

TOWN COUNCIL
Committee to Review Zoning and Permitting Regulations
Selectmen's Conference Room

Thursday December 5, 2019 – 6:00pm

Councilors:

Chair of Committee, Councilor Jennifer Cullum
Councilor Paul Hebert
Councilor Paula K. Schnepf
Councilor Britt Beedenbender

MEETING MINUTES

PRESENT: Chair of Committee, Councilor Jennifer Cullum; Councilor Paul Hebert; Councilor Britt Beedenbender Councilor Paula K. Schnepf; **ALSO IN ATTENDANCE:** Elizabeth Planning and Development; Paul Wackrow, Assistant Planner; Gloria McPherson, Planning and Development; Brian Florence, Building Commissioner

Chair Councilor Cullum opened the meeting at 6:00pm announcing that we will lose quorum at 6:30 due to Councilor Hebert having another commitment to attend; Chair announced Public Comment, announcing that the comments will be limited to 3 minutes.

PUBLIC COMMENT:

1. John Crow, President Osterville Village Association, wanted to clarify a statement he had made at a meeting prior to this one that the Barnstable Resource Line for residents was not in use and was not being used anymore by the Town, he wanted to clarify that it is working and is monitored and answered by Lynne Poyant, Communications Director, for the Town of Barnstable.
2. Martin MacNally, Marstons Mills, Fire Prevention Officer for COMM for 31 years, President of the Homeowners Association in Marstons Mills, and has two of these homes in the neighborhood, he also works as a property manager for a short term rental company based in Eastham but handles registrations from Eastham to Barnstable. Length of stays, he is not in favor of having a set length of stay, however his company has a 1 week minimum stay in the summer months and a three day minimum in the winter months, he believes that homeowners that do this service themselves the length of stay is important if you're looking for someone who can only afford a four day. It will be a mistake for Barnstable to limit the length of stay or set standards of length, because they will go to other communities and spend their money there instead of here. Any restrictions you put on must be spread to all rentals in the town. Short Term rental should not be singled out from long term rentals. You have just as many year round rental problems as short stay rental problems. He understands the Town is trying to stream line the Regulatory process, but does not think that corners should be cut or process eliminated for rental in the Town.
3. Heather Hunt, Osterville, Barnstable Watch, a memo was sent to the Committee, and at the last meeting the Committee had mentioned that you would be looking at nuisance style regulations. The Short Term Rental problem presents fundamental land use and zoning enforcement issues and we do not believe that nuisance style regulations are a substitute. The following memo handed out is a memo for thoughts on that, as well as a preliminary recommendation on the rampant and overt occupancy regulations violation problem that has gone unaddressed.

TO: Ad Hoc Committee on Zoning and Regulations
 FROM: BarnstableWatch.com
 (contact: Heather Hunt, Kathy Holcombe at BarnstableWatch@gmail.com)
 DATE: December 5, 2019
 RE: **Short-term rentals and nuisance ordinances**

**Nuisance ordinances place the burden on residents to report problems.
 But these problems are not inevitable; the Town can prevent many of them by enforcing existing regulations.**

In our experience, many short-term rental nuisances — like noise and parking — are the result of overstuffing single-family homes. Groups of transient lodgers and multiple families use single family homes and exceed Town of Barnstable occupancy limits all the time. In our experience the Town does not enforce its own occupancy rules even when asked; correcting that is a good place to start.

**Occupancy violations are part of the short-term rental business model,
 and a routine practice of investors running makeshift hotels.**

To the right, you'll see icons that "hosts" use to advertise their short-term rentals on Airbnb.com. ***The icons show prospective renters how many friends can pile in to a house and divide costs.***



Overstuffing homes gives Airbnb its pricing advantage over hotels, motels, and bed-and-breakfasts where such occupancy violations are not allowed. Investors routinely welcome it. Were they to not engage in occupancy violations, their properties would not be as popular and produce the income they expect.

