

EXHIBIT NO. 1

19
9-15-01

Docket Item # 13
TEXT AMENDMENT #2001-0001

Planning Commission Meeting
September 4, 2001

CASE: TEXT AMENDMENT #2001-0001
EXPANDED SPECIAL EXCEPTION PROCEDURE FOR BZA

ISSUE: Consideration of an amendment to Section 11-1302 of the Zoning Ordinance to expand the type of cases the Board of Zoning Appeals may hear as special exceptions.

PLANNING COMMISSION ACTION, SEPTEMBER 4, 2001: On a motion by Mr. Dunn, seconded by Ms. Fossum, the Planning Commission voted to recommend approval of the text amendment. The motion carried on a vote of 7 to 0.

Reason: The Planning Commission agreed with the staff analysis. Mr. Dunn added his own insight from his experience on the Board of Zoning Appeals, suggesting that the special exception procedure will allow outcomes in keeping with the practice of the BZA and with the expectations of the neighborhood.

Speakers:

Stephen Koenig, member of the Board of Zoning Appeals, spoke in support of the text amendment.

Warren Almquist, chairman of the Board of Zoning Appeals, spoke in support of the text amendment.

Amy Slack, Del Ray Civic Association, spoke in support of the proposal.

Mariella Posey, Northeast Citizens Association, spoke against the proposal, expressing concerns generally for the loss of open space.

STAFF RECOMMENDATION: Staff recommends that the Planning Commission on its own motion initiate the following text amendment proposed by the Board of Zoning Appeals:

ARTICLE XI: DEVELOPMENT APPROVALS AND PROCEDURES

Sec.11-1300 *Special Exceptions.*

Sec.11-1302 *Special exception established.* A lot in a single-family, two family or townhouse zone may be the subject of a special exception from the following zoning requirements pursuant to this section 11-1300:

(A) Fences on corner lots.

(B) Yard and setback requirements.

- (1) Yard and setback requirements applicable to the extension or enlargement of a single family, two family or townhouse dwelling only, within any one noncomplying plane of such dwelling.
- (2) As used in this subsection, the term noncomplying plane means the vertical plane established by a wall, one story or more in height, of a main building, which wall:
 - (a) does not comply with the yard or setback requirements of this ordinance;
 - (b) existed prior to the effective date of any change to the yard or setback regulations or restrictions applicable to such wall; and
 - (c) extends for more than 50% of the length of the building along the side containing such wall.
- (3) The term noncomplying plane does not include any plane established in whole or in part by entrances, steps or other projections into a required yard.
- (4) Nothing in this subsection shall be deemed to authorize the extension or enlargement of a single family, two family or townhouse dwelling beyond the height or FAR permitted by the zone in which such dwelling is located.

Note: Underlining denotes new text.

DISCUSSION

This text amendment is proposed by the Board of Zoning Appeals, and gives the Board the authority to decide additional cases as special exceptions, instead of as variances.

Background

Currently, the work of the Board of Zoning Appeals consists almost entirely of deciding variance cases. The great majority of those cases involve requests to add small additions to single family homes. The proposals require a variance because the addition proposed violates the zoning rules in some way, typically by projecting into what is required to be an open yard area.

The legal standard applied to variance cases is very difficult to meet, and requires a finding of a “hardship,” which state law defines to mean that without the variance the lot will essentially be unusable. Staff is forced to recommend against approval in about 90% of the variance cases it forwards to the Board. Yet, many of the cases presented seem reasonable, both because they ask for very small changes that do not appear to harm the established neighborhood, and because the house is often positioned on the lot in such a way as to make any addition whatsoever contrary to zoning. This latter circumstance occurs when the case involves a house and lot developed prior to the imposition of any, or at least current zoning. In such cases — when the proposal is small, is in keeping with the neighborhood, and is proposed to a house, or a part of a house, that does not meet zoning already — it is difficult to review the case and not wish for a different legal process by which to judge the proposal.

For many years staff has discussed with the Board the notion of creating a second mechanism, different from the variance procedure, by which cases could be decided. Working with representatives of the City Attorney’s Office and with Planning and Zoning staff, draft text amendments were circulated as early as 1988. However, it was not until recently that the presently constituted Board felt comfortable experimenting with the new technique.

