

Town of Wolfeboro  
Short Term Rental Subcommittee  
Planning Board  
Monday, May 17, 2021

Present: Geordy Hutchinson, Cindy Melanson, Peter Cooke, Brad Harriman, John Thurston, Susan Repplier, Tavis Austin, Kathy Barnard.

The meeting was called to order at 10:00 AM.in the Great Hall.

The minutes of May 3, 2021 were reviewed. There was a motion to accept the minutes. The motion was seconded. All members present voted in favor of the minutes.

The next item on the agenda was the opportunity for the public speak. Several members took the opportunity to address the issue.

Some of the issue's mentions were as follows: the use of accessory structure as dwelling unit; tents on private property needs to be addressed; whole home rental are an issue (especially when overcrowding occurs); a review of the zoning ordinance and how we got to where we are; there are existing regulations in place that can be enforced; the grandfathering of existing uses needs to be addressed, enforce only by complaint needs to be re-examined; zoning ordinance needs to be specific; take a stand on the issue of short-term residential in existing neighborhoods; people need to be educated about what they can and cannot do; police need more power to do their job.

The public session was then closed.

The committee then discussed the existing problems and possible resolution.

John Thurston then made a motion on short-term rental as follows: or regardless of a permitted use in a specific zone under current zoning ordinances, I make a motion to seek clarification from the Town's legal council to see whether the use of "vacation rental" in NH bill 458 amended RSA 674:16 is a permitted use under current zoning regulation or ordinances in any district within the boundaries of the Town of Wolfeboro. The motion was seconded. All members present voted in favor of the motion.

There was more discussion about the issue. John then made another motion to seek clarification from the Town's legal counsel to see whether the collection of a business tax for a short-term rental or vacation rental is defined as a business for profit in NH. This motion was seconded. All members present voted in favor of the motion. Tavis will forward this to the Planning Board's attorney

Committee members then decided to review some of the permitted uses and other suggestion in Audrey Klein letter and discuss this at the next meeting.

The next meeting will be held on June 7, 2021, 8:00 AM in the Great Hall.

Submitted by Kathy Barnard

## Wolfeboro Short Term Rental Committee 5/17, 2021

Dear Madam Chair,

In the 1980's, Meredith determined that they wanted to encourage development in the downtown for overnight accommodations, and the first hotel was built. I remember well, because as a young woman I cleaned rooms at the Mill Falls Marketplace. Over the next two decades, Meredith very successfully developed tourism based on short term overnight stays, including hotel conferences, weddings, and the like. Today, Meredith has probably several thousand overnight rooms.

During that same time period, Wolfeboro intentionally focused on being a *residential* summer resort town. By and large, summer vacationers in Wolfeboro were people who owned their camp and who stayed for the entire summer, inviting friends and family to join them. Their children worked summer jobs in Wolfeboro. They were "regulars" at all of the local businesses and were recognized from year to year. Wolfeboro retains that small town feel which has not been just our marketing trademark, but our truth, for decades. Wolfeboro never intended to be a town that accommodates every overnight visitor; we never intended to be Meredith.

Wolfeboro has a number of hotels, motels, inns, and approved bed & breakfasts. Since the early 1980's (and probably earlier, but I had no access to earlier town records), Wolfeboro regulated short-term rentals. Initially, short term accommodations were allowed "by right" in the Shorefront Resort Residential Zone (Rt 109 from Tuftonboro to Keewaydin Road.)

Over the course of two decades, the language in the zoning changed a number of times. As an example, in the Resort Residential Zone permitted by right were:

- Boarding, Lodging, Tourist Home or Bed & Breakfast shall mean a dwelling with a managing resident on the premise, having accommodations within the dwellings space, with or without meals, rented to more than two and fewer than 20 persons.

And in some commercial zones:

- Hotel, Motel or Inn shall be a building or group of buildings providing sleeping accommodations (but not individual cooking facilities) for persons lodged with or without meals on a transient bases for compensation but not meeting the definition of Boarding, Lodging, Tourist Home or Bed & Breakfast.

