

Cicely Woodrow

From: Paul Frommer <frommerclu@comcast.net>
Sent: Monday, October 31, 2011 5:11 PM
To: PnZFeedback; Cicely Woodrow; Graciela Moreno
Subject: COA Contact Us: "Harris Teeter" Project, No. St. Asaph Street
Attachments: ATT00001.txt

COA Contact Us: Planning and Zoning General Feedback

Time: [Mon Oct 31, 2011 17:11:18] Message ID: [34415]

Issue Type: Planning and Zoning General Feedback
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Subject: "Harris Teeter" Project, No. St. Asaph Street
BZA Case #2011-0013 Protest Petition Sec, 11-808 Director's
Determination

Sirs: I see once again from public notices posted at the "Harris Teeter" sight there is another effort to implement a "NIMBY" result despite the great need for this up to date supermarket in North Old Town and its overwhelming support by City Coucil.

Since my wife and I moved to Old Town in 1974/1975 the population in this part of Alexandria has increased markedly and continues to do so (e.g. the new mixed use buildings on both Wyeth Street and U.S. 1 near the Braddock Metro Station). This on top of the already added Watergate of Alexanria, Liberty Row, Abingdon Row, the high rises near the Metro on North Fayette Street, etc. Despite this we are stil served by an antiquated, mini-sized Giant "super"market. For fresh fish and a wide variety of fresh fruits and vegetables, varieties of meats and practically any product it is necessary to go to the Harris Teeter in south Crystal City or elsewhere at a distance. It is time we had this amenity right here.

Thank you

BZA2011-0013
717, 719, 723, 735 N. St. Asaph Street;
716 N. Pitt Street
Board of Zoning Appeals
November 10, 2011 Hearing

Staff Report Responding to Appeal

- Director's Determination
- City's Staff Report with Exhibits

Barbara Carter

From: Faroll Hamer
Sent: Thursday, July 21, 2011 10:52 AM
To: MgwScrp03@aol.com
Cc: ombudinc@aol.com; Joanna Anderson; Barbara Ross
Subject: Harris Teeter Protest Petition

Dear Mr. Wenk:

You have requested that we set out in writing our determination, made on June 24, 2011 and presented verbally to City Council at its June 25, 2011 public hearing, that the protest petition filed with regard to the Harris Teeter rezoning (REZ #2011-0001) was insufficient to require a supermajority vote by Council under the Zoning Ordinance and City Charter.

Under sections 9.13 of the City Charter and 11-808 of the Zoning Ordinance, Council is required to approve a rezoning application by supermajority vote if a petition protesting the rezoning is filed by the owners of 20% of the land within 300 feet of the boundaries of the subject property. See Section 11-808(A)(2). In this case, a petition was timely filed on June 24, 2011. After reviewing the petition, the Director of Planning and Zoning determined that, even if every signature on the petition was counted, ignoring questions raised by several signatures about whether they should be counted, the signatures represented an insufficient amount of land to trigger a supermajority vote.

As to the methodology employed, staff reviewed each and every one of the signatures to determine if the signature matched the title owner's name on the city's real estate records. The land area represented by the signatures was computed and compared to the amount of land that is 20% of the land within 300 feet of the boundaries of the subject property.

Many of the signatories on the petition were Alexandria House condominium owners. In addition to the actual petition, the acting secretary of the Board filed a single page document which states that the Board has the power under the Board Bylaws and state law to act as an attorney-in-fact on behalf of all owners of the condominium building in regard to certain matters relating to the common elements and attested to a vote of the Board of Directors which authorized the act of submitting the zoning protest petition and authorizing the Board President to speak on behalf of the Council and the Board.

As to the question of methodology when part of the relevant land is held in condominium ownership, and after consultation with the City Attorney's office, the Director's determination took into consideration the following two issues:

1. Whether the Condominium Act, under section 55-79.80 of the state code, gives a condo Board the authority to speak for all of its owners as to their opposition to a zoning matter, in this case specifically a protest petition.

The Director determined that for purposes of a protest petition under section 11-808, a condo Board does not have the authority to speak for all owners of the entire land area, and that to allow it to do so would deprive individual owners of their due process rights to speak as to land use issues.

2. Whether the petition, including the document filed by the Secretary of the Board, was an action by the board to sign the petition on behalf of all of the unit owners.

The Director determined that even if the answer to the first question was different – that a condo Board had the power to speak for all owners as to a zoning protest petition – in this case, the Board president had not signed the petition on the behalf of all condo owners and the document filed with the petition by the Board secretary did not officially and properly state the Board’s opposition to the rezoning.

We hope the above explanation is helpful to you. As we discussed when we met, given the fact that the Council decision to adopt the rezoning of the property for the Harris Teeter project was unanimous, the issue of whether the protest petition filed in regard to the rezoning is moot and we do not think it appropriate for the BZA to be deciding a case if there is no current matter in controversy.

You may have the right to appeal this decision within thirty days in accordance with Section 15.2-2311 of the Code of Virginia. The decision shall be final and unappealable if not appealed within thirty days.

Faroll Hamer, Director
Department of Planning and Zoning
City of Alexandria
301 King Street
Alexandria, VA 22314
703-746-4666
Faroll.Hamer@alexandriava.gov

Docket Item #4
BZA Case #2011-0013

Board of Zoning Appeals
November 10, 2011

Address: 717, 719, 723, and 735 North St. Asaph Street, and 716 North Pitt Street
Zone: CD/rezoned to CDD
Appellants: Judith Jones and Jerry Warner, 400 North Madison Street
Issue: Determination by Director as to application of protest petition requirements to condominium buildings

Summary of Case on Appeal

This case stems from objections some Alexandria House residents have to development of a Harris Teeter grocery store with residential units in North Old Town. In addition to objecting to the development at the City Council hearing on the case, the appellants were part of a group of adjacent property owners who attempted to invoke a supermajority vote requirement for City Council approval by filing a "protest petition" with the city clerk prior to the Council hearing. The Director of Planning and Zoning ("Director") and city staff reviewed the signatures on the petition and determined that the petition did not meet the requirements to trigger the supermajority vote. The appellant disagrees.

