

**CITY COUNCIL OF ALEXANDRIA, VIRGINIA**

**Public Hearing Meeting  
Saturday, April 14, 2007 - - 9:30 a.m.**

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Present: Mayor William D. Euille, Vice Mayor Andrew H. Macdonald, Members of Council Ludwig P. Gaines, K. Rob Krupicka, Timothy B. Lovain, Redella S. Pepper and Paul C. Smedberg.

Absent: None.

Also Present: Mr. Hartmann, City Manager; Mr. Pessoa, City Attorney; Ms. Evans, Deputy City Manager; Mr. Jinks, Deputy City Manager; Police Lt. Uzzell; Mr. Josephson, Acting Director, Planning and Zoning; Mr. Milone, Planning and Zoning; Mr. Hunt, Planning and Zoning; Mr. Farmer, Planning and Zoning; Mr. Leiberg, Planning and Zoning; Mr. Leeman, Planning and Zoning; Ms. Baker, City Engineer, Transportation and Environmental Services; Ms. Davis, Housing Director; Mr. Blakeley, Recreation, Parks and Cultural Activities; Dr. Konigsberg, Health Department Director, Mr. Custard, Director, Environmental Health, Health Department; and Mr. Lloyd.

Recorded by: Jacqueline M. Henderson, City Clerk and Clerk of Council

**OPENING**

- 1. Calling the Roll.

The meeting was called to order by Mayor Euille, and the City Clerk called the roll; all the members of the Council were present.

**The following items were taken out of turn:**

- 3. Public Discussion Period.

None.

**REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES**

**ACTION CONSENT CALENDAR<sup>1</sup> (4)**

**Planning Commission**

4. SPECIAL USE PERMIT #2007-0010  
 5000 FAIRBANKS AVENUE  
 NEXTEL COMMUNICATIONS  
 Public Hearing and Consideration of a request for a communications array and related equipment on the rooftop of an existing building; zoned RC/Residential. Applicant: Nextel Communications of the Mid-Atlantic, Inc. by Ed Donohue

PLANNING COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated April 3, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 4, 4/14/07, and is incorporated as part of this record by reference.)

**END OF ACTION CONSENT CALENDAR**

**WHEREUPON**, upon motion by Councilman Krupicka, seconded by Vice Mayor Macdonald and carried unanimously, City Council approved the action consent calendar, as follows:

4. City Council approved the Planning Commission recommendation.

The voting was as follows:

Krupicka	"aye"	Gaines	"aye"
Macdonald	"aye"	Lovain	"aye"
Euille	"aye"	Pepper	"aye"
	Smedberg	"aye"	

**REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER**

5. Public Hearing on the One-Year Action Plan for Housing and Community Development for City Fiscal Year 2008.

(A copy of the City Manager's memorandum dated April 5, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 5, 4/14/07, and is incorporated as part of this record by reference.)

The following person participated in the public hearing on this item:

- a. Jack Sullivan, 4300 Ivanhoe Place, congratulated the Housing staff that prepared a report that emphasizes the City's commitment to maintaining public housing and the preservation of existing rental stock. The report sites these as the City's affordable housing effort, and they are the kind of affordable housing Alexandria should be promoting. What the City should not be promoting, he said, are rewards to developers of additional density in the name of affordable housing. For example, he said, the Hunting Terrace proposal would tear down 117 units to build gargantuan

buildings of high priced apartments. Tearing down rental stock is almost always a bad idea, and is even a worse idea to grant those wielding the wrecking ball additional density in the name of affordable housing. Mr. Sullivan said that if density rights are up for trade by the City, they should be given for developer contributions to transportation and developers should be on notice that as they bring additional residents to Alexandria, they will be expected to contribute to transit. He said the Council can make it happen now by ordinance and he referenced the Virginia Transportation Act, and it makes density for transit a clear and present opportunity.

**WHEREUPON**, upon motion by Councilman Smedberg, seconded by Councilwoman Pepper and carried unanimously, City Council held the public hearing on the draft one-year action plan for Housing and Community Development for FY 2008, which includes the City's application for Federal Fiscal Year 2007 funding for \$1,280,565 in Community Development Block Grant (CDBG) monies and \$818,941 in Home Investment Partnerships Program (HOME) monies. The voting was as follows:

Smedberg	"aye"	Macdonald	"aye"
Pepper	"aye"	Gaines	"aye"
Euille	"aye"	Krupicka	absent
	Lovain		"aye"

2. Recognition of Louie's Kids and Viewing of Video.

Council recognized Mr. Louise Yuhasz, of Louie's Kids, and viewed the video of the television show that showcased Louie's Kids.