Four years ago, Council adopted Section 11-300 of the zoning ordinance, which gives the Board the power to hear *special exception* cases as well as variance cases. Special exceptions are a different mechanism, involve a different application, and are reviewed with regard to a more liberal standard than the variance. As adopted by Council, the special exception procedure judges an application for adherence to the following standards:

- whether complying with zoning creates an unreasonable burden on the use of the property, and whether that burden outweighs the purpose for which the zoning rule was adopted;

- whether approving the proposal will harm the public generally, the neighborhood, or adjacent properties;
- whether the proposal will block light and air or cause a fire hazard;
- whether the proposal is compatible with development in the surrounding neighborhood;
- whether the proposal represents the only reasonable means and location on the lot to accommodate the proposed structure given the natural constraints of the lot or existing development.
- in the case of fences, whether the size, configuration or other unusual characteristic of the lot means that the proposed fenced area is reasonable and does not create a significant harm for others.

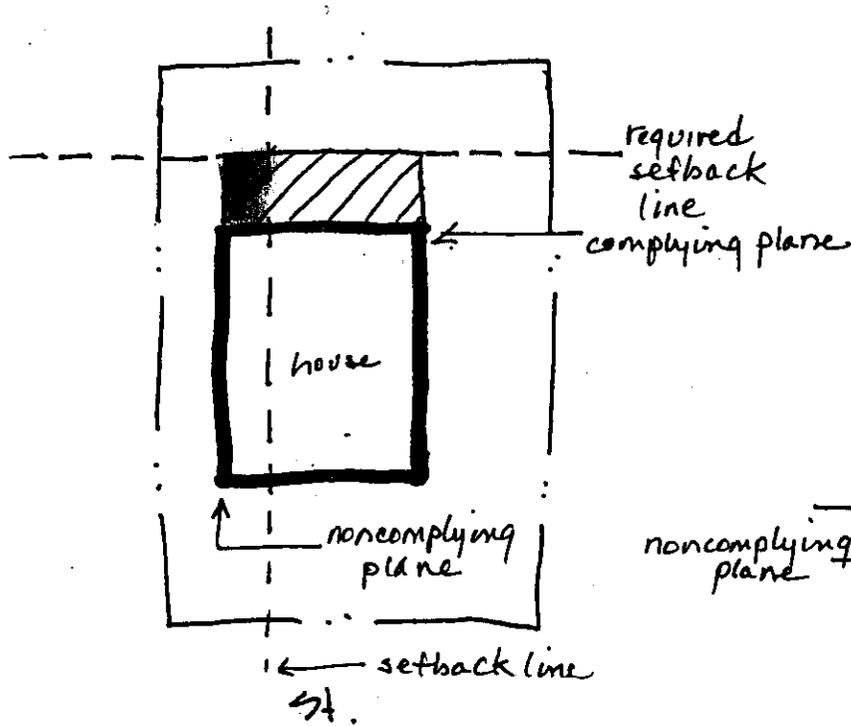
Although the special exception mechanism was created, the Board and staff were cautious about too broad an application for it. As originally adopted, there was only one type of case included which can be heard as a special exception: that related to the vexing problem of corner lot fences. Since its adoption, several corner lot fence cases have been heard by the Board as special exceptions. The Board has not granted all of the requests, but has granted several of them. Now, the Board is proposing that the City allow more homeowners' cases to be heard as special exceptions, instead of as variance cases.