Common spaces
 12 air mattresses,
 2 couches

We're aware of at least one local investor who advertises in excess of occupancy limits and overstuffs with two illegal attic "bedrooms" and no safe egress. Since that was reported in February 2019, and a Cease and Desist order was issued many months later, there was constant use of those rooms - lights on, drapes up and down - throughout summer 2019, consistent with continued advertisements showing those illegal rooms.



**Police use nuisance laws to shut down problem properties.
Makeshift hotels proliferating in Barnstable residential neighborhoods aren't that.**

Nuisance ordinances can eliminate certain problem properties efficiently. They can force disruptive tenants to leave and, sometimes, landlords to sell. But it's no solution for year-round residents living next to revolving door transient lodgers with bags that are never really unpacked.

And, at least in Barnstable, they would place burdens and risks on residents.

Residents who have complained of occupancy violations have been asked by Town officials to produce evidence - photographs and documentary proof. In fact, one of us was asked by a Town official to produce evidence of septic system compromise after expressing concern about chronic occupancy violations.

Photographing lodgers next door is no way to live. For the Town to encourage residents to use our electronic devices to produce evidence of transient lodgers' behaviors and violations is also risky. The Commonwealth of Massachusetts laws on audio recording are strict and, we believe, have both civil and criminal consequences. Please do not put in a place a system that depends on residents to gather evidence to get the protection of laws.

**Barnstable is spending \$1.06 billion on a long-term wastewater management plan
while it ignores threats to the system we'll still depend on for decades.**

As you know, excess nitrogen leaching from septic systems causes 80% of the nutrient pollution in our estuaries. Last year, scientists found chemicals in our drinking water linked to cancer, immune disorders, and liver disease. Residents were urged to keep their dogs away from lakes and ponds because the toxic algae could kill them.

Until the \$1.06 billion project is completed decades from now, we need to manage the problem.

We urge the Town to stop providing a safe harbor to operators of short-term rental properties that invite occupancy in excess of septic system design. If the Town believes our occupancy limits are wrong, it should:

1. Explain the policy objective it seeks to achieve that trumps the public health and environmental protections occupancy limits provide
2. Adjust all occupancy limits so that residents and those considering buying a home here understand what is allowed

Let's prevent nuisances: as a condition of short-term rental permit, require advertisements that identify the legally permitted number of adults.

Preliminary recommendation

As a condition to obtaining a short-term rental registration from the Town of Barnstable, applicants should be required to state the number of adult occupants permitted by the Town's occupancy regulation in all rental advertisements.¹ The application should also state that the rental permit will be revoked if an ad does not comply.

Other jurisdictions have ordered short-term rental advertisements to accurately represent occupancy. For example, Boulder, Colorado provides that all advertisements for rentals should list a maximum occupancy no greater than the city's maximum unrelated occupants (the advertised limit can be smaller than that allowed by law).² Rancho Mirage, California requires the maximum overnight occupancy to be disclosed in all advertisements.³ New York's summer haven — the Hamptons — has special, tightened occupancy limits, regardless of the size of the home, when it's not rented to a family.

Rationale

Advertisements for short-term rental units across Barnstable invite illegal occupancy levels in plain sight. This includes investors using on-line platforms like Airbnb, professional rental companies, and Realtors. *(See illustrations in the Appendix to this document.)*

Expected sources of support

- *Homeowners* who purchased dwellings in residential neighborhoods with occupancy limits designed to protect public health, safety, and quality of life.
- *Municipal enforcement staff*, who in our experience and a review of Town records, ask residents that request occupancy enforcement at nearby STRs for photographic or other evidence of violations. Enforcement staff appears to be unable to gather evidence or enforce laws: one officer described evidence-gathering as "driving by" an investor-operated Airbnb.
- *State and local health and environmental officials* who at least on paper administer laws to align septic system capacity to bedroom and occupancy levels.
- *Environmental advocates*, including those that have taken steps to ensure concrete action to protect the Cape's water and ultimately, its economy.

¹ The Town currently requires a sign to be posted in short-term rental units indicating the occupancy limits. Short-term rental advertisements, publicly available "guest" reviews and neighbor experiences show this is wholly ineffective in achieving occupancy limit compliance.