6. Public Hearing and Consideration of Community Development Block Grant Program Amendment to Provide Funding to Provide New Windows for the Lacy Court Apartments.

(A copy of the City Manager's memorandum dated April 5, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 6, 4/14/07, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Councilwoman Pepper, seconded by Councilman Smedberg and carried unanimously, City Council: 1. Approved the amendment; 2. Authorized the City Manager to execute all necessary documents associated with the program amendment and the loan to Robert Pierre Johnson; and 3. Authorized a budget transfer of \$105,000 from the Home Rehabilitation Loan Program to fund the proposed window renovation for the Lacy Court Apartments. The voting was as follows:

Pepper	"aye"	Macdonald	"aye"
Smedberg	"aye"	Gaines	"aye"
Euille	"aye"	Krupicka	"aye"
	Lovain		"aye"

**REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)**

**Planning Commission (continued)**

7. VACATION #2006-0004  
10 RUSSELL ROAD  
Public Hearing and Consideration of a request to vacate a public right-of-way; zoned R-5/Residential. Applicant: Earnest Baucom and Vi Jaramillo

PLANNING COMMISSION ACTION: Recommend Denial 7-0

(A copy of the Planning Commission report dated April 3, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item. No. 7, 4/14/07, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Councilwoman Pepper, seconded by Vice Mayor Macdonald and carried unanimously, City Council closed the public hearing. The voting was as follows:

Pepper	"aye"	Gaines	"aye"
Macdonald	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	"aye"
	Smedberg	"aye"	

Acting Planning Director Josephson made a presentation of the staff report and responded to questions of Council.

**A MOTION WAS MADE** by Vice Mayor Macdonald and seconded by Councilwoman Pepper, to uphold the decision of the Planning Commission to deny the request for vacation.

Mr. Earnest Baucom, the applicant, spoke about the access to the sidewalk and noted that they worked with the City Arborist to get the dead trees cut, as it was a safety hazard. He said if the property went to them, they would be responsible for the sidewalk. He said they wanted to beautify it, put grass on it and trees and a stone-type sidewalk to the sidewalk.

**WHEREUPON**, a substitute motion was made by Councilman Krupicka, seconded by Councilman Smedberg and carried unanimously, to defer action on this item to 1. Ask staff to take another look at the appraised value of the land, as it may be low and there should be review of the real value of the land; 2. To ask that the applicant take a look at the adopt-a-garden program with the Parks and Recreation Department; and 3. Ask the applicant and staff to look at if the Council were to accept the vacation, what would be necessary for the applicant to put an easement on this

portion of the land to ensure it never has the opportunity to be developed.

Vice Mayor Macdonald withdrew his original motion.

The voting was as follows:

Krupicka	"aye"	Macdonald	"aye"
Smedberg	"aye"	Gaines	"aye"
Euille	"aye"	Lovain	"aye"
Pepper		"aye"	

8. TEXT AMENDMENT #2007-0001

COVERED OPEN PORCHES/LANDINGS

Public Hearing and Consideration of a request to amend Section 11-1300 of the Zoning Ordinance allowing covered open porches in required front yards by special exception, and Section 7-200 amending the zoning regulations applicable to open covered landings in all yards. Staff: Department of Planning and Zoning

PLANNING COMMISSION ACTION: Recommend Approval w/amendments 7-0

(A copy of the Planning Commission report dated April 3, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item. No. 8, 4/14/07, and is incorporated as part of this record by reference.)

Mr. Milone made a presentation of the staff report and responded to questions of Council.

The following persons participated in the public hearing on this item:

(a) Stephen Koenig, 2231 East Spring Street, spoke in favor of the text amendment. He said on the appeal, he asked if a change in the appeal process was necessary, what would be the nature of the appeal process, and what is the impact on the process and the nature of the BZA's work.

(b) David Fromm, 2307 E. Randolph Avenue, spoke in favor of the text amendment, asking for clarification on the intent of the special exception criteria, asking what the definition of "ground level" is, does the text amendment apply to new construction, and does the text amendment allow a house to be remodeled by absorbing a complying porch into the house and then using the exception to add a porch into the setback.

(c) Michael Curry, 1418 Julianna Place, a member of the Board of Zoning Appeals, spoke about why the BZA has to meet a level of hardship. A way to allow citizens to have more use of their homes and be connected to their neighbors is to allow them to have a front porch and noted why the BZA can deny a special exception, even if one meets the criteria for it.

