

**Town of Cape Elizabeth  
Ordinance Committee Minutes**

January 6, 2020

7:00 p.m.

Town Hall

Present: Penny Jordan, Chair  
Jamie Garvin  
Chris Straw  
Valerie Adams, ex officio  
Valerie Deveraux, ex officio

Staff: Maureen O'Meara, Town Planner

Councilor Penny Jordan called the meeting to order. The minutes of the December 2, 2019 meeting were approved 3-0.

Public Comment

Alina Perez, 14 Littlejohn Rd - She has been a Cape homeowner for 18 years and a single parent who works in the Cape Elizabeth School system. She operates a short term rental in her primary residence, unhosted for 3-4 weeks each summer. She supports the "red-line ordinance" that includes a 30 day limit, but does not want the limit to be less than 30 days. She expects a \$1,000 - 2,000 increase in her taxes after the revaluation and the STR income helps with the tax burden. Primary residence owners are invested in a good neighbor relationship. Rentals enrich the town by allowing a variety of home owners to afford to live here.

Committee review of draft ordinance amendments

Committee Chair Jordan began review of the "redline ordinance" draft. She wants to keep in mind unintended consequences and also look at enforcement.

Councilor Straw supports replacing the "homestay" term with "boarding room." Councilor Garvin likes the use of "lodgers" in the definition.

The committee discussed the "primary residence" definition. Councilor Straw could support limiting it to properties with a homestead exemption and Councilors Garvin and Jordan prefer keeping the options in the draft. Ms. O'Meara noted that enforcement will be more successful with fewer options. Another community allows "other documentation" and is receiving affidavits that are suspect.

Councilor Jordan felt the other items in the definition help people understand what is required and Councilor Adams observed that people could "game" the system. The committee discussed the limitations of the state id. The committee agreed to delete reference to "other documents" in the definition.

Councilors Garvin and Jordan questioned the ceiling of 30 days, perhaps increasing it to 90 days. Councilor Straw said STRs are transient use, which is why he would treat it as operating a business in a residential neighborhood. The committee replaced the short term rental definition with an alternate suggested by a town resident.

The committee reviewed the Short Term Rental Guest definition and speculated about how it impacted family guests and house-sitting. No changes were proposed.

The committee discussed the Short Term Rental Hosted and Unhosted definitions at length. These definitions are not used in the ordinance. Councilor Garvin suggested that STRs issues may be moot if STRs are limited to primary residences. The hosted and unhosted should be merged because we do not want enforcement to do "bed checks."

Scott Rockwell, 119 Old Ocean House Rd - In his situation, his neighbors act as hosts and look out for him. He received a call when he was on vacation in Puerto Rico that his goats had escaped and his neighbors helped out.

Gary Cummings, 36 Richmond Terrace - When neighbors aren't hosts, their peace is disturbed. Suggesting that neighbors are fine with helping with unhosted STRs is not an accurate picture.

Ms. O'Meara pointed out that if you regulate hosted and unhosted differently, then you need to clearly define each or you incentivize deceit.

Alina Perez - She does not want her neighbors to be uncomfortable and it happened once in 6 years of renting.

Elizabeth Menz, 27 Cross Hill Rd - She rents in the summer to cover taxes, college costs and during the rental tent camps at Wolfe's Neck Farm. Her husband is in Maryland. Her family manages the STR and are on site 3 times a week. She has never had any issues and doesn't want her STR to disrupt her neighbors.

Councilor Garvin supports the primary residence as the main requirement and then a fixed number of days to rent. This will reduce the overall number of STRs.

The STR market is almost all unhosted and the ordinance should not differentiate.

Councilor Jordan said the same conditions are in place with the STR abutting. It was noted that this would require a conditional use permit.

Councilor Deveraux questioned how you would enforce the hosted requirement. Ms. O'Meara said the town was considering contracting with a private enforcement company, like Host Compliance, for assistance.

Tony Armstrong, 32 Lawson Rd - He said the ordinance already limits rentals so that a 2-3 day rental equals 7 days.

Councilor Deveraux likes the hosted option and providing a homeowner the unhosted option with a cap.

Councilor Straw supports having both a hosted and unhosted option. Councilor Garvin doubts the hosted option can be enforced. Councilors Garvin and Jordan agreed that distinguishing between hosted and unhosted was not important. Councilor Adams would like to manage the definition more and reference "entire house."

Councilor Garvin asked Mr. Hebda if he thought incidences like what happened over the holidays would not happen if STRs are limited to primary residence. Mr. Hebda, 55 Richmond Terrace, said they would still happen because the owners are gone and are not there to see what happens. They just apologize, but how can you screen the next renter?