Background

Rezoning Approval

The Planning Commission voted to recommend approval of REZ#2011-0001 ("Harris Teeter rezoning") at its meeting of June 2, 2011. The rezoning was one of several development applications which together allow the construction of a Harris Teeter grocery store, underground parking and four floors of residential units for a large parcel of land in North Old Town. The development site is immediately across the street from the Alexandria House condominium at 400 North Madison Street. The Harris Teeter rezoning application proposed to change the zoning of the development site on North St. Asaph and North Pitt Streets from the CD/Commercial Downtown zone to the CDD #20 Coordinated Development District.

City Council voted unanimously to approve the rezoning on June 25, 2011, after a public hearing, having found that the change in zoning meets the public necessity, convenience, general welfare and good zoning practices. On the same day, Council unanimously approved Ordinance #4732 implementing the rezoning.

The City Clerk's office received a zoning protest petition on June 24, 2011, prior to 12:00 p.m. noon and the petition was immediately transmitted to the members of the City Council so that they were aware of it prior to their June 25, 2011 meeting. City staff reviewed the petition and, after careful consideration, the Director determined that the petition failed to include sufficient signatures to trigger the supermajority vote requirement for a Council approval of the rezoning.

At Council's June 25th meeting, the Director's decision regarding the petition was explained and Council was told that a three fourths majority vote would not be required to approve the rezoning application. City Council subsequently voted to approve the rezoning by a unanimous vote of 7-0, despite the fact that only a regular majority (4-3 vote) was required.

Protest Petition

The Zoning Ordinance provides a mechanism whereby landowners may "protest" the rezoning and, upon a proper petition, require that the rezoning be approved by a supermajority of Council votes (a three fourths majority, or 5-2 vote). Section 11-808 of the Zoning Ordinance provides:

11-808 - Protest of zoning map amendment by landowners.

- (A) Who may protest. A protest shall be signed by the owners of at least 20 percent of:
 - (1) The land proposed to be rezoned by the map amendment; or
 - (2) All land within 300 feet of the boundaries of the land proposed to be changed by the map amendment.

- (B) Deadline for protest. A protest must be filed with the city clerk no later than noon on the last working day before the day on which city council conducts its first public hearing on the proposed amendment.

- (C) Calculation of ownership. The director shall verify that those filing are legal property owners. Through mathematical calculation and the use of a planimeter, the department of transportation and environmental services shall verify said 20 percent area. Streets, alleys and land dedicated to public use or owned by the city, state or federal government shall not be included in computing the areas of ownership required.

- (D) Effect of protest. If a protest to a proposed text or map amendment is filed, the city council may not approve the proposed amendment except by an affirmative vote of three-fourths of its members.

- (E) Limitations.
 - (1) Once a protest has been filed, no changes by way of addition, substitution, amendment or withdrawal may be made to the protest after the deadline provided for the filing of a protest in section 11-808(B).
 - (2) A protest against a less restrictive change is not effective against a more restrictive change but a new protest may be filed against the more restrictive change and this paragraph does not prevent the filing of a protest against both a less and more restrictive change.
 - (3) The provisions of this section 11-808 shall not apply to city owned property or be effective in the case of a map amendment which is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

This rarely used provision is a protection for property owners in rezoning cases. Where the City initiates a rezoning against the wishes of the property owners, the owners may protest the rezoning under section 11-808. If a property owner asks for rezoning but surrounding property owners oppose it, they may protest. In either case, the zoning ordinance legislates by mathematical calculation the degree of "protest" sufficient to require a supermajority vote by Council. Specifically, in a case like the Harris Teeter rezoning where surrounding property owners object, the rule requires a successful petition to include the signatures of the owners of at least 20 percent of the land area within 300 feet of the subject property. Thus, if an owner of property within the 300 foot boundary signs the petition, his property is included in the

calculation. If sufficient property owners sign the petition – representing at least 20% of the land in the 300 foot area – then the supermajority vote requirement is triggered.

Most properties are owned by a single person, a couple, or an entity. For example, if John Doe is an owner of a single family house within the 300 foot boundary of the property being rezoned, and the lot his house sits on is 5000 square feet in area, then Mr. Doe's signature on the petition counts as 5000 square feet towards the 20% threshold. As discussed in detail below, the analysis becomes more difficult when the ownership of the land is part of a condominium regime; however, the form and basis of the analysis is essentially the same and should be applied equally no matter the type of ownership of land is involved. Significantly, section 11-808 does not speak to the variety of forms of ownership which might be part of a protest petition review. Condominium ownership is only one of the myriad forms which staff must consider. So, it is important that there be a straightforward, practical and fair manner in which to review such situations.

Although the language of the zoning provision appears simple, analysis of a protest petition requires a highly detailed, technical and mathematical research project, typically on the afternoon prior to the City Council meeting when a rezoning case is going to be heard. Specifically, staff's analysis requires it to take the following steps:

1. Draw a circle from the outer boundary of the rezoning parcel extending 300 feet in all directions.
2. Calculate the amount of land area within that 300 foot perimeter of the property, subtracting out all streets, alleys and government owned land.
3. Calculate the amount of land area that represents 20% of the total amount within the 300 foot perimeter.
4. Obtain a list of all private properties within the 300 foot perimeter.
5. Research the City's property records and identify the record property owners of those parcels.
6. Review the protest petition to verify that the signers are record property owners of the parcels within the perimeter area.
7. Calculate the amount of land represented by verified property owners on the petition.
8. Determine if that amount meets or exceeds the 20% figure calculated under #3.

Each of these steps was undertaken in the Harris Teeter case.

