

MEMORANDUM

November 6, 2005

To: Maplewood Planning Board
From: Ad Hoc Subcommittee for B&B Ordinance Drafting
Annette DePalma
Steve Finn
Jim Nathenson
Jerry Ryan, chair
Subject: Subcommittee Report

The Maplewood Township Committee asked the Planning Board to draft an ordinance creating "an amendment to the zoning ordinance to permit Bed and Breakfasts to be located within residential zones with certain conditions". The Planning Board chair appointed this subcommittee to create the requested ordinance draft language for submission to the Township Committee.

The subcommittee was provided with materials that had been submitted to the planning board and township committee by several sources, and met on October 12 with a representative from Township Counsel's firm to work on the draft language.

SUMMARY

The subcommittee has not completed draft ordinances for review by the Planning Board and Township Committee. Several questions of policy arose during deliberations that need to be aired.

The subcommittee believes that, for a number of reasons, it would be a mistake to allow B&Bs in Maplewood. However, if the Township Committee disagrees and decides to proceed with creating ordinances to allow for B&B operation in Maplewood, we believe that two ordinances should be enacted: one related to the zoning for B&Bs, and one for licensing B&B operations.

The subcommittee feels confident that after discussion of the issues raised, draft ordinances can be completed in short order should it be the Township Committee's decision to do so.

B&Bs – POLICY CONSIDERATIONS

The subcommittee had a wide-ranging discussion on the relevant issues of zoning, licensing, and enforcement, and how to best express them in ordinance form.

Recognizing that this is a policy decision of the Township Committee, this committee nevertheless thought it productive to weigh in on the subject of allowing B&Bs at all. We believe that the issues raised below would come up on introduction and hearings on any ordinances, and were thus best raised now.

1. There is, at best, only weak economic justification for allowing B&B's in the Township. Despite the EDAC's positive recommendation in favor of B&Bs, that group neither wrote a report nor provided an economic justification supporting its conclusion. There is little destination logic for Maplewood as a locale for B&Bs, and the number of appropriately sized to accommodate these enterprises is limited. Therefore, as a practical matter, the number of rooms that potentially would be made available is quite small. Consequently, the incremental local spending by guests would be marginal and the revenues to the Township generated by a hotel tax would be negligible. A B&B may be more of a "nice thing" for residents with out-of-town visitors that need a place to sleep. However, if there is truly broad demand for guest rooms in Maplewood, then perhaps such demand would be better served by a small hotel in an existing business district such as Springfield Avenue.
2. The potential for neighborhood resistance is very high. There are adverse perceptions of public safety, probable intrusiveness, and negative amenity. The NIMBY factor will be extreme, and there will be skepticism of the government's ability to protect and/or regulate against abuse by operators of B&Bs. Recall that our police regularly tell us to "call if you see anyone out of the ordinary that does not belong in the neighborhood". A B&B may increase the anxiety relative to strangers in the neighborhood, increase the noise level in the neighborhood, and perhaps even create an impression of reduced safety.
3. There may be great difficulty in regulating this use. The crux of the difficulty of regulating this use lies in the fact that by definition a B&B is a mixed use, i.e. a business use with public attributes operating in an owner-occupied private home in a residential zone. The bulk variance aspects of regulation would be relatively straightforward, but the real protections against operational abuse would be difficult to implement. Operating restrictions are inherently ambiguous and difficult to enforce because behaviors tolerated for private residences, (i.e. hosting parties, or serving meals or alcohol to houseguests) would not be permitted with regard to B&B patrons. If a B&B proprietor were permitted to have both personal and business guests, it would be difficult to distinguish activities that violate the B&B regulations from activities that are permissible for a residential user. Furthermore, effective enforcement of other key operational restrictions, e.g. hours of operation, number of consecutive nights stay, number of guests per room, etc. would require a level of monitoring that may not be practical in a Township with relatively few such enterprises and already scarce enforcement personnel.

B&Bs – ORDINANCE CONSIDERATIONS

As noted above, the subcommittee opposes the adoption of ordinances enabling B&Bs in Maplewood. If the Township Committee chooses to proceed on allowing B&Bs, there

should be two separate ordinances: one for zoning, and one for operating regulations and licensing. We would expect that a B&B would be required to have both the necessary zoning approvals and a Township-issued license. We expect that this licensing could be a strong method of enforcement, as the license would be subject to suspension or revocation in the event of violations of the operating regulations.

ZONING ORDINANCE

From the point of view of zoning, we agreed that if B&Bs were to be allowed at all, they should only be allowed as conditional uses. Whatever specific conditions are applied, and in whatever zones those conditions might be applied, we believed that all B&Bs should require a site plan review by the Planning Board.

