



STR Ordinance

1 message

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March 10, 2023

To: the Tiverton Town Councilors

Thoughts on Tiverton STR Ordinance

In anticipation of the upcoming meeting on STR's, I wish to make some hopefully helpful comments regarding the issues raised in the Matrix presented by Councilor Burk.

Some Facts

In October by email and in December in person at a Council meeting, I addressed the proliferation of STR's in my small neighborhood of 9 closely abutting single family cottages within a 500 foot space at the beginning of Riverside Drive.

One STR there was not necessarily a problem. Now three out of the nine cottages are STR's. Two of those three are year round, full time. Given their extraordinary profitability, it is beyond foreseeable that before long there will be more.

I do not think anyone anywhere thinks this is desirable for a residential neighborhood? There must be limitations.

Full time year round short term rentals

Full time year round short term rentals are businesses, pure and simple. They are not incidental uses of residential property. They do not belong in residential areas.

And if somehow they are allowed, they should be subject to the same rules as any other business. That includes parking requirements.

But the draft ordinance already seems to reflect the concern that full time businesses are indeed undesirable in residential areas.

While Section 5(a), clause 2, does allow some full time year round STR's, it allows them only for owners who are residents of Tiverton..... and then only if they live within three miles.....and even then only if they have owned the property for three years.

This special treatment allowing a few in state owners to run a full time STR business, but prohibiting out of state owners is probably illegal.

This is a matter on which the Council should seek advice from its counsel.

In particular this is likely unconstitutional under the interstate commerce clause of the U.S. Constitution. That clause prohibits discriminating against out of state business. See, Hignell-Stark v City of New Orleans, 46 F.4th (5th Cir 2022) (can't limit STR rentals to in state residents) and Northeast Patients Group v United Cannabis Patients (1st Cir, No. 21-1719, 8/17/22) (can't limit marijuana retailers to Maine residents).

Those cases very much indicate that the Town must *either* allow everyone to operate year-round STR's.

Or it must allow no one.

The Town can't, as the draft ordinance attempts to do, discriminate against out of state folks, and just allow Tiverton residents to do business, while prohibiting people from Fall River and Westport, or from Boston and New York.

Given this choice, the Council would be wise to prohibit year round businesses in residential neighborhoods entirely rather than to open it up to everyone from everywhere.

It seems clear from the draft ordinance that, while there was a concern for some local owners, there was no desire to open the floodgates to year round STR rentals. But the only way to do so is to prohibit them all. The Town can't discriminate in favor of just locals.

I urge the Council to seek further advice from its counsel, perhaps in advance of the meeting.

Owner occupancy for at least 180 days

This basic provision of the draft ordinance - requiring owner occupancy for 180 days - does attempt to preserve the residential nature of properties while allowing some incidental use for short-term rentals.

As drafted, however, this provision would prohibit an owner from satisfying that requirement by a long-term rental to a tenant for the 180 day period rather than actually occupy it him(her)self.

The Council might consider allowing the 180 day requirement itself to be satisfied by a long term rental. There are some local owners who do this. That would also allow an out of state owner to do the same and avoid more possible problems under the interstate commerce clause. See the Hignell-Stark case above which addressed just this issue.

Limitations

The facts regarding Riverside Drive strongly indicate a need for limitations so that a given area does not become saturated or overrun with STR's.

Limits simply on the total number of permits, as the Town of Warren has recently done, doesn't address the problem of many permitted STR's congregating in one small area. As has already happened on Riverside Drive.

Some jurisdictions have done this by limiting the number of STR's by block or by block face, but that doesn't seem workable for much of Tiverton.

An appropriate limitation would be to prohibit an STR within a certain number of feet from another STR - perhaps varying that distance from one zoning area to another. The limitation might also give a preference to part-time STR's over (if they are allowed) full-time ones. For most of Riverside Drive, zoned W with homes very close to one another, something on the order of 350 feet might work. In rural areas the distances might be greater.

Since the regulation of STR's is motivated by an interest in enabling residents to use their property for incidental rental income - (as opposed to creating a corporate industry) - it seems perfectly appropriate to limit a person (couple?) to owning a single STR. As a practical matter this would have to exclude corporate ownership; otherwise a single person could hide behind a multitude of LLC's.

Occupancy

There is no reason why the allowable occupancy of an STR should be any greater than the actual sleeping capacity of the dwelling - usually 2 per bedroom. It's not as if the unit will only be so used occasionally. It will be so used regularly. Allowing 150% of what a building official designates as capacity - as the draft suggests - is unwise, unsafe, and encourages just the problems neighbors are most concerned about.

This also suggests that a limitation on the number of bedrooms allowed - perhaps no more than 3 - would be similarly wise. A dwelling that rents 4, 5 or 6 bedrooms with 8 or 10 or 12 occupants, and maybe more guests, is again just the kind of STR that most concerns neighbors. It is also very unlikely to be the kind of STR that facilitates an owner's real need for rental income, and very much more a business.

STR's of rooms within the owner's dwelling.

Many of the most compelling and sympathetic accounts at the Council's hearings came from owners who rented out rooms within their homes, who had done so for many years, and who truly relied on that income to get by.

Much of this may already be perfectly legal. Most, if not all, of these persons live in residentially zoned districts. In those districts the "*Taking of boarders or the renting of rooms by a resident family (not to exceed two roomers or boarders)*" is already a fully permissible use under the zoning ordinance. Art IV, Section 2.

Accordingly much of this STR activity is already fully allowed without the need for further permitting or regulation by the Town. It would be good to reassure such people.

Further, the Council might consider addressing this kind of STR activity by expanding the numbers allowed under the existing provision.

Special use permit

The special use permit procedure contemplated by the draft ordinance has a lot to commend it because of the criteria for such a permit under Article XVI of the Zoning Ordinance.

These criteria make it clear that any special use permit for an STR would be a privilege not a right. Special use permits are granted only after careful public consideration of the effects upon neighbors, community, and concordance with the comprehensive plan. Additionally the special use provisions themselves

can require, as they already do in some cases, (e.g. Art XVI, Section 4), special limitations, like, for example, the distancing suggested above.

On the other hand, a special use permit may become permanent and attach to the land meaning any successor owner is entitled to its benefit - no matter their qualifications or responsibility (or lack of).

Ideal would be a licensing procedure that incorporated all the conditions and protections, including notice and hearing, required for a special use permit. Such a license would be revocable and not automatically go to the next owner.

Grandfathering

If the Town chooses, pending the enactment of a new ordinance, not to enforce the current prohibition on STRs, it might be wise to make known to citizens that they undertake STR's at their own risk. Impermissible activities are generally not entitled to be protected and grandfathered.

Thank you for your consideration of these thoughts.

John Reed
21 Riverside Drive

Sent from my iPad