Application of Protest Petition Analysis in Harris Teeter case

The land involved in this case is shown on the map of the area on Attachment #1. The map includes the Harris Teeter site as well as the properties surrounding it. The highlighted land within the outer circle includes all of the land within a distance of 300 feet from the boundary of the Harris Teeter property. Attachment #2 is a calculation staff used to assess the amount of land that would have to be represented by signatures to result in a supermajority vote. It shows that there is total 590,699 square feet of land within the 300 foot perimeter area. A significant part of that area, 208,815 square feet, is devoted to public streets, which is deducted from the total, for a remaining privately owned area of 381,884 square feet. That is the land area for which signatures are required representing the ownership of 20%, or 76,377 square feet.

The protest petition filed in this case is found at Exhibit 1 of the Appellants' appeal. It includes 145 signatures and staff reviewed each and every signature, including those of the Alexandria House residents. Staff had to determine, for each signatory, whether it was the correct title holder and, if so, how much land is contained in the property being signed for. Using the City's real estate records, staff compared each signature to the record title owner. Staff then added each petitioning property together to see if those properties amounted to 20%, or 76,337 square feet. Staff began by counting every signature as valid, even though there were a series of signatures that raised questions about ownership. Mathematically, even assuming each signature were valid, there were insufficient signatures to reach the 20% threshold.

Prior to filing the petition, Alexandria House discusses its intention to file with the City and asserted that its Board should be recognized as speaking for all owners. The protest provision is not widely used, and therefore without much precedent. However, in this case, the Director, with consultation from the City Attorney's office, determined that the most logical and fair way to apply the protest process to a condominium ownership is to divide the amount of land by the number of unit owners and give each unit owner the opportunity to sign the petition and have its portion of the land counted towards the required 20%. Other land in condominium ownership lies within the 300 foot boundary area near the Harris Teeter and, given the need to review petitions quickly, accurately and fairly, the Director's approach is reasonable. Alexandria House was advised of this decision prior to filing the petition.

For the Harris Teeter petition, the amount of the Alexandria House parcel within the 300 feet boundary is 82,142 square feet and there are 212 units in the Alexandria House. Therefore, each owner's signature on the petition counted for approximately 388 square feet. The petition includes signatures representing 111 units within Alexandria House which in total accounted for 43,068 square feet of land. Additional non-Alexandria House signatures represented another 9,468 square feet of land. Thus the total land represented by signatures on the petition was 52,536 square feet, less than the 76,377 required to reach 20% of the total. Therefore, the Director found that the petition was not sufficient under section 11-808 to trigger the supermajority vote by Council.

Legal Threshold Matter:
The Appellants are No Longer Aggrieved and the Case is Moot

Council approved the rezoning by a unanimous, 7-0 vote. As a result and as a threshold matter, the appellants do not meet the requirements of a party entitled to appeal a Zoning Director's decision to the Board of Zoning Appeals ("BZA") because, they are not "aggrieved." If a valid zoning protest had been filed, it would have required that the rezoning proposal be approved by Council by a supermajority; Council approved the rezoning by a unanimous vote, with more votes than a supermajority requires. The issues appellants raise are therefore moot and there is no justiciable issue before the BZA.

The City Charter and the zoning ordinance require that the appellant be "aggrieved" by the decision of the Director in order to appeal the decision to the BZA. The Virginia Supreme Court has defined the term aggrieved in the following way:

“The word “aggrieved” in a statute contemplates a substantial grievance and means a denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.” *Virginia Beach Beautification Commission v. Board of Zoning Appeals of the City of Virginia Beach, et al*, 231 Va. 415, 419-20 (1986) Citing *Insurance Ass’n v. Commonwealth*, 201 Va. 249, 253, 110 S.E.2d 223, 226 (1959).

In order to bring a case before the BZA, a party must have suffered some sort of “denial of a personal or property right.” A party cannot bring a case to the BZA just to see what the BZA would rule if such a case presents itself in the future. The purpose of limiting who can appeal a decision is to prevent advisory decisions, ones that are not necessary or will not make a difference in a real situation. This case is asking for just such an advisory opinion.

Had the City Council approved the rezoning with only a 4-3 vote, then appellants could have argued that they did not receive the benefit of the protest petition protections and would arguably be aggrieved by the Director’s decision. Instead, the appellant got the benefit of the valid zoning protest petition and a vote by City Council that is unequivocal. What appellants seek from the BZA appeal is a ruling requiring a supermajority vote by Council on the Harris Teeter rezoning case. Council has already done that in this case. Relief for appellant is superfluous and unnecessary.

The Director’s decision is not appealable to the BZA because the outcome of the case will remain the same no matter how the BZA decides the case; the appellants cannot be “aggrieved” given that Council voted by a majority in excess of what a valid zoning protest would have required and there is no relief that can be granted in any event. Therefore, the BZA should not hear the appeal.

In the event the BZA decides to hear the case, we provide below the analysis showing that the Director’s decision was indeed reasonable and correct.

The Director’s determinations on the review of the Zoning Protest Petition were reasonable and correct and should be upheld.

Appellants raise three questions for the Board of Zoning Appeals:

1. Does a condominium board have the authority to speak for all owners of the entire land area?
2. If the condominium board does have the authority to speak for all owners, did the board actually sign the petition filed by Petitioners?
3. Did the Director’s determination exclude certain rights created by the Virginia Condominium Act that operate to deprive the owners of the land their right to be counted towards the protest petition total?

The Director's decision in this case was correct and reasonable as explained in detail below.

1. *Does a condominium board have the authority to speak for all owners of the entire land area?*

The appellants argue that pursuant to the state law governing condominiums, the Director should have allowed the Alexandria House condominium Board President to sign the protest petition on behalf of all 212 owners of the Alexandria. On the contrary, the Director's Determination was a fair and reasonable interpretation not inconsistent with the Condominium Act.