We believe that it is critically important that the ordinances for B&Bs be written to minimize the impact on the properties in residential areas. To achieve this goal, B&Bs in residential zones should be restricted by lot size, frontage, parking, lot coverage, landscape buffering, and setbacks, especially side setbacks. Setting overly broad conditions would make many properties eligible, while setting narrow conditions would allow a very small number, or just one, or no B&Bs at all. Ideally, one would like to decide on the number of B&Bs in the community and only allow that number; however, Counsel informed us that there is no basis for regulating the number of B&Bs.

We discussed, but did not finalize, the details of the zoning parameters. If the Township Committee decides to proceed on this ordinance, such details could be finalized quickly.

Parenthetically, we wondered if a home zoned as a B&B should be re-assessed to reflect the income-producing nature of the property. This question is probably outside the scope of this subcommittee, but can and should be investigated independently by the tax assessor's office.

OPERATING REGULATIONS AND LICENSING

If the Township Committee decides to proceed with allowing B&Bs, we suggest that the Township create an ordinance that defines B&Bs, creates licenses to operate B&Bs, sets fees for those licenses, and establishes the regulations that must be followed when operating the B&B in order to retain the license.

The ordinance would state that only a B&B license holder can operate a B&B. Someone would be eligible to get a B&B license only if their property meets the zoning for a B&B (either by ordinance, or by variance). All B&B regulations must be obeyed or the license can either be suspended or revoked. The Township could decline to renew a B&B license if the license holder has had too many convictions for violations within the license period. There should be provisions for suspending or revoking licenses, as well as a providing a time period that a suspended licensee must wait to re-apply for a license.

A B&B operator should be required to submit their books for inspection by the Township, or perhaps some monthly report, or both, so that use can be monitored and any "hotel tax" can be assessed and collected.

The ordinance should require inspections to be sure that all building and fire codes are complied with, as well as assurance that all zoning restrictions are met, as a condition of granting the license and/or renewing the license. Only breakfasts would be served, but if cooked breakfasts are to be permitted (as opposed to continental breakfasts), then inspection and perhaps licensing by the Board of Health may be required.

We discussed the notion of "turning on" and "turning off" the B&B use. The consensus was that if a property is a B&B, then it is always a B&B; the proprietor can not, for example, arbitrarily decide that the property is a B&B one weekend and is not on another. The ability to say "this weekend I am not a B&B" is something that the licensing ordinance must forbid; otherwise the B&B regulations could be easily flaunted, making enforcement difficult, if not impossible. A B&B should not be defined by the fact of accepting payment for lodging, but rather by the very act of taking in lodgers. Determining a method for making such distinctions is one of the most difficult aspects of allowing B&Bs in Maplewood.

An operating regulation and licensing ordinance would have to set forth other limits on operations, such as maximum consecutive days stay for a guest, maximum guests per room, prohibitions on alcohol, and prohibitions on catering or hosting parties. Again, these sorts of operating restrictions would require an inherently high level of monitoring, which may be difficult for the Township to do.

APPENDIX – PARAMETERS FOR ORDINANCES

If the Township Committee decides to proceed, two ordinances should be created: an ordinance on licensing, and a zoning amendment.

In order to draft an ordinance on Operating Regulations and Licensing, the Township Committee would need to decide the following issues. Our recommendations, where we have them, are included in italics:

- Decide if a B&B must be owner occupied – *we think it should*
- Define a B&B in a way that restricts the ability of the proprietor to suspend the B&B use and “abuse” the regulations – *counsel will need to assist with this*
- License term – *1 year*
- Criteria for suspension and revocation of licenses – *two convictions during the license period*
- Fines for violations
- Use restrictions – *no alcohol, no lunches or dinners, no cooking facilities in the room*
- Number of consecutive days a lodger can stay – *no more than seven*
- Cooked breakfasts – *require board of health inspections*

In order to draft a zoning amendment, the Township Committee would need to make a decision on the following issues. Our recommendations are included in italics:

- Decide if a B&B requires a site plan review by the planning board – *we think it should*
- Decide if a B&B is a conditional use – *we think it should be*
- Decide where to permit B&Bs – *we discussed allowing them only in residential zones on main arteries (Wyoming, Ridgewood, Maplewood, Valley, Prospect, Parker, Elmwood, Tuscan, Millburn) where the lot is greater than 10,000 square feet. Further discussion is required on this item.*
- Decide how many B&B rooms are permitted per unit – *we suggest occupancy of two per bedroom. An owner-occupied house must have at least one bedroom for the owner, and all other bedrooms are B&B uses*
- Decide about required parking – *we suggest that one spot per unit must be provided, off street, in the side or rear of the home*
- Decide about landscape and structural buffers between the B&B and adjacent properties – *we believe they are necessary*