² <https://bouldercolorado.gov/plan-develop/occupancy-limits>

³ <https://ranchomirageca.gov/residents/short-term-rental-information/>

- *Cape Cod & Island Association of Realtors (CCIAOR)* given their professional obligation to integrity in advertising.⁴ Additionally, the CCIAOR has publicly expressed concern about Barnstable’s wastewater challenges, which is directly linked to the septic design, capacity, and use that aligns with legal occupancy limits.

Expected sources of opposition

- *Property owners Interested in maximizing STR revenue* by exceeding occupancy limits to reduce cost per person and/or to attract groups or multi-family use.
- *Transient lodgers* who seek to exceed occupancy limits to reduce cost per person and/or to use single-family homes as venues for groups and multi-families.

Fiscal impact

- Reduce the costs of enforcement staff required to deal with occupancy violations at short-term rentals *in real time* that occur when advertisements invite transient occupants in excess of permitted levels.
- While there are data services, we respectfully suggest that identifying advertisements in excess of occupancy limits and the associated street address is not hard. We did it. High school interns working for academic credit could do it at no cost.

**The Town already has most of what it needs to regulate STRs:
occupancy limits and zoning, which we all relied on when we bought our homes.**

At a recent civic association meeting, a resident stated *“the Town of Barnstable has lost its way in terms of respecting what zoning is. You really just have to respect zoning, and you have to enforce it. An investor in a residential neighborhood is a blatant violation of occupancy. That is a change of use.”*

⁴ **Article 12** REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations.

Standard of Practice 12-10 REALTORS®’ obligation to present a true picture in their advertising and representations to the public includes Internet content, images, and the URLs and domain names they use, and prohibits REALTORS® from:

1. engaging in deceptive or unauthorized framing of real estate brokerage websites;
2. manipulating (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result;
3. deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic;
or
4. presenting content developed by others without either attribution or without permission, or
5. otherwise misleading consumers, including use of misleading images. (*Adopted 1/07, Amended 1/18*)
See, <https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/2019-code-of-ethics-standards-of-practice#DutiestothePublic>

BarnstableWatch is comprised of residents who live in single-family homes located in zoning districts where the permitted land use is single-family residential dwellings. We relied on that zoning designation when we purchased our homes. Many of us chose to purchase homes in zone RC, where we knew zoning laws did not allow rental of even one room.

We now find ourselves living next door to homes that investor-operators have flipped into makeshift hotels. Unlike traditional Cape family rentals, these properties are investor profit centers that are home to no one, ever.

One difference between this new type of transient lodging accommodation and traditional accommodations — inns, motels, hotels, and bed-and-breakfasts — is that the Town requires the latter to have on-site management, which controls many things, including occupancy.

Residents in Barnstable deserve what residents in every other municipality across the Commonwealth have: protection of zoning laws.

The Town of Barnstable wrote that it has been deliberating short-term rental regulations since August 2018. It took more than a year for the Town to ask for citizen input and the views of village associations. That is critically important and requires time. That said, we are barreling toward a year-and-a-half of deliberations and in the intervening period, Barnstable's response to requests for the protection of existing, longtime zoning laws has been to advise homeowners to "wait" for new zoning laws.

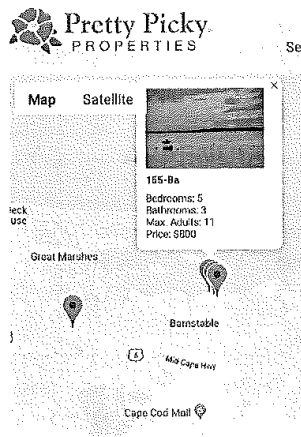
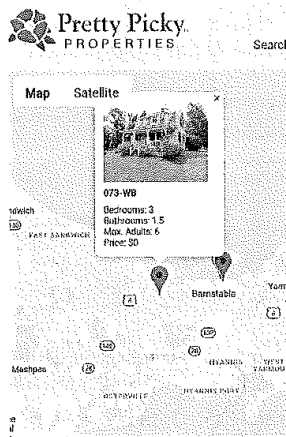
We urge the Town to provide homeowners who bought homes in single-family residential dwelling districts to enforce zoning and occupancy laws and return our residential neighborhoods to what they have always been while it continues its important public input process and deliberations.