It is true that if the Director had determined that a condominium board had the right to speak for all unit owners in a protest, (and if the protest petition had included a signature by the Board,) then Alexandria House's land would have represented sufficient land area to exceed the 20% threshold for protest purposes. However, the clear words of the zoning ordinance do not support the interpretation asserted by appellants. The Condominium Act does not require it. Further, that interpretation would abrogate the property rights of the individual condominium owners without clear evidence of their consent to do so, thus denying property rights and creating an injustice.

First, the zoning ordinance clearly states that the petition must be signed by "owners" of "land". The Alexandria House Board of Directors ("Board") does not actually own any land, other than potentially the few units within the building that appear to be owned by the Board.¹ Nor does the Board "own" the common elements, even if it does have legal authority to act on behalf of the owners of the common elements for some limited purposes. Alexandria House's Master Deed states specifically that the General Common Elements of the Alexandria House include "the land as described in Exhibit A on which the Alexandria House shall be constructed" and that "each Co-Owner shall have an undivided interest in the General Common Elements..." See Master Deed Section V.A and VII.A. Thus, Alexandria House's own governing documents make it clear that the "land" where the Alexandria House is constructed is owned by all of the co-owners of the condominium, not by the Board. Therefore, the Board may not be considered the owner of the property and therefore would not be considered a valid signatory pursuant to the requirements of Section 11-808.

Second, although appellant cites the Condominium Act as giving the Board the authority to speak on behalf of the unit owners for some purposes, the scope of that authority does not extend to the act of expressing themselves to their government. Section 55-79(B) of the Condominium Act gives the executive organ of the condominium association the power to speak with respect to legal matters *that affect the common elements*. The appellant suggests that this authority extends to the Board speaking for the unit owners against land use cases in their neighborhood if the application has an effect on the common elements. However, the rezoning case across the street from Alexandria House does not affect the common elements, as that concept is included in the statute. Further, the statute does not say the Board has all powers for anything that has to do with the common elements thereby somehow making them equivalent to an owner of that property. Instead, the purpose of giving the Board some legal authority to act on behalf of all of

¹ The petition contained a few signatures by the President of the Board on behalf of certain specific units within the building. These signatures were each counted as individual owners. See p. 5 of the Petition.

the owners is, as the appellant states, so that in cases where the Board is in the best position to understand a legal issue, it can act without having to obtain each owner's consent. In the case, for example, of litigating an issue with regard to the workmanship of a new roof, or a collection suit for the roof project, it makes sense to allow the Board to act for all owners. However, a protest petition or other zoning matter are not the type of circumstance included in a Board's limited authority, or covered by the language of the Condominium Act. In fact, a protest petition involves a citizen's fundamental right to express his opinion to the government about an action that the government is considering in his neighborhood. This circumstance is very different from a contract between the Alexandria House and a neighbor or a company working on the property, where it is imperative for the Alexandria House to speak with one voice. On the contrary, it is possible, even likely, that Alexandria House residents will have differing views about a rezoning and the prospect of a new grocery store in their neighborhood. Therefore, the Board should not, and cannot, abrogate the individual owners' right to express their support or opposition to the government.

Third, even if the Condominium Act could be construed to allow the Board to speak for the common elements, that signature would represent only a small portion of the ownership of the whole. See United Masonry, Inc. v. Jefferson Mews, Inc. 218 Va. 360, 237 S.E. 2d 171 (1977). As relates to a condominium or any other ownership form with more than a single owner, it is the totality of ownership that must be represented in a protest petition. In a condominium form of ownership, the whole ownership consists of the individual units plus the common elements. Therefore, if the Board's authority to speak for the common elements were to constitute enough ownership to allow them to sign the petition for the common elements, they would then be considered only one of many owners of this whole.

To accept appellant's interpretation would be to accept the denial of individual property rights for each condominium unit owner by the mere fact of owning the condominium. Instead, each condominium unit owner is an owner of property and should have the same right as any other owner of property to participate in the land use process in their community. The Director's Determination is fair and reasonable, and within the plain meaning of the zoning ordinance. It should therefore be upheld.

2. *If the condominium Board has the authority to speak for all owners, did the board actually sign the petition filed by Appellants?*

Even if the BZA decides that the Director should have allowed the Board to sign the petition on behalf of the entire building, the protest petition in this case did not include the Board's signature.

Exhibit 1 to the appeal is the petition of signatures filed the afternoon prior to the Council hearing. The first page of that document is titled "Statement of Representation and Validation Thereof". It is signed by the Acting Secretary of the Alexandria House Condominium Board. The first paragraph of the statement cites the Board's statutory authority as to common elements, as discussed above, and explains what it believes would be adverse effects of the rezoning to the common elements. However, the second paragraph states the actual action of the Board. It is specific, stating that

...the vote taken by the Board of Directors to authorize the action of submitting the attached zoning protest petition to the City of Alexandria and for the President to speak on behalf of the Council and the Board of Directors...with regard to this matter.

It appears that the vote by the Board was not to *sign* the petition; it was to *submit* the petition. The petition was indeed submitted. The City accepted the petition and reviewed the signatures on it, with negative results for appellants. Arguably, this Board vote gave the President the authority to sign the petition on behalf of the common elements. However, there is no signature either on the Statement of Representation, on the petition itself, or on a separate document, that the President has signed representing the common elements against the rezoning. The Statement of Representation is signed by the Acting Secretary, not the President, and attests to the content of the Board's vote only. On the other hand, the President did sign the petition on behalf of units owned by the Board, showing that the Board was aware that the President needed to sign the petition in order for the Board to speak on behalf of certain property. (See p. 5 of Petition) Those signatures were counted towards the total. While there is no specific form that is required for the protest petition, it must be clear that the intent of the party signing the document is to include a signature on the protest petition. It must also show or state specifically the land that is being represented by the signature. In this case, neither was done.²

Therefore, the Director's Determination that even if the Board was a proper signatory for all of the owners of the condominium, it did not properly sign the petition in that capacity was reasonable and correct and should be upheld.

