

**THE CITY OF ALEXANDRIA  
COMMON INTEREST COMMUNITIES  
EDUCATION SERIES**



**FINDING *PARKING* SPACES**

**JUNE 25, 2022**

**PRESENTED BY**

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# CITY REQUIREMENTS

- Parking Ratios
  - Older Development
  - New Developments
- Proffer and Site Plan Requirements
- Data-based Decision Making
- Transportation Management Plans
- Parking Study



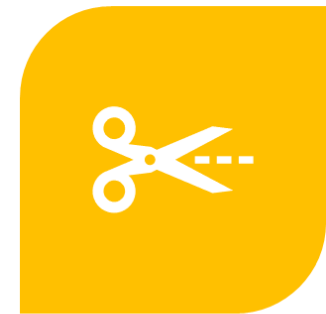
# THINGS TO CONSIDER



PARKING REQUIREMENTS  
ARE SITE SPECIFIC AND  
WHAT IS REQUIRED FOR ONE  
PROPERTY MAY NOT BE  
REQUIRED FOR OTHERS.



CURRENT CITY PARKING  
REQUIREMENTS ARE  
PERFORMANCE-BASED AND  
RESPONDS TO THE  
PROPERTY'S LOCATION,  
ACCESS TO TRANSIT, AND  
AMENITIES.



CURRENT CITY PARKING  
POLICY IS TO UNBUNDLE  
PARKING. THIS MEANS TO  
NO LONGER PERMIT THE  
CONVEYANCE OF PARKING  
SPACES WITH RESIDENTIAL  
UNITS.

*\* Unbundled parking is for **\*new\*** construction.*



# APPROACH TO EVALUATE AND ADDRESS PARKING CONCERNS

- Determine specific parking requirements for your community by reviewing the approved Development Site Plan (DSP) or Development Special Use Permit (DSUP) conditions. *Call Development Division of Department of Planning & Zoning at 703.746.4666.*
- Learn if your community is governed by a Transportation Management Plan (TMP) - which provides alternatives to car use - and how to implement the TMP. *Contact Thomas Hamed and Renee' Moore with the GO Alex team at [goalex@alexandriava.gov](mailto:goalex@alexandriava.gov).*



# **APPROACH TO EVALUATE AND ADDRESS PARKING CONCERNS**

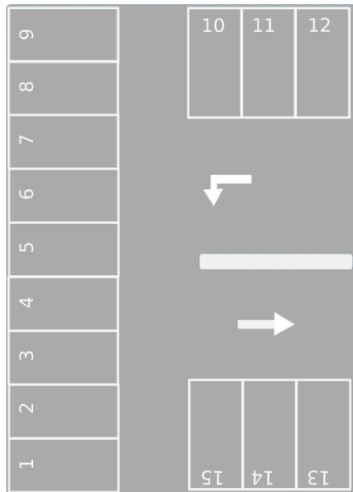
- Consider hiring a Parking Consultant to assist your community in evaluating existing parking conditions (i.e. parking studies) and develop potential solutions (e.x. reconfiguring parking spaces).
- Parking Consultants - This list does not represent an endorsement by the City of Alexandria, but the firms have experience conducting parking studies in the City of Alexandria
  - Gorove Slade
  - Wells and Associates
  - Kimley Horn



# Classification



# Classification



The legal classification of a parking space dictates association and owner rights and responsibilities.

The legal classification of the parking space is ***document*** driven.



# Classification

- **Property Owners Association** – governing documents (declaration or supplementary declaration)
  - Common Area
  - Reserved Common Area
  - Lot
- **Condominium** – condominium instruments (declaration, bylaws, plans)
  - Common Element
  - Limited Common Element
  - Reserved Common Element
  - Unit





# **Classification -**

## ***Property Owners Association***

### **Common Area**

- Property owned by the Association or to which the Association has easement or other rights.
- Unless otherwise specified in ***recorded*** governing documents, Lot Owners have equal rights of use to parking spaces.
- Right to park usually is a *non-exclusive* easement.
- Rights to park subject to Association rules and regulations.



# **Classification - *Property Owners Association***

## **Reserved Common Area**

- Common Area designated by Board for the exclusive use by specified Lot Owners.
- Rights of use are a ***revocable*** license.
- Recorded governing documents must contain express authority to designate Reserved Common Area.
- Must be designated on a uniform basis, *unless* recorded governing documents expressly permit otherwise.
- Fees ***only if*** authorized in recorded governing documents.
- Rights to park subject to Association rules and regulations.



