

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
CIVIL INTAKE
2019 AUG 30 AM 10:27
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

ANDREW COOPER

and

REBECCA COOPER

and

BLAKE RATCLIFF

and

SARA RATCLIFF

and

CECILIA GONZALEZ

and

CINDY REESE

and

DONALD WALKER

and

DEBRA WALKER

and

HUGER HUAMANI

and

CARMEN GISELLE HUAMANI OBER

and

AMJAD ARNOUS

Case No. 2018 - 12818

and

JOHN A. MCEWAN

and

MARY LOU MCEWAN

and

KEVIN HOLLEY

and

LAURA QUIRK NISWANDER

and

LORI MARSENGILL

and

GARY MARSENGILL

and

MARGARET WIEGENSTEIN

and

MELINDA NORTON

and

NAGLA ABDELHALIM

and

NHUNG NINA LUONG

and

QUAN NGUYEN

and

ROBERT ROSS

and

HELEN ROSS

and

ROSANA MONTEQUIN

and

MARCELA MONTEQUIN

and

SANJEEV ANAND

and

ANJU ANAND

and

SARAH TEAGLE

and

SOFIA ZAPATA

and

SVETLA BORISOVA

and

NICKOLAS PLOUTIS

and

MELINDA GALEY

and

TRAVIS GALEY

and

VICTORIA SPELLMAN

Plaintiffs,

v.

BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA

Serve: Elizabeth D. Teare
Deputy County Attorney
12000 Government Center Parkway
Suite 549
Fairfax County, Virginia 22035

Defendant.

COMPLAINT FOR DECLARATORY AND OTHER RELIEF

COME NOW, Andrew Cooper, Rebecca Cooper, Blake Ratcliff, Sara Ratcliff, Cecilia Gonzalez, Cindy Reese, Donald Walker, Debra Walker, Huger Huamani, Carmen Giselle Huamani Ober, Amjad Arnous, John A. McEwan, Mary Lou McEwan, Kevin Holley, Laura Quirk Niswander, Lori Marsengill, Gary Marsengill, Margaret Wiegenstein, Melinda Norton, Nagla Abdelhalim, Nhung Nina Luong, Quan Nguyen, Robert Ross, Helen Ross, Rosana Montequin, Marcela Montequin, Sanjeev Anand, Anju Anand, Sarah Teagle, Sofia Zapata, Svetla Borisova, Nickolas Ploutis, Melinda Galey, Travis Galey and Victoria Spellman (collectively, the “Plaintiffs”) by counsel, pursuant to Virginia Code §§ 8.01-184 *et seq.*, 15.2-2285(F) and 8.01-267.5, and file this Complaint for Declaratory and Other Relief against the Board of Supervisors of Fairfax County, Virginia (the “Board”) and in support thereof state as follows:

Introduction

1. This Complaint asks the Court to declare void *ab initio* the Board's July 31, 2018 adoption of Zoning Ordinance Amendment 18-473 (the "STL Zoning Ordinance Amendment") relating to use and occupancy of residences in Fairfax County for less than 30 days, as well as the Board's related July 31, 2018 adoption of amendments to Chapter 4 (Taxation and Finance) the Code of the County of Fairfax relating to Business, Professional and Occupational License Tax and Transient Occupancy Tax (the "Transient Occupancy Tax Amendment").

2. The STL Zoning Ordinance Amendment is the culmination of the County's troubling and misguided efforts over the last two years to try to enforce and regulate residential use and occupancy arising from the popularity and expansion of the housing sharing economy through online marketplace platforms such as AirBnB.

3. The Court should declare the STL Zoning Ordinance void *ab initio* because the ordinance (i) was never initiated as a proposed amendment by the Board or Planning Commission; (ii) violates the Dillon Rule; (iii) constitutes a piecemeal downzoning; (iv) is a violation of procedural due process rights; (v) is a violation of substantive due process rights; (vi) is a violation of equal protection rights; (vii) authorizes an unlawful search and seizure; and (viii) is unreasonable, arbitrary and capricious.

Parties

4. The Board of Supervisors of Fairfax County, Virginia (the "Board") is the duly elected governing body of Fairfax County, Virginia, and it is the governing entity that exercises planning and zoning authority for the County. The Board has the authority to adopt amendments to the zoning ordinance and zoning map of Fairfax County. The Board is capable

of suing and being sued in its own name. The Board adopted the STL Zoning Ordinance Amendment and the Transient Occupancy Tax Amendment that are the subject of this action.

