

**Town of Cape Elizabeth
Ordinance Committee Minutes**

December 2, 2019

7:00 p.m.

Town Hall

Present: Penny Jordan, Chair
Valerie Adams
Jamie Garvin, ex officio member
Chris Straw
Jeremy Gabrielson

Staff: Maureen O'Meara, Town Planner

Councilor Penny Jordan called the meeting to order. The minutes of the November 7, 2019 meeting were approved 2-0.

Public Comment

Chair Jordan asked for public comment of items not on the agenda and there was none. She asked for comments not to be repetitive and opened public comment.

Doug Dransfield, Richmond Terrace - He has reviewed proposed changes and appreciates the direction. Chair Jordan clarified that the proposed changes were not drafted by the committee, but by resident Mary Ann Lynch. He wants the ordinance to establish penalties for people who don't get a permit. Chair Jordan said that the town can increase fees and also contract with a company to monitor STRs. He referenced a Boston Globe article where airbnb agreed to remove listings of people who do not obtain a permit and wants Cape to do the same.

Victoria Volent, 58 Cottage Farms Rd - She referenced her email. She supports people using their property to generate income through long-term rentals, which brings people into the community as residents and she want to hear the committee's thoughts.

Mary Ann Lynch, 2 Olde Colony Ln - She appreciates including a draft in the meeting package. It addresses concerns with more than 10% of neighborhoods of traditional 4 bed, 2.5 bath homes "dark." There is a middle ground where folks like in Richmond Terrace use rental income to pay taxes. We should avoid commerce clause problems. She has reviewed other ordinances, including Jersey City. If you rent an owner occupied home, this is an accessory use. Jersey City limits rentals to 60 days but her draft does not have a limit. If the STR is not your primary residence, this is a business and should be prohibited. Her draft includes a transition clause to address next summer's contracts, as well as a \$2,000/day

penalty. Rentals are in the \$1,500/\$1,800 range, so the penalty needs to match the rental benefit. We should prevent "a hotel without staff."

Tom Dunham, 11 Becky's Cove Ln - He wants to leave his "STR" cottage to his daughter to rent and the proposed changes would preclude her from retaining the cottage.

Ms. Lynch offered that she could do a long-term rental. There should be a balance between the burden on the neighbors and property owners.

Jeff Holden, 402 Pulpit Rock Rd - He operates a STR at his house and carriage house. A homestay he can rent while he is on premise. Need granularity, not a blanket. He has 14 acres. His house has 5 bedrooms and he lives in the carriage house 2-3 weeks each summer. Taxes have increased 25% in 3 years. Responsible homeowners won't hurt neighbors and the ordinance should allow renting while still respecting the neighbors.

Councilor Garvin asked if this is his primary residence with an adjoining dwelling. Mr. Holden said yes. Councilor Garvin asked if he rented the carriage house and Mr. Holden said yes, in addition to some rental of the primary residence.

Frank Strout, 1184 Shore Rd - His family has an LLC and no family member abuts 40 Zeb Cove Rd so it's an issue if STR rental is limited to primary residence. They have rented 3 years without complaint. They rent to cover a \$38,000 tax bill, which would require \$3,200 a month if a long term rental. Three family members live in town and someone manages the property for us. Chair Jordan asked about abutting across the private road, where a family member lives. Mr. Strout said they are trying to keep the property in the family for the next generation and not making a profit. The land has been in the family for 200 years.

The public comment period was closed.

Chair Jordan noted the town attorney update on the commerce clause, which would not allow regulations to differentiate between non-primary residence resident and non-resident owners.

Councilor Straw reviewed his draft, which is a complete rewrite, and he prepared as a working version to move the discussion forward. The goals are to remove overlapping terms, and remove contradictory and duplicative language, such as B&B and homestay (which is eliminated). The B&B definition is contrary to the State Fire Marshall because it references beds instead of rooms and that is

fixed. STRs should exclude a special event facility and add short term hosted rental, which is a new definition.

There is a discrepancy between the residential and commercial zones in treating STRs as a primary and accessory use. The regulations should not push externalities of a use that is excessively adverse to neighbors. Rentals have historically been allowed but that tended to be for 1-2 months a summer. That can continue.

Taxes are rising, but taxes are set by Augusta as a pseudo wealth tax. Historically, a boarder can be added to the home to pay taxes and this should still be allowed. A B&B must serve breakfast and hosted STRs do not serve meals. In the RA District, a hosted STR should be an accessory use. He would allow an unhosted STR in the RA on a large lot with a conditional use permit. He recommends deleting verbosity of STR regulations.

Councilor Straw noted that the RC District does not include accessory uses and Ms. O'Meara said this is a clerical error that has been corrected. Councilor Straw removed rooming or boarding house and also struck B&B that were shoe horned into the high density districts (RC) and moved it to a business use.

