

Memorandum

To: Chair Susan Albright and members of the Zoning and Planning Committee

From: Councilor Lisle Baker

Subject: Short-term rentals docket nos. 128-19 and 136-19; case law background

Date: July 12, 2019

Cc: City Council, Planning, Inspectional Services and Law Departments; Mayor's Office

I mentioned in a separate memo that other municipalities have found short-term rentals not to be an accessory residential use. Note that a feature of Newton's proposed ordinance already agreed to by the Zoning and Planning Committee is a requirement that the property be owner-occupied or occupied by a long term lessee. What I thought I heard in listening to the tape of the last session is that the long-term owner or lessee also be resident on the property. This is a key dimension of the proposed Newton ordinance as the increasing practice is for owners to turn over their properties without remaining on site, as the court in the Lynnfield case indicates, which is attached to this memo for your review in advance of the Zoning and Planning meeting on July 15.

I will bring copies of the Swampscott and Newton ZBA decisions with similar outcomes to the meeting on the 15th, but they are available from Mr. Olson in advance if you would like to see them.

Please let me know if you have any questions.

2018 WL 4502015

Only the Westlaw citation is currently available.

Massachusetts Land Court,
DEPARTMENT OF THE TRIAL COURT.
ESSEX COUNTY.

Alexander STYLLER, Plaintiff,

v.

Thomas AYLWARD, John Fallon, Janis Markakis, Patrick Rondeau and
Brian Shaffer as members of the Lynnfield Zoning Board of Appeals, and
John Roberto as Building Inspector of the Town of Lynnfield, Defendants.

16 MISC. 000757 (KCL)

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Dated: September 19, 2018

DECISION

Introduction

Keith C. Long, Justice

*1 This case began with a murder, still unsolved.

The circumstances surrounding that murder, and how they led to the issues presently before this court, are as follows.

Plaintiff Alexander Styller is the owner of a large single-family home in a quiet residential neighborhood in Lynnfield, which he lists for short-term rental on the AirBnB, HomeAway, Tripz, VacationHomeRentals, and Flipkey/TripAdvisor websites.¹ Its spacious interior, five bedrooms, three-car garage, indoor bar, and outdoor pool and patio make it a particularly attractive place to rent, particularly for large groups. Mr. Styller is a small business owner with income that can vary, and values the additional income that these rentals bring him. Thus, with the exception of his wife's birthday and certain holidays, his practice is to rent his house whenever possible, with he and his family going to his parents' home or a nearby hotel until his renters leave. He charges between \$1,000 and \$2,740 a night for the house, and past rentals have been for business conferences, board meetings, photo shoots, and family reunions.

¹ The short-term rental websites — AirBnB, HomeAway, Tripz, VacationHomeRentals, Flipkey/TripAdvisor, and others — have similar terms of service, without material difference. *See* Trial Ex. 8 (AirBnB), Trial Ex. 9 (HomeAway), and Trial Ex. 10 (TripAdvisor). Thus, for simplicity and consistency when discussing those terms below, I cite or reference AirBnB's since it is the best known of the websites.

AirBnB's explanation in its Terms of Service of “How the Site, Application and Services Work” is a good brief summary of what these websites purport to do and, just as importantly, what they tell you they do *not* do and take no responsibility for.

In those Terms of Service, AirBnB describes itself as “an online platform that connects hosts who have accommodations to list and book with guests seeking to book such accommodations (collectively, the ‘Services’), which Services are accessible at www.airbnb.com and any other websites through which AirBnB makes the

Services available (collectively, the ‘Site’) ...” See AirBnB Terms of Service as of Oct. 27, 2016 (Trial Ex. 8) (hereafter “Terms of Service”), § 1. It also states that it “reserves the right, at its sole discretion, to modify the Site, Application, or Services or to modify these Terms, including the Service Fees, *at any time and without prior notice.*” Terms of Service, § 3 (emphasis added). All those who use its website platform agree to be bound by its Terms of Service, which state that AirBnB’s responsibilities “are limited to facilitating the availability of the Site, Application and Services” and that “AIRBNB IS NOT RESPONSIBLE FOR AND DISCLAIMS ANY AND ALL LIABILITY RELATED TO ANY AND ALL LISTINGS AND ACCOMMODATIONS. ACCORDINGLY, ANY BOOKINGS WILL BE MADE OR ACCEPTED AT THE MEMBER’S OWN RISK.” Terms of Service, § 5 (capital letters in original).