5. Andrew Cooper and Rebecca Cooper own, reside at and/or use the property located at 4009 David Lane, Alexandria VA 22311. By virtue of their ownership, occupancy and/or use of this property in Fairfax County, they are aggrieved by the STL Zoning Ordinance Amendment and have standing to challenge the STL Zoning Ordinance Amendment.

6. Blake Ratcliff and Sara Ratcliff own, reside at and/or use property located at 3320 Grass Hill Terrace, Falls Church VA 22044. By virtue of their ownership, occupancy and/or use of this property in Fairfax County, they are aggrieved by the STL Zoning Ordinance Amendment and have standing to challenge the STL Zoning Ordinance Amendment.

7. Cecilia Gonzalez owns, resides at and/or uses the property located at 6953 Pine Crest Avenue, McLean VA 22101. By virtue of her ownership, occupancy and/or use of this property in Fairfax County, she is aggrieved by the STL Zoning Ordinance Amendment and has standing to challenge the STL Zoning Ordinance Amendment.

8. Cindy Reese owns, resides at and/or uses the property located at 4021 Gallows Rd, Annandale VA 22003. By virtue of her ownership, occupancy and/or use of this property in Fairfax County, she is aggrieved by the STL Zoning Ordinance Amendment and has standing to challenge the STL Zoning Ordinance Amendment.

9. Donald Walker and Debra Walker own, reside at and/or use the property located at 9302 MacSwain Place, Springfield VA 22153. By virtue of their ownership, occupancy and/or use of this property in Fairfax County, they are aggrieved by the STL Zoning Ordinance Amendment and have standing to challenge the STL Zoning Ordinance Amendment.

10. Huger Huamani and Carmen Giselle Huamani Ober own, reside at and/or use the property located at 10009 Beacon Pond Lane, Burke VA 22015. By virtue of their ownership, occupancy and/or use of this property in Fairfax County, they are aggrieved by the STL Zoning Ordinance Amendment and have standing to challenge the STL Zoning Ordinance Amendment.

11. Amjad Arnous owns, resides at and/or uses property located at 927 Leigh Mill Road, Great Falls VA 22066. By virtue of his ownership, occupancy and/or use of this property in Fairfax County, he is aggrieved by the STL Zoning Ordinance Amendment and has standing to challenge the STL Zoning Ordinance Amendment.

12. John A. McEwan and Mary Lou McEwan own, reside at and/or use the property located at 9319 Ludgate Dr, Alexandria VA 22309. By virtue of their ownership, occupancy and/or use of this property in Fairfax County, they are aggrieved by the STL Zoning Ordinance Amendment and have standing to challenge the STL Zoning Ordinance Amendment.

13. Kevin Holley owns, resides at and/or uses the property located at 1561 Trails Edge Lane, Reston VA 20194. By virtue of his ownership, occupancy and/or use of this property in Fairfax County, he is aggrieved by the STL Zoning Ordinance Amendment and has standing to challenge the STL Zoning Ordinance Amendment.

14. Laura Quirk Niswander owns, resides at and/or uses the property located at 8115 Yorktown Drive, Alexandria VA 22308. By virtue of her ownership, occupancy and/or use of this property in Fairfax County, she is aggrieved by the STL Zoning Ordinance Amendment and has standing to challenge the STL Zoning Ordinance Amendment.

15. Lori Marsengill and Gary Marsengill own, reside at and/or use the property located at 9105 Wexford Drive, Vienna VA 22182. By virtue of their ownership, occupancy

and/or use of this property in Fairfax County, they are aggrieved by the STL Zoning Ordinance Amendment and have standing to challenge the STL Zoning Ordinance Amendment.

16. Margaret Wiegenstein owns, resides at and/or uses the property located at 2811 Maple Lane, Fairfax VA 22031. By virtue of her ownership, occupancy and/or use of this property in Fairfax County, she is aggrieved by the STL Zoning Ordinance Amendment and has standing to challenge the STL Zoning Ordinance Amendment.

17. Melinda Norton owns, resides at and/or uses the property located at 13205 Poplar Tree Road, Fairfax VA 22033. By virtue of her ownership, occupancy and/or use of this property in Fairfax County, she is aggrieved by the STL Zoning Ordinance Amendment and has standing to challenge the STL Zoning Ordinance Amendment.

18. Nagla Abdelhalim owns, resides at and/or uses the property located at 3025 Silent Valley Drive, Fairfax VA 22031. By virtue of her ownership, occupancy and/or use of this property in Fairfax County, she is aggrieved by the STL Zoning Ordinance Amendment and has standing to challenge the STL Zoning Ordinance Amendment.

19. Nhung Nina Luong and Quan Nguyen own, reside at and/or use the property located at 7504 Arlington Blvd, Falls Church VA 22042. By virtue of their ownership, occupancy and/or use of this property in Fairfax County, they are aggrieved by the STL Zoning Ordinance Amendment and have standing to challenge the STL Zoning Ordinance Amendment.

