

**REPLACEMENT SHORT-TERM RENTAL REGULATIONS
CONSISTENT WITH THE FIFTH CIRCUIT COURT OF APPEALS #21-30643**

Eric Treaster
3 January 2023

Chairman Capon, Juliet Hodge & Members of the PZC,

I believe that (i) an STR is a commercial use that can degrade the quality of life of its neighbors, (ii) an STR with a resident owner, or a resident representative of its owner, will reduce that risk, (iii) STR economic benefits to local businesses and the community are limited, because most STRs are vacant most of the time, and (iv) STRs without a resident owner, or a resident representative of the owner, reduce the number of houses available for permanent residency, which is in conflict with the POCD.

I believe there are four approaches that will mitigate the risks of STRs:

1. Prohibit STRs, except those in commercial districts.

This approach, which Noank adopted, is reasonable, uniform, constitutional, and the simplest to enforce.

It is proper, because residential districts should be reserved for residential purposes – with exceptions for neighborhood schools and low-intensity home occupations.

A prohibition on STRs has the benefit of retaining the number of houses available for permanent residency, which is consistent with the POCD.

A prohibition on STRs would show that the PZC prioritizes residential uses over conflicting commercial uses in residential neighborhoods.

This option satisfies the goals of the neighbors, retains permanent housing consistent with the POCD, and provides more economic benefits to local businesses than would frequently vacant STRs.

As such, the "prohibition" option should be discussed as an agenda item, with the goal of determining whether the PZC is in favor or opposed to STRs in residential districts.

2. Require the STR owner to be a resident on his STR property.

This is the approach adopted in our existing regulations, which appears to work well in reducing the risks of STR guests creating a negative impact on the quality of life of nearby neighbors. This approach has the additional benefit of retaining the number of houses available for permanent residency, which is consistent with the POCD.

However, this approach is unconstitutional, because it does not allow for out-of-state ownership of STRs. Our existing STR regulations must be amended – preferably before a complaint is filed against the Commission. *As such, this option cannot be considered.*

3. Require the STR owner, or his representative, to be present when an STR has guests.

For example, if an STR is rented Friday-Sunday, the owner, or his representative, must be there Friday-Sunday.

This approach is simple, constitutional, and would help ensure that STRs do not have a negative impact on the quality of life of their neighbors. It would be nearly as effective as if the STR owner, or his representative, lived on the property as in Option #2.

However, in the real world, it will be difficult, and perhaps impossible, for an STR owner to find a reliable, trustworthy, and qualified representative who cares about the property and its neighbors, and who is willing and able to be present whenever the STR has guests.

For example, much like a motel, guests might reserve an STR for a Saturday & Sunday, then for Thursday, then for Saturday through Tuesday, with check-in times at 10 AM, 3 PM, and 9 PM; followed by a three-night rental 10 days later with a 3-hour check-in window; followed by a 7-day rental with check-in at 8 AM on a Christmas morning and a checkout at 8 PM on New Year's evening. Sometimes reservations may be made only an hour before a guest arrives. Check-in and checkout times and dates could be at any time, including after midnight, and on holidays.

There could also be multiple check-in times for the same weekend if guests arrive at different times. Some guests may arrive earlier or later than planned, and leave earlier or later.

And guests could have dogs, children, extra visitors, or illegal drugs in violation of the guest agreement, which must be dealt with immediately before the neighbors are affected. Even though an owner or his representative may do his best to be present when there are guests, it is likely he would often be absent.

In addition, because such STRs would not have a resident on the property, this approach would reduce the number of houses available for permanent residency, which conflicts with the POCD.

This approach also results in a vacant house between guest departures and arrivals, and vacant houses are at increased risk of damage by fire, vandalism, loss of heat, frozen & ruptured pipes, flooding, mold, and "squatting."

Taken together, this option, although tempting, should not be adopted.

4. Require the owner, or his representative, to reside on an STR property, with an exception for seasonal STRs.

As with Option #2, an owner, or his "designated representative," if he is residing on the property, will be more likely to welcome his guests in person, enforce the conditions of the special permit and the STR rules, resolve problems, protect the property, protect the neighbors, and check out STR guests, than would a designated representative who does not reside on the property.