APPENDIX

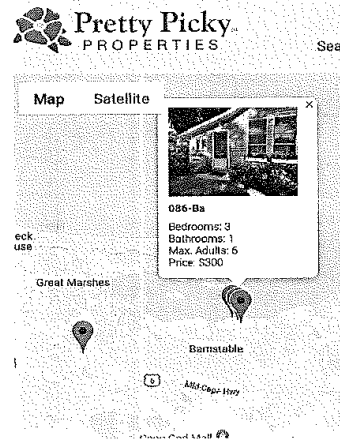
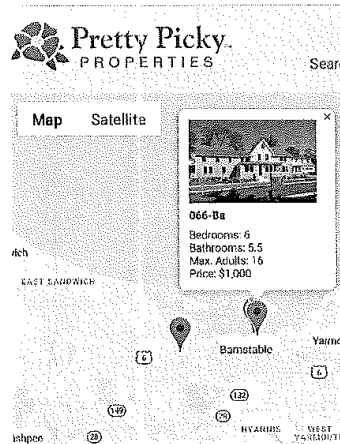
Professional rental companies
openly advertise to exceed occupancy limits

A professional rental company stated at a village association citizen input session on short-term rentals that landlords of long-term rental units are more likely to violate Town codes.

The company's short-term rental advertisements for *all* of its properties in Barnstable as of December 1, 2019 exceed maximum adult occupancy per regulatory limits.



Source 12/1/2019,
<https://www.prettypicky.com/mid-cape-vacation-rentals-map/>



BarnstableWatch

www.BarnstableWatch.com

This ad invites 14 to occupy a 5-bedroom home, with a septic system designed accordingly, in an environmentally challenged area.

To the extent Town officials conclude other policy objective are more important than the environmental protections that sizing septic systems to bedrooms and limiting occupancy accordingly, it should identify those objectives publicly.



AA weneedavacation.com

We Need a Vacation.com
Cape Cod, Martha's Vineyard, Nantucket

17/14

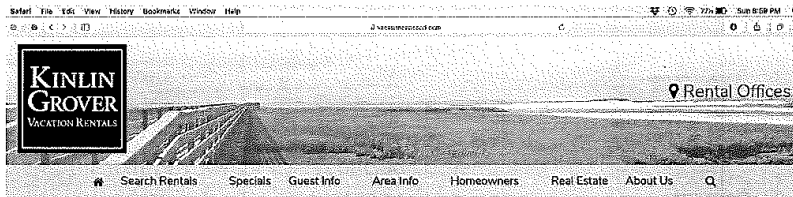
< Centerville Vacation Rentals

Wequaqet Dream With Private Dock

♡ ✉

5 BR 4 1/2 baths Sleeps 14

Beds: 1 king, 5 queens, 2 twins



Browser: Safari File Edit View History Bookmarks Window Help

KINLIN GROVER VACATION RENTALS

Rental Offices

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This ad identifies 24 persons may occupy at a 7-bedroom home.

Previous Prop Next Prop

This large, 7 bedrooms and 5 full baths, open spaced house is one and a half blocks from the beach. - TRHOD

