



Resolution on Proposed Amendments to the Zoning Ordinance re Short-Term Lodging Uses April 4, 2018

Whereas, the current Fairfax County Zoning Ordinance (“ZO”) (a) does not permit the rental of dwellings, or rooms in dwellings, for short periods of time (i.e. less than 30 days), except for hotels or where the Board of Supervisors (“BOS”) has approved a Special Exception for a “bed and breakfast”, and (b) recognizes that private agreements (e.g. HOA or co-op/condominium rules) may also restrict the use of a dwelling; and

Whereas, offers of short-term lodging (“STL”) arrangements by individuals and through companies such as AirBNB, VRBO, and Trip Adviser, have become more popular in recent years, such that County staff estimates that there are currently about 1,500 known STLs operating in Fairfax County; and

Whereas, S.1578 was enacted by the Virginia Assembly in 2017 (with an effective date of July 1, 2018) creating new Virginia Code section 15.2-983, which allows localities to “establish a short-term rental registry and require operators within the locality to register annually”; and

Whereas, in response to this legislation, in June,2017 the BOS requested County staff to propose amendments to the ZO which would create a registry of dwellings that offer STLs in Fairfax County and which would also “balance residents’ interests to protect the character of their neighborhood with the interests of parties wanting to operate short term rentals within their residence”; and

Whereas, County staff has conducted an on-line public Survey on this issue; conducted several public meetings (including one in McLean on Sept. 25, 2017); and studied responses to legislation in other localities (including Arlington County, Blacksburg, VA, Charlottesville, VA, Montgomery County, MD, and the cities of San Francisco and Santa Monica in California); and

Whereas, public hearings to consider the proposed ZO amendments are scheduled for May 3, 2018 (Planning Commission) and June 19, 2018 (BOS); and

Whereas, the major concerns about STL raised by the public include:

- a. Impact on character of the neighborhood

- b. Introduction of commercial uses into residential areas
- c. Parking and traffic on local streets
- d. Safety and security (for renters, lodgers, & neighbors)
- e. Noise and trash (especially with events/parties)
- f. Impact on HOA & condo agreements, restrictive covenants
- g. Enforceability; and

Whereas, the major advantages of STL raised in the public meetings include:

- a. Additional income for homeowners
- b. Making homes more affordable
- c. Providing a cheaper alternative to hotels
- d. Providing an opportunity to meet people from other states/countries; and

Whereas, the proposed amendments to the ZO address the concerns raised about neighborhood character as follows:

1. STL would be a permitted use in R-districts, but not for workforce or affordable care housing, detached accessory structures or dwelling units, or temporary family health care structures; STLs are intended to operate “within the main structure of the principal building on the property.” Staff Report, p.5.

2. STLs would have an Operator who must be a Permanent Resident (who could be either the property owner or a long-term renter who occupies or intends to occupy the dwelling for at least 185 days/yr.), and who must provide 2 forms of verification of his or her residency at the dwelling.

3. The maximum number of days of STL use per year for a dwelling is limited to 90 days.

4. The Operator of the STL may be absent during the STL use, but only if he or she appoints an Authorized Agent to respond to emergencies in his or her absence.

5. The maximum occupancy of the STL is limited to 6 adults per night (may be lower if required by Virginia Uniform Statewide Building Code).

6. In order to avoid having multiple groups renting the STL at the same time, all persons lodging at an STL at the same time must be associated with the same rental contract, and the number of such contracts is limited to 1 per night; and

Whereas, the proposed amendments to the ZO address the concerns raised about safety as follows:

1. All sleeping rooms must comply with the relevant building codes (e.g. 2d means of egress from basement rooms).

2. Working safety equipment would be required on site, including a fire extinguisher and smoke/CO detectors.

3. Exit plans must be posted on the doors of sleeping rooms, as in a hotel; and

Whereas, the proposed amendments to the ZO address the concerns about events/parties (e.g. parties, weddings, fundraisers, commercial activities, etc.) by prohibiting any such activities at the STL, other than gatherings of the authorized lodgers; and

Whereas, the proposed amendments to the ZO address the concerns about parking by requiring that all STL advertisements must indicate where lodgers can legally park, or else explicitly state in the ad that parking is not available; and

Whereas, the proposed amendments to the ZO address the issue of enforceability as follows:

1. An STL permit would be issued for a term of 2 years for a \$200 fee; the permit number must be included in all ads; the ZO Administrator may revoke a permit (with notice) if the Operator fails to comply with the STL regulation or any other regulation in the ZO.