In May 2016, through Flipkey/TripAdvisor, Mr. Styller rented his house for a three day stay, May 27-29 (Memorial Day weekend), to Mr. Woody Victor and what Mr. Victor said would be “five guests”. Mr. Styller had not met Mr. Victor or any of his guests before and, prior to agreeing to the rental, all he knew about them came from Mr. Victor’s few brief texts arranging the rental and what Mr. Styller could locate about Mr. Victor on social media. All he knew about them after agreeing to rent to Mr. Victor came from his brief interaction with Mr. Victor when he met him at the beginning of the rental and gave him the house key. None of the website operators (AirBnB, et al.) make any representations or warranties about the renters who make arrangements through their platforms,² and Mr. Styller received none. Moreover, there is no real assurance that the person(s) making the rental will be the person(s) actually occupying the house.³

² See Terms of Service, § 8 (“**No Endorsement.** AirBnB does not endorse any Member, Listing or Accommodation. ... [W]e do not make any representations about, confirm, or endorse any Member or the Member’s purported identity or background...Any references in the Site, Application or Services to a Member being ‘verified’ or ‘connected’ (or similar language) only indicate that the Member has completed a relevant verification or identification process and does not represent anything else. Any such description is not an endorsement, certification or guarantee by AirBnB about any Member, including of the Member’s identity and whether the Member is trustworthy, safe or suitable.”).

³ AirBnB’s terms prohibit the use of its platform to request or book a stay “if you will not actually be staying at the Accommodation yourself” and give AirBnB the right to investigate for violations (Terms of Service, § 14 “User Conduct”), but disclaim all responsibility to do so and all liability arising from its failure to do so (see nn. 1 & 2, *supra*). The homeowner making the rental can check for compliance himself, but as a practical matter can only do so at the time when the keys are turned over to the renter at the beginning of the rental. If the owner does not return during the term of the rental, or if he uses a keypad lock or passcode-enabled lockbox to provide the key and thus never meets the renter at all, there is no effective and reliable enforcement of the prohibition.

*2 Despite this limited knowledge, Mr. Styller made the rental in accordance with his usual practice. He received (through FlipKey/TripAdvisor) \$6,418 from Mr. Victor for the rental (\$2,140 per day). He met Mr. Victor on May 27 to give him the keys to the house, a short introductory lesson on how to operate its appliances, and his cell phone number in case a question arose about those appliances during his stay. From that moment on, Mr. Victor had sole and exclusive possession of the house for the entirety of the three-day stay with no visits, monitoring, or supervision from Mr. Styller. Mr. Styller and his family went to stay with his parents until the rental was over.

Unknown to Mr. Styller, Mr. Victor’s plans were not limited to “five guests” with perhaps a few visitors dropping by during their stay. His *actual* plan was to hold a large party lasting far into the night, and ultimately over 100 people came to the house for the party. One of them was Kevin Heath, who was shot and killed by another attendee around 3:00 am. The identity of the killer is still unknown.

Two things happened subsequently. The Lynnfield Building Inspector served Mr. Styller with a cease and desist order prohibiting further short term rentals without a special permit from the zoning board of appeals,⁴ and the town amended its zoning bylaw to explicitly address such rentals.⁵ Mr. Styller appealed

the cease and desist order to the zoning board which affirmed it by written decision,⁶ and then timely appealed the board's decision to this court pursuant to G.L. c. 40A, § 17.

4 Trial Ex. 1.

5 Trial Ex. 7.

6 Trial Ex. 3.

Mr. Styller does not dispute that the amended bylaw prohibits short term rentals of single family homes in single family districts (his situation), which the amended bylaw defines as rentals of thirty days or less. What he *does* dispute is its applicability to his property. He contends that short term rentals through AirBnB-type website platforms were permitted as of right by the pre-amended bylaw, and thus that he has a “grandfathered” right to continue them. The defendants — the zoning board and building inspector — disagree. The determination of that issue is outcome dispositive of this case.