20. Robert Ross and Helen Ross own, reside at and/or use the property located at 3704 Michele Court, Oakton VA 22124. By virtue of their ownership, occupancy and/or use of this property in Fairfax County, they are aggrieved by the STL Zoning Ordinance Amendment and have standing to challenge the STL Zoning Ordinance Amendment.

21. Rosana Montequin and Marcela Montequin own, reside at and/or use property located at 4806 Apple Tree Drive, Alexandria VA 22310. By virtue of their ownership, occupancy and/or use of this property in Fairfax County, they are aggrieved by the STL Zoning Ordinance Amendment and have standing to challenge the STL Zoning Ordinance Amendment.

22. Sanjeev Anand and Anju Anand own, reside at and/or use the property located at 11260 Waples Mill Road, Oakton VA 22124. By virtue of their ownership, occupancy and/or use of this property in Fairfax County, they are aggrieved by the STL Zoning Ordinance Amendment and have standing to challenge the STL Zoning Ordinance Amendment.

23. Sarah Teagle owns, resides at and/or uses the property located at 11516 Hickory Cluster, Reston VA 20180. By virtue of her ownership, occupancy and/or use of this property in Fairfax County, she is aggrieved by the STL Zoning Ordinance Amendment and has standing to challenge the STL Zoning Ordinance Amendment.

24. Sofia Zapata owns, resides at and/or uses the property located at 5201 Bradwood Street, Springfield VA 22151. By virtue of her ownership, occupancy and/or use of this property in Fairfax County, she is aggrieved by the STL Zoning Ordinance Amendment and has standing to challenge the STL Zoning Ordinance Amendment.

25. Svetla Borisova owns, resides at and/or uses the property located at 6111 Liverpool Lane, Alexandria VA 22315. By virtue of her ownership, occupancy and/or use of this property in Fairfax County, she is aggrieved by the STL Zoning Ordinance Amendment and has standing to challenge the STL Zoning Ordinance Amendment.

26. Nickolas Ploutis owns, resides at and/or uses the property located at 6627 Cavalier Drive, Alexandria VA 22307. By virtue of his ownership, occupancy and/or use of

this property in Fairfax County, he is aggrieved by the STL Zoning Ordinance Amendment and has standing to challenge the STL Zoning Ordinance Amendment.

27. Melinda Galey and Travis Galey own, reside at and/or use the property located at 5692 Medallion Court, Alexandria, VA 22303. By virtue of their ownership, occupancy and/or use of this property in Fairfax County, they are aggrieved by the STL Zoning Ordinance Amendment and have standing to challenge the STL Zoning Ordinance Amendment.

28. Victoria Spellman owns, resides at and/or uses the property located at 13132 Copper Brook Way, Herndon VA 20171.

29. The Plaintiffs' claims in this action involve common issues of fact and arise out of the same transaction or occurrence and, therefore, the Plaintiffs have joined together in this action under Virginia Code § 8.01-267.5.

Venue and Jurisdiction

30. Venue is proper in this Court pursuant to Virginia Code § 15.2-2285(F).

31. This Court has personal jurisdiction over the parties.

32. This Court has subject matter jurisdiction under Virginia Code § 15.2-2285(F).

Facts

The Residential Housing Sharing Economy

33. The housing sharing economy refers to person-to-person online marketplace platforms which allow individuals to connect and share their residences with others seeking residential housing, often for relatively short periods of time.

34. Examples of online marketplace platforms in the housing sharing economy include AirBnB, Vacation Rental by Owner (VRBO), Homeaway, FlipKey, TripAdvisor Rentals and Booking.com Apartments.

35. The housing sharing economy in Fairfax County, Virginia is thriving, with individuals across Fairfax County participating in online marketplaces, as both providers and consumers of residential housing options.

36. The housing sharing economy in Fairfax County serves a vital purpose by offering providers of residential housing, among other benefits, a means to earn income by sharing their residences. The housing sharing economy likewise offers consumers of residential housing affordable and flexible housing options for short periods of time.

***Residential Housing Sharing Is A
By-Right Residential Use Under The Fairfax County Zoning Ordinance***

37. The Zoning Ordinance of Fairfax County, Virginia (“Zoning Ordinance”), through its residential district regulations, includes various permitted residential uses. For example, permitted residential uses include, but are not limited to, single family detached dwellings and single family attached dwellings. The Zoning Ordinance defines these permitted uses as single family dwellings and groups of single family dwellings, respectively. The Zoning Ordinance characterizes single family dwellings as residential buildings containing only one dwelling unit.

