

May 1, 2018

Ms. Julie Strandlie
Mason District Planning Commissioner
Fairfax County Planning Commission
12000 Government Center Parkway
Fairfax, Virginia 22035-5505

**Subject: Articles 10, 18 and 20 of the Zoning Ordinance and
Chapter 4 of the Code of Fairfax County Regarding Short-Term Lodging
(Residential Owner/Renter Operated Dwellings Only)**

Dear Ms. Strandlie:

I write as the president of the Lake Barcroft Association (LBA), a community of 1,045 homes in the Seven Corners area of Fairfax County regarding the proposed amendments to the zoning ordinance regarding Short Term Lodgings (STL). The Lake Barcroft Association is deeply concerned about the potential negative effects of the proposed revisions to the zoning ordinance on the residential character and management of our community as described below.

In assessing the potential impact of the proposed ordinance revisions regarding STL the Planning Commission should consider the reasons why this ordinance exists in the first place. Section One of Article One of the Zoning Ordinance provides that the purpose of the Ordinance is to "maintain conditions under which people can live in productive and enjoyable harmony"; while Section Six provides that another purpose is to "provide residential areas with healthy surroundings for family life." The goals of productive and enjoyable harmony and healthy surroundings for family life are designed to promote a sense of community within the residential areas of the County. A strong sense of community puts neighbors in touch with one another, helps them watch out for one another, and promotes involvement in community issues such as the school system, zoning, law enforcement, and many other concerns. The transient occupancy of homes by short term renters is often incompatible with these important civic goals.

Over the past two to three years the Lake Barcroft Association has heard accounts from a wide range of community members at its monthly meetings about how short term rentals have negatively impacted their lives. The Board heard concerns about neighborhood security, unruly transient occupants, excessive noise, disturbances of the peace, excessive traffic, and other incidents. Neighbors told the Board that the owners who rented their properties out short term were absent from their properties during the rentals and were not monitoring what was going at their homes. The neighbors to homes being let to short term renters were clearly not

enjoying the “productive and enjoyable harmony”, or the “healthy surroundings for family life” that is envisioned by Article One of the Zoning Ordinance. In September, 2016 the Lake Barcroft Association held a community-wide meeting to solicit the views of the community-at-large on short term rentals. On a rainy Monday evening, over 120 community members filled the meeting room in Mason District to voice their unanimous concern over the impact of short term rentals.

In the course of our community discourse on short term rentals it was clear that several key distinctions were made regarding the practice. The rental of individual rooms in a house where the primary residents stays on premise has never caused a problem in our community. Secondly, the whole house rental of a property for two weeks or less per year – the practice known as “vacation swaps” – has never caused a problem. The problems to the community are invariably caused by those few individuals engaged in high frequency, whole-house rentals, where the property owner is not present. In short, those that are operating a *de facto* lodging business on weekends. Therefore, it is critical that the new regulations distinguish between whole house rentals which have major impacts on the community and the far less intrusive single room rentals.

Based upon this input from our community there are four key points that should be articulated in any revision to the zoning ordinance regarding short term lodgings.

- **Require registration and permitting:** It is imperative that a registry of STLs be established and maintained with public access. Not only will this allow neighbors and potential buyers to be aware of this activity but it will facilitate the collection of appropriate taxes along with safety and compliance inspections. A drawback of only requiring STL operators to include a permit number on their online listing is that it depends on cooperation of online listing sites to post this information. Fees should be sufficient to offset not only administrative costs but the enhanced enforcement that will be required to ensure compliance. There should be a limit of one registration allowed to an individual or entity in order to prevent the use of properties as an investment in STL.
- **Require the primary resident to remain on the property:** It is important that the primary resident provide such proof as a condition of registry, as the staff recommends. It is more important that the permanent resident be present during all rental activity. Any provision that would allow the operation of a whole house rental using registered agents or allowing the owners to be absent means that neighbors would have no one to contact other than the renters or the police in the case of problems. Bringing problems to the attention of the property owner after the fact would do nothing to preserve the established norms for residential community behavior. This is particularly true for those engaged in frequent rentals and look at the practice as a business.
- **Limit the frequency:** The staff report suggests a limitation on the number of nights a STL use is permitted in order to keep the use truly accessory. The