Barnstable Rentals



Check Availability

Type: Single Home

Bedrooms: 7

Max. Occupancy: 24

Baths: 5 full

Town: Barnstable

<https://www.vacationcapecod.com/rental/house/122?User=KGR444413&Avail=&Stay=>

BarnstableWatch

www.BarnstableWatch.com

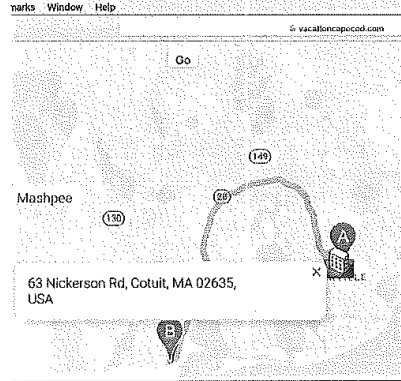


Description

This large, open spaced house is one and a half blocks from the beach. The house sleeps 24 people, with 7 bedrooms and 5 full baths. The compound consists of a large main house, with a gourmet kitchen, family room, living room with fireplace, 6 bedrooms, 4 full baths. The house level has a full laundry area, sauna and shower. A huge terrace around deck overlooks a large, landscaped yard, with a 400 square foot, screened in, teak deck decorated porch. There is a Giant House, which sleeps 10, has a large family room, and has a new kitchen and full bath. The house comes complete with linens, towels, beach towels and beach chairs. The house is also ideal for family reunions, and Working parties and is available year round. First Floor: Bedroom #1 12 Twins, Bedroom #2 7 1 Queen, Bedroom #3 1 Queen size sleep sofa; Second Floor: Bedroom #4 7 6 Twins, Bedroom #5 7 3 Twins, Bedroom #6 7 1 King ***SATURDAY TO SATURDAY ONLY *** ADDITIONAL LINEN CLEANING FEE OF \$350.00***10m-Refundable \$125 booking fee not included in rental rate.

Bed Sizes

- Bedroom 1 - 7 Twins
- Bedroom 2 - Queen
- Bedroom 3 - 6 Twins
- Bedroom 4 - 3 Twins
- Bedroom 5 - King
- Additional Sleeping 3 - 1 Queen sleep sofa



Short-term rentals operators advertise common space as bedrooms

Short-term rental ads for properties across Barnstable offer common space as sleeping quarters.

These representations are common and are in plain sight. Identifying the address is simple.

To the extent Barnstable has a policy reason for putting aside the determination about the legal number of bedrooms in residential dwellings, it should identify that policy and not spend taxpayer dollars sending Town employees to properties to inspect and identify the permitted number of bedrooms and occupants.

Picturesque, completely renovated 8 room seaside home surrounded by stunning hydrangeas & roses. Just 15 blocks to Oysterville center & walk/bike to harbor & beach; Light and airy with a nautical theme & open floor plan. Gourmet kitchen. Tennis nearby. Bikes & kayaks provided.

SPECIAL MIDWEEK PRICING - this summer save up to 40% off. [read more](#)

Any questions for the host?

Contact host

Sleeping arrangements



Bedroom 2
1 queen bed, 1 crib



Bedroom 3
2 single beds



Common spaces
1 single bed, 1 sofa bed, 1 air mattress

4. Robert Schulte, Centerville, a contrary position, the 3-4 day rentals are destroying the neighborhoods, it's not the ones that are rented from realtors, it's the ones that rent to too many individuals at a time in a home that the septic is only so big, and can only accommodate the size and the amount of bedrooms. Those are the issues we have; there are too many people in a short stay.
5. Cathy Holcomb, Centerville, zoning enforcement is what we need to do, if you enforce the RC-1 zoning laws none of us would be here tonight.
6. Jake who is small business owner, and wants to make sure that the Committee keeps in mind the small business owners that rely on the tourism that comes here to survive, if we start to limit the length of stays or the amount of stays or the rental market all together that has a huge impact on the small business owners that rely on these tourists to survive, they will go elsewhere, and you will have more vacant stores fronts along main street.

Chair of Committee asked for Committee response to the public comments made.

Councilor Paul Hebert asked Jake the small business owner to clarify what he meant by the small business owner. Jake wanted to make sure that the Committee kept in mind how important the short term stays are to the small business owner. People are vacationing different these days, they tend not to stay weeks, but days instead, so if we limit the time or the length of stay, it just may put a lot out of work.

7. Laura Cronin short term rental in a business area is not the problem, it is the houses in our residential neighborhoods that are being rented and the traffic that it increases in our neighborhoods, our neighborhoods are not zoned for a business, and no one should be able to run a business out of a neighborhood, if you own a bed and breakfast and you're in a business zone, then you have every right to operate it in that district, but if you live in a residential neighborhood, that is what it is, a residential neighborhood has year round residents.

Councilor Schnepf thanked everyone for coming and appreciates the comments made tonight that are from different perspectives, and obviously a concern that create a policy balance and that when we come up with policies that we keep in mind the impact on small business in our area.