The case was tried before me, jury-waived. Based on the agreed facts and exhibits, the additional testimony and exhibits admitted at trial, my assessment of the credibility, weight, and appropriate inferences to be drawn from that evidence, and as more fully explained below, I find and rule that the town may prohibit short term rentals of Mr. Styller's house without a special permit, that such rentals were always unlawful under the applicable provisions of the Lynnfield zoning bylaw without a special permit, and thus that he has no grandfathered right to make such rentals.

Facts

These, and those stated above, are the facts as I find them after trial.

Mr. Styller's house at 8 Needham Road is a five-bedroom single family home located in Lynnfield's Single Residence C district. In July 2015, Mr. Styller began renting it on a short-term basis through internet service providers specializing in such rentals — AirBnB primarily, but also HomeAway, Tripz, VacationHomeRentals, and Flipkey/TripAdvisor.

The basic idea behind these websites — the word they use is “platforms,” and I'll use that term hereafter — is simple. Owners (called “Hosts”) list their properties on the platform and those seeking rentals (called “Guests”) go to that platform to see what is available in particular locations. If these renters are interested in the owner's listing, the platform puts them together. Payment is made to the website, which deducts a fee and passes the remainder to the owner.

***3** Two aspects are important to keep in mind.

First, the owner gets remarkably little information about potential renters, and has only limited ways to acquire more. AirBnB, for example, tries to run the names of people using its services through sex offender registries and criminal conviction databases, but makes no promises it has done so and no representations of any kind about anyone, “Host” or “Guest”. Indeed, as previously noted, its terms of service specifically state that its responsibilities “are limited to facilitating the availability of the Site, Application and Services,” and “any bookings will be made or accepted at the Member's own risk.”⁷ AirBnB allows owners to require their renters to provide a government-issued identification in order to rent but, unless the owner is on-site during the period of the rental, there is no guarantee that the person renting will be the person actually occupying, or that they won't bring others.

7 Terms of Service, § 5.

Second, these platforms and their terms of service are constantly changing. They began with people listing spare bedrooms in their houses with the “Host” remaining there during the “Guest’s” stay and often providing breakfast.⁸ But this is a limited market, and AirBnB and the other website operators had ambitious plans for growth. Renters want privacy, consistency, non-cancelable reservations, and late check-in. Thus, over time, AirBnB and the others expanded their platforms to include rentals where the owner rents his entire property and is completely absent during the renter’s stay, and where there may never be any in-person contact between the owner and the renter (house keys will be in a lockbox or access will be by keypad, enabling late arrival and early departure). These platforms have continued to expand, seeking to add professionals either on business trips or arranging conferences with their colleagues, to their user base, and now, through an arrangement AirBnB calls “Work-Ready Homes,” these “Guests” can find “Hosts” who (1) rent their entire home so that it can be occupied by the renter’s “team”, (2) provide wireless internet, 24-hour self check-in through keypads or lockbox, flexible cancellations, and laptop-ready workspace, (3) respond to booking requests within 24 hours, (4) will not cancel reservations within seven days prior to check-in, and (5) provide hairdryers, hangers, shampoo, an iron, toilet paper, and fresh linens.⁹ In short, while the “Host” and “Guest” terminology has remained on the websites, the personal relationship it implies is increasingly far different from reality.

8 The AirBnB name began as a shortened form of “AirbedAndBreakfast”.

9 See www.airbnb.com.

From the owner’s perspective, AirBnB-type short-term rentals have many advantages and few downsides. An owner can rent his property whenever he wants to rent it, and the short-term nature of those rentals gives him great flexibility. He can earn money from those rentals that he would not otherwise get. He can lock up his valuables,¹⁰ minimizing the risk of damage or theft. He can hire cleaners to change the sheets and clean up whatever mess might be left. He can even factor-in the cost of repairing damage and replacing missing items in the rental charges he sets.