2. The STL Operator would keep a Guest Log of the lodgers.

3. By accepting the permit, the Operator would agree to consent to inspection at any reasonable time by the Fairfax County Department of Code Compliance (“DCC”)

4. If the Operator is a long-term tenant (as opposed to the property owner), then the property owner would be required to give his or her written consent to use of the property as an STL; and

Whereas, the major differences between the proposed ZO amendments and earlier drafts of these amendments are that, under the proposed ZO amendments: (a) the Operator is limited to a Permanent Resident, who is defined as the property owner or a long-term renter (although County is contemplating STL regulations for operator-managed multiple family dwellings), and (b) the number of nights permitted for the STL use is limited to 90 nights per year (although the Permanent Resident need not be there if an Authorized Agent is appointed during such absence); and

Whereas, the McLean Citizens Association (“MCA”) believes that the proposed ZO amendments are an improvement over previous drafts, but also believes that the following issues still need to be addressed:

1. Limitation on definition of Operator -- MCA is concerned that requiring the Operator to be *either* the property owner or a “long-term renter” (lease of at least 185 days) could be abused by commercial companies working through such renters. Nor should the owner or renter be a shell corporation set up for this purpose. That would be inconsistent with County staff’s intent that this requirement “dispel the concern that non-resident operators could negatively impact neighborhood character”. Staff report, p.5. For that reason, MCA recommends that Operators be limited to an individual who is the resident owner of the property, and that any change in the residence of the Operator be given to County within 10 days of such change of residence.
2. Presence of owner -- MCA remains concerned about STLs in the absence of the property owner. For that reason, at least during the initial 18-month trial period for these provisions, MCA recommends that the number of nights that the property could be leased as an STL without the owner present be limited to no more than 30 of the 90 nights, and with an Authorized Agent.
3. Definition of Authorized Agent -- MCA is concerned about the definition of an “Authorized Agent” who would function in the absence of the Operator. MCA recommends a requirement that the Authorized Agent be an adult who is physically present in the County during the absence of the Operator, who has transportation that can get him or her to the STL within an hour after a call is placed from a lodger, and who has

some background or prior experience in promptly dealing with building management issues.

4. Notification of adjacent neighbors -- MCA recommends that the amendments require that a notification of STL activity, emergency contact information (both as to the Operator and any Authorized Agent), and contact information for the Fairfax County enforcement entity, be provided to the adjacent neighbors of the STL at the time a permit is granted or renewed.
5. Clarifying statements -- MCA recommends clarifying statements that: (a) the STL use is limited to the 90 days recommended by County staff, and not to the longer 180 day time period set forth in the advertised version of these amendments; (b) private agreements (such as HOA or co-op/condo rules) remain in effect and may restrict or prohibit the STL use; and (c) that compliance with all state and local laws and regulations is required, with specific reference to limiting noise and lights at certain hours.
6. Maximum occupancy -- MCA believes that the maximum occupancy should not be defined as 6 “adults” and would instead recommend that this be defined as 6 “people”, perhaps excluding from the definition of “people” children under a stated age.
7. Parking -- MCA remains concerned about the failure to require designated parking spaces for lodgers. Overflow parking by lodgers is a major concern of residents, and MCA does not think that a statement in the STL advertisement about the availability of legal parking will sufficiently address the issue. MCA also does not believe that the comparison to home occupations is apt, since visitors to a home business (unlike lodgers) would not be present overnight. For these reasons, MCA recommends that at least one parking space be provided by the Operator for each occupied sleeping room.
8. Enforcement -- MCA is particularly concerned about the ability of County staff to adequately enforce the provisions of these amendments. The Staff report states that there are about 1,500 known STLs operating in the County; 54 complaints have been received (about 3.5%), but the Department of Code Compliance has only 13 open cases and has issued only 6 Notices of Violation. There appears to be no intention by the County to increase funding or manpower for the DCC after DCC receives this new responsibility. Noise or similar complaints by neighbors will apparently be a matter for local police, but there is no indication by County that the police will receive additional resources to deal with the extra incidents. MCA therefore recommends that additional resources be provided by County to either the DCC or the County police for this purpose.
9. Permits and violations -- MCA believes it is important to have provisions that would allow County to cancel a permit for a particular STL after a given number of violations regarding the registration process, as well as for a given number of violations of local ordinances at that property. MCA recommends that the provisions of Virginia Code section 15.2-983(C)(1) (\$500 fine per violation for Operator’s failure to register, ability to prohibit the Operator from operating a given STL for “repeated violations” regarding the registry) and 15.2-983(C)(2) (ability to prohibit an Operator from offering STL if more than 3 violations of state and local laws relating to that STL) should be fully incorporated in the proposed amendments.
10. Cost of Host Compliance LLC -- MCA recommends that the cost of using Host Compliance LLC to track compliance should be offset against the projected County revenues to be realized from these amendments.

Now, therefore, be it resolved that the MCA **generally supports** the concept of regulating and legalizing STLs, **but** believes that significant changes need to be made to the proposal that adequately address the issues raised in items 1 through 10 of the preceding “Whereas” clause before it is enacted; and

Now, therefore, be it further resolved that, in the event the STL amendments to the ZO go forward, at the end of the 18-month trial period, the County (1) evaluate the adequacy of Host Compliance LLC’s efforts to track compliance and the Country’s enforcement actions in promptly responding to complaints and taking actions to rectify violations, and (2) implement appropriate measures or revisions to the ZO to address any identified inadequacies.

Approved by the Board of Directors of the McLean Citizens Association

April 4, 2018

McLean Citizens Association, P.O. Box 273, McLean, VA 22101

Cc: Members of the Fairfax County Planning Commission
John Foust, Dranesville District Supervisor
John Ulfelder, Dranesville Planning Commissioner
Benjamin Wiles, Dranesville Supervisor’s Staff
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