3. *Did the Director's determination exclude certain rights created by the Virginia Condominium Act that operate to deprive the owners of the land their right to be counted towards the protest petition total?*

The appellant argues that the Director has failed to acknowledge the fact that condominium ownership includes vertical property rights and that the characterization of the word "land" included in the Condominium Act (which includes "airspace") should be used to interpret the meaning of the word "land" in section 11-808 of the zoning ordinance. On the other hand, the Supreme Court's explanation of the definition of land cited by the appellant specifically states, "within the meaning of this chapter" which means that it is limited to the use within the Condominium Act chapter of the State Code. United Masonry, Inc. v. Jefferson Mews, Inc. 218 Va. 360, 377, 237 S.E. 2d 171, 181 (1977).

In any event, it is important that the term "land" when used in the zoning ordinance language on protest petitions be proportional to other "land" within the 300 foot boundary area being reviewed to determine if sufficient owner signatures have been filed in protest. Appellant's argument suggests that because under condominium law unit owners actually own "land" above the ground, the totality of the floor area in the vertical structure should be counted for purposes

² Staff had been in contact with attorneys for the Alexandria House Board and specifically asked them whether additional documentation would be forthcoming, pointing out the lack of a clear signature by the President for the protest. No additional documents were forwarded. See Attachment #3.

of a protest petition if a condominium property is within the 300 foot area. However, for protest purposes, it is imperative to treat all "land" in like fashion property to property within the 300 foot boundary area. Otherwise, although all properties are within the same range or distance to the rezoning site, condominiums would receive preferential treatment. Therefore, each separate property within that 300 foot boundary land area is treated the same: it is the size in horizontal area of that property that is counted if sufficient and valid signatures are received. The form of ownership determines whose signatures are required and how they are counted. Ownership schemes may vary as to each property, and methods of computing ownership have to take into account those schemes, whatever the ownership scheme. However, the size of the property considered when calculating the 20% threshold is the horizontal size reflected in the land records.

The appellant goes on to argue that because each individual condominium unit owner pays taxes to the City based on the amount of floor area within the unit, that unit owners' due process rights are being infringed by not allowing the Board to speak on their behalf. That argument actually works in support of the Director's Determination to treat each unit owner separately, allowing and requiring each to sign the petition. The fact that each individual pays taxes on his unit and his portion of the common elements, including the land, each should have a voice and ability to petition its government with grievances. The Board does not pay any taxes as a board or for the common elements; the taxes are paid on an individual basis, just as the zoning protest petition should be applied.

Contrary to the appellants' assertion that the Condominium Act supports treating condominiums differently for zoning purposes, it does not. In fact, Section 55-79.43(A) provides for parity among buildings for zoning purposes despite different forms of ownership. ("No zoning or other land use ordinance shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership.")

Standard of Review

The Alexandria zoning ordinance gives the authority to the Director of Planning and Zoning to administer the zoning ordinance. Section 11-101. Among other duties, the Director of Planning and Zoning is tasked with "Interpret[ing] the provisions of this ordinance to ensure that its intent is carried out;" Section 11-102(F).

The Virginia Supreme Court has clearly indicated that "A consistent administrative construction of an ordinance by officials charged with its enforcement is entitled to great weight." *The Lamar Company, LLC v. Board of Zoning Appeals, City of Lynchburg*, 270 Va. 540, 547, 620 S.E.2d 753, 757 (2005) quoting *Masterson v. Board of Zoning Appeals*, 233 Va. 37, 44, 353 S.E. 2d 727, 733 (1987). Deference to the interpretation of the person charged with administering the zoning ordinance whose role and expertise it is to provide the relationship between the zoning ordinance text and the local governments plan for zoning is essential in order to have a uniform application of the ordinance. See *Lamar* at p. 547. See Also *Trustees of Christ and St. Luke's Episcopal Church v. Board of Zoning Appeals of the City of Norfolk*, 273 Va. 375, 382, 641 S.E.

2d 104, 107 (2007). The Board of Zoning appeals should only reverse the Director's decision if "the board determines that the decision is contrary to the plain meaning of the ordinance and the legislative intent expressed therein". *Higgs v. Kirkbride*, 258 Va. 567, 575, 522 S.E.2d 861, 865 (1999).

Additionally, under settled principles of administrative law, the interpretation given a legislative enactment by public officials charged with its administration and enforcement is entitled to be given significant weight by the courts. *See Payton v. Williams*, 145 S.E.2d 147 (1965). In Virginia, it is settled law that a presumption of correctness attaches to the actions of state and local officials. *See Hladys v. Commonwealth*, 366 S.E.2d 98 (1988). Such actions are presumed to be valid and will not be disturbed by a court absent clear proof that the action is unreasonable, arbitrary, and bears no reasonable relation to the public health, safety, morals or general welfare. *See County of Lancaster v. Cowardin*, 391 S.E.2d 267, 269 (Va. 1990); *Board of Supervisors of Fairfax County v. Robertson*, 266 Va. 525 (2003)(discussing the presumption of reasonableness attached to the Board's legislative acts).

Taking these two principles together, therefore, means the Board of Zoning Appeals should apply deference to the decision of the Director of Planning and Zoning in order to continue the necessary consistency in the application of the zoning ordinance, unless the Board determines that the Director's decision was contrary to the plain meaning of the ordinance and was made without reasonable basis.

Conclusion

Even though the protest petition did not require it, more than a supermajority of Council members voted for the rezoning achieving what a successful petition would have done. This case should therefore not be considered by the BZA, as the appellants are not aggrieved, and the case presents no justiciable controversy. Even if the BZA rules against Director, it is limited as to the relief it can offer. It cannot direct Council to take another vote on the Harris Teeter rezoning and to pass it by supermajority; Council has acted in a manner that exceeds the relief sought in this case.