Proposed Special Exception

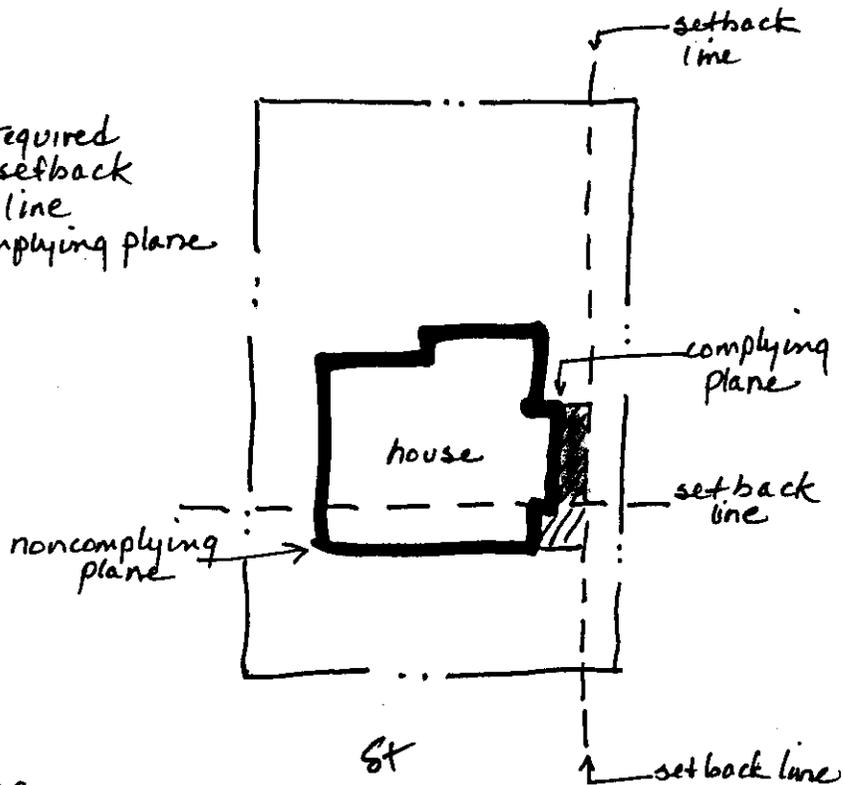
The Board worked with staff over several months in an effort to research its historical caseload and determine which cases were appropriate ones to be heard as special exceptions. The new group of cases proposed here for special exception treatment involves only single family, two family and townhouse dwellings. It does not include cases which involve outbuildings, such as garages or sheds, or fences. It also involves only additions to houses that are not allowed now because of a yard or setback zoning rule. Finally, within the universe of the cases involving building additions that extend into required yards, the proposed group includes only those additions that lie within (or behind) a single, existing, noncomplying plane (typically a wall).

In general terms, then, the group of cases will include only projections from a house that extend a wall that is already not in compliance with the zone yard or setback rule. The examples below attempt to illustrate the types of cases that will and will not be allowed to proceed as special exception cases:

Eligible for special exception:

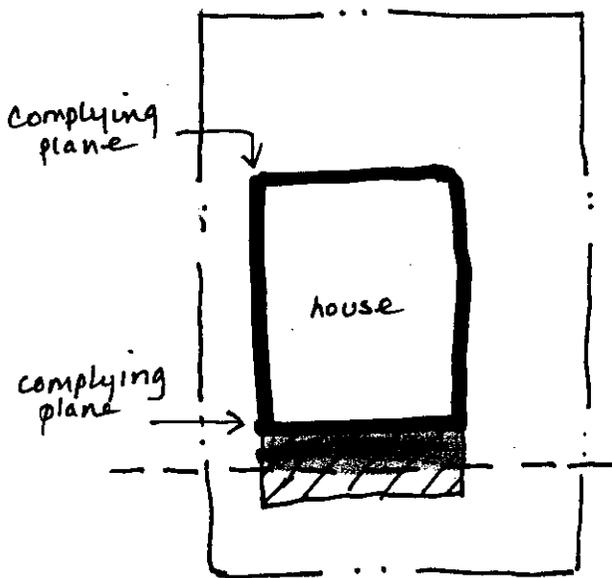


Extension of one noncomplying plane.