38. Under the Zoning Ordinance, a dwelling unit is, *inter alia*, one or more rooms in a residential building arranged, designed, used, *or* intended for use as a complete, independent living facility, and including provisions for living, sleeping, eating, cooking and sanitation and is subject to permitted occupancy requirements.

39. As a result, residential buildings that are designed *or* used for residential occupancy in accordance with permitted occupancy requirements are a permitted by-right use under the Zoning Ordinance.

40. The method by which residential buildings that are designed *or* used for residential occupancy are actually occupied by individuals (i.e., through ownership, a traditional landlord/tenant relationship or an online marketplace platform in the housing sharing economy) does not change the fact that the use and occupancy are permitted under the Zoning Ordinance.

41. Similarly, the period of time for which residential buildings that are designed *or* used for residential occupancy are actually occupied by individuals (i.e., permanently, more than 30 days or less than 30 days) does not change the fact that the use and occupancy are permitted under the Zoning Ordinance.

42. If a residential building that is designed *or* used for residential occupancy is occupied in accordance with the applicable district regulations and occupancy requirements, it matters not that the permitted use and occupancy are facilitated through an online marketplace platform in the housing sharing economy or that the permitted use and occupancy are for a period of less than 30 days.

43. Consistent with the fact that residential buildings designed *or* used for residential occupancy and occupied in accordance with the applicable district regulations and occupancy requirements are a by-right use in residential districts (regardless of whether occupancy is facilitated through an online marketplace platform in the housing sharing economy and regardless of whether the permitted use is for a period of less than 30 days), the Fairfax County Zoning Office has confirmed – in response to requests from different residents – that this type occupancy does not violate the Zoning Ordinance.

***The Fairfax County Zoning Ordinance
Does Not Prohibit Residential Housing Sharing***

44. Also consistent with the fact that residential buildings designed *or* used for residential occupancy and occupied in accordance with the applicable district regulations and occupancy requirements are a by-right permitted use in residential districts (regardless of whether occupancy is facilitated through an online marketplace platform in the housing sharing economy and regardless of whether the permitted use is for a period of less than 30 days), the Zoning Ordinance does not prohibit residential housing sharing and does not prohibit residential housing sharing for periods of less than 30 days.

45. In a misguided effort to manufacture a justification for pursuing and adopting the STL Zoning Ordinance Amendment, the County and its staff took the position – based on a patchwork of undefined and wholly inapplicable terminology and regulations – that occupancy of homes in residential districts for less than 30 consecutive days, facilitated through residential housing sharing, is somehow expressly prohibited under the Fairfax County Zoning Ordinance. The County and its staff are wrong, and the Zoning Ordinance contains no such prohibition.

46. The County and its staff manufactured a prohibition on occupancy of homes in residential districts for less than 30 consecutive days simply so the County could pursue unjustified enforcement actions against Fairfax County residents, which the County and its staff could subsequently use as a basis to justify the Board pursuing and adopting the STL Zoning Ordinance Amendment.

***The County's Unlawful
Enforcement Actions Targeting Fairfax County Residents***

47. In or around 2016, the County began investigating and targeting Fairfax County residents who were lawfully using and occupying their residences for residential purposes through residential housing sharing.

48. In at least one situation, the County and its staff initiated its investigation targeting Fairfax County residents using and occupying their residences for residential purposes through residential housing sharing following racially-charged complaints from neighbors.

49. In at least one situation, the Fairfax County Code Compliance office represented to the residents that the County was merely collecting feedback to provide to Virginia's Housing Commission Short Term Rental Work Group. In reality, the County was conducting an investigation of the homeowners' use and occupancy of their residences for residential purposes through residential housing sharing in response to the discriminatory complaints that had been lodged by neighbors.

50. Following their investigations, the County and its staff issued notices of violation to Fairfax County residents based on the County and staff's manufactured prohibition on occupancy of homes in residential districts for less than 30 consecutive days.

51. Certain of those notices of violation were appealed to the Board of Zoning Appeals and subsequently appealed to this Court. At least two of those actions are currently pending before this Court.

52. The County and its staff pursued – and continue to pursue – their baseless enforcement actions, some of which arose from racially-charged complaints from neighbors,

for purposes of improperly using the cases as a justification for the Board to pursue and adopt the STL Zoning Ordinance Amendment.

*The Authority To Create
A Registry For Short-Term Rental Of Property*

53. In 2017, the Virginia General Assembly enacted Virginia Code § 15.2-983 entitled “Creation of registry for short-term rental of property.”

54. The enabling statute pertains to what the statute refers to as short-term rentals for fewer than 30 consecutive days.