In other residential zones, Boarding, Lodging, Tourist Homes and Bed & Breakfasts required individual approvals with a Special Exception, or potentially with Variance. Hotels, Motels and Inns had a separate process for commercial zones.

Sometime in the early 90's, the Resort Residential Zone was removed and the language was again changed, which left the zoning allowances very similar to what we have today. Give that short-term accommodations have always been specifically permitted in some zones by an approval processes, we can be very certain that short-term rentals were and are NOT allowed in zones where they are not specifically listed (re: permissive zoning). I'm not a lawyer, however the recent court case Working Stiff Partners LLC v. City of Portsmouth has many similar elements to the history and restrictions in Wolfeboro, and is thought to be very good case law for Towns wishing to uphold their zoning ordinances with regard to transient/short term rentals.

Moving forward with revisioning Wolfeboro as an overnight destination, there is no reason to rush into adapting our zoning to this tidal wave of pressure, let us move slowly. Cautiously. Let's also recognize the caution and care the Planning Board applied in wording the past zoning ordinances, specifically for Bed & Breakfasts and Accessory Dwelling Units. Given the restrictive measures for these two uses, it is clear that the Planning Board recognized the potential for negative impacts of short-term accommodations and planned accordingly.

Let's look at the current restrictions for an approved Bed & Breakfast:

**A single-family detached dwelling** containing, in addition to living accommodations for the **resident manager**, up to **six** individual sleeping rooms, without cooking facilities, for the purpose of **providing to the general public, for compensation, lodging, bathroom facilities** and breakfast **to overnight patrons only and for no longer than two consecutive weeks.**

These are allowed outright in the South Wolfeboro and Wolfeboro Falls districts, allowed by Special Exception in the Village Residential, Rural Residential and Agricultural districts, and allowed by Planning Board approval in the Central Business District, Bay Street Limited Business District, Center Street/28 and Commercial District C2.

Let's look at the current restrictions for an approved Accessory Dwelling Unit, which are allowed everywhere by the **Planning Board Conditional Use process:**

A residential living unit that is within or attached to a single-family dwelling, **subordinate to the single-family dwelling**, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking and sanitation.

**D.** Conditional use permit. Pursuant to RSA 674:21, the Planning Board is hereby authorized to grant a conditional use permit to allow for accessory dwelling units in accordance with the restrictions and requirements of this section.

**E.** Criteria for approval. Where permitted by conditional use permit, an accessory dwelling unit shall comply with the following:

- (1) A maximum of **one accessory dwelling unit** (ADU) per single-family dwelling is permitted.
- (2) Exterior alterations, enlargements, or extensions of the single-family dwelling are permitted in order to accommodate the accessory dwelling unit. However, no such change is permitted which would alter the appearance of the single-family dwelling to look like a duplex or any other multifamily structure (i.e., **the house shall not look like it was designed to occupy more than one family**). . . .
- (3) The area of an ADU shall **not exceed 30%** of the total habitable floor area of the single-family dwelling or 750 square feet, whichever is larger.
- (4) A minimum of one dedicated off-street parking space shall be provided for the ADU.
- (5) The **property owner must occupy one of the two dwelling units and provide proof of occupancy. The owner-occupied unit cannot be sublet.** Both the primary dwelling unit and the accessory dwelling unit must remain in common ownership.

What is most interesting, is that both of these definitions require that the property owner or resident manager be a resident occupant of the property.

A straightforward and organic method of increasing overnight accommodations is to modernize our current zoning sections. By making small changes to our existing definitions (Hotel, Motel, Inn, Bed & Breakfast, Accessory Dwelling Unit, & Rooming House), and by adjusting the zones in which they may be approved, and by which process, (by Right, by Special Exception, by Conditional Use), we could easily double the number of legal overnight rooms without having to develop an entire new zoning section. From there, in time, we can see what else might be desired.