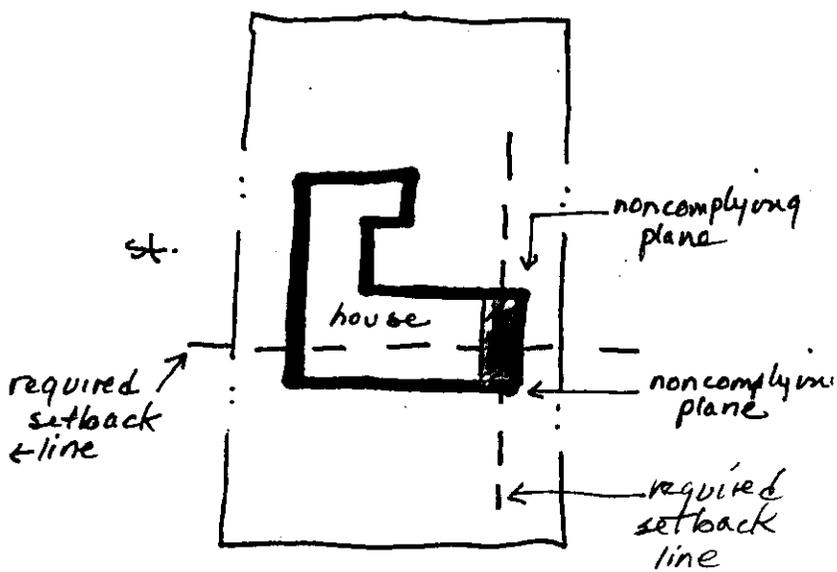


Extension of one noncomplying plane

Not eligible for special exception:



Extension of a complying plane



Extension of two noncomplying planes

This text amendment reflects the Board's best judgment regarding the type of cases that should be heard as special exceptions instead of as variances. Although some of the distinctions between cases are highly technical, they reflect the work of the Board and the type of cases that come before it. This particular group of cases was selected because the Board feels that it is fair to treat these cases differently and because the new treatment will affect a significant number of cases. The Board recognizes that there may be additional cases deserving similar treatment but believes it should move slowly in a step by step fashion with the special exception mechanism.

Staff endorses the Board's effort and recommends approval of the text amendment.

STAFF: Eileen Fogarty, Director, Planning and Zoning;
Barbara Ross, Deputy Director;
Peter Leiberg, Principal Planner;
Ignacio Pessoa, City Attorney's Office.

Attachments: Zoning Ordinance, Section 11-1300

§ 11-1300

ALEXANDRIA ZONING ORDINANCE

Sec. 11-1300 Special exception.

11-1301 *Authority.* The board of zoning appeals is authorized to review applications for those special exceptions established by this section 11-1300.

11-1302 *Special exception established.* A lot in a single-family, two-family or townhouse zone may be the subject of a special exception from the following zoning requirements pursuant to this section 11-1300:

(A) Fences on corner lots.

11-1303 *Procedures for special exception.*

(A) *Application.* Any person owning, or having an interest in property and the consent of the owner, may file an application for a special exception in regard to such property with the director. The application shall contain the following information and such additional information as the board of zoning appeals may, by rule, require:

1. Ten copies of a plot plan drawn to scale clearly showing the requested special exception(s), the property involved, existing and proposed buildings or additions, property lines, and the location of and distance to adjacent buildings from the proposed building or addition.
2. The particular provisions or requirements of this ordinance which prevent the proposed construction on, or proposed use of, the property.
3. The existing zoning classification of the property.
4. The special conditions, circumstances or characteristics of the land, building or structure that prevent the use of the land in compliance with the requirements of this ordinance and a statement as to whether such conditions existed at the time the current owner acquired the property.
5. An explanation of how the requested special exception conforms to each of the standards set out in section 11-1304 below.

(B) *Staff review and report.* The director shall review the application and determine that it contains the required information; shall review the merits of the application; shall prepare a staff report indicating its findings; and shall forward the report to the board of zoning appeals.

(C) *Docketing and notice.* At the time the director determines that the application is complete, he shall docket the matter for public hearing before the board of zoning appeals for a date to occur no later than 30 working days from the date of such determination.

- (D) *Public hearing by board of zoning appeals.* The board of zoning appeals shall conduct a public hearing on the application for a special exception and approve, deny or approve the application with conditions. The decision of the board shall state the reasons therefor.
- (E) *Withdrawal of application.* An application for a special exception may not be withdrawn by the applicant without the consent of the board after it has been docketed for public hearing.

11-1304

Standards for special exception. In order to grant an application for a special exception under this section 11-1300, the board must find that the strict application of the ordinance creates an unreasonable burden on the use and enjoyment of the property which outweighs the material zoning purpose for which the specific provision of the ordinance at issue was designed. In making its determination, the board shall consider and weigh the following issues, as applicable.