10 Mr. Styller puts his in a locked room or closet when his house is rented.

***4** From the neighbors’ perspective, however, it is all downside. The owner may not be there to experience the external effects of frequent short-term rentals — a constantly-changing cast of strangers in the building or neighborhood, unknown cars on the street, and the traffic and noise from parties (a not-infrequent purpose of AirBnB-type rentals, as evidenced by the incident that led to this case). But the neighbors are there to experience those effects, and may not be pleased. These effects are likely worse in non-owner occupied properties where the owner never lives there but instead rents it out in a continuous series of short term arrangements, calculating that the rental income will be higher than that received from longer-term tenants. This has a community-wide effect as well as effects on the immediate neighbors. Short-term AirBnB-style rentals may be good for tourists, but they decrease the number of properties available for long-term rental by residents and thus, if the practice is widespread, drive up the overall cost of rentals.

As previously noted, Mr. Styller offers short-term AirBnB-style rentals of his house. He and his family live there but, with only limited exceptions (his wife’s birthday and certain holidays), he rents it whenever he can, and rents it for a broad range of purposes — business retreats, business conferences, photo shoots for advertisements, and family reunions. His rentals have been one-time, short-term rentals, most between two and five days. Unless called by the renter to answer a question or address a problem, he is not at the property during the rentals and thus has no supervision over its actual use.

Mr. Heath's murder, and the media reports regarding it, brought Mr. Styller's short-term website rentals of his house to the attention of the Lynnfield Building Inspector. On May 31, 2016, two days after the fatal shooting occurred, the Building Inspector sent Mr. Styller a cease and desist letter stating that he was in violation of the Lynnfield Zoning By-laws for failure to obtain a special permit for the short-term rental of his home, and directing him to cease all such rentals and remove his listing information from AirBnB and all similar websites until he obtained such a permit. Mr. Styller appealed that order to the Lynnfield Zoning Board of Appeals (the "Board"), which upheld it "to prohibit rentals of 30 days or less."¹¹ Mr. Styller timely appealed the Board's decision to this court pursuant to G.L. c.40A, § 17. Subsequent to the filing of that appeal, Lynnfield amended its bylaw explicitly to prohibit rentals of thirty days or less in single residence districts.¹² Mr. Styller contends that his right to make such rentals is grandfathered under the old bylaw.¹³ Trial thus focused on that issue, whose outcome is dispositive of this case.

¹¹ Trial Ex. 3.

¹² Bylaw §§ 4.1, 4.1.1.3 and 5.1.5 as amended Oct. 17, 2016 (Trial Ex. 7).

¹³ Zoning Bylaw (Oct. 19, 2015) (Trial Ex. 5). The sections at issue are § 4 (Use Regulations, introductory paragraph) (prohibiting uses unless they are *specifically permitted* in the bylaw) (emphasis added), § 4.1.10 (allowing "accessory uses" in single residence districts if they fall within that definition), §§ 5.1, 5.2, 5.3, 5.4 and 5.1.5 (defining "accessory uses" and the accessory uses allowable in residence districts), and § 4.1.1.3 (allowing certain additional uses in the district if authorized by special permit from the board of appeals).

Further relevant facts are set forth in the Analysis section below.

Analysis

The Regulation of Short-Term Rentals is Within the Zoning Power

A municipality's power to regulate short-term rentals through zoning ordinances and bylaws needs no lengthy discussion. St. 1975, c. 808, §§ 2A & 7 allow zoning regulation of the use of land, the density of population, and the intensity of use "to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants," and those powers "are not to be narrowly interpreted." See *Decoulos v. City of Peabody*, 360 Mass. 428, 429 (1971). The permissible objectives of zoning include the lessening of congestion in the streets, the prevention of overcrowding, the conservation of the value of land and buildings, and the most appropriate use of land throughout the city or town. St. 1975, c. 808, § 2A. This is particularly so in the regulation of uses in relation to their possible effects on other buildings in the same zoning district. See *Decoulos*, 360 Mass. at 430.