In addition, if the owner, or the owner's "representative" (and, if he wishes, his family), lives on the property, the STR would not reduce the number of houses available for permanent residents. This would be a win-win for everyone – the STR guests, the STR owner, the neighbors, the STR operator, his family, and local businesses.

The following proposal is intended to implement Option #4. It is based on a requirement that an STR owner resides on his property as in the current regulations, or has his designated representative or operator reside on the property – *with an exception for seasonal STRs*.

For seasonal STRs, the proposed regulations permit its owner, or his designated representative, to reside on the property, or *to be present* on the property (his choice), when it has guests. Since *seasonal* houses, by definition, cannot be used for permanent residents, this approach would retain the number of houses available for permanent residency, which is consistent with the POCD.

Please contact me if you have any questions or suggestions.

Respectfully,

Eric Treaster

**SUGGESTED REPLACEMENT SHORT-TERM RENTAL REGULATIONS
THAT ARE CONSISTENT
WITH THE FIFTH CIRCUIT COURT OF APPEALS #21-30643**

§2.2 – Add the following definitions:

SEASONAL SHORT-TERM RENTAL: An STR available for less than six months per year.

NON-SEASONAL SHORT-TERM RENTAL: An STR available for more than six months per year.

SHORT-TERM RENTAL ("STR"): All or part of a furnished single-family residence, duplex unit, or accessory apartment, on a single parcel, that is rented, or available to be rented, to members of the public for 30 or fewer continuous days.

SHORT-TERM RENTAL OPERATOR ("STR Operator"): An adult who is an STR owner, or a designated representative of an STR owner, responsible for enforcing the conditions of the STR special permit, the STR Guest Rules, and the STR Guest Agreement.

SHORT-TERM RENTAL GUEST ("STR Guest"): A person or persons renting lodging from an STR Operator, for a fee, for less than thirty (30) consecutive days, under a written guest rental agreement.

SHORT-TERM GUEST RENTAL AGREEMENT ("STR Guest Agreement"): A written agreement between the STR Operator and his guests that establishes the rent, schedules, times, terms, fees, deposits, conditions, responsibilities, and respective obligations of the parties.

SHORT-TERM RENTAL GUEST RULES ("STR Guest Rules"): House rules for the guests of an STR.

§5.3 – (page 5-2) – Update the "Schedule of Uses – Residential Districts"

Line 7 in the second section of the schedule – ("Residential – Accessory Uses")

Delete: "Short Term Rentals, Hosted §8.31"

Replace with: "Short-term Rentals §8.31"

§8.31 – Replace §8.31 with the following:

8.31 SHORT-TERM RENTALS

A. Purpose:

To permit members of the public to be a guest in part or all of a furnished single-family residence, duplex unit, or accessory apartment in a residential district, or in a legally existing single-family residence, duplex unit, or accessory apartment in a non-residential district, provided such use (i) does not reduce the number of dwellings available for long-term residency, and (ii) does not create an adverse effect on the surrounding neighborhood.

B. Physical Requirements:

1. An STR must be located within (i) a single-family residence, (ii) a duplex unit, (iii) a permitted accessory apartment in a single-family residence, or (iv) a detached accessory apartment on the same parcel as a single-family residence.
2. The STR must not have zoning, building, fire, or health code violations, and shall not be blighted under the Town's Blight Ordinance.
3. The property for a proposed STR must be current regarding payment of property taxes.
4. An STR must not require a shared driveway for access.
5. Parking for STR guests must have an all-weather surface.

