**Memo to the Washington Zoning Commission Concerning the Regulation of Short-Term Rental Homes**

In recent months the short term rental of homes through internet based platforms such as VRBO, AirBnB, etc. has become a topic of discussion within the community. The Zoning Commission has been asked to clarify the regulation of these enterprises. In response the Commission has said that it would consider adopting new regulations specifically addressing the issue of short term rentals. The purpose of this memorandum is to demonstrate that the current Washington Zoning Regulations cover the short-term rental of entire dwellings in Residential Districts, and do so with adequate and appropriate regulation, rendering the adoption of new regulations unnecessary.

The Town regulations currently allow lodging establishments in all residential zones, subject to Special Permit requirements. However, the Town only allows lodging where the owner is not present in the R-1 zone, and then requires that the minimum lot size be at least 5 acres. This regulatory scheme fairly balances the desires of some to be able to use their properties as lodging establishments while also protecting the residents in the more densely populated and sensitive areas (R-2 and R-3) from the nuisance inherent in short term rentals. Enforcement of the regulations as written will fairly balance all competing interests without adding additional regulations which could have the unintended effect of ‘grandfathering’ current uses.

Section 2.2 of the Town of Washington Zoning Regulations provides that uses of land and structures are either ‘permitted’ or ‘permitted by special permit.’ Section 2.3.2 of the regulations provides ‘All uses not specifically permitted by right or Special Permit in these Regulations are prohibited.’

All residential districts in the Town of Washington (R-1, R-2 and R-3) allow a ‘Single Family Dwelling’ as a permitted use; i.e., as of right.

Section 21.1.22 of the regulations defines “**Dwelling, Single Family.** A building, other than a mobile home, designed for and occupied **exclusively** as a residence for **only one** family and having no party wall in common with an adjacent building.” The transient use of a dwelling by multiple families or groups for periods as short as a day or two cannot be consistent with the requirement that a single family dwelling (which is a use permitted as of right) must be **exclusively** used as a residence by **only one** family. However, that does not mean that some buildings may not be used for lodging.

Residential district R-1 allows, by Special Permit, an Inn or Tourist Home (Sec. 4.4.1); a Room and Board or Bed and Breakfast establishment (Sec. 4.4.6) and a Boarding House (Sec. 4.4.14.) Residential district R-2, in contrast, allows, by Special Permit, only a Room and Board or Bed and Breakfast establishment (Sec. 5.4.1.) Similarly, residential district R-3 allows, by Special Permit, only Room and Board or Bed and Breakfast establishments **per Section 13.14** (Sec. 6.4.1.)

Section 21.1.11 of the regulations defines “**Boarding House.** A building, the owner of which, for compensation, provides meals and guest rooms for sleeping for not more than ten persons **and** who occupies at least one room therein.”

Similarly, Section 13.14, which is meant to define ‘Room and Board or Bed and Breakfast establishments” allowed in the R-3 District, provides:

**Room and Board or Bed and Breakfast Establishment.** The provision of rooms for transient visitors in an **owner occupied** residential dwelling may be permitted by Special Permit by the Commission subject to the following conditions:

* + 1. In order to qualify for and maintain this Special Permit in a residence, the residence must be owner occupied for the duration of the permit; or in the case of a tenant, the tenant shall have the written permission of the owner for the duration of the permit.
    2. A property owner may operate only one Bed and Breakfast whether it is owner or tenant occupied,
    3. Permits for Bed and Breakfast and Room and Board Establishments are valid for three years and may be renewed by application to the Commission for additional three year periods.
    4. The lot shall be of adequate size and shape to provide one additional accessible parking space for each guest room.
    5. \*\*\*\* No more than three guest rooms shall be permitted.
    6. At least one complete bathroom shall be provided accessible to the guest room or rooms.
    7. †††† One exterior sign not to exceed 2 square feet is permitted by Section 16.
    8. Failure to abide by these Regulations is cause for the Commission to revoke the Special Permit at the discretion of the Commission.

Section 13.9 of the regulations provides the definition of a Tourist Home or Inn:

**Tourist Home or Inn**. Section 19-13-b26, Sanitation of Motels and **Overnight Cabins**, and Section 19-13-b29, Motels and **Overnight Cabins** or the Public Health Code of the State of Ct. as amended, are adopted as a part of these Regulations. In addition:

1. The minimum size of the lot shall be 5 acres, and
2. the frontage shall be on a state highway and shall not be less than 500 feet†, and
3. the minimum setback of any structure, excluding fences, shall be 100 feet from any street and 50 feet from any lot line.

**How do these Regulations cover the short term rental of entire homes in Residential districts without the owner present?**

A Single Family Dwelling, which is permitted as of right, is described as a building occupied exclusively as a residence by only ONE family. Occupancy of the same structure, by multiple families or other, unrelated people, on a short term basis, cannot be compatible with the requirement of ‘exclusive’ occupancy by ‘only one’ family. Therefore, homes rented in their entirety, for short periods of time are not a permitted use as of right because they do not meet the definition of a ‘Single Family Dwelling.”

The regulations do allow “Room and Board and Bed and Breakfast establishments” in all 3 residential districts, subject to the requirement to receive a Special Permit, and to be owner occupied during the provision of lodging; as well as compliant with the other provisions of section 13.14.