- (A) Whether approval of the special exception will be detrimental to the public welfare, to the neighborhood or to adjacent properties.
- (B) Whether approval of the special exception will impair an adequate supply of light or air to adjacent property, or cause or substantially increase traffic congestion or increase the danger of fire or the spread of fire, or endanger the public safety.
- (C) Whether approval of the special exception will alter the essential character of the area or the zone.
- (D) Whether the proposal will be compatible with development in the surrounding neighborhood.
- (E) Whether the proposed development represents the only reasonable means and location on the lot to accommodate the proposed structure given the natural constraints of the lot or the existing development of the lot.
- (F) In the case of fences, whether the size, configuration or other unusual characteristic of the lot requires an exception from the zoning requirements in order to provide a reasonable fenced area without creating significant harm to adjacent properties or the neighborhood.

11-1305

Conditions and restrictions. Conditions and restrictions may be imposed on the premises benefited by a special exception as may be necessary to reduce, minimize, or mitigate the effect of the special exception upon other property in the neighborhood and better to carry out the general intent of the zoning ordinance. A guarantee or a bond may be required of the applicant to ensure that the conditions imposed are being and will be complied with. Failure to

ALEXANDRIA ZONING ORDINANCE

comply with any such conditions or restrictions shall constitute a violation of this ordinance and cause to revoke the permit, after notice and hearing is had.

11-1306 *Burden on applicant.* The applicant for a special exception shall bear the burden of producing evidence establishing that the requested special exception satisfies the standards set out in section 11-1304.

11-1307 *Special exception not authorized.* A special exception otherwise available under this section shall not be approved where the same relief was, is or may be available from the planning commission, board of architectural review or city council as part of its review of a site plan or other development application and such relief was either not granted or not sought.

11-1308 *Reconsideration.* If an applicant for a special exception is denied, a subsequent application for the same relief on the same site shall not be considered again for one year unless the new application differs in a substantial and material way from the old one, in which case it may be reconsidered after six months.
(Ord. No. 3901, § 1, 12-14-96)

DIVISION D. CITY PLANNING COMMISSION

Sec. 11-1500 **Establishment and authority.**

11-1501 *Purpose and general authority.* The planning commission is established to perform such duties as are set forth in, and exercised the authority conferred by, chapter 9 of the city charter, this ordinance and other applicable law. In general, the commission shall have such powers as may be necessary to enable it to fulfill its function, promote planning and carry out the purposes of this ordinance.

11-1502 *Composition of planning commission.*

(A) The city planning commission shall consist of seven members, who shall be qualified resident voters of the city who hold no office of profit under the city government, appointed by the city council for terms of four years. The city manager shall designate an officer or employee to sit with the commission with the right to discuss and advise but without the right to vote. Vacancies shall be filled by council for the unexpired portion of the term.

(B) Members of the city planning commission shall serve as such without compensation, but may receive reimbursement for travel and expenses incurred by attendance at conventions, meetings



City of Alexandria, Virginia

DEPARTMENT OF PLANNING AND ZONING
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DATE: MAY 21, 2001
TO: CIVIC ASSOCIATIONS AND INTERESTED GROUPS
FROM: EILEEN FOGARTY, DIRECTOR *Eileen Fogarty / BFC*
DEPARTMENT OF PLANNING AND ZONING
SUBJECT: NEW TEXT AMENDMENT: BOARD OF ZONING APPEALS PROCEDURE

Enclosed is a draft text amendment that staff plans to present to the Planning Commission and City Council for consideration in September 2001. We invite your comments.

The text amendment has been the subject of extensive discussion between staff and the Board of Zoning Appeals over the last year or more, and is designed to allow certain requests now considered by the Board as variances to be heard in the future as special exceptions. The Board hopes that adoption of the text amendment will allow more planning considerations to become part of the Board's consideration.