(d) Poul Hertel, 1217 Michigan Court, said one of the fundamental issues is just how fundamentally important porches are to the look and appearance of different areas. He said what they are dealing with is hardship, but the legal appeal is one of process only. He said because they are changing the ordinance, that means the appeal process has to change commensurate with it. He said the elected body, the City Council, must be the place for a community to appeal the decisions, and he urged the appeal process be incorporated.

**WHEREUPON**, upon motion by Councilwoman Pepper, seconded by Vice Mayor Macdonald and carried unanimously, City Council closed the public hearing. The voting was as follows:

Pepper	"aye"	Gaines	"aye"
Macdonald	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	"aye"
	Smedberg	"aye"	

**WHEREUPON**, upon motion by Councilwoman Pepper, seconded by Councilman Krupicka and carried unanimously, City Council approved the Planning Commission recommendation, with an amendment to page 6, section 11-1302(c)(2), first line, to read: "The application for ground level covered front porch shall demonstrate by clear and convincing evidence that the proposed porch is compatible with the existing building architecture, neighboring properties and neighborhood character, and will comply with the following requirements." The voting was as follows:

Pepper	"aye"	Macdonald	"aye"
Krupicka	"aye"	Gaines	"aye"
Euille	"aye"	Lovain	"aye"
	Smedberg	"aye"	

9. DEVELOPMENT SPECIAL USE PERMIT #2006-0036  
1600 KING STREET

DSF/LONG KING STREET - RESIDENTIAL TO HOTEL CONVERSION

Public Hearing and Consideration of a request for approval of an amendment to DSUP #2002-0041, with site plan, to convert a residential building with ground floor retail to a 107 room hotel, with two restaurants, a day spa with massage, a reduction of loading spaces, and valet parking; zoned KR/King Street Retail Strategy. Applicants: DSF/Long King Street, LLC and Kimpton Hotel and Restaurant Group, LLC by M. Catharine Puskar, attorney

PLANNING COMMISSION ACTION: Recommend Approval w/amendments 7-0

(A copy of the Planning Commission report dated April 3, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item. No. 9, 4/14/07, and is incorporated as part of this record by reference.)

Mr. Farner made a presentation of the staff report and he responded to questions of Council.

The following persons participated in the public hearing on this item:

(a) M. Catharine Puskar, 2200 Clarendon Blvd., Suite 1300, Arlington, attorney representing the applicant, spoke in favor of the request.

(b) Nick Gregory, 480 King Street, area general manager for the two properties in Alexandria, spoke in favor of the request, noting that they feel a luxury presence is needed and is missing in Old Town. He noted how they partner locally to make an impact.

(c) Charlotte A. Hall, 205 The Strand, vice president of Potomac Riverboat Company and past president of the Old Town Business and Professional Association, spoke in support of the application.

(d) Marlin G. Lord, 2724 Hickory Street, representing the King Street Gardens Park Foundation, spoke in support of the \$15,000 earmarked for King Street Gardens Park. He said on page 27, 5g, it attaches words "or to another fund" and he asked Council to strike those words so that it is earmarked for King Street Gardens specifically.

(e) Van Van Fleet, 26 Wolfe Street, president of Old Town Civic Association, representing the Old Town Civic Board, said they have no problem with the construction, and he said the original proposal for condos did not include a restaurant, so he asked how that would affect the Uptowner Restaurant. He said they disagree with valet parking on King Street. He said the reduction of open spaces on King Street will present problems and he noted that many extra cars will park in the neighborhood. Mr. Van Fleet spoke of the precedent and noted that until Council invokes parking for residents only in the old town housing zones, no change to the current policy should be made on King Street, and they ask Council to disapprove the valet parking portion of the request.

(g) Julie Crenshaw Van Fleet, 26 Wolfe Street, referred to her comments in the staff report. She said Trey Hanbary, the president of the King Street Neighborhood Association and James Melton are not present, and they live in this neighborhood and she said they mentioned a lot of concerns regarding the change in use. She said it changes the dynamic of the neighborhood, she said the four parking spaces impacts the businesses and the Uptowner and will cause additional people to go into Harvard Street, and she said the City should designate that the parking on that street is residential only.

(h) Suzanna Kang, 1504 Cameron Street, said her husband is Trey Hanbary, who could not be present. Ms. Kang spoke of their concerns of parking and that it

would come into the neighborhood. She asked Council to consider regulating the area to make it residential only. She said the change from residential to hotel has a significant impact on them, and they are concerned with fixing the local playground.

In response to a question from Councilman Krupicka about the parking chapter being done by the Transportation Task Force, Mr. Poul Hertel, vice chair of the ad-hoc transportation committee, said they will be dealing in more broader terms about parking.