C. STR Operator requirements and duties:

An STR Operator must:

1. Reside on a non-seasonal STR,
2. Reside, or be present, on a seasonal STR property whenever it has guests,
3. Assure the STR is safe, sanitary, and ready for guests,
4. Personally welcome and check-in STR guests,
5. Provide STR guests with a copy of the STR Guest Rules,
6. Have STR guests agree, in writing, to comply with the STR Guest Rules,
7. Provide a card listing his name, address, phone number, and email address to STR guests when they check-in,

8. Provide a card listing his name, address, phone number, and email address to his adjacent and opposite neighbors, the land use office, the fire department, and the police department,
9. Be reachable at all times by STR guests, his adjacent and opposite neighbors, the land use office, the fire department, and the police department,
10. Provide STR guests with emergency and non-emergency phone numbers for the police, ambulance, and fire department; and the locations and phone numbers of the nearest emergency and walk-in medical facilities and hospitals,
11. Instruct STR guests regarding the proper operation of the home's features – such as its fireplace, TV, cable, video games, sound systems, garage door opener, dishwasher, dryer, washing machine, air conditioning, compactor, heating system, EV charging system, security system, internet, and Wi-Fi,
12. Instruct STR guests regarding the proper use of the septic or sewer system (i.e. no cleaning wipes (including "flushable" wipes), paper towels, grease, oils, incompatible detergents, cigarette butts, cat litter, coffee grounds, acids, and multi-ply colored toilet paper),
13. Instruct STR guests regarding the use of the swimming pool, hot tub, sauna, BBQ, fire pit, basketball hoop, tennis court, dock, and boats, if any, including limits on the hours of use, sound levels, and cleaning and replenishment requirements, as appropriate,
14. Ensure the STR (i) is essentially invisible to the neighborhood; (ii) does not create a nuisance (i.e. noise, odors, trespass, lighting, etc.); (iii) is not detrimental to the aesthetic quality of the residence or its neighborhood, and (iv) does not interfere with the quality of life in the neighborhood,
15. Ensure STR guests' pets do not create a nuisance or constitute a hazard,
16. Ensure STR guests comply with the conditions of the STR special permit, the STR parking requirements, the STR Guest Rules, and the STR Guest Agreement,
17. Assure STR guests do not loan out or sublet the STR,
18. Assure the number of STR guests does not exceed the number shown in the STR Guest Agreement,
19. Assure there are no more than two adult guests per bedroom,
20. Assure household waste is properly managed,
21. Instruct STR guests regarding any cleaning and replenishment requirements that must be performed before checkout,
22. Prevent the manufacturing, sale, or use of illegal drugs and substances within the STR,

23. Contact the police, if necessary, to prevent STR guests from interfering with the quality of life in the neighborhood,
24. Contact the police, if necessary, to eject STR guests who fail to vacate on or before the checkout time shown in the Guest Rental Agreement, and
25. Check out STR guests.

D. Parking Requirements:

1. Sufficient on-site parking must be available for STR guests, without blocking vehicles belonging to the STR Operator.
2. Sufficient on-site parking must be provided for the STR Operator without blocking STR guest vehicle(s).
3. STR guests may park end-to-end.
4. Parking in non-designated spaces, and on-street parking, is prohibited.
5. Covered parking (garages & carports) may be used by STR guests, or by the STR operator.

E. Lighting requirements:

Exterior permanent and temporary site lighting, if any, shall comply with applicable Zoning Regulations and be of a design that does not illuminate or create glare on nearby properties.

F. Refuse and recycling Requirements:

All garbage and recyclables shall be contained within the wheeled containers provided by the Town's refuse service provider.

G. Site plan requirements:

1. The site plan must show adequate off-street parking for STR guests and the STR operator.
2. The site plan must show exterior permanent and temporary site lighting, if any.
3. The Site Plan does not require a new signed and sealed A-2 survey, but must satisfy the Site Plan requirements listed in Appendix B, items B-1 (A), B-2 (A), B-4 (A-C), B-5 (A, C-E), and B-6 (A-B).