staff proposes a maximum of 90 calendar days for STL use per year, or approximately 25% of a year. While this limit may be appropriate for single room rentals with the property owner present it is grossly in excess of a reasonable limit on whole house rentals – if the County is interested in preserving the residential character of neighborhoods. As a practical matter, whole house rentals are largely a weekend-focused activity occurring between April and October in this market. A 90-day limit would allow the whole house rental approximately 30 times per year –almost every weekend between April Fools Day and Halloween! This is hardly an “accessory use” and no family wants to live next door to this type of bed and breakfast in a residential setting. A more reasonable limit, particularly for whole house rentals, is less than 21 days per year. This would accommodate “vacation swaps” but limit weekend rental activity to 23% of the weekends during the rental season.

- **Limits on occupancy:** The proposed staff recommendation of not more than six adults per dwelling per night is excessive. Since this would not include children of the 6 renters that actual occupancy could easily be 12, 15 or more. Occupancy at this level is more consistent with Nags Head than our residential community. The occupancy maximum should be tied to the number of rentable bedrooms with no more than two individuals per room, regardless of age or family relationship. Staff argues that such a restriction would be “virtually impossible to enforce”, as it requires specific observation of the number of people in a bedroom. Any compliance with the new regulations will require a willingness of the staff to enforce. While determining who is sleeping where might be difficult it is relatively easy to determine if the number of renters in house is in excess of the maximum permitted by the property’s permit.

Lake Barcroft is a private, single family home community which includes a commonly-owned 135-acre swimmable lake that includes five common use beaches and gardens. The challenge of managing the shared liability of this facility hinges upon maintaining access to insurance products that are only available through our implementation of strict rules regarding access and use of the lake and common property. Homeowners do not have an unrestricted use to our facilities at all times of the day nor do they have unlimited guest privileges. Short-term rentals – particularly when the resident owner(s) are not present – pose a very real threat to the community's ability to maintain our insurable status as it is extraordinarily difficult to enforce our lake use regulations to transient renters. If a transient occupant of a community residence were ever to be involved in an accident on our common property – including the beaches and lake – it could severely undermine the community's ability to maintain our critical access to insurance markets.

Without reasonable zoning restriction that distinguishes between whole house and single room STL rentals you will be sending a message the county is open for business relative to any and all STLs. The STL market here would be very lucrative without meaningful restrictions. The lucrative economic potential from short-term

rental properties could incentivize commercial interests to purchase homes that come up for sale – particularly lakefront properties – and turn them into STL resorts. Such a scenario would have a profound and problematic impact on our neighborhood. For all of these reasons, we urge the Planning Commission to act in the interests of community and not open up our neighborhood to unwanted commercial activity.

Lastly, I would like to offer a cautionary note regarding the relationship of county ordinances on STL and HOA rules on the same. The staff is quick to point out that the ordinances would not change an association's ability to regulate and enforce their community's rules and covenants. This is true but it hardly negates the interests of HOA's in the enactment of reasonable restrictions through the county zoning ordinance. The fact is that any HOA's ability to enforce based on their rules alone is subject to the expense and vagaries of judicial review. As a practical matter this limits the ability of many HOAs to enter into enforcement actions. Furthermore, there are many county residents, particularly in older communities, that either don't live in an HOA or the governing documents are unclear on the modern practice of STLs. In any case, strong county regulations are an important protection that enhances the enforceability of HOA rules regarding STLs in older and newer communities alike.

Sincerely,

Anne Cullather, President
Lake Barcroft Association

Cc: Fairfax County Planning Commission
Supervisor Penelope Gross
LBA Board of Directors