55. The enabling statute permits localities to establish by ordinance a short-term rental registry (ministerial in nature) and require operators within the locality to register annually. Under the statute, localities may charge a reasonable fee for such registration related to the actual cost of establishing and maintaining the registry.

56. The enabling statute carves out an express exception for certain real estate and other professionals and mandates that no ordinance shall require any such person to participate in such a registry.

57. The enabling statute further provides for certain penalties associated with the failure to register with a locality’s registry. The enabling statute also provides that operators may be prohibited from registering and offering a property for short-term rental upon repeated violations.

58. The enabling statute does not contain any authority allowing localities to controvert existing by-right permitted use and occupancy of residential buildings.

59. The enabling statute does not contain any authority allowing localities to require individuals to obtain a permit from the zoning administrator for such use.

60. The enabling statute does not contain any authority allowing localities to require residential buildings used for short-term rentals to be open for inspection by the County on demand.

61. The enabling statute does not contain any authority allowing localities to require operators of short-term rentals to be permanent residents of the subject properties.

62. The enabling statute does not contain any authority allowing localities to limit short-term occupancy of homes to 60 nights per year.

63. The enabling statute does not contain any authority allowing localities to require that only adults may use and occupy a residential building on a short-term basis.

64. The enabling statute does not contain any authority allowing localities to require that individuals occupying a residence on a short-term basis must do so under a single rental contract.

65. The enabling statute does not contain any authority allowing localities to prohibit gatherings of persons other than those occupying the residence on a short-term basis.

66. The enabling statute does not contain any authority allowing localities to require operators of short-term rentals to log personal information of guests occupying the residence and disclose guests personal information to the County on demand.

67. The enabling statute does not contain any authority allowing localities to classify short-term rentals as hotels for purposes of collecting Business, Professional and Occupational License (BPOL) taxes from short-term rental operators.

68. The enabling statute does not contain any authority allowing localities to require real estate and other professionals to comply with any such regulations.

69. In addition to the lack of any such authority under the enabling statute for the foregoing requirements and prohibitions, there is no other express or implied authority held by the Board to impose such requirements and prohibitions.

***The Board's Failure To
Initiate The STL Zoning Ordinance Amendment***

70. According to the County and its staff (following their manufactured prohibition and in tandem with their baseless enforcement actions), as a result of the Virginia General Assembly's enactment of Virginia Code § 15.2-983, the Board directed staff on March 14, 2017 to form a workgroup to analyze the short-term rental of property in Fairfax County and recommend possible changes to the County Code and Zoning Ordinance.

71. As a result, approximately one-year later on March 20, 2018, the County's staff proposed an amendment to the Fairfax County Zoning Ordinance to allow as an accessory use what the County and its staff refer to as short-term lodging.

72. The Board, however, failed to take the necessary and fundamental legislative action of initiating the amendment proposed by staff, in that the Board failed to adopt a resolution of intention to amend the Fairfax County Zoning Ordinance.

73. On March 20, 2018, the Board bypassed its statutory and fundamental obligation to adopt a resolution of intention to amend the Fairfax County Zoning Ordinance and instead proceeded to authorize the advertisement of a public hearing for the Planning Commission and the Board to consider staff's proposal.

***The Unlawful Regulation Imposed By
The Board's STL Zoning Ordinance Amendment***

74. On July 31, 2018 – after the County and its staff manufactured a prohibition so they could carry out baseless enforcement actions to justify pursuing and adopting a zoning

ordinance amendment, and after the Board failed to initiate any amendment to the Zoning Ordinance – the Board adopted the STL Zoning Ordinance Amendment.

75. Although the Board plainly failed to adopt a resolution of intention to amend the Fairfax County Zoning Ordinance, the STL Zoning Ordinance Amendment falsely states that it was adopted by “the Board after having first given notice of its intention so to do, in the manner prescribed by law. . . .”

76. The STL Zoning Ordinance Amendment purports to unreasonably, arbitrarily, capriciously and without authority amend the Zoning Ordinance by adding definitions and regulations including, but certainly not limited to, the following:

- a. Adding new definitions for “short-term lodging” and “transient occupancy” that were previously undefined by the Zoning Ordinance (although the undefined terms formed the complete basis of the County and its staff’s manufactured prohibition on short-term lodging and transient occupancy prior to the STL Zoning Ordinance Amendment);
- b. Requiring the issuance of a permit from the Zoning Administrator, which can be revoked by the Zoning Administrator, for short-term rentals (although such occupancy is a by-right permitted use in residential districts under the Zoning Ordinance and despite the lack of any authority whatsoever for the County to require persons to obtain such a permit from the Zoning Administrator and despite the lack of authority to revoke such permits in the matter stated);
- c. Requiring residential buildings used for short-term rentals to be open for inspection by the County on demand (although such use and occupancy

are a by-right permitted use in residential districts under the Zoning Ordinance and despite the lack of any authority whatsoever for the County to impose the extraordinary intrusion of allowing the County to search homes on demand without a warrant and without consent);