Further, the regulations address situations in which the owner is not present, and the entire structure is rented on a short term basis. That is covered by Section 13.9, which incorporates the General Statutes governing Motels and **Overnight Cabins** into its regulatory scheme. An “Overnight Cabin” is simply an archaic way of saying ‘an AirBnB’, it is a dwelling unit meant to be wholly occupied by a renter for a short period of time. The Town regulations allow a Tourist Home or Inn (or Overnight Cabin) only in Residential District R-1 and subject to the requirements to receive a special permit that are enumerated in Section 13.9.

Read as a whole the regulations demonstrate a thoughtful and considered approach to allowing various forms of lodging in residential districts. Districts R-2 (Washington Green) and R-3 (Lake Waramaug), which are smaller, more densely populated and perhaps more ecologically sensitive than R-1, are limited to Room and Board or Bed and Breakfast establishments where the owner is on site, there are no more than 3 guest rooms, and adequate parking is required. In the R-1 district an Overnight Cabin may be granted a Special Permit if the requirements of Section 13.9 are met. This approach allows protection of dense residential neighborhoods from the ‘party house’ effects of uncontrolled short term rentals and still allows for full structure rental as long as minimum lot sizes insure that neighbors are not disturbed. It is a balanced and thoughtful approach that’s already been built into the Town regulations. Enforcement of the regulations as written will allow the existence of Overnight Cabins, AirBnB’s, VRBO’s, etc. while ensuring that residents in Single Family Home districts are not unduly infringed upon by the nature of short term visitors.

Respectively submitted,

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"[**Tourist Cabin**](https://www.lawinsider.com/dictionary/tourist-cabin) or Cottage" means a seasonal dwelling operated or offered as a place of temporary residence, lodging or occupancy by way of concession, permit, lease, licence, rental agreement or similar commercial arrangement, throughout all or any part of a calendar year.” From the “Law Insider Dictionary”; found by Google

Public Health Code Re: Overnight Cabins attached

Emphasis added in some Zoning Regulations Cited

**Public Health Code relating to Overnight Cabins and Motels**

Sec. 19-13-B26. Sanitation of family campgrounds, including trailer camps, mobile home parks, motels and overnight cabins No city, town, borough, institution, person, firm or corporation shall operate, maintain or offer for use, or permit to be used, within the state of Connecticut any tract of land on which persons may camp or on which any mobile home park, motel or overnight cabins are maintained except after full and literal compliance with sections 19-13-B26 to 19-13-B29, inclusive and 19a-2a-29 of the Regulations of Connecticut State Agencies. (Effective June 26, 1972; amended December 27, 2005)

Sec. 19-13-B29. Motels and overnight cabins (a) Registration. The management of a motel or any area where overnight cabins are rented for living purposes shall register in writing, with the local director of health of the town, city or borough in which such motel or area is located, a description of the motel or area with its location, and such registration shall beDepartment of Public Health Sec. 19-13-B page 21 (7-05) § 19-13-B31 made annually in January or in advance of the opening of the motel or overnight cabin area for use. (b) Water supply. A water supply of sanitary quality shall be provided in ample quantity to meet all requirements of the maximum number of persons using such a tract at any time. Wherever water is obtained from other than an approved public water supply, it shall be of safe, sanitary quality approved by the state department of health. (c) Plumbing. The plumbing facilities within each motel or cabin shall conform with the requirements of section 19-13-B45. (d) Drinking facilities. Multi-use drinking cups or glasses furnished by management shall be thoroughly cleaned and effectively subjected to an approved bactericidal process after each change of occupancy and single service containers shall be protected against contamination by sanitary covering or storage before use. (e) Emergency sanitary facilities. Sewage disposal facilities for each motel or cabin or group of cabins shall be approved by the local director of health. They shall be laid out on the basis of nonresidential buildings as set forth in sections 1913-B20h (b) and 19-13-B20l (b), or, if such facilities include complete sanitary facilities for residential use such as cooking and washing, the size and design of such facilities shall be on the basis of number of bedrooms for residential buildings as set forth in sections 19-13-B20a to 19-13-B20r, inclusive. In no case shall septic tanks be installed with a liquid capacity of less than one thousand gallons. The methods of sewage or refuse disposal utilized in connection with a motel or an overnight cabin area, shall be such as to create no nuisance. Where public sewers exist, connection shall be made to such sewers in lieu of private sewage disposal facilities. (f) Washing and toilet facilities. Adequate washing and toilet facilities shall be provided. If individual washing and toilet facilities are not provided in each rental unit, central facilities shall include separate toilets for men and women with at least one toilet seat for each fifteen men or fraction thereof, and at least one toilet seat for each fifteen women or fraction thereof, and at least one wash basin for each twenty men or fraction thereof, and at least one wash basin for each twenty women or fraction thereof. Wash basin and water shall be readily accessible to toilet rooms. Soap and individual towels shall be provided. (g) Swimming and bathing facilities. Swimming and bathing facilities, if provided, shall comply with the provisions of sections 19-13-B33a, 19-13-B34 and 1913-B36. (h) General sanitation requirements. Buildings shall be maintained in a safe and sanitary condition. When the state department of health or the local director of health so directs, a certificate of approval shall be obtained from the local or state fire marshal. All hot water and space heaters shall be properly located and vented. (i) Responsibility of management. The management of every motel or area for overnight cabins shall assume responsibility for maintaining in good repair all water and sanitary facilities. (Effective April 11, 1973)