Further, appellants' arguments that its Board should be able to speak for them are not supported in a zoning protest case. The Condominium Act does not give the Board ownership of the entire property. Nor does it give the Board the power to speak as to common elements on zoning matters, including protest petitions; even if it did, common elements do not amount to the whole of ownership of a condominium building. Even if the statute somehow can be construed to give a Board the power to speak for all owners in a zoning case, and although the President of the Board had the power to submit the protest petition and to speak for the Board as to common elements, the petition as filed failed to include a signature of the President in protest of the rezoning on behalf of either all common elements or all owners.

Although the appellants dispute the fairness of the Director's methodology, her approach was fair to all owners, and a reasonable interpretation of the zoning ordinance on protest petitions.

Calculations for Appeal: Harris Teeter Site (DSP2010-00027)

Total Area of 300 Foot Perimeter	590,699
Total Public Property	0
Total Area in Right-of-Way	-208,815
Total Area For Calculation	381,884
20% of Area For Calculation	76,377

All Area In Petition	20% of Total Area	Area Of Petition Above or Below Required 20%
	76,377	Above -76,377 Requirement

All numbers in square feet.

Barbara Ross

From: Joanna Anderson
Sent: Friday, June 24, 2011 1:59 PM
To: stussey@chadwickwashington.com
Subject: FW: Zoning Protest Petition
Attachments: zoning protest petition 625.pdf

Hi Sara:

Per our discussion, attached is the zoning protest petition that we received. It is our understanding that the "Statement of Representation and Validation Thereof" is the authorization for the president of the Board of the Council of Co-Owners of the Alexandria House to sign the petition on behalf of the board for the units owned by the Council of Co-Owners of the Alexandria House which he has on page 5 of the petition. There is no other signature on the petition signed by Mr. Weinman as the President. Please let us know ASAP if you have additional information regarding this matter.

Thank you.

Joanna

Joanna C. (Frizzell) Anderson
Assistant City Attorney
301 King Street, Suite 1300
Alexandria, Virginia 22314
703.746.3750
joanna.anderson@alexandriava.gov

From: Gloria Sitton
Sent: Friday, June 24, 2011 11:14 AM
To: Joanna Anderson; Barbara Ross
Subject: Zoning Protest Petition

Attached is the Zoning Protest Petition filed with the City Clerk's Office at 11:01 a.m. today.

Gloria Sitton
Deputy City Clerk
City of Alexandria
703-746-4550
gloria.sitton@alexandriava.gov

GO GREEN -- Tip: Store emails and other documents electronically. Paper makes up more of our garbage than any other type of trash at almost 40%.

BZA2011-0013
717, 719, 723, 735 N. St. Asaph Street;
716 N. Pitt Street
Board of Zoning Appeals
November 10, 2011 Hearing

Appeal Documents

- Application Form – Part A
- Basis for Appeal with Exhibits – Part B



BZA Case # 2011-0013

APPLICATION BOARD OF ZONING APPEALS

APPEAL

Identify the order, requirement, decision or determination that is the subject of the appeal. Attach one copy to the application.

Please see the attached emails, specifically the Director's email dated July 21, 2011.

What is the date of that order, requirement, decision or determination was made?
A determination was made on or about June 24 and a written determination was made on July 21, 2011.

*The appeal must be filed within 30 days from the date that the order, requirement, decision or determination was made.

PART A

1. Applicant: Owner Contract Purchaser Agent

Name ① Judith Jones and ② Jerry Warner

Address c/o Roy A. Shannon, Jr., Esquire at RRBMDK, LLP
120 N. Union St., Suite 140, Alexandria, VA 22314

Daytime Phone 703-299-3440

Email Address rrshannon@rrbmdk.com
① 400 Madison St., Unit 1801, Alexandria, VA 22314

2. Property Location ② 400 Madison St., Unit 2208, Alexandria, VA 22314

3. Assessment Map # ① 055.03 Block 0A Lot 1801
② 055.03 Block 0A Lot 2208

Zone CRMU/H

Legal Property Owner Name ① Judith Jones.

Address 400 Madison St., Unit 1801, Alexandria, VA 22314

② Jerry Warner
400 Madison St., Unit 2208, Alexandria, VA 22314

PLANNING & ZONING
JUL 26 2011

5. If property owner or applicant is being represented by an authorized agent, such as an attorney, realtor or other person for which there is a form of compensation, does this agent or the business in which they are employed have a business license to operate in the City of Alexandria, Virginia?

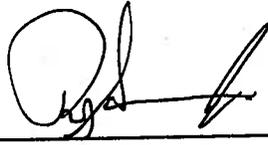
- Yes, Provide proof of current City business license.
- No, Said agent shall be required to obtain a business prior to filing application.

THE UNDERSIGNED HEREBY ATTESTS that all of the information herein provided including the site plan, building elevations, prospective drawings of the projects, etc., are true, correct and accurate. The undersigned further understands that, should such information be found incorrect, any action taken by the Board based on such information may be invalidated. The undersigned also hereby grants the City of Alexandria permission to post placard notice as required by Article XI, Division A, Section 11-301(B) of the 1992 Alexandria City Zoning Ordinance, on the property which is the subject of this application. The applicant, if other than the property owner, also attests that he/she has obtained permission from the property owner to make this application.

APPLICANT OR AUTHORIZED AGENT:

Roy R. Shannon, Jr
Print Name

703-299-3440
Telephone


Signature

July 25, 2011
Date

Pursuant to Section 13-3-2 of the City Code, the use of a document containing false information may constitute a Class 1 misdemeanor and may result in a punishment of a year in jail or \$2,500 or both. It may also constitute grounds to revoke the permit applied for with such information.

① 400 Madison St. Unit 1801
 Alexandria, VA 22314
 ② 400 Madison St. Unit 2208
 Alexandria, VA 22314

OWNERSHIP AND DISCLOSURE STATEMENT
 Use additional sheets if necessary

1. Applicant. State the name, address and percent of ownership of any person or entity owning an interest in the applicant, unless the entity is a corporation or partnership, in which case identify each owner of more than ten percent. The term ownership interest shall include any legal or equitable interest held at the time of the application in the real property which is the subject of the application.