Mr. Milone and Mr. Josephson responded to questions from City Council.

Ms. Puskar said Kimpton Hotel Group is in discussion with neighboring properties who have excess parking to accommodate their patrons, should the garage get full. She said they will participate in a coordinated effort for the valet zone and they understand they may need to share the valet zone with other users.

**WHEREUPON**, upon motion by Councilman Krupicka, seconded by Councilman Smedberg and carried unanimously, City Council closed the public hearing. The voting was as follows:

Krupicka	"aye"	Macdonald	"aye"
Smedberg	"aye"	Gaines	"aye"
Euille	"aye"	Lovain	"aye"
	Pepper	"aye"	

**WHEREUPON**, upon motion by Councilman Krupicka and seconded by Councilman Smedberg, City Council approved the Planning Commission recommendation, with the following amendments: 1. In condition 11f, change the words "adjoining properties" to "properties in vicinity;" 2. In condition 11g, change 12 months to six months so that Council can review the overflow parking, and to be explicit that if the parking isn't working, they will seek other buildings to provide overflow parking; 3. In condition 11i, add an additional concept that if employees are parking, the applicant, if necessary, will provide subsidies to assist with that; 4. In condition 5g, strike the reference to "King Street Park" and insert "in the vicinity or the needs of the neighborhood and surrounding area."

Councilman Smedberg said to the bigger philosophical issue of the last condition, should the money be directed specifically to a non-profit group that is set up to help manage a park, that is not the policy road they want to go down for this type of consideration.

Vice Mayor Macdonald said with regard to the historic character of the remaining building, 27E, that any alterations to the building shall require review and approval by the BAR, he would like to see a statement that there will be a collaborative effort that the applicant will work with the BAR and staff to ensure that all alterations, exterior and interior, are to the extent possible, compatible with the historic character of the building.

After discussion, Mr. Josephson said the staff and the applicant will work together to preserve and recognize the historic architecture of the existing building.

The voting was as follows:

Krupicka	"aye"	Macdonald	"aye"
Smedberg	"aye"	Gaines	"aye"
Euille	"aye"	Lovain	"aye"
	Pepper	"aye"	

\* \* \* \* \*

City Council took a 15-minute recess.

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### **Board of Architectural Review**

10. Public Hearing and Consideration of an Appeal of the Board of Architectural Review's decision approving a request for a new residential development at 900 N. Washington Street, zoned OCM(50). APPLICANT: Robert S. Brandt. APPELLANT: Poul Hertel on behalf of petitioners.

(A copy of the report dated April 14, 2007, along with the appeal, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item. No. 10, 4/14/07, and is incorporated as part of this record by reference.)

Mr. Josephson and Mr. Milone made a presentation of the staff report and responded to questions of Council.

The following persons participated in the public hearing on this item:

(a) Lori Arrasmith Quill, 206 East Spring Street, member of the Board of Architectural Review, one of two architect members on the board, reviewed how the BAR evaluates projects and the complexity of the conversation. She explained how architects design buildings and what they look at, and she spoke of painting of brick on buildings and noted the reasonings for approving the project.

(b) Poul Hertel, 1217 Michigan Court, speaking in support of the appeal, said they are not asking for revocation, but a simple amendment to the certificate of appropriateness so that it will be consistent with the proffer made by the developer at the Planning Commission. He said the BAR changed the color scheme and made the building look more monolithic and bigger in violation of the site plan and they would like it changed back. He also spoke to the BAR's disregard of the Washington Street standards and in this project, the BAR approved a concept on July 19 that clearly violated the law and the BAR members were adamant that that was their intent. He

said the staff and Planning Commission take their charge of the Washington Street standards seriously, hence the change to the plan. He asked Council to respect the plan by returning the color scheme and tell the BAR that they have to obey the law.

(c) Mariella Posey, 915 Second Street, president of the board and representing the land use committee of the North East Citizens' Association, spoke in support of the appeal, noting the process of the BAR decision at the hearing.

(d) Sylvia Sibrover, 915 Second Street, spoke in support of the appeal, noting the process of the BAR in its decision.

(e) Van Van Fleet, 26 Wolfe Street, representing the Old Town Civic Association Board, spoke in support of the appeal, noting the process of the BAR in its decision.

(f) Michael E. Hobbs, 419 Cameron Street, representing the Alexandria Federation of Civic Associations, spoke in support of the appeal, noting the process of the BAR in its decision.

(g) Julie Crenshaw Van Fleet, 26 Wolfe Street, spoke in support of the appeal, noting the process of the BAR in its decision.