Councilor Straw referenced a rental situation in Bridgton. With a long-term renter, you have an ongoing relationship. STRs are a one-off interaction.

Councilor Jordan asked Frank Strout to explain how he manages an STR.

Frank Strout, 1184 Shore Rd - His family has a manager who screens renters, looks at background history, meets them at the property and explains the rules. They only do weekly rentals. When someone is looking to rent for a long weekend, it is usually a party and we say no. Now we have repeat renters. There are 3 family members living within a mile of the property. We rent STR for 3 months/yr, then long term tenant for remainder.

The committee discussed private room v. entire home rental, with some preference for definitions matching language used on STR platform sites. The Short Term Rental Hosted and Unhosted definitions will remain in the ordinance

to help people understand the regulatory structure. The committee wants staff will look at using a different definition for tenant that uses a property rights perspective.

Ms. O'Meara included the conditional use section, without change, in the draft as a reference because some STRs are proposed to require conditional use review. She noted that applying the conditional use standards to an STR may be problematic.

Councilor Straw supports the conditional use review requirement and would make all STRs a conditional use. There was no additional support for that revision.

The committee moved to review of Sec. 19-8-14, Short Term Rental Standards. Ms. O'Meara explained that the draft requires all STRs to obtain a permit (some currently are exempt) as regulated by this section. There were no changes suggested to the draft purpose statement. A new section, B. Permitted Short Term Rentals, is intended to capture the STR framework discussed at the December 2, 2019 meeting, as shown on the chart developed during that meeting. The main STR categories are: Primary residence hosted, Primary residence unhosted, Seven acres plus STR and STR adjacent.

Councilor Garvin said that requiring a primary residence is the hurdle and it does not need to be hosted. The problem is not primary residence STRs, but the rapid growth of real estate speculation. There is also a preponderance of activity year round which will be curtailed with a cap. The more complicated the ordinance, the more people will "dodge the speed bumps."

Councilor Jordan asked if he would change the STR definition to require primary residency? If the draft is changed to not require hosted, because most of the market is in unhosted, then he would consider eliminating others, but wants to be careful not to overcorrect to address the problem.

Councilor Straw would maintain the hosted/unhosted distinction but would differentiate in which districts they are allowed.

Tony Armstrong - He supports retaining the definitions but treating them the same in the regulations.

Deborah King, 125 Old Ocean House Rd - She rents and lives in her home. She is an active host and has had no problems.

Councilor Garvin said there is less market demand for hosted STRs and Mrs. King asserted both have interest in the market. Councilor Garvin said the vast number of listings in Cape are to rent the whole property. Mrs. King commended the Strout model and supports requiring STR owners to provide a contact number to the neighbors. Councilor Garvin said that may be incorporated later in the ordinance review. Mrs. King asked why limit STRs to 90 days?

Tim Hebda - He still supports hosted v. unhosted STRs. If something occurs and the owner has gone away for 2 weeks, the problem remains. He has been communicating with the STR owner and the behavior has not changed. How can you assume the next renter won't act the same?

Councilor Garvin said if the STR is in a primary residence, there will be less renting and they will be more likely to deal with the consequences. Some actions are not STR violations.

Jenny Aronson, 27 Lawson Rd - Having a number to contact puts the burden on the neighbor, which she does not support.

The committee focused on the Primary residence hosted and unhosted definitions. Ms. O'Meara explained that the days for renting would need to appear on the permit application. She also recommends that the 30 rental period be in a consecutive block to further enhance monitoring and enforcement. Councilors Straw and Jordan liked the block. There was discussion of increasing the rental time limit to 45, 60 or 90 days.

Mary Ann Lynch, 2 Olde Colony Lane - She would like to comment on the 30 day limit. When she moved here, there were no rentals in her 22-home neighborhood. Now more than 10% are rented. Unhosted STRs are a business. She was asked if the STRs are primary residences? She said no. She is sympathetic to the desire for rental income and 30 days is reasonable for STRs. If they need more, it should be a long-term rental. Renting every week is disruptive to the neighborhood and should therefore be limited.

Councilor Deveraux asked if she had concerns with hosted STRs. Ms. Lynch has no concerns because they live there.

Councilor Adams would limit all STRs to 30-60 days because of the disruption.

The committee agreed 3-2 to keep the hosted/unhosted categories.

Elizabeth Menz -She questioned if the consecutive block will concentrate STR activity?

Councilor Garvin is ok with 90 days and no block. Councilor Adams said it would be nice to know there is a set time.

Tony Armstrong - For most scenarios, 90 day equals the summer.

Councilor Deveraux asked about hosted STRs?