Name	Address	Percent of Ownership
1.		
2.		
3.		

2. Property. State the name, address and percent of ownership of any person or entity owning an interest in the property located at see above (address), unless the entity is a corporation or partnership, in which case identify each owner of more than ten percent. The term ownership interest shall include any legal or equitable interest held at the time of the application in the real property which is the subject of the application.

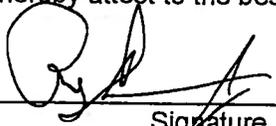
Name	Address	Percent of Ownership
1. Judith Jones	400 Madison St., Unit 1801 Alexandria VA 22314	100%
2. Jerry Warner	400 Madison St. Unit 2208 Alexandria, VA 22314	100%
3.		

3. Business or Financial Relationships. Each person or entity listed above (1 and 2), with an ownership interest in the applicant or in the subject property is required to disclose any business or financial relationship, as defined by Section 11-350 of the Zoning Ordinance, existing at the time of this application, or within the 12-month period prior to the submission of this application with any member of the Alexandria City Council, Planning Commission, Board of Zoning Appeals or either Boards of Architectural Review.

Name of person or entity	Relationship as defined by Section 11-350 of the Zoning Ordinance	Member of the Approving Body (i.e. City Council, Planning Commission, etc.)
1.		
2.		
3.		

NOTE: Business or financial relationships of the type described in Sec. 11-350 that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings.

As the applicant or the applicant's authorized agent, I hereby attest to the best of my ability that the information provided above is true and correct.

7-25-11 Roy R. Shannon, Jr 
 Date Printed Name Signature

PART B

1. Why do you believe the order, requirement, decision or determination is incorrect? Explain the basis for the appeal, beginning in the following space and using additional pages, if necessary.

See Attached Documents

Revised Part B – BZA Case # 2011-0013

Appeal to the Board of Zoning Appeals
B.Z.A. Case No.2011-0013
Revised Part B

Grounds for Appeal by Petitioners Judith Jones and Jerry Warner

As indicated by the Director of Planning and Zoning's staff to the City Council during the June 25, 2011 hearing on this matter, and in the written determination by the Director of Planning and Zoning ("Director"), the Petitioners, Judith Jones and Jerry Warner, as signatories to the protest petition, attached hereto as Exhibit 1 and incorporated by reference, have the right to appeal the Director's determinations to the Board of Zoning Appeal. Pursuant to Va. Code Ann. § 15.2-2311, this is their appeal.

The Petitioners challenge certain specific determinations, made by the Director, in relation to the project known as Harris Teeter of Old Town North ("Harris Teeter Project"), including the written determinations, attached hereto as Exhibit 2 and incorporated by reference. The petitioners appeal the following determinations:

1. "The Director determined that for purposes of a protest petition under section 11-808, a condo Board does not have the authority to speak for all owners of the entire land area, and that to allow it to do so would deprive individual owners of their due process rights to speak as to land use issues;"

2. "The Director determined that even if the answer to the first question was different – that a condo Board had the power to speak for all owners as to a zoning protest petition – in this case, the Board president had not signed the petition on the behalf of all condo owners and the document filed with the petition by the Board secretary did not officially and properly state the Board's opposition to the rezoning;" and

3. The Director determined not to include any of the "land," created by operation of the Virginia Condominium Act, Va. Code Ann. §§ 55-79.39, et seq. (the "Condominium Act"), in her calculations of the area of land within the 300 feet of the parcel proposed to be rezoned under Rezoning Application # 2011-0001. The Director's determination not to include in her calculation the "land" attributed to individual unit owners at the Alexandria House Condominium ("Alexandria House") operated to deprive the Petitioners, as well as each of the other unit owners, of their property and procedural rights under Virginia law and the constitutions of Virginia and the United States.

Background

The crux of this appeal is the proper and required methodology for apportioning and counting voting rights associated with land owned and operated as a condominium in the context of procedures established in City of Alexandria Zoning Ordinance ("Zoning Ordinance") and the City Charter.

Revised Part B – BZA Case # 2011-0013

The Petitioners are each unit owners at the Alexandria House. As such, each has a legally recognized ownership interest in the common elements of Alexandria House. The Petitioners are aggrieved parties for various reasons, including: (1) the improper and procedurally defective denial of the protest petition each signed, the erroneous exclusion of their land and ownership interests in the Director's calculations; and (2) the erroneous exclusion of their interests in the common elements of Alexandria House as a consequence of the Director's determination not to include common elements in the calculation regarding the 20% requirement under Zoning Ordinance § 11-808. The Petitioners have also filed a declaratory judgment action in the Circuit Court for the City of Alexandria -- Case No. 11003776, attached hereto as Exhibit 3 and incorporated by reference -- requesting that the Court declare the City Council's Ordinance No. 4732 void *ab initio* as a consequence of these substantive and procedural shortcomings in the process by which the ordinance was approved.

The Petitioners were signatories to a properly-filed and otherwise valid protest petition pursuant to § 9.13 of the City Charter and § 11-808 of the Zoning Ordinance. However, the Director rejected the protest petition based on a purported failure to meet the 20% requirement of those sections. Following her erroneous conclusion as to the sufficiency of the protest petition, the Director, through her staff, compounded her mistake by erroneously advising the City Council in the June 25 public hearing that the protest petition had failed because it did not satisfy the 20% requirement.

On information and belief, the Director, in determining the total amount of land within 300 feet of the property proposed to be affected by Rezoning App. 2011-0001, calculated a total of 381,884 square feet.

On information and belief, 20% of the total land within 300 feet of the properties addressed in Rezoning App. 2011-0001, as calculated by the Director, is 76,377 square feet.

On information and belief, the Director determined that the land area attributable to Alexandria House, which falls within 300 feet of the area being amended by Rezoning App. 2011-0001, is 82,142 square feet.

Accordingly, had the land legally and properly attributable to Alexandria House (82,142 sq. ft.) been included in the Director's calculation respecting the 20% requirement, this land would have been enough land, by itself, to satisfy the 20% requirement.