(h) Richard T. Cooper, 1219 Powhatan Street, spoke in support of the appeal, noting the process of the BAR in its decision.

(i) Howard Middleton, 3110 Fairview Park Drive, representing Lawrence Brandt, said their team has worked with the neighbors, BAR and Planning Commission and asked Council to approve one of the two options so they can proceed with site plan approval.

**WHEREUPON**, upon motion by Vice Mayor Macdonald, seconded by Councilman Smedberg and carried unanimously, City Council closed the public hearing. The voting was as follows:

Macdonald	"aye"	Gaines	"aye"
Smedberg	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	"aye"
	Pepper	"aye"	

Mayor Euille said there appears to have been improper action or process on behalf of the Board of Architectural Review, and Council wants any of the appointed bodies to follow proper procedures and guidelines and adhere to the open public participation policy, and he noted that he would send a letter to the BAR expressing Council's concerns regarding guidelines and procedures so that hopefully an exercise like this won't happen again.

**WHEREUPON**, upon motion by Councilman Smedberg, seconded by Councilwoman Pepper and carried unanimously, City Council upheld the appeal made on behalf of the neighborhood by Mr. Hertel in support of the community and developer-agreed upon plan prior to modifications by the BAR, the submission date of December 2006, noting that it is the color scheme that is important to the facade of the building along Columbus Street.

In discussion of brick versus painted brick, Mr. Josephson asked that there be no preference and have an option that it could either be painted or unpainted.

Mr. Middleton said the concept of having a mix is appropriate, as there aren't that many different colored bricks.

The voting was as follows:

Smedberg	"aye"	Macdonald	"aye"
Pepper	"aye"	Gaines	"aye"
Euille	"aye"	Krupicka	"aye"
	Lovain	"aye"	

## **ORDINANCES AND RESOLUTIONS**

11. Public Hearing, Second Reading and Final Passage of an Ordinance on Changes to the FDA Food Code, to Require Mobile Food Units To Be Clearly Identified, and To Amend the Requirements For Issuance of a Food Manager Certificate. (#14, 4/10/07) **(ROLL-CALL VOTE)**

(A copy of the City Manager's memorandum dated April 3, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 11, 4/14/07, and is incorporated as part of this record by reference.

(A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 11, 4/14/07, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 3 of Item No. 11, 4/14/07, and is incorporated as part of this record by reference.)

The following person participated in the public hearing on this item:

(a) Patrick M. Horn, 1200 17th Street, NW, Washington, D.C., representing the Restaurant Association of Metropolitan Washington, spoke in support of the ordinance and all the changes.

**WHEREUPON**, upon motion by Councilman Gaines, seconded by Councilwoman Pepper and carried unanimously by roll-call vote, City Council approved the ordinance on changes to the FDA Food Code to require mobile units to be clearly identified and to amend the requirements for issuance of a food manager certificate. The voting was as follows:

Gaines	"aye"	Macdonald	"aye"
Pepper	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	"aye"
	Smedberg	"aye"	

The ordinance reads as follows:

**ORDINANCE NO. 4476**

AN ORDINANCE to amend and reordain Section 11-2-3 (ADOPTION OF THE UNITED STATES FOOD AND DRUG ADMINISTRATION/PUBLIC HEALTH SERVICE 1999 FOOD CODE) and Section 11-2-5 (MODIFICATIONS TO FDA FOOD CODE) of Article A (GENERAL PROVISIONS), Section 11-2-11 (GENERAL) of Article B (MOBILE UNITS), and Section 11-2-21 (PERMITS FOR FOOD ESTABLISHMENTS) and Section 11-2-25 (ISSUANCE OF FOOD MANAGER CERTIFICATE) of Article C (COMPLIANCE PROCEDURES) of Chapter 2 (FOOD AND FOOD ESTABLISHMENTS), Title 11 (HEALTH, ENVIRONMENTAL AND SANITARY REGULATIONS) of The Code of the City of Alexandria, Virginia, 1981, as amended.