*5 As discussed above, short-term rentals, and particularly those arranged through AirBnB-style platforms, have significant external effects on the neighboring community and the community at large. Regulating them thus falls squarely within the zoning power. There are also significant differences between short-term and long-term rentals that allow municipalities to distinguish between them for regulatory purposes. Rentals of thirty days or less (short-term rentals) are commonly considered "transient." See, e.g., 2009 International Building Code Commentary (Trial Ex. 12) at 3-41 — 3-42 & 3-47. **Transient tenants have less of a stake in the properties they occupy than longer-term tenants — less of a stake in keeping noise down, trash picked up, and maintaining good relationships with the neighbors, for example — since they will soon be gone and never return. Moreover, even with the best-behaved short-term renters, numerous short-term**

rentals are more disruptive to a neighborhood than longer-term rentals because they reduce stability. Faces and vehicles will be ever-changing, making “community” more difficult to establish and maintain, which in turn affects residents' abilities to distinguish between those with a cause to be in the neighborhood and those who might not.

AirBnB-Type Rentals Are Not “Uses” That Can Be Grandfathered

“Grandfathering” is addressed in G.L. c. 40A, § 6, which protects “uses lawfully in existence or lawfully begun” prior to changes in zoning. AirBnB-type rental arrangements are not such uses. Rather, they are ever-changing technologies that produce materially-different uses as the technology changes, and AirBnB and the other platforms have reserved the right, at their sole discretion, at any time, for any reason, to change that technology and the types of rentals they make available.

As noted above, AirBnB began with a simple model — owners with extra bedrooms who would rent them to others while staying in the property themselves, often providing breakfast (thus the original name “AirBedandBreakfast”). This model had a limited audience — persons who did not mind staying in someone's home while the owner was around, and did not mind the idiosyncrasies of that experience. What that model lacked, and what the larger pool of potential users clearly wanted, was privacy. AirBnB thus expanded to include situations where the owner, as here with Mr. Styller, would be completely absent during the rental. This caused a material change in the type of use. No longer would there be on-site supervision to prevent or mitigate off-site impacts. Now, the neighbors would be on their own.

This has become increasingly so with the newest changes to AirBnB. Persons seeking short-term rentals want to know, quickly, that they have reservations that cannot be revoked. AirBnB thus now offers an “instant book” option for owners who choose to participate in that program and, even in other types of bookings, a steadily-decreasing period of time for property owners to refuse or revoke them. “Instant book” entirely eliminates the owner's opportunity to control who occupies his house, and requiring reservations to be “locked in” at least a week before the renter arrives eliminates the owner's ability to meet the renter in person before deciding to rent. Thus, the only information available will come from internet communications. The risks to the neighbors inherent in such rentals when the owner will not be present to supervise are obvious.

It is also reasonable to infer that these changes to the platforms, steadily expanding the pool of persons interested, will result in an even higher volume of rentals (AirBnB surely hopes so), making the rental use of properties less “incidental” and more “primary”. Zoning was created, and is justified, by the degree of certainty it provides to its various designated districts. When that certainty no longer exists, the protections of zoning no longer exist. It is no defense for an owner to say that he will not participate in these new models. There is no effective enforcement mechanism to police whether he does or not. A building inspector cannot check with every individual short-term renter to see how, and on what terms, their rental was arranged.

Even if AirBnB *Could* be Grandfathered, Neither it Nor Any Other Type of Short Term Rental is Grandfathered In this District Under the Former ByLaw

*6 The bylaw in effect at the time Mr. Styller began renting his home is Trial Ex. 5, absent § 2.16 which did not become effective until October 19, 2015. Under that bylaw, “[n]o building or structure ... [could] be used for any purpose or in any manner other than for one or more of the uses specifically permitted herein.” Bylaw, § 4 (introductory paragraph). Mr. Styller's home was, and is, in a Single Residence District. In relevant part, the permitted uses in such districts were single family residence and “[a]ccessory use as

hereinafter limited and defined.” Bylaw, § 4.1.10. Mr. Styller contends that his short-term, AirBnB-type rentals were such an accessory use. I disagree.