Tony Armstrong - One STR is occupied with an effective 3 unit. The property has a commercial feel and you still have cars, cleaning folks, people so he prefers 30 rather than 90 days.

The committee agreed not to limited hosted STRs to 60 days and keep it at the 90 limit.

Councilor Garvin said that every April we approve tax increases that burden residents. Citizens want services and then we take away this income tool, which is unreasonable. He agrees STR proliferation is out of hand.

Councilor Straw agreed but STRs have broken the normal housing cycle by locking up housing inventory. The tension is that STRs are subsidizing people that might sell or downsize. Councilor Jordan is frustrated that we are not letting people use the STR tool because times change. Councilor Adams said that STRs create another policy problem because they exacerbate the affordable housing problem.

The committee reviewed the 7+ acre STR option. Ms. O'Meara noted that the size of the lot does not preclude a structure from being close to an abutter, however no minimum setback is proposed because many of the STR complaints relate to outside activities and it would be difficult to establish setbacks from outside play areas. The committee discussed the inequity of allowing large lot owners to generate revenue where smaller lot owners would not have that option. This exemption also allows more STR activity when the town is moving toward less STRs. The committee decided to delete this option.

Frank Strout - He said that that people are not buying million dollar homes in order to operate an STR. It is rare.

Jenny Aronson - It happened at Lawson Rd.

Tony Armstrong - 1.8 million paid to operate a property as an STR.

Frank Strout - The 7 acre option is not consistent with the 90 and 30 caps proposed earlier.

Elizabeth Menz - The unhosted primary residence limit is stingy and should be increased from 30 to 60 days.

Councilor Straw supports the 30 day limit on unhosted. Councilor Garvin observed that almost all the communications have been about unhosted STRs, except for Ms. Lynch. The committee agreed to add back in the 7 acre STR option. They also aligned the 90 day limit for STR adjacent to math STR hosted. Accessory dwelling units were removed from STR adjacent because they are important for affordable housing.

Councilor Jordan asked for more public comment on the 30-60-90 day limits. There was agreement that 90 days basically equates to the summer.

Scott Rockwell - Are you asking us to talk to our neighbors about the 90 days? Councilor Jordan said yes.

David Turgelsky, 11 Starbird Dr - He wants to clarify that most complaints are from unhosted, non-primary STRs.

Deborah King - We are being punished when we are bringing money into the town.

Elizabeth Menz - When will the ordinance changes be wrapped up because we have bookings already?

Councilor Jordan said we still have a lot of work to do. Ms. O'Meara offered to review the process. When the Ordinance Committee completes its work, it will send it back to the Town Council. Because Zoning Ordinance amendments are proposed, this will need to be referred to the Planning Board. The Planning Board may hold 1 or more workshops and must hold a public hearing before referring it back to the Town Council. The Town Council may then send it back to the Ordinance Committee and the Town Council must hold a public hearing before it considers a vote for adoption.

Ms. Lynch - With this timeline, the Town Council should consider a moratorium on STRs that would begin January, 2021 to make clear expectations about bookings.

Councilor Deveraux asked if bookings can be cancelled.

Scott Rockwell - There is a big penalty to cancel bookings. We are "super hosts" and would lose that designation.

The committee reviewed #5, multifamily and multiplex STRs. Councilor Straw has concerns with the impact of STRs on neighbors in close proximity typical of multi-unit housing. The committee agreed to keep this provision.

The committee moved to Sec. C, Short Term Rental requirements.

Councilor Garvin wants greater penalties than proposed if someone operates without a permit. There was general agreement that STR permits running on the same calendar year would promote enforcement. A grace period was discussed and discarded. Ms. O'Meara said making the rental period consecutive days should make it easier to enforce a block of time, which would have to be identified on the permit, and the committee agreed.

Under advertising, this provision requires that the STR advertising must match the permit. Councilor Garvin supports building in protections for existing contracts. The committee wants the advertising language proposed by Ms. Volent be added to the draft.

Scott Rockwell - His family returns to his home for 2 weeks each summer. The consecutive rental block is split in half. This is a broad brush against the STR community.

Under Minimum stay, Councilor Garvin said this was confusing. Staff will work on better language.

Under Registration record, Councilor Deveraux asked why not more time than 48 hours. The committee agreed to 5 days.

Review of draft amendments will pick up at the next meeting, starting at D, Review Procedure (p. 8).

### Next meeting

The committee agreed to schedule the next meeting for Wednesday, January 15th, beginning at 7:30 a.m. The focus of the meeting will be to complete the review of the draft. Councilors Straw and Garvin said they prefer electronic copies of the meeting package only.