H. STR Guest Rules:

The STR Guest Rules must include the following (as a minimum):

1. For year-round STRs – a notice that the STR operator resides on the property.
2. For seasonal STRs – a notice that the STR Operator will be present when the STR has guests.
3. The maximum number of adult guests.
4. The number of bedrooms available for guests.
5. The limit on the number of guest vehicles.
6. A notice that parking is on-site in designated parking spaces on an all-weather surface, and on-street parking is not permitted.
7. A notice that guests shall not adversely affect the surrounding neighborhood.
8. A notice that guests are not allowed to have visitors.
9. A notice that guests are not allowed to sublet the STR.
10. The pet rules, including type, number, licensing, weight, and breed requirements (if any).
11. Notice that guests must pick up, bag, and properly dispose of their pet's excrement.
12. A section on prohibited activities – such as parties, auto repair, auto washing, oil changes, alcohol, marijuana, illegal drugs, live music, amplified sounds, use of pool after certain hours, trespassing on neighboring properties, drone flying, basketball practice, use of guns, and use of skateboards.
13. The procedure required for the return of deposits.

I. Additional STR application requirements:

1. A copy of the STR Operator's official photo ID showing his residence address.
2. A copy of the property card showing the number of bedrooms in the proposed STR.
3. A certificate of zoning compliance.
4. Documentation from the blight official, building, fire department, and health department that there are no blight, building, fire, or health code violations.
5. A certification from the tax collector showing taxes are current.

6. A floor plan, drawn to scale, of the single-family residence, duplex, or accessory apartment to be used as an STR, showing room dimensions, bedrooms that will be used by guests, and bedroom(s) reserved for the STR Operator.
7. A copy of the proposed STR Guest Agreement.
8. A copy of the proposed STR Guest Rules.
9. A copy of the advertising that will be displayed on the websites of STR facilitators, such as Airbnb and Frbo, for the proposed STR.

J. Miscellaneous requirements:

1. The Operator is responsible for the conduct of STR guests.
2. The Operator is responsible for ensuring that STR guests comply with applicable laws, town ordinances, and these regulations.
3. Unaccompanied minors are not permitted as STR guests.
4. STR occupancy is limited to two adult guests per legal bedroom, where the number of bedrooms is the number shown on the STR's property card, less the number of bedrooms reserved for use by the Operator.
5. Non-lodging uses by STR guests, such as weddings, receptions, banquets, and corporate retreats, are prohibited.
6. The STR shall not constitute or create a risk to public health, safety, convenience, and/or general welfare.
7. There shall be no signage, lighting, or other exterior indication a residence is an STR.
8. A single-family residence and its accessory apartment shall not be simultaneously used as STRs.
9. A dwelling used as an STR without a Special Permit is prohibited.
10. Operation of the STR must be consistent with the applicable Special Permit Criteria in §11.3.4.
11. Advertising for year-round (non-seasonal) STRs, including information displayed on STR marketing platforms such as Airbnb and Frbo, shall include a notice that "the STR Owner" or "the STR Operator" [as appropriate] resides on the property."

12. Advertising for seasonal STRs, including information displayed on STR marketing platforms such as Airbnb and Frbo, shall include a notice that "the STR Owner" or "the STR Operator" [as appropriate] will be present on the property.
13. Advertising on STR facilitator websites, such as Airbnb and Frbo, shall include, but not be limited to, parking and parking constraints, the limit on the allowed number of vehicles, the limit on the allowed number of guests, pet regulations, noise constraints, and notice that guests are not allowed to have visitors.

K. If an STR Operator is replaced –

1. The new STR Operator's name, address, phone number, and email address must be provided to adjacent and opposite neighbors, the Land Use Office, Fire Department, and the Police Department.
2. A copy of the advertising the new STR Operator will display on STR facilitator websites, such as Airbnb and Frbo, must be provided to the Land Use Office.
3. The new STR Operator's (i) STR Guest Rules and (ii) STR Guest Agreement must be submitted to the Land Use Office for the Commission to review as a minor amendment to the STR Special Permit."

L. Enforcement:

1. The Town Building and/or Zoning Officials may inspect an STR with reasonable notice to determine compliance with these requirements, town regulations, and ordinances.
2. These regulations may be enforced under §13.1 and §13.2 of the Zoning Regulations, and Town Ordinance #300-009 (Zoning Citations).
3. The Commission may revoke an STR Special Permit, after a public hearing, for failure to comply with the requirements in these regulations.