

September 25, 2019

Planning Board  
8 Newmarket Road  
Durham, NH 03824

RE: Bed and Breakfast zoning ordinance: proposed amendments

Dear Members of the Board,

I applaud the work of Councilor Welsh and Town staff who have worked closely with him to develop a reasonable approach to regulating short-term rentals. In general, I believe that the proposal covers most bases well.

I'd like to address two points.

**The first concern is special exception and permit expiration.**

By law, special exceptions \*run with the property.\* The proposal states:

*Expiration. If the property is not used as a bed and breakfast for 24 consecutive months the permit to operate the bed and breakfast shall expire (along with the special exception, above).*

I would urge the Board to clarify that these terms are legal. The enabling legislation, RSA 674:33(IV)b states:

*(b) Special exceptions authorized under this paragraph shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such special exception shall expire within 6 months after the resolution of a planning application filed in reliance upon the special exception.*

I'm also concerned with the specific language in our proposal. The clear intent of the RSA is the sunseting of an unexercised authority. But the use of the word "for" in our proposal, as opposed to "within," muddies the waters, i.e., "If the property is not used as a bed and breakfast for 24 months..." I believe that language counters the intention of the RSA.

In addition, the language implies that the property must be rented during each of 24 consecutive months, which I do not believe is the intent. Therefore I would suggest replacing that language with that used in the RSA.

**My second concern is about change of ownership.** Since the proposed ordinance would permit the use, whether by right or by special exception, for the property itself, one must also consider whether this is a good idea when property ownership changes hands.

We probably all know excellent landlords, some of whom may own properties that were grandfathered for more than three unrelated tenants. In my opinion, one should avoid whenever possible regulating land use based on the character of current owners, for obvious reasons.

I would like to proposed that when a property changes hands, the new property owner be required to submit a new application for a permit.

This afternoon I spoke with a senior planner at the NH Office of Strategic Initiatives, formerly the Office of Energy and Planning. He told me that the city of Laconia, New Hampshire, is working its way through an ordinance, and its coverage in the *Laconia Daily Sun* published yesterday should be of interest to Durham:

“Short-Term Lodging Proposal to City Council,” draft dated August 4, 2019:  
<[https://www.laconianh.gov/DocumentCenter/View/4263/ShortTerm-Lodging\\_90419](https://www.laconianh.gov/DocumentCenter/View/4263/ShortTerm-Lodging_90419)>

“Mayor pushes more restrictive short-term rental regulation.” *Laconia Daily Sun*, September 24, 2019.

Laconia’s draft ordinance includes language we could consider:

4. Approval for Short-Term Lodging...is owner specific; change of ownership shall require a new application.

Of course, there may be legal issues to be worked out in our ordinance regarding the interaction of permitting (or licensing) and special exceptions.

**My third—and primary—concern is one that I raised in response to an earlier draft: How might this affect our compact family neighborhoods?**

In 2012, I was asked, as a Town Councilor, to help neighbors who were concerned about an Airbnb operating illegally out of a small house on Valentine Hill Road, a one-block quiet road in the Faculty neighborhood that attracts young families. The property was the owners’ primary residence, with two rooms rented short-term to unrelated tenants.

Just as student lifestyles are fundamentally incompatible with family lifestyles, as Chief Kurz is fond of saying, the comings and goings of short-term renters often do not conform to the norms of a family neighborhood. So let’s do what we can to help the neighborhoods. This is why Special Exception is important: so that neighbors can weigh in.

Laconia’s mayor said, “it was important to maintain the residential character of neighborhoods and essential to preserve housing stock—already in short supply—for people who live and work in the area.” I couldn’t agree more.

Sincerely yours,

*[Signed: Robin Mower]*