- d. Requiring operators of short-term rentals to be permanent residents of the subject properties (although such use and occupancy are a by-right permitted use in residential districts under the Zoning Ordinance and despite the lack of any authority whatsoever for the County to mandate that persons must permanently reside at any property they might own or rent);
- e. Prohibiting short-term occupancy of homes for more than 60 nights per year (although such use and occupancy are a by-right permitted use in residential districts under the Zoning Ordinance and despite the lack of any authority whatsoever for the County to impose a requirement on how many days a year a home may be occupied);
- f. Mandating that only 6 adults per night may use and occupy a residential building on a short-term basis (although such use and occupancy are a by-right permitted use in residential districts under the Zoning Ordinance and despite the lack of any authority whatsoever to limit use and occupancy to adults while prohibiting use and occupancy by children);
- g. Mandating that individuals occupying a residence on a short-term basis must do so under a single rental contract (despite the lack of any authority

whatsoever for the County to dictate the manner in which private parties may contract with each other);

- h. Prohibiting any gatherings of persons other than those occupying the residence on a short-term basis (despite the lack of any authority whatsoever for the County to regulate whether and how persons may gather in private residences); and
- i. Requiring operators of short-term rentals to log personal information of guests occupying the residence and disclosing guests personal information to the County on demand (although such use and occupancy are a by-right permitted use in residential districts under the Zoning Ordinance and despite the lack of any authority whatsoever for the County to impose the extraordinary intrusion of mandating that personal and private information of guests be publically disclosed to the County on demand).
- j. Requiring real estate and other professionals to comply with the regulations (even though the enabling statute expressly prohibits such regulation).

77. Furthermore, the Transient Occupancy Tax Amendment purports to unreasonably, arbitrarily, capriciously and without authority amend the Fairfax County Code by classifying short-term rentals as hotels for purposes of collecting Business, Professional and Occupational License (BPOL) taxes from short-term rental operators.

78. The provisions of the STL Zoning Ordinance Amendment identified above, as well as numerous other provisions of the STL Zoning Ordinance Amendment not specifically enumerated or referred to herein, and the Transient Occupancy Tax Amendment are

unreasonable, arbitrary, capricious, unauthorized, illegal, in violation of Virginia law, in violation of the United States Constitution, in violation of the Virginia Constitution, without any valid relationship to the health, safety and welfare of the citizens of Fairfax County and void *ab initio*.

Count I:
The Board Failed To Initiate The STL Zoning Ordinance Amendment

79. The foregoing allegations are incorporated as if fully set forth herein.

80. Virginia Code § 15.2-2286(A)(7) permits the Zoning Ordinance to include provisions for the amendment of the Zoning Ordinance and requires any such amendment be initiated (i) by resolution of the governing body; (ii) by motion of the planning commission; or (iii) by petition of a property owner.

81. Zoning Ordinance § 18-201 mandates that the Zoning Ordinance may be amended by the Board “provided the amendment is initiated in the following manner: (1) [a]doption by the Planning Commission of a resolution of intention to propose an amendment; (2) [a]doption by the Board of a resolution of intention to amend, which resolution, upon adoption, is referred to the Planning Commission; or (3) [f]iling with the Zoning Administrator an application submitted by the owners....”

82. The STL Zoning Ordinance Amendment was not initiated through the Planning Commission’s adoption of a resolution of intention to propose an amendment to the Zoning Ordinance.

83. The STL Zoning Ordinance Amendment was not initiated through the Board’s adoption of a resolution of intention to amend the Zoning Ordinance.

84. The STL Zoning Ordinance Amendment was not initiated through an owner application filed with the Zoning Administrator.

85. The STL Zoning Ordinance Amendment was not initiated at all, and neither the Board nor the Planning Commission adopted a resolution of intention to amend or propose an amendment to the Zoning Ordinance.

86. As a result of the failure to initiate the STL Zoning Ordinance Amendment, the STL Zoning Ordinance Amendment and Transient Occupancy Tax Amendment are void *ab initio*.