# **Classification - *Property Owners Association***

## **Lot**

- Parking spaces may be located on the Lot (driveways/garages).
- Unless otherwise specified in recorded governing documents, owners have exclusive right to park on Lots.
- May be subject to restrictive covenants established by the declaration or by rules adopted by the board.



# **Classification -**

## ***Condominium Unit Owners Association***

### **Common Elements**

- Unit Owners own an undivided interest in the Common Elements – **common element interest**.
- Unless otherwise specified in the recorded condominium instruments, Owners have equal rights of use in Common Element parking spaces.
- Rights of use in Common Element parking spaces subject to Association rules and regulations.



# **Classification -**

## ***Condominium Unit Owners Association***

### **Limited Common Elements**

- Portion of the Common Elements designated by Declarant in the condominium instruments.
- Owners of Units to which a Limited Common Element is assigned have exclusive rights to use.
- Two types of Limited Common Elements –
  - “Fixed” to Units (patios, terraces, balconies, windows) and which cannot be transferred.
  - “Assignable” to a unit and which later can be “reassigned” to a different Unit (parking spaces, storage spaces, boat slips).



# **Classification -**

## ***Condominium Unit Owners Association***

### **Assignable Limited Common Elements**

- Condominium Act establishes requirements for creation of Limited Common Elements.
  - Location and dimension on plats/plans.
  - Express reservation in the Declaration to designate and assign as a Limited Common Element.
  - Original assignment by Declarant ***effected*** by amendment to the Declaration.



# **Classification -**

## ***Condominium Unit Owners Association***

### **Assignable Limited Common Elements**

- Condominium Act establishes requirements for reassignment of Limited Common Elements.
- Rights to use Limited Common Element parking spaces subject to Association rules and regulations.
- Local jurisdictions may assess Limited Common Elements for real estate taxes.
- Condominium instruments may establish authority to assign a fee for Limited Common Elements.



# **Classification -**

## ***Condominium Unit Owners Association***

### **Reserved Common Elements**

- Part of the Common Elements designated by a Board for the exclusive use of specified unit owners.
- Rights of use are akin to a revocable license.
- Recorded condominium instruments must grant express authority to designate portions of the Common Elements as Reserved Common Elements.
- The Condominium Act does **not** address Reserved Common Elements – document-based authority.





# **Classification -**

## ***Condominium Unit Owners Association***

### **Reserved Common Element**

- Reserved Common Elements must be designated on a uniform basis, ***unless*** the recorded condominium instruments expressly permit otherwise.
- Fees may not be charged unless authorized in the recorded condominium instruments.
- Rights to use Reserved Common Elements subject to Association rules and regulations and sometimes written agreement between Association and Unit Owner (lease or license).



# Classification - *Condominium Unit Owners Association* Unit



- Parking spaces may be designated as a Unit.
- Legal boundaries of a parking space unit described in the Declaration.
- Ownership of a parking space unit is *fee simple* and is transferrable by deed.
- Association may have more limited rights to regulate parking and use of parking.
- Local jurisdiction may assess real estate taxes against parking space Units.



# Rule Making



# Rule Making Authority

The authority of an association to adopt rules and regulations relating to parking (or otherwise) is established in the **recorded** governing documents or condominium instruments **and** by applicable law.



# Rule Making Authority

## *Property Owners Association*



- The Declaration establishes express authority to adopt rules relating to use of Common Area.
- The Declaration may also establish that owners easements to use Common Area are subject to rules.
- Section 55.1-1819 of the Property Owners' Association Act establishes Board authority to adopt and enforce rules with respect to the Common Areas, *unless* reserved to the members.
- Association may also have authority to adopt rules for use of Lots (especially restrictive covenants).



# Rule Making Authority

## *Condominium Unit Owners Association*

- The **Bylaws** typically establish express authority to adopt rules for use of Common Elements.
- Section 55.1-1956 B of the Condominium Act provides that the Board has the irrevocable power as attorney-in-fact to act on behalf of the Owners with respect to the Common Elements.
- The Association may have authority to adopt rules relating to use of Units (especially relating to restrictive covenants).



# Rule Making Limitations

**But**

Two lines of Virginia cases limit rule-making (and enforcement) authority of Virginia community associations:

- The *Sully Station* line of cases
- The *Shadowood* line of cases



# Rule Making Limitations

## *Sully Station Line of Cases*

***Sully Station II Community Association  
v Reginald W. Dye  
259 Va. 282 (2000)***

- Owners challenged a board adopted parking policy which assigned Common Area parking spaces to some, but not all townhomes in the community.
- The Court held that the assignment was equivalent to the grant of a *preferential license*, and was improper in light of Declaration which provided that member easement of enjoyment in the Common Area are subject to the right of the Association to license portions of the Common Area to Members on a *uniform, non-preferential* basis.