He rewrote the STR purpose statement and noted the pressure from the state to create new housing via the comprehensive plan. The applicability section verbosity was replaced with bullets and referenced the homestead exemption as required to operate a hosted STR. No STRs in condominiums, no conversion of multifamily dwellings, no duplex rental, not parties without a special event overlay or conditional use, no on-street parking, no more than 8 persons per STR unless a conditional use permit is obtained.

In order to save CEO time, the nitty gritty of what the CEO has to do should be removed from the ordinance. The building code requirements should be deleted and rely on the fire marshall. STR operators should have a good neighbor brochure but not put it in the ordinance. The sewer and parking references should be deleted. The 3-strikes penalty should be deleted in favor of relying on the CEO's discretion. He supports a transition provision.

Chair Jordan wants the committee discussion to start with principles, then flow through the ordinance. First, do we want to continue STRs, and if as a primary residence?

Councilor Adams appreciates the Lynch draft and has some compromises she can support, such as allowing non-primary residence STRs on 7+ acre lots. She likes the conditional use permit. She does not support the immediately adjacent

lot, but ok with multiple dwellings on the same lot. She would allow adjacent lot with a conditional use permit.

Chair Jordan, Councilor Straw and Councilor Garvin agreed some STRs are ok.

The discussion moved to non-primary residence STRs. Councilor Adams supported these subject to the above limitations. Councilor Straw supported as long as the owner was on the premises. If off-premise, there should be restrictions.

Councilor Garvin expressed concern with compliance with the commerce clause for STR exceptions above.

Moving the discussion forward, Councilors Straw and Adams did not support primary residence, unhosted STRs. Councilor Garvin felt unhosted primary residence STRs are not a problem.

Councilor Straw said that zoning should address theoretical problems. Neighbors should not have to be the property manager. We are rolling the dice that it won't be a problem in the future.

Councilor Garvin said the problem is when the property is primarily a STR. He is conflicted with allowing the STR in the RA on a large lot when RB and RC lot owners may have more of an income need. Large lot property owners have means and don't the income as much as the smaller property owners, who may be retirees.

Councilor Straw said he could support 1-2 weeks of renting unhosted, primary residence.

Councilor Garvin said the current 7 day restriction is confusing to people and Councilor Adams said it should clarify 1 single family home.

Chair Jordan asked about allowing the primary residence STR on an adjacent lot. Councilor Straw said people hang onto property to avoid the estate tax and we should not enable that. Chair Jordan noted family attachment to property and Councilor Straw questioned what we are constitutionally allowed.

Councilor Adams gave the example of someone who buys the adjacent lot as an investment. The Dunham cottage is essentially the same lot. A conditional use permit requirement may be an option.

Councilor Garvin supported handling STR adjacent lot situations on an individual basis. He would also allow non-adjacent STRs that are line of sight with a primary residence or it would be hard to defend legally. There are a small number of examples so we should focus on the majority.

Chair Jordan asked Ms. O'Meara to summarize the history of the homestay and B&B regulations. She explained that the homestay was mostly to acknowledge the practice of someone renting out a room long-term, one example at the time being on Olde Colony Ln. The provision came from the Camden, Maine Ordinance and made it clear this was allowed. The B&B ordinance was a balance struck after 3 public hearings, where properties with frontage on Shore Rd and Ocean House Rd would be allowed a B&B, which is why this is allowed in the RA and RC residential districts.

After discussion, the committee leaned toward keeping the homestay definition, but changing the term to avoid confusion.

To explore other points of view, Councilor Garvin questioned removing STRs from the commercial districts, noting that many objected to STRs because they are a business in a residential district. Councilor Adams clarified that she has 2 policy concerns. One concern is operating STRs in residential districts because they can be a business in a residential zone. She objects to STRs in commercial districts because it conflicts with the town's policy to promote affordable housing. STRs conflict with long-term housing in the commercial districts. Councilor Garvin said it is hard to defend the claim that Cape is just anti-business. Councilor Adams said it is ok for the town to decide which businesses we want, such as excluding strip clubs, etc.

Councilor Garvin said South Portland allows STRs in business districts. Councilor Straw said our current requirements allow business in the business districts. He agrees we need to preserve affordable housing and preserve business. Councilor Adams said that when we adopted "mixed use," in the business districts, people were not thinking STRs.

Chair Jordan asked if we want STRs in the town center? Councilor Straw said no.

Councilor Garvin asked why not allow someone to own an unhosted STR on the other side of town? The committee discussed proximity and adjacency. Councilor Adams clarified that it is the municipal residency, not the primary residence, that creates conflicts with the commerce clause.

Councilor Straw said abutting is more acceptable because the STR operator experiences the externalities of the use first. A person could also merge the lots.

