

To: Members of the Planning Board
From: Liz Durfee, AICP, Planner
Date: December 14, 2023

Subject: Regulation of Tourist Homes

Overview

The Select Board and Planning Board have discussed the topic of how to regulate short-term rentals. The general consensus has been that the term “tourist home,” as defined in Madbury’s Zoning Ordinance, encompasses what is conventionally understood to be a short-term rental (i.e. an AirBnB, etc.). Tourist home is defined as *Any one family residence of normal residential proportions consisting of a room or group of rooms located within the confines of the original residential structure where transient accommodations for sleeping are provided for a price.* Tourist homes are permitted by right in the General Residential and Agricultural District.

The state allows municipalities to regulate, permit, and prohibit short-term rentals. The state does not define short-term rentals. The NH Municipal Association encourages municipalities to examine their zoning ordinances and develop clear regulations.

Madbury’s Master Plan does not speak directly to tourist homes or short-term rentals, but the housing chapter does specify that “The Town must continue to assess housing needs and evaluate the effectiveness of current regulations in achieving housing goals.”

The Selectboard has suggested that tourist homes could be regulated as Home Occupations level 2 (which require a conditional use permit) or as a use is allowed by Conditional Use Permit in the General Residential and Agricultural District.

Potential CUP Criteria

The Planning Board has requested examples of criteria that could be included in a permitting process.

The ‘base’ criteria that apply to all conditional uses are included in Article IV General Provisions Section 9(D) of the Zoning Ordinance (attached). Additional, use-specific criteria could be incorporated into Article V General Residential and Agricultural District Section 2, as is done for agritourism, for example. The criteria in Article IV Section 9 do not need to be repeated in Article V and therefore are not listed in this section.

For short-term rentals, the NH Municipal Association recommends that Towns incorporate the following:

- *Limit on number of units per property*
- *Limit on number of guests per unit*
- *Limit on number of days per year units may be rented*
- *Owner occupancy requirement*
- *Allowance only by special exception*
- *Restriction to specific zoning districts*
- *Periodic safety inspections.*

Several key aspects of what is or is not allowed should be determined by the Planning Board, such as:

1. Should Site Plan Review be required?
2. Does the owner need to be present?
3. Can property owners rent homes or just rooms?
4. Does the Town want to cap the number of permits in town?

Preliminary recommendations for the Planning Board to discuss follow:

1. **Article III Definitions**

- Amend the definition of “Tourist Home” to clarify that an STR is not a tourist home.
TOURIST HOME: Any one family residence of normal residential proportions consisting of a room or group of rooms located within the confines of the original residential structure where transient accommodations for sleeping are provided for a price. **A short-term rental is not a tourist home.**
- Add a definition for “Short-term rental” Most short-term rental ordinances include the length of time a home or rooms in a home may be rented and the max number of days per year in the definition of short-term rental as opposed to including this in the criteria. This is what helps distinguish a short-term rental from another type of rental.

Example from Durham: Short-term rental - An accessory use to an owner-occupied single-family residence containing, in addition to living accommodations for the owner and the owner’s family, not more than three sleeping rooms, for the purpose of providing to the general public, for compensation, lodging, with or without breakfast, for less than thirty (30) consecutive days. A short-term rental is not considered a home occupation.

Example from Portsmouth (this is only part of the City’s definition): Short-term rental - Rental of an entire dwelling unit for less than 30 consecutive days at a time and for not more than 120 days in any 12-month period.

2. **Article V Section 2(E)** Replace Section E with the following:

A conditional use permit issued by the Planning Board in accordance with [**Article V Section 2 or a new section in article V (section 5) or in a new Article V-C]** is required to establish a short-term rental.

3. Add Short-Term Rental CUP, annual permit, and conditions.

*This content could feasibly be included in **Article V Section 2 or a new section in article V or in a new Article V-C.***

- A. A conditional use permit issued by the Planning Board is required to establish a short-term rental.
- B. An annual permit to operate shall also be required for each short-term rental. This shall be issued by the building inspector. This permit may be revoked if the property owner fails to adhere to conditions of approval.
- C. The short-term rental shall be subject to the following criteria and the criteria in Article IV General Provisions Section 9(D).
 - i. The site where the short-term rental is located must be the property owner’s primary residence.
 - *Could also specify that the rental can’t be an accessory apartment*
 - ii. The property owner or a member of the property owner’s family must be on the premises overnight each night while the property is rented.
 - *If the Planning Board decides to allow whole homes to be rented, as opposed to just rooms, then this criteria would be omitted.*
 - iii. No parties or events shall be permitted.

- *Could add some additional detail here, such as limiting the people allowed at the property to those who are registered renters. I.e. no friends or other guests.*
- iv. Those areas of the premises open to use by renters shall remain subject to periodic safety inspections per state law.
- v. No recreational vehicle, travel trailer, tent, or other temporary shelter may be used by the renter(s) on the premises in conjunction with the short-term rental.
- vi. The number of renters shall be limited to two occupants per bedroom.
 - *May need to add some flexibility for children. In lieu of this or along with this requirement, could require evidence of septic design capacity. Article IV Section 9(D)(d) does require “appropriate utilities,” but it would be helpful to specifically request the design capacity/number of bedrooms that the septic system is designed for.*
- vii. Prior to CUP approval by the Planning Board, the applicant shall submit a written statement from the Madbury Fire Chief ascertaining that the proposal has adequate fire lanes, emergency site access and other appropriate provisions to ensure public safety, as determined by the Fire Chief.
 - *This is the language included in Madbury’s Site Plan Review Regulations*
- viii. The Planning Board may set additional conditions on the CUP based upon potential impact of the proposal to the neighborhood.

It is recommended that police and fire chiefs and the Town’s Attorney review all potential changes to the Zoning Ordinance prior to consideration of adoption.