WHEREAS, the health and safety of the public requires the regulation of food and food establishments located within the City of Alexandria; and

WHEREAS, existing provisions of the city code that govern the cleanliness and sanitation of food and food establishments are based upon the 1999 Model Food Code of the United States Food and Drug Administration ("FDA"); and

WHEREAS, the FDA intends that its Model Food Code be updated and revised every four years, in order to incorporate the most current scientific knowledge and new technologies in the food packaging and food service industries; and

WHEREAS, the FDA has recently promulgated its 2005 Model Food Code, which incorporates nationally recognized health and sanitation standards designed to provide the greatest possible protection from and prevention of infectious and non-infectious food-borne diseases; and

WHEREAS, the regulatory scheme set out in the 2005 FDA Model Food Code is presently employed in numerous food industries, as well as the meat and poultry inspection systems of the federal government, and has been endorsed by the National Conference for Food Protection, the National Restaurant Association, and the

Restaurant Association of Metropolitan Washington; and

WHEREAS, neighboring jurisdictions in Northern Virginia have adopted the 2005 FDA Model Food Code, and the adoption of this code by the City of Alexandria will help to establish uniform standards for the regulation of food and food establishments in the region; now, therefore

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 11-2-3 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 11-2-3 Adoption of the United States Food and Drug Administration/Public Health Service 2005 Food Code.

(a) Chapters 1 through 8, inclusive, and all appendices and annexes of the United States Food and Drug Administration/Public Health Service 2005 Food Code ("FDA Food Code, as adopted and promulgated by the United States Food and Drug Administration/Public Health Service ("FDA/USPHS"), including such chapters, appendices and annexes as may hereafter be amended from time to time, but excepting the portions of the FDA Food Code addressed in section 11-2-5(a) and (b), are hereby adopted and incorporated in their entirety into this chapter as if fully set forth herein. In the event of conflict or inconsistency between this chapter and the FDA Food Code, the provisions of this chapter shall control. When used in the FDA Food Code, the term "Health Authority" shall mean the director or his designee.

(b) The director is hereby authorized to promulgate regulations consistent with this chapter that are designed to assist in the administration and enforcement of this chapter. In promulgating regulations, the director shall consider accepted standards of health, hygiene, sanitation, safety and physical plant management. Any regulations prepared by the director shall not become effective until they have been presented to and approved by city council.

(c) A certified copy of the FDA Food Code shall be maintained by the director at the Environmental Health Division office of the health department and shall be available for review by members of the public.

Section 2. That Section 11-2-5 of The Code of the City Of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 11-2-5 Modifications to FDA Food Code.

(a) The portions of the FDA Food Code addressed in this subsection are not adopted by incorporation into this chapter. Rather, they are modified in the manner set

out below, and their modified versions shall apply in the city:

(1) Paragraph 3-501.12 (A) of the FDA Food Code is modified to read as follows:

Under refrigeration that maintains the FOOD temperature at 5°C (41°F) or less.

(2) Paragraph 3-501.13(A) of the FDA Food Code is modified to read as follows:

Under refrigeration that maintains the FOOD temperature at 5°C (41°F) or less.

(3) Subparagraph 3-501.13(B)(3) of the FDA Food Code is modified to read as follows:

For a period of time that does not allow thawed portions of READY-TO-EAT FOOD to rise above 5°C (41°F).

(4) Subparagraph 3-501.13(B)(4) of the FDA Food Code is modified to read as follows:

For a period of time that does not allow thawed portions of a raw animal FOOD requiring cooking as specified under ¶ 3-401.11 (A) or (B) to be above 5°C (41°F) for more than 4 hours including:

(a) The time the food is exposed to the running water and the time needed for preparation for cooking, or

(b) The time it takes under refrigeration to lower the FOOD temperature to 5°C (41°F) as specified under Subparagraph 3-501.16(A)(2).

(5) Subparagraph 3-501.14(A)(2) of the FDA Food Code is modified to read as follows:

Within a total of 6 hours from 57°C (135°F) to 5°C (41°F) or less.

(6) Paragraph 3-501.14(B) of the FDA Food Code is modified to read as follows:

POTENTIALLY HAZARDOUS FOOD (TIME/TEMPERATURE CONTROL FOR SAFETY FOOD) shall be cooled within 4 hours to 5°C (41°F) or less if prepared from ingredients at ambient temperature, such as reconstituted FOODS and canned tuna.

(7) Paragraph 3-501.14(C) of the FDA Food Code is modified to read as follows:

Except as specified under ¶(D) of this regulation, a POTENTIALLY HAZARDOUS FOOD (TIME/TEMPERATURE CONTROL FOR SAFETY FOOD) received in compliance with LAWS allowing a temperature above 5°C (41°F) during shipment from the supplier as specified in ¶3-202.11(B), shall be cooled within 4 hours to 5°C

(41°F) or less.

(8) Subparagraph 3-501.16(A)(2) of the FDA Food Code is modified to read as follows:

At a temperature of 5°C (41°F) or less.

(9) Subparagraph 3-501.17(A)(1) of the FDA Food Code is modified to read as follows:

5°C (41°F) or less for a maximum of 7 days.