# **Rule Making Limitations**

## ***Sully Station Line of Cases***

***Ralph White v. Boundary Association, Inc.***  
**271 Va. 50 (2006)**

- Owner challenged a parking policy adopted by association board which assigned two Common Area parking spaces to each of the townhomes in the community.
- Owner argued that Section 55-513A (now Section 55.1-1819A) of the Property Owners' Association Act permits adoption of Common Area regulations under valid Bylaws "except where expressly reserved by the declaration to the members" and that the declaration contained a provision giving every owner "a right and easement of enjoyment to the Common Area."



# **Rule Making Limitations**

## ***Sully Station Line of Cases***

***Ralph White v. Boundary Association, Inc.***  
**271 Va. 50 (2006)**

- Court found in favor of Owner. Court reasoned that the Declaration expressly granted each Owner an easement of equal enjoyment in all of the Common Area which the Association had no authority to divest.
- Court determined that because the Declaration did not authorize the Board to license portions of the Common Area - - which is what the assignment was, the Board was not permitted to adopt a rule prohibiting Owners access to certain portions of the Common Area.



# **Rule Making Limitations**

## ***Sully Station Line of Cases***

***Manchester Oaks Homeowners Association, Inc.***

***v Patrick K. Batt***

**Virginia Supreme Court 2012**

Owners of Lots with garages challenged Board's assignment of parking spaces in Common Area to Owners of Lots without garages.

- The Declaration provided that “every owner shall have a right and easement of enjoyment in and to the Common Area, which shall pass with the title of such Owner's Lot,” subject to Association's right to adopt rules governing the use of the Common Area, including the Common Area parking lots.



# **Rule Making Limitations**

## ***Sully Station Line of Cases***

***Manchester Oaks Homeowners Association, Inc.***

***v Patrick K. Batt***

**Virginia Supreme Court 2012**

- The Court concluded that unless the Declaration expressly provides otherwise, the Association is required to assign parking spaces in the Common Area to all Lot Owners equally, if at all.
- The Court reasoned that the Common Area is “an area owned and used in common by residents of a condominium, subdivision, or planned unit development” and that “in common” means “Shared equally with others, undivided into separately owned parts.”



# Compliance



# Compliance Authority

The authority of an Association to pursue compliance as established by the **recorded** governing documents or condominium instruments.



# Parking Rules

- Based on express authority.
- Address real or anticipated concerns.
- Number of vehicles.
- Nature of vehicles.
- Vehicle maintenance.
- Length of parking permission.



# Registration

- A way to control parking.
- Ensure compliance.
- Different approaches – not one size fits all.
- Implementation.





# Compliance Strategies

- Tow vehicles from:
  - Common Area or Common Elements
  - Lots
- Suspend parking privileges
- Suspend right to use Association facilities
- Assess charges
- Abatement



# Towing

- Express authority to tow or exercise self-help should be established in the recorded governing documents or condominium instruments, *especially in case of towing from Lots.*
- Even when express authority exists, *especially in case of vehicles on Lots*, obtain a court order.
- Notice to vehicle owner whenever possible.
- Observe local ordinances which may have signage and other requirements pertaining to towing.



# **Suspension of Rights and Assessment of Fees**

- Express authority to suspend rights and assess fees for violations must be established in the recorded governing documents or condominium instruments.
- *Prior to* suspending rights or assessing fees, Sections 55.1-1959 of the Condominium Act and 55.1-1819 of the Property Owners' Association Act require the Association to afford Owners due process – including, an opportunity to cure violations and to be heard and represented by counsel.



# Enforcement Limitations

The *Shadowood* line of Virginia cases limits enforcement authority of Virginia community associations.



# **Enforcement Limitations**

## ***Shadowood Line of Cases***

***Shadowood Condominium Association v. Fairfax  
County Redevelopment and Housing Authority  
Virginia Supreme Court (2012)***

- Owners challenged the authority of a Fairfax County condominium association to impose and collect charges for rule violations.
- The association relied upon Section 55-79.80:2 of the Condominium Act, which provides that the association shall have the power to suspend privileges and assess charges, *to the extent the condominium instruments or rules duly adopted pursuant thereto expressly provide.*



# **Enforcement Limitations**

## ***Shadowood Line of Cases***

***Shadowood Condominium Association v. Fairfax County Redevelopment and Housing Authority***  
**Virginia Supreme Court (2012)**

- The Fairfax County Circuit Court ruled that the Association did not have authority to adopt a rule to impose and collect charges for violations – absent specific authority in the recorded condominium instruments. The recorded condominium instruments only permitted promulgating rules relating to common elements.
- In an unpublished opinion, the Virginia Supreme Court affirmed the lower court ruling.