Count II:

The STL Zoning Ordinance Amendment Is An Unlawful Piecemeal Downzoning

87. The foregoing allegations are incorporated as if fully set forth herein.

88. Residential buildings designed *or* used for residential occupancy and occupied in accordance with the applicable district regulations and occupancy requirements are a by-right use in residential districts, regardless of whether occupancy is facilitated through an online marketplace platform in the housing sharing economy and regardless whether the occupancy is for a period of less than 30 days.

89. The STL Zoning Ordinance Amendment constitutes a downzoning of this by-right permitted use.

90. The STL Zoning Ordinance Amendment was not comprehensive in nature.

91. The STL Zoning Ordinance Amendment was piecemeal in nature.

92. The STL Zoning Ordinance Amendment was not adopted due to, and there is no evidence of, mistake, fraud or changed circumstances substantially affecting the public health, safety or welfare.

93. The STL Zoning Ordinance Amendment and all of its provisions are unreasonable, arbitrary, capricious, unauthorized, illegal, in violation of Virginia law, without

any valid relationship to the health, safety and welfare of the citizens of Fairfax County and void *ab initio*.

Count III:

The STL Zoning Ordinance Amendment Violates The Dillon Rule

94. The foregoing allegations are incorporated as if fully set forth herein.

95. The STL Zoning Ordinance Amendment, and all of its provisions, and the Transient Occupancy Tax Amendment violate the Dillon Rule.

96. The Board is not enabled under any applicable state law to enact the STL Zoning Ordinance Amendment or any of its provisions and regulations or the Transient Occupancy Tax Amendment.

97. There is no express authority for the Board to enact the STL Zoning Ordinance Amendment or any of its provisions and regulations or the Transient Occupancy Tax Amendment.

98. There is no authority implied to the Board from expressly granted powers or those that are essential and indispensable permitting the Board to enact the STL Zoning Ordinance Amendment or any of its provisions or regulations or the Transient Occupancy Tax Amendment.

99. Due to the lack of any applicable express authority or implied authority, the STL Zoning Ordinance Amendment and all of its provisions and regulations and the Transient Occupancy Tax Amendment are void *ab initio*.

100. Even if the Board was enabled by state law to enact the STL Zoning Ordinance Amendment and its provisions and regulations and the Transient Occupancy Tax Amendment (which it was not), the STL Zoning Ordinance Amendment was not initiated in accordance

with Virginia Code § 15.2-2286(A)(7) and Zoning Ordinance § 18-201 and, therefore, is void *ab initio*.

101. Even if the Board was enabled by Virginia Code § 15.2-983 to enact the STL Zoning Ordinance Amendment and its provisions and regulations and the Transient Occupancy Tax Amendment (which it was not), the STL Zoning Ordinance Amendment was not adopted in accordance with the manner specified under Virginia Code § 15.2-983 and, therefore, is void *ab initio*.

102. The STL Zoning Ordinance Amendment and all of its provisions and the Transient Occupancy Tax Amendment are unreasonable, arbitrary, capricious, unauthorized, illegal, in violation of Virginia law, without any valid relationship to the health, safety and welfare of the citizens of Fairfax County and void *ab initio*.

Count IV:
The STL Zoning Ordinance Amendment Is A Violation Of Procedural Due Process

103. The foregoing allegations are incorporated as if fully set forth herein.

104. The Plaintiffs have property interests of which the Board has deprived them without due process of the law.

105. The STL Zoning Ordinance Amendment and all of its provisions and regulations deprived Plaintiffs of fair and adequate procedural protections.

106. The STL Zoning Ordinance Amendment and all of its provisions and regulations were not initiated in accordance with Virginia Code § 15.2-2286(A)(7) and Zoning Ordinance § 18-201 and, therefore, deprived Plaintiffs of due process of the law.

107. The STL Zoning Ordinance Amendment and all of its provisions and regulations are uncertain and vague and fails to give Plaintiffs a reasonable opportunity to know what is prohibited so that they may act accordingly in that it conflicts with and is contrary to by-right

permitted uses in residential districts under the Zoning Ordinance and, therefore, deprived Plaintiffs of due process of the law.

108. The STL Zoning Ordinance Amendment and all of its provisions and the Transient Occupancy Tax Amendment are unreasonable, arbitrary, capricious, unauthorized, illegal, in violation of Virginia law, in violation of the United States Constitution, in violation of the Virginia Constitution, without any valid relationship to the health, safety and welfare of the citizens of Fairfax County and void *ab initio*.

Count V:
The STL Zoning Ordinance Amendment Is A Violation Of Substantive Due Process

109. The foregoing allegations are incorporated as if fully set forth herein.

110. The STL Zoning Ordinance Amendment and all of its provisions and regulations do not substantially advance any legitimate governmental interests.