(10) Section 6-402.11 of the FDA Food Code is modified to read as follows:

Public toilet rooms shall be provided for CONSUMERS whenever seating for CONSUMERS is provided on the premises. CONSUMERS shall not be permitted to gain access to toilet rooms by passing through a kitchen, food preparation, food storage, or utensil washing area. Toilet rooms shall be conveniently located and accessible to EMPLOYEES during all hours of operation. Toilet rooms must be entirely separate and apart from any rooms or areas used for utensil washing or for the manufacture, storage, and handling of food products. Public and employee toilet facilities shall be installed according to and in the number required by the Virginia Uniform Statewide Building Code (VUSBC).

(11) Paragraph 8-304.10 (A) of the FDA Food Code is modified to read as follows:

A copy of the version of FDA Food Code adopted in Section 11-2-3 above shall be maintained for public inspection in the office of the Alexandria Health Department's Environmental Health Division. A link to the full text of the version of FDA Food Code adopted in Section 11-2-3 above shall be placed on the Alexandria Health Department's website.

(12) Paragraph 8-802.10(A) of Annex 1 of the FDA Food Code is modified to read as follows:

If admission to the PREMISES of a FOOD ESTABLISHMENT is denied or other circumstances exist that would justify an inspection order under LAW, to make an inspection that includes the recordation of information by any means of audio-visual recordation including (but not limited to) photography, tape-recording and videotaping.

(b) Subparagraph 3-501.17(A)((2) and Sections , 8-201.11, 8-201.12, and 8-303.10 of the FDA Food Code are not adopted or incorporated into this chapter and shall be of no effect in the city.

Section 3. That Section 11-2-11 of The Code of the City Of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to

read as follows:

**Sec. 11-2-11 General.**

Mobile food units and limited service mobile food units shall comply with the requirements of this chapter. All mobile food units are to be clearly identified with the unit trade name and contact phone number conspicuously displayed on both sides and the back of the unit. The permit issued under this chapter shall be posted in a conspicuous place so as to be visible to the public whenever the unit is not in motion.

Section 4. That Section 11-2-21 of The Code of the City Of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

**Sec. 11-2-21 Permits for food establishments.**

(a) No person shall operate a food establishment unless that person possesses a valid permit issued by the director. Only a person who complies with the requirements of this chapter shall be entitled to receive or retain such a permit. Permits are not transferable. A valid permit shall be posted in every food establishment in a conspicuous place. Food establishment permits are issued for a calendar year and expire on December 31 regardless of the month of issue.

(b) An initial application fee and an annual renewal application fee shall be assessed for each permitted food establishment including temporary food stands operating less than 14 days. These fees shall be in the amounts established by the General Assembly of the Commonwealth of Virginia and/or the Alexandria City Council. Such fees shall not be applicable to food establishments operated by the Alexandria City Public Schools. The application fees shall be based on a calendar year and shall be due and payable on or before December 31 or upon initial application. The fees shall not be prorated.

(c) Establishments failing to file the required application for renewal of the permit will be operating without a valid permit and will be subject to immediate closure in accordance with Section 11-2-29 of this chapter.

Section 5. That Section 11-2-25 of The Code of the City Of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 11-2-25 Issuance of food manager certificate.

(a) Any person desiring to obtain a certificate required by section 11-2-24 shall apply in writing on forms provided or accepted by the director. Such application shall include the name and address of the applicant, the location and type of the proposed food establishment and the signature of the applicant. The director may designate a private vendor to issue, on the director's behalf, a food manager certificate to any person who successfully complies with the provisions of this Chapter.

(b) A food manager certificate shall be issued only to a person who has passed a food manager certification examination from a food protection manager certification program that is evaluated and listed by a Conference for Food Protection recognized accrediting agency. The examination shall be conducted by the director or the director's designee. The designee may be a private vendor or vendors approved by the director as qualified to conduct the food manager certification examination.

(c) A limited food manager certificate shall be issued only to a person who has passed a limited food manager certification examination approved by the director.

(d) A food manager certificate, or a limited food manager certificate, shall be issued in the name of an individual applicant only, shall not be assignable or transferable, and shall be valid only for a period of five years from the date of notification of the successful completion of the approved exam.

(e) A food manager certificate shall remain the property of the issuing authority.

(f) A food manager certificate shall be renewed for a five (5) year period upon passing a food manager certification examination from a food protection manager certification program that is evaluated and listed by a Conference for Food Protection recognized accrediting agency.

(g) A limited food manager certificate shall be renewed for a five (5) year period upon passing a limited food manager certification examination approved by the director.