# **Enforcement Limitations**

## ***Shadowood Line of Cases***

***Farran v. Olde Belhaven Towne Owners Association***  
**80 Va. Cir. 508 (Fairfax 2010)**

- In *Farran*, the Fairfax County Circuit Court issued a similar ruling when a Lot Owner challenged the authority of the Association to impose and collect charges under Section 55.1-1819B of the Property Owners' Association Act, which is almost identical to Section 55.1-1959 of the Condominium Act.
- *Farran* was not appealed to the Virginia Supreme Court.



# **Enforcement Limitations**

## ***Shadowood Line of Cases***

***Lee's Crossing Homeowners' Association  
v. Linzie Zinone  
Loudoun Cir. Ct. Case No. 50272 (2011)***

**But**

- In *Lee's Crossing*, the Loudoun County Circuit Court interpreted Section 55.1-1819B of the Property Owners' Association Act to provide a Board with authority to adopt rules permitting the Board to impose and collect monetary charges, regardless of specific authority in the recorded governing documents.
- The *Lee's Crossing* case was not appealed to the Virginia Supreme Court.





# Electric Vehicle Charging Stations

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- Legislation in 2020.
- Promotes installation of charging stations.
- Cannot prohibit installation on individual lots, within unit boundaries or limited common element parking spaces.
- Condominiums – special conditions.
- Authority to Adopt Rules – *Reasonable*
  - Number
  - Place
  - Size
  - Manner
- Association held harmless

# Special Considerations

How to Prepare:

- Consider parking before you rent or purchase.
- Visit property at different times, different days to observe parking patterns.
- Review documents.



# Fair Housing



# Fair Housing

## *Why It May Involve Parking*

The fair housing laws *require* housing providers – which includes community associations, to make:

- ✱ **Reasonable accommodations** in rules, policies, practices, or services that are **necessary** to afford disabled individuals an equal opportunity to use and enjoy the **dwelling**; AND
- ✱ **Reasonable modifications** of existing premises that are occupied by disabled individuals if such modifications are **necessary** to afford disabled individuals with an equal opportunity to use and enjoy the **dwelling**.



# Fair Housing

## *Why It May Involve Parking*

**So**

- If an individual with a mobility disability recognized under fair housing laws requests a parking space to be reserved for his or her exclusive use, *and a nexus exists*, then with limited exception, the Association must grant that request.
- ***The Association is responsible for associated costs.***



# **Fair Housing**

## ***Why It May Involve Parking***

- If an individual with a mobility disability recognized under fair housing laws requests physical changes to parking infrastructure (i.e. - restripe to accommodate increased width, altered curb cuts), and a nexus exists, then with some exception, the Association must grant that request.
- *But, the Association can require the requesting owner to pay for the modification.*



# **Fair Housing**

## ***But It Must Be Reasonable***

- Fair housing laws permit the Association to deny accommodation or modification requests which are **not** reasonable.
- What constitutes a *reasonable accommodation* or “reasonable modification” is determined by the facts and circumstances.



# **Fair Housing**

## ***But It Must Be Reasonable***

These facts and circumstances may include:

- The cost of the requested accommodation or modification;
- The financial resources of the provider;
- The benefits that the accommodation or modification would provide to the requester; and
- The availability of alternative accommodations or modifications that would effectively meet the requester's disability-related needs.





# Fair Housing

## *But It Must Be Reasonable*

- Courts have generally held that an accommodation or modification is **reasonable** if the accommodation or modification would not impose an undue hardship or burden upon the housing provider or it would fundamentally alter the nature of the provider's operations.
- A **fundamental alteration** is a modification that alters the essential nature of a provider's operations.



# Fair Housing Accessible Parking

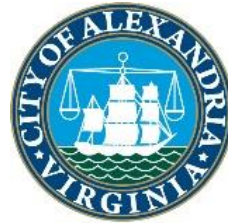
- Requests for accessible parking to accommodate a disability shall be treated as a request for ***reasonable accommodation***.
- Background
  - *Windsor Plaza* case.
  - HUD Joint Statement.
- Impact: Housing providers responsible for costs – unless an *undue financial burden*.



# Discussion



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