111. The STL Zoning Ordinance Amendment and all of its provisions and regulations are unreasonable, arbitrary, capricious, irrational and unjustified by any circumstance, governmental interest or facts and deprives Plaintiffs of legitimate, by-right permitted use of their protected property interests.

112. The STL Zoning Ordinance Amendment and all of its provisions and regulations do not constitute a reasonable regulation of Plaintiffs' property interests reasonably suited to achieve any legitimate goal, and it has no conceivable rational relationship to any legitimate public purpose.

113. The STL Zoning Ordinance Amendment and all of its provisions and regulations fall far beyond the outer limits of legitimate governmental action such that no process could cure the deficiency.

114. The STL Zoning Ordinance Amendment and all of its provisions and the Transient Occupancy Tax Amendment are unreasonable, arbitrary, capricious, unauthorized, illegal, in violation of Virginia law, in violation of the United States Constitution, in violation of the Virginia Constitution, without any valid relationship to the health, safety and welfare of the citizens of Fairfax County and void *ab initio*.

Count VI:
The STL Zoning Ordinance Amendment Is A Violation Of Equal Protection Rights

115. The foregoing allegations are incorporated as if fully set forth herein.

116. The STL Zoning Ordinance Amendment and all of its provisions and regulations are discriminatory and constitutes a violation of Plaintiffs rights under the United States Constitution and the Constitution of Virginia.

117. The STL Zoning Ordinance Amendment and all of its provisions and regulations are discriminatory in the manner in which they classify uses related to use and occupancy of residential buildings.

118. The STL Zoning Ordinance Amendment and all of its provisions and regulations, as compared to similarly situated residents in Fairfax County, Virginia using their property in a manner similar to Plaintiffs' use of their Property, violate the uniformity requirement, are not substantially related to the public health, safety or welfare and constitute a denial of equal protection of the laws.

119. There is no rational basis for the STL Zoning Ordinance Amendment and all of its provisions and regulations, and the STL Zoning Ordinance Amendment bears no reasonable relation to any legitimate government objective.

120. The STL Zoning Ordinance Amendment and all of its provisions and the Transient Occupancy Tax Amendment are unreasonable, arbitrary, capricious, unauthorized,

illegal, in violation of Virginia law, in violation of the United States Constitution, in violation of the Virginia Constitution, without any valid relationship to the health, safety and welfare of the citizens of Fairfax County and void *ab initio*.

Count VII:
The STL Zoning Ordinance Amendment Authorizes An Unlawful Search And Seizure

121. The foregoing allegations are incorporated as if fully set forth herein.

122. The STL Zoning Ordinance Amendment unlawfully requires residential buildings used for short-term rentals (and related records) to be open for inspection by the County on demand, without a warrant and without consent.

123. The Board is without any authority to adopt an ordinance imposing the extraordinary intrusion of allowing the County to search residences on demand without a warrant and without consent.

124. Plaintiffs have a constitutional right to be secure in their persons, houses, paper, and effects, against unreasonable searches and seizures by the government.

125. Plaintiffs further have a reasonable expectation of privacy on their property and in their residences.

126. The STL Zoning Ordinance Amendment provisions with respect to on demand inspections without a warrant and without consent constitutes a violation of Plaintiffs' constitutional rights.

127. The STL Zoning Ordinance Amendment and all of its provisions are unreasonable, arbitrary, capricious, unauthorized, illegal, in violation of Virginia law, in violation of the United States Constitution, in violation of the Virginia Constitution, without any valid relationship to the health, safety and welfare of the citizens of Fairfax County and void *ab initio*.

Count VIII:
The STL Zoning Ordinance Amendment Is Arbitrary And Capricious

128. The foregoing allegations are incorporated as if fully set forth herein.

129. The STL Zoning Ordinance Amendment and all of its provisions and the Transient Occupancy Tax Amendment are unreasonable, arbitrary, capricious, unauthorized, illegal, in violation of Virginia law, in violation of the United States Constitution, in violation of the Virginia Constitution, without any valid relationship to the health, safety and welfare of the citizens of Fairfax County and void *ab initio*.

Prayer for Relief

WHEREFORE, the Plaintiffs request the Court to enter and Order (i) declaring, determining, finding and ruling that the Board's STL Zoning Ordinance Amendment and all of its provisions and the Transient Occupancy Tax Amendment are unreasonable, arbitrary, capricious, unauthorized, illegal, in violation of Virginia law, in violation of the United States Constitution, in violation of the Virginia Constitution, without any valid relationship to the health, safety and welfare of the citizens of Fairfax County and void *ab initio*; and (ii) granting Plaintiffs such other and further relief as the nature of the evidence and the case demands.

Date: August 30, 2018

Respectfully submitted,

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