(h) If the applicant's certificate has been revoked or suspended during the preceding five years, the applicant shall retake and pass either a food manager certification examination from a food protection manager certification program that is evaluated and listed by a Conference for Food Protection recognized accrediting agency or a limited food manager certification examination approved by the director, whichever is appropriate. The director may, at his discretion, designate a specific vendor to administer the examination.

Section 6. That this ordinance shall become effective upon the date and at the time of its final passage.

**REPORTS OF BOARDS, COMMISSION AND COMMITTEES (continued)**

12. CITY CHARTER, SECTION 9.06 #2007-0002  
48 SOUTH EARLY STREET  
Consideration of a proposal by the City of Alexandria to acquire the property at 48 South Early Street, pursuant to the provisions of Section 9.06 of the City Charter. Staff: Department of Recreation, Parks and Cultural Activities.

PLANNING COMMISSION ACTION: Approved 7-0  
**(THIS ITEM IS NOT SET FOR PUBLIC HEARING BUT IS FOR CITY COUNCIL'S INFORMATION ONLY - NO APPROVAL IS NECESSARY.)**

(A copy of the Planning Commission report dated April 3, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item. No. 12, 4/14/07, and is incorporated as part of this record by reference.)

City Council received the report.

## **REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)**

### **DEFERRAL/WITHDRAWAL CONSENT CALENDAR (13-17)**

#### **Planning Commission (continued)**

13. SPECIAL USE PERMIT #2007-0009  
2214 MOUNT VERNON AVENUE  
MASSAGE THERAPY  
Public Hearing and Consideration of a request to operate a massage therapy and yoga establishment; zoned CL/Commercial Low. Applicant: Sara VanderGoot

PLANNING COMMISSION ACTION: Deferred

14. SPECIAL USE PERMIT #2007-0015  
206 SOUTH UNION STREET  
FITNESS ON THE RUN  
Public Hearing and Consideration of a request to operate a personal fitness training establishment; zoned W-1/Waterfront. Applicant: Fitness On The Run, LLC by Adrien M. Cotton

PLANNING COMMISSION ACTION: Deferred

15. TEXT AMENDMENT #2007-0003  
SMOKE FREE RESTAURANTS  
Public Hearing and Consideration of a request for amendments to the Zoning Ordinance to add definitions under new Sections 2-190.1 and 2-193.1, and to add new Section 7-2200 relating to requirements for smoke-free restaurants.

Staff: Department of Planning and Zoning

PLANNING COMMISSION ACTION: Deferred (Staff's Request)

16. MASTER PLAN AMENDMENT#2006-0005  
TEXT AMENDMENT #2007-0002  
REZONING #2007-0002  
BRADDOCK ROAD SMALL AREA PLAN

The area generally bounded by Oronoco Street to the south; North Henry Street to the east; the northern-most point of land at North Fayette Street; and the Metrorail tracks to the west.

Public Hearing and Consideration of a request for (1) a revision of, supplement to, and amendment of the Braddock Road Metro Station Small Area Plan chapter of the Master Plan, to include the Braddock Metro Neighborhood Plan; (2) amendments to the City of Alexandria's Zoning Map to reflect the Braddock Road Metro Urban Overlay Zone including the Braddock Road Metro Height Map and the Braddock Road Metro Parking District Map and the Braddock Road Metro Retail Focus Areas Map; (3) adoption of section 6-800 of the zoning ordinance pertaining to the Braddock Road Metro Urban Overlay Zone. Applicant: City of Alexandria, Department of Planning and Zoning

PLANNING COMMISSION ACTION: Deferred (Staff's Request)

17. SPECIAL USE PERMIT #2007-0014  
322 NORTH LANGLEY STREET  
CHILD CARE HOME

Public Hearing and Consideration of request to operate a child care home; zoned R-8/Residential. Applicant: Nelly Velez

PLANNING COMMISSION ACTION: Deferred (Applicant's Request)

## END OF DEFERRAL/WITHDRAWAL CONSENT CALENDAR

City Council noted the deferrals.

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**THERE BEING NO FURTHER BUSINESS TO BE CONSIDERED**, upon motion by Councilwoman Pepper, seconded by Vice Mayor Macdonald and carried unanimously, the public hearing meeting of April 14, 2007, was adjourned at 1:59 p.m. The voting was as follows:

Pepper	"aye"	Gaines	"aye"
Macdonald	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	"aye"

Smedberg "aye"

APPROVED BY:

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WILLIAM D. EUILLE    MAYOR

ATTEST:

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Jacqueline M. Henderson, CMC, City Clerk