The bylaw defines an accessory use as:

Either a subordinate use of a building, other structure or tract of land, or a subordinate building or other structure:

1. Whose use is *customary* in connection with the principal building, other structure or use of land, and
2. Whose use is *clearly incidental* to the use of the principal building, other structure or use of land, and
3. ...
4. Which does not constitute, in effect, a *conversion* of the principal use of the premises to one not permitted.

Bylaw, § 5 (emphasis added). Bylaw, § 5.1.5 defines “[t]he regular renting of rooms or the furnishing of table board in a dwelling by prearrangement to not more than five (5) persons” as such a customary accessory use. Mr. Styller contends that he falls within this provision. I disagree.

The rules for interpreting bylaws are the familiar ones. They are the same as those for statutory interpretation, *Plainville Asphalt Corp. v. Plainville*, 83 Mass. App. Ct. 710, 712 (2013), and the task is to construe the bylaw according to the legislature’s intent “ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.” *Grady v. Zoning Bd. of Appeals of Peabody*, 465 Mass. 725, 729 (2013) (internal citations and quotations omitted). The court first looks to the bylaw language and, if its meaning is plain and unambiguous, the plain wording shall be enforced unless doing so would “yield an absurd or unworkable result.” *Shirley Wayside Ltd. Partnership v. Board of Appeals of Shirley*, 461 Mass. 469, 477 (2012) (internal citations and quotations omitted). The court’s objective is “to give effect to *all* its provisions, so that no part will be inoperative or superfluous.” *Id.* (emphasis added; internal citations and quotations omitted). “We do not construe a statute’s words in isolation or apart from the legal context within which they appear. The meaning of language is inherently contextual.” *W.A. Wilde Co. Inc. v. Bd. of Assessors of Holliston*, 84 Mass. App. Ct. 102, 104 (2013) (internal citations and quotations omitted). Thus, in this case, Bylaw § 5.1.5 must be construed in accordance with its plain language and in the context of the other relevant bylaw provisions. As previously noted, these are Bylaw §§ 4 (Use Regulations, introductory paragraph) (prohibiting uses unless they are *specifically permitted* in the bylaw) (emphasis added), § 4.1.10 (allowing “accessory uses” in single residence districts if they fall within that definition), §§ 5.1, 5.2, 5.3, 5.4 and 5.1.5 (defining “accessory uses” and the accessory uses allowable in residence districts), and § 4.1.1.3 (allowing certain additional uses in the district if authorized by special permit from the board of appeals).

I start with Bylaw § 4 (introductory paragraph), which makes clear the intent that uses must be “*specifically permitted*” by the bylaw and, if not, are prohibited. The Styller house is in a single residence district and, in relevant part, any use other than that can only be an *accessory* one. Bylaw, § 4.1.10. As the bylaw states, this means that the use must be “customary in connection” with the principal use (single family residence), “clearly incidental” to that use, and which “does not constitute, in effect[,], a conversion of [that] use to one not permitted.” Bylaw, §§ 5.1, 5.2 & 5.4.

*7 We know from Bylaw § 4.1.1.3 that “tourist homes” and “boarding or lodging houses” do not fall within the scope of as of right “accessory uses” because they require a special permit from the zoning

board,¹⁴ and we know from that same Bylaw section that “overnight cabins”, “motels”, and “hotels” are not permitted accessory uses because they are not allowed in this district even *with* a special permit. Mr. Styller's house is not a prohibited “hotel” because it does not have “six or more guest rooms, intended or designed to be used, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests.”¹⁵ Rather, it has five. It is not a prohibited “motel” for the same reason.¹⁶ It is not a “boarding house” because, when rented, it is rented as a single unit.¹⁷ However, it *does* function as a “tourist home” when he rents it to “persons who travel for pleasure.” See Concise Oxford Dictionary (1999) at 1515 (definition of “tourist”).¹⁸ And it *does* function as a “lodging house” when he rents it out to four or more persons.¹⁹ Both of these uses require a special permit and are not “as of right”. Thus, they cannot be grandfathered as “as of right” uses.

¹⁴ “It is a basic canon of statutory interpretation that general statutory language must yield to that which is more specific.” *TBI Inc. v. Board of Health of North Andover*, 431 Mass. 9, 18 (2000) (internal citations and quotations omitted).