Now the ugly part:

- Modernizing the zoning in the method above will still require that *legally pre-existing nonconforming short term rentals* be identified and documented with *vested rights*. We cannot remove or change the status of legally pre-existing non-conforming short term rental properties. Those properties have *vested rights* not available to others who were not legal/approved when started. It is imperative to discern which properties have vested rights.
- We need to enforce the ordinance with regard to illegally created/operating short term rentals, including whole-house short term rentals. The approach needs to be prioritized by staff, perhaps starting with those units that have been created without building permits. It is imperative that Wolfeboro initiate a public information campaign to inform property owners and property purchasers of the Zoning restrictions of short term/transient rentals.
- We need to have an annual or bi-annual licensing/permitting program for approved existing and new overnight accommodations that allows for code review and nuisance abatement.

**Nothing that we do with the zoning will negate the necessity of the three administrative actions above, they cannot be skipped or swept under the table.**

Someone made the point that enforcement could be only by "complaint". "By complaint" is not an equitable method of zoning enforcement.

- Enforcement by complaint does not create equity between illegal short-term rentals and those who comply with the local and State requirements.
- Enforcement by complaint can be used by citizens against each other as a retribution for unrelated dissatisfactions.
- Enforcement by complaint creates unnecessary ill-will between neighbors by shrugging off the responsibility of maintaining order from Town management to individual homeowners.
- And, in the worst case, enforcement by complaint creates a climate wherein someone may be frightened about calling in a health or safety concern.

We've heard people suggest we find solutions based on the answer to the question "What problem are we trying to solve?". Overnight rentals, and particularly illegal overnight rentals impact every facet of life in Wolfeboro, it is not only a Police or Fire Department issue.

### **What are the impacts?**

- Fair and equitable competition with APPROVED traditional short-term commercial rentals.
- Building valuation for property tax to be commensurate with STR
- Proper notice to real estate firms and potential purchasers that short-term rentals are not permitted unless approved by Town processes.
- Building Insurance to recognize use as STR
- Meals and Room tax paid
- Building and Fire Safety Code review

### **Enforcement Impacts:**

- Licensing on an annual basis allows for removal of the permission to operate if necessary, can require new application when property is sold to a new owner.
- Fines/"tickets" can be issued for lax oversight by manager or negative behavior issues by tenants. Adoption of enforcement regulation under RSA 31:39, which could be enforcement by the Codes Office rather than the Police Department.
- Licensing fees to offset costs of implementing and enforcing the program.
- Zoning Enforcement is difficult and lengthy, therefore zoning language needs to be unambiguous.

### **Negatives of STR:**

- Reduction in the number of available long-term rentals.
- Downtown will have fewer permanent residents.
- Will require staff-hours to implement and administer.
- May remove the ability to earn additional critical income for some local resident property owners.
- There will be trash, parking and noise impacts greater than those experienced in a permanent residential neighborhood.

### **Building and Fire Code:**

- Dwelling unit may be restricted to a number of unrelated individuals, or structure may be considered Rooming & Lodging for code purposes.
- Dwelling Unit may be required to have a minimum of square feet per individual.
- Other critical code requirements such as GFCI circuits in kitchen and bathrooms, star railings and guards, pool fencing, and more.

### **Benefits of STR:**

- Additional rental income for those who are full-time residents of Wolfeboro.
- Increases business activity downtown; vacationers spend more dollars per day than residents.
- Reduced traffic in the walkable area of town.

**How are short terms rentals are presently allowed? (See Below):**

**BED-AND-BREAKFAST (TOW Zoning) (SW) (WF) (VR & RR by SE) A(CM by SE) (C1 by PB) (BSLBD by PB) (CS/28 by PB) (C2 by PB only existing structures 1992)**

A single-family detached dwelling containing, in addition to living accommodations for the resident manager, **up to six individual sleeping rooms**, without cooking facilities, for the purpose of **providing to the general public, for compensation, lodging, bathroom facilities and breakfast to overnight patrons only and for no longer than two consecutive weeks.**

**BOARDINGHOUSE (TOW Zoning) (C2 by PB only existing structures pre-1992)**

A dwelling for not more than 10 occupants where lodgers rent one or more rooms for one or more nights and sometimes for extended periods of weeks and months. The common parts of the house are maintained, and some services, such as laundry and cleaning, may be supplied.