As discussed in the enclosed draft staff report, the difference between a variance and a special exception case is the standard by which the Board judges the case. By state law a variance may only be granted when there is a legal hardship, a condition so onerous that it amounts to a confiscation of the applicant's property. Since most variance cases in Alexandria are for additions to single family homes, very few, in staff's judgement, meet that test. The special exception mechanism is different, allowing the Board to consider whether the addition proposed is harmful to neighbors, is compatible with neighboring development, and is located in the most reasonable place on the lot.

Under the proposed text amendment, not all cases would be eligible for special exception treatment; generally, only those additions that involve an extension of a wall that is already not in compliance with the zone yard or setback rule will be considered under the procedure. Examples of those cases are in the draft staff report.

If you have any questions or need additional information, please contact Peter Leiberg or Barbara Ross of this office.

cc: Honorable Mayor and Members of City Council
Philip Sunderland, City Manager

Good evening, Mr. Chairman and members of the Commission. My name is Mariella Posey and I live at 915 Second Street. I'm here to express my concern about this text amendment, which would now allow the BZA to decide some cases involving zoning setbacks on the basis of a special exception instead of on the basis of a variance due to a hardship.

Expanding the BZA's authority to decide zoning issues of setbacks, abrogates the zoning process of public hearings by bypassing the Planning Council and the City Council. To have a mechanism that bypasses the usual zoning review process could have consequences for the integrity and the consistency of planning.

Setback requirements are an integral part of zoning and the Small Area Plans and should be part of the usual zoning review process.

If this text amendment is adopted and smaller setbacks are allowed, I fear neighborhood open space will suffer, over time, from the collective changes. Also, affordable housing could be adversely affected since smaller houses will be made larger and thus less affordable.

The City felt the issues of affordable housing and open space were important enough to hold summits on each. It would seem logical that any zoning issue that could have a negative impact on either should go through a full zoning review process and not be decided by a single board.

**Text Amendment #2000-03
Expanded Special Exception Procedure for the BZA
testimony from Stephen Koenig, BZA member (1996)**

GOAL

As you know, our board operates at that critical boundary between the needs and intentions of the community on one hand, and the rights of individual citizens and property owners on the other.

The purpose of the BZA is to provide a structured review process for evaluating the merits of proposals that by definition do not fall within the normal limits of the zoning regulations.

Our goal is to evaluate the cases which come before us with an appropriate set of criteria, and to apply the regulations as fairly and consistently as possible.

PROBLEM

Our tools for doing this are the Variance process and the Special Exception process.

We've discovered over time that a certain range of Variance applications consistently confront us with a serious dilemma.

These are generally cases in existing areas of the city to which the current zone requirements were applied after the pattern of the neighborhood was established. This has often created significant numbers of noncomplying properties in close proximity to one another. Applicants for a variance on such a noncomplying structure by definition cannot fulfill the variance criteria which requires that "the hardship is not generally shared by other properties in the same zone and vicinity."

This regularly leaves us with two undesirable options:

- First, we can deny an application which is a perfectly appropriate candidate in all other aspects. If we reject such a worthy project, we may respect the letter of the rule, but we limit the owner's use of the property without protecting any important aspect of the public realm.
- Second, we can approve an application by selectively de-emphasizing certain variance criteria in that particular instance. This may serve the merits of the individual case but courts the very serious risk of compromising our best efforts at fair and consistent application of the rules.

PROPOSAL

To address this situation we've carefully studied our caseload for the recent past, with the indispensable support and expertise of Ms. Ross and Mr. Lieberg.

The result of our collective effort is the text amendment before you this evening.

It represents our best effort to reallocate a carefully circumscribed subset of our cases from the Variance to the special Exception process.

We believe this will facilitate our endeavor to render judgements which successfully balance community needs with the rights of the private citizen.

TEXT AMENDMENT # 2001-0001

ISSUE DESCRIPTION: Expanded Special Exception
Procedure for B.Z.A.

ZONING ORDINANCE SECTION: 11-1302

CITY DEPARTMENT: Planning + Zoning

Date Application Filed: _____ Legal Advertisement: _____

ACTION - Planning Commission: 9-4-2000: RECOMMEND APPROVAL. 7-0

ACTION - City Council: 9-15-2001: APPROVED.

9/15/01PH--CC approved the Planning Commission recommendation.