Chair of Committee asked Gloria McPherson about why an Air B & B in a residential neighborhood is allowed to operate in a R1 zone. Ms. McPherson answered that traditionally is has been considered a residential use in a residential neighborhood, an example she gave was she owns a house in New Hampshire that she rents out, is she considered running a business when she rents this out, and it has been determined that no she is not. This is what we are trying to determine that if renting your house in a residential neighborhood running a business. It is not clear on whether it is a residential use or a business use.

Ann Schulte from Centerville commented that the number of people that are in a home even though our own residents are limited due to septic, or the number of cars parked on a residential street or parked in front of fire hydrants, I am not going to call the police every time something like this happens, but when do we draw the line of safety in our neighborhoods, we as families can't have 15 people in a three bedroom home, so why are the rentals different. She would like to see the laws enforced that are put on the residents, we have the rules existing, and we need to enforce them.

Ms. McPherson commented that it is always who you rent to, I have had in my own experience horrible renters that have ruined my home, the other thing mentioned is the parties at these homes, neighbors that own homes have parties all the time, and they live in the home, so when we look at these rentals we have to keep in mind the homeowner in a traditional home, if we put restrictions on the short term rental they will apply to the homeowners.

Chair of Committee asked Councilor Schnepf to introduce her topic of discussion regarding setting goals from Short Term Rental survey results, Chair of the Committee mentioned that the survey results have not included as of yet the Greater Hyannis Civic Association, and regardless of the discussion tonight she is going to wait for their input and suggestions before moving forward with anything, this impact Hyannis the most, so it is unfair to proceed without their discussion. Councilor Schnepf stated that we need to look at the tool in place we have and figure out if we need to add to those or create more. The State has determined Short Term Rentals as a revenue source for the State, so there have been sanctions put on the rental market. A conversation we need to have is whether we need to preserve the rental market across the Town, so we need to accept that there are going to be this short stay rentals in our area because we are that type of vacation spot for people. Councilor Schnepf asked if the Committee's desire to preserve the traditional rentals here on the Cape. Chair of the Committee stated it is important to her to keep the traditional rentals here on the Cape, she mentioned she grew up here and it has always been a way for people to visit the Cape when they can't afford to live here, so keeping the traditional Cape Cod alive is very important to her. Councilor Hebert stated the same, we need to keep Olde Cape Cod the same, and preserve the unique Cape Cod we have, but also put in place rules and regulations so that the short term rental can survive in our Town. You can still come to the Cape and rent a home to get that homey feeling, we should be able to craft regulations to do this, we need to protect the reasons people come here, we do not want to drive people away, we want people to come here, so we need a balance and a reasonable solution to the problem.

Chair of the Committee stated we need policies spelled out correctly and enforcement to be done; we have ordinances on the books we need to enforce it. Build on what we have already.

Councilor Schnepf encouraged individuals to write us if you do not feel that we should build on the current regulations or if you feel that the rentals should be eliminated altogether, writing to the committee members is important. Feedback is important. Safety is another concern that came up as a result of the survey sent, as well as security in our neighborhoods, so we need to create a document that has some teeth for enforcement.

Chair of the Committee mentioned that she had a conversation with Laura Cronin regarding enforcement, and why is the enforcement not being done. And is a house that turns over a bedroom 30 times in a month considered running a business. These are questions we need answers to; what is the threshold of when its residential turned business, when is it considered overcrowding in a home when there are 15 people in a 1 bathroom home. Councilor Schnepf answered that in our current zoning regulations it is unclear. Councilor Schnepf asked if any idea have how many rentals we have in the Town. Mr. Wackrow stated we do if they register their homes, but if they do not we don't. Chair of the Committee would like to see one document for a rental regardless of the type of rental you have, some are lodging houses, some are shelters, some are group homes, there is a wide variety of homes people rent, and we need to make sure that they are all under one umbrella, and the regulations apply to all.

Chair of the Committee asked for a motion to adjourn, all members present voted in favor of adjournment.

ADJOURN: 6:55pm