[Amended 3-9-2010 ATM by Art. 8]

**HOTEL-INN-MOTEL (TOW Zoning) (C1 by PB) (BSLBD by PB) (WF)**

A building containing at least five and not more than 50 individual sleeping rooms or suites, each having a private bathroom attached thereto, for the purpose of providing overnight lodging facilities to the general public for compensation. It may provide dining services and amenities to its guests and to the public and may host special functions, such as weddings and conventions.

[Amended 3-13-2018 ATM by Art. 3]

**CAMPGROUND (TOW Zoning)**

Any area or tract of land used or designed to accommodate two or more camping parties, including tents, camping trailers, recreation vehicles or other camping outfits, and includes the necessary accessory uses normally associated with such use.

**DORMITORY (TOW Zoning) (VR by SE & PB)**

A building occupied by a resident manager and used, designed and adapted to provide housing for more than eight occupants, not including the resident manager and his or her family. Such units are distinguished by separate study and sleeping quarters; common social assembly rooms; common toilet facilities; and common cooking and dining facilities, where provided.

[Added 3-9-2010 ATM by Art. 8]

**§ 175-57.1. ACCESSORY DWELLING UNIT**

[Added 3-14-2017 ATM by Art. 2]

**C. Definition.** As used in this section, the following term shall have the meaning indicated:

**ACCESSORY DWELLING UNIT (ADU)**

A residential living unit that is within or attached to a single-family dwelling, **subordinate to the single-family dwelling**, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking and sanitation.

**E. Criteria for approval.** Where permitted by conditional use permit, an accessory dwelling unit shall comply with the following:

- (1) A maximum of **one accessory dwelling unit** (ADU) per single-family dwelling is permitted.
- (2) Exterior alterations, enlargements, or extensions of the single-family dwelling are permitted in order to accommodate the accessory dwelling unit. However, no such change is permitted which would alter the appearance of the single-family dwelling to look like a duplex or any other multifamily structure (i.e., **the house shall not look like it was designed to occupy more than one family**). The exterior door to the accessory dwelling unit shall be located to the side or rear of the building whenever possible. The ADU shall be connected to the main dwelling unit by an interior door in a common wall.
- (3) The area of an ADU shall **not exceed 30%** of the total habitable floor area of the single-family dwelling or 750 square feet, whichever is larger.
- (4) A minimum of one dedicated off-street parking space shall be provided for the ADU.
- (5) The **property owner must occupy one of the two dwelling units and provide proof of occupancy. The owner-occupied unit cannot be sublet.** Both the primary dwelling unit and the accessory dwelling unit must remain in common ownership.

(6) Where municipal sewer service is not provided, the septic system shall meet New Hampshire Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises, RSA 485-a:38, Approval to Increase Load on a Sewage Disposal System.

**Some Definitions:**

**DWELLING UNIT (TOW Zoning)**

One or more rooms arranged, designed or used for residential purposes for one household and containing independent sanitary and cooking facilities. The presence of cooking and sanitary facilities conclusively establishes the intent to use for residential purposes.

**NEIGHBORHOOD**

An area of land local to the use concerned, generally lying within a radius of 1,000 feet, which **has a set of unifying characteristics such as housing style or quality, similar income strata, economic livelihood**, topographic features, water features, local recreational facilities or convenience shopping. Factors such as a railroad and highway rights-of-way, major streets, rivers, water bodies and severe topographic constraints will form boundaries and serve to separate neighborhoods.

**OCCUPANCY**

The predominant use classification of a building, structure or land.

**PERMITTED USE**

A use specifically permitted or analogous to those specifically permitted as set forth in Article VII.

**PRINCIPAL USE**

The primary or predominant use to which the property is or may be devoted and to which all other uses on the premises are accessory.

**COMMERCIAL USE:** A use operated for profit or compensation. (TOW Zoning)

**PROHIBITED USE**

A use which is not specifically permitted.

Sincerely,

Audrey Cline  
North Main Street