The committee agreed not to allow an STR unless it is a primary residence. The committee's policy decisions were reflected on the chart below, which committee members noted is still subject to discussion and revision.

Type	Permitted	Conditions
Primary residence hosted	Yes	General STR rules ; should not include housesitting if no payment
Primary residence unhosted Property larger than 7 acres	Yes	Single family home; General STR rules ; can be hosted or unhosted; 30 days/yr, minimum 1 wk rental; only in RA district with conditional use permit, minimum setbacks
Non primary residence (hosted or unhosted) Property larger than 7 acres	Yes	Single family home; General STR rules ; can be hosted or unhosted; 30 days/yr, minimum 1 wk rental; only in RA district with conditional use permit, minimum setbacks
Primary residence unhosted	Yes - 2 No - 2	Some time restriction: 30 days/yr, minimum 1 wk rental
Unhosted STR on a lot abutting a primary residence or an accessory dwelling unit on the same lot as a primary residence	Yes - 3	This allows a lot across the road to be a STR with a conditional use permit;
Non primary residence hosted STR	No	
Non primary residence unhosted STR	No	
Non primary residence unhosted STR in Town Center/BA	No	No because this is the affordable unit area

For the next meeting, staff will prepare draft ordinance provisions that reflect the discussion as shown on the chart. No deletions to the STR regulations will be made and instead these will be discussed by the committee at the next meeting. Ms. O'Meara noted that the building code references are needed to require things like hard wired smoke detectors and egress lighting because, under the building code, STRs fall under single family home provisions which do not require these items.

The Code Enforcement Officer will be asked to comment on deletions proposed by Councilor Straw. A long-term homestay will be preserved using a new term.

Councilor Garvin wants the next meeting to include substantive discussion on compliance and enforcement. He asked if compliance issues will decrease with the proposed changes. Ms. O'Meara explained that a list of 121 properties was developed based on a map of STRs submitted by a member of the public and 45 of those properties had homestead exemptions.

Councilor Gabrielson noted house sitting where no money is changing hands should still be allowed and Councilor Straw wants to look at penalties.

Public Comment

Tom Dunham - He asked the committee to consider a conditional use to allow his daughter to own and rent out the cottage. He is concerned with the rental limit of 30 days and would prefer 10 weeks. You don't want to force out an aging population. He has rented for 10 years to multiple families and some have then moved to town. Instead of burning us with regulations, nail the violators.

Steve Bornick, 23 Olde Colony Ln - He agrees and runs 7 STR properties. People generally don't buy property as a STR business to make money. You should follow through on impacts to neighbors. Some STRs are better than residents and you should monitor better. You should limit the overall number of STRs like Portland, for example 125 STRs, then oust if there are violations.

Jenny Aronson, 27 Lawson Rd - You have nailed the problem with non-residential STR operators. This would help my neighborhood. She supports 1 week minimum rental.

Victoria Volent - She sat with Host Compliance 2 weeks ago. Enforcement is most effective when there is a minimum of special provisions, such as housesitting. She wants the advertising to match what the regulations allow. If the property is hosted, the advertising must say "a room."

She does not want Accessory Dwelling units (ADUs) to be STRs. They are an important source of affordable housing and can be rented long-term to generate income. She also does not support unhosted STRs in business districts because business district apartments are an important affordable housing component. To use the CEO's time well, keep regulations simple.

Councilor Garvin suggested that the town's demographics suggest ADUs allow seniors to stay in their homes with the added income.

Julie Armstrong, 32 Lawson Rd - She thanked the committee and noted there are 4 STRs within 500' of her home that are not primary residences. Please do not

underestimate the impact on property owners when primary residence STRs are operating. There is a psychological injury to enjoyment of property and 10 weeks is a long time, especially with popular STR neighborhoods .

Frank Strout - commends work so far, summarizing as follows:

1. Homestead exemption - not all apply.
2. Thirty days is a tight window; they do 3 months
3. Make rules simple to enforce, avoid loopholes, and have hefty fines

Gary Cummings, 36 Richmond Terrace - People are buying homes solely as a business to run as a STR. He chooses not to do it with his house.

Tom Dunham - Perhaps a contract zone would work?

Councilor Adams asked Mr. Strout and Mr. Dunham why they are not renting long-term? Mr. Strout said the taxes are \$38,000/year and they would need to get \$3,200 a month renting long-term. Mr. Dunham said he owns 2 houses with a \$50,000/yr tax bill. Their goal is to net out \$25,000/yr from the cottage rental.

Tony Armstrong, 32 Lawson Rd - He supports keeping the 3 strikes penalties instead of burdening the CEO with making the decision. He is concerned with renting out property without enhanced building code requirements. Smoke detection should be a minimum.

Next meeting

The committee scheduled the next meeting for Monday, January 6, 2020 beginning at 7:00 p.m. The meeting adjourned at 9:30 p.m.