¹⁵ The Bylaw incorporates the definitions contained in the state building code for words not defined in the text of the Bylaw itself. Bylaw, § 2.16.4. This definition of “hotel” comes from that code. 780 CMR 310.2 (emphasis added).

¹⁶ The state building code uses the same definition for hotel and motel. 780 CMR 310.2.

¹⁷ The state building code defines “boarding house” as “a building arranged or used for lodging for compensation, with or without meals, and *not* occupied as a single unit.” 780 CMR 310.2 (emphasis added).

¹⁸ The state building code does not define “tourist home” so I use the dictionary definition of “tourist” for its common and accepted meaning.

¹⁹ The state building code incorporates the definition of “lodging house” in G.L. c. 140, § 22. That statute defines “lodging house” as “a house where lodgings are let to four or more persons...”

In any event, *all* of Mr. Styller's short-term rentals fall outside the definition of permitted accessory uses (and thus have not been grandfathered) for the following reasons.

First, those rentals are not “clearly incidental to the use of the principal building” as a single family residence. Bylaw, § 5.2. In zoning bylaws or ordinances, “incidental” incorporates two concepts: “It means that the use must not be the primary use of the property but rather one which is subordinate and minor in significance... [and] ‘incidental,’ when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant. To ignore this latter aspect of ‘incidental’ would be to permit any use which is not primary, no matter how unrelated it is to the primary use.” *Henry v. Board of Appeals of Dunstable*, 418 Mass. 841, 845 (1994) (internal citations omitted). When addressing “uses which in general tend to become deleterious to a neighborhood of homes it would seem that the most liberal test open to us must be whether the use is one that is so necessary in connection with a one family detached house or so commonly to be expected with such a house that it cannot be supposed the ordinance was intended to prevent it.” *Town of Harvard v. Maxant*, 360 Mass. 432, 437-438 (1971) (internal citation and quotation omitted).

Mr. Styller's frequent rentals of his residence, intended as a substantial supplemental source of income, are not such an incidental use. Homes are expected to be used as residences, not for profit. Continuous rentals of a primary residence are contrary to the fundamental use of the home, as it leaves its primary residents without a place to stay. For those same reasons, Mr. Styller's rentals have become, “in effect, a conversion of the principal use of the premises to one not permitted.” Bylaw, § 5.4.

*8 Mr. Styller's rentals also fail the test in Bylaw § 5.1 that they be “customary in connection with the principal building, other structure or use of land.” Bylaw, § 5.1. Most people do not rent out their homes on a continuing basis. They live in them. Recognizing this, the Bylaw contains a specific definition of what would be considered “customary” in connection with rentals in single family district homes. This is the provision that allows “the regular renting of rooms or the furnishing of table board in a dwelling by prearrangement to not more than five (5) persons.” Bylaw § 5.1.5. Reading that language in ordinary fashion, and particularly in light of the intent for the district — single family homes, lived in by their owners — it plainly speaks to the situation of the homeowner, living in the home, renting out *rooms* in the house (*rooms*, not the *entirety* of the house) or furnishing table board (meals) inside the house. The continuing presence of the owner in the house ensures the continuity and supervision that are the essence of a single family district, and that the rentals are truly incidental to the use of the home as single family residence. Reading that provision more broadly is contrary to the Bylaw's command that “no land, building, structure or part thereof shall be used for any purpose or in any manner other than for one or more of the uses *specifically permitted* herein.” Bylaw, § 4 (introductory paragraph).

Conclusion

For the foregoing reasons, I find and rule that Mr. Styller's short-term rentals of his residential property without a special permit are, and always have been, in violation of the applicable Lynnfield zoning bylaws, and have no “grandfathered” protection. They are thus subject to the current zoning bylaw which prohibit rentals of thirty days or less in his Single Residence District, and the Zoning Board's Decision prohibiting Mr. Styller from making such rentals is thus **AFFIRMED**.

Judgment shall enter accordingly.

SO ORDERED.

All Citations

Not Reported in N.E. Rptr., 2018 WL 4502015