The 82,142 square feet of land attributed to Alexandria House includes common elements of the condominium, which elements are the responsibility of the Board of Directors ("Board") of Alexandria House by operation of the Condominium Act and Alexandria House's governing instruments.

The protest petition should have been deemed valid and given the legally required procedural effect on the subsequent deliberations and voting on Rezoning App. 2011-0001. This, however, did not occur. As a consequence of this defective procedure, as well as the deprivation of the rights of residents to participate in important zoning procedures with the potential to drastically affect the value

and enjoyment of their real property interests, the City Council should properly conduct the process again. City Council should be required to give notice and hold a public hearing to once again consider and vote on the Harris Teeter Project. And this time, the public hearing and vote should be held using the correct process -- one in which the spectre, stigma and practical weight of the existence of a valid protest petition, and the true and substantial level of opposition such a petition represents -- are front-and-center in Council's deliberations, just as the required process establishes.

Determination #1

The Director determined that for purposes of a protest petition under section 11-808, a condo Board does not have the authority to speak for all owners of the entire land area, and that to allow it to do so would deprive individual owners of their due process rights to speak as to land use issues. [See Exhibit 2]

The Condominium Act § 55-79.79(A) states:

Except to the extent otherwise provided by the condominium instruments, **all powers and responsibilities, including financial responsibility, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the case of the common elements, and (ii) to the individual unit owner in the case of any unit or any part thereof, except to the extent that the need for repairs, renovation, restoration or replacement arises from a condition originating in or through the common elements or any apparatus located within the common elements, in which case the unit owners' association shall have such powers and responsibilities.** Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. (emphasis added).

Because the unit owners' association is responsible for all aspects of the common elements, it follows that the unit owners' association is vested with the appropriate authority to carry out its duties. Consequently, the next section of the Condominium Act § 55-79.80(B) provides,

...the executive organ of the unit owner's association...itself, shall have the irrevocable power as attorney-in-fact on behalf of all the unit owners...with respect to the common elements, including without limitation the right, in the name of the unit owners' association, (i) to grant easements through the common elements and accept easements benefiting the condominium or any portion thereof, (ii) to assert,

Revised Part B – BZA Case # 2011-0013

through litigation or **otherwise**, defend against, compromise, adjust, and settle any claims or actions related to common elements...and (iii) to **apply for any governmental approvals under state and local law.** (emphasis added).

The executive organ of the unit owners' association is in the best position to represent the unit owners' interests when the common elements of a condominium are at issue.

Take the following example: If the Board of Directors ("Board") of Alexandria House knew of a water infiltration problem in its garage, then it would be responsible to address the problem. The Board would likely have an engineer evaluate the problem. Then, depending on the results of the evaluation, the Board would bid the repair work, file suit against those parties responsible for causing the problem, or consider other available actions. The Board's discussions with engineers and legal counsel about the facts and cause(s) of the water problem, the possible pending litigation (or ongoing litigation), settlement strategies, and the like would all be kept confidential and discussed during the Board's "executive sessions." Thus, the unit owners of Alexandria House would not likely be aware of all the particular details of the water problem in the garage and might not even know there is a construction defect in the garage.

The Board is in the best position to speak for Alexandria House when it comes to matters involving the common elements. Indeed, the General Assembly anticipated precisely these issues in considering and *resolving* how legal interests relating to the common elements of a condominium should be protected and exercised. And the legislature gave the Board the power to assert all manner of legal and procedural rights where the common elements of a condominium are involved. Moreover, the governing instruments of Alexandria House confirm that such power over the common elements is vested in the Board. Finally, because the voting rights and procedures in question relate to common elements, the Association, by its duly constituted executive organ, is not only *an* entity with standing to advance legal and procedural rights regarding such elements held by individual unit owners, but it is the *only* entity with such standing. *See, e.g.*, Va. Code Ann. §§ 55-79.53 and 55-70.80(B); *Kuznicki v. Mason*, 273 Va. 166, 639 S.E.2d 308 (2007) ("[S]tanding to institute claims or actions concerning common elements, including limited common elements, is restricted to condominium unit owners' associations.").

Determination 1 directly contravenes the requirements of the Condominium Act and should be reversed.

Determination #2

The Director determined that even if the answer to the first question was different – that a condo Board had the power to speak for all owners as to a zoning protest petition – in this case, the Board president had not signed the petition on the behalf of all condo owners and the document filed with the

Revised Part B – BZA Case # 2011-0013

petition by the Board secretary did not officially and properly state the Board's opposition to the rezoning. [See Exhibit 2]

Along with signatures of various unit owners and landowners, the Secretary of the Board submitted to the Director for consideration a Statement of Representation and Validation Thereof ("Board's Statement"). Exhibit 1, p. 1. The Board's Statement explained in detail that the governing instruments for Alexandria House gave the Board the authority to administer the affairs of the condominium. Furthermore, the Board's Statement cited Va. Code § 55-79.80(B), explaining the Board's "irrevocable power as attorney-in-fact on behalf of all the unit owners... with respect to the common elements." The Board's Statement further explains:

This action is related and pertains to the proposed zoning map amendment for the Harris Teeter of Old Town North, Rezoning Application #2011-0001, **which if approved would adversely impact and affect the common elements of the Alexandria House Condominium** due to increase pedestrian traffic, vehicular traffic, light pollution, increase air pollution, noise, and other considerations, and therefore, **the Board has proper authority and power under the Bylaws and under the Virginia Condominium Act to act for and on behalf of the unit owners of the Council.**

As the Secretary of the Board of Directors of the Council of Co-Owners of Alexandria House, **I attest to the vote taken by the Board of Directors to authorize the action of submitting the attached zoning protest petition to the City of Alexandria** and for the President to speak on behalf of the Council and the Board of Directors, the executive organ of the Council with regard to this matter. (Emphasis added.)

The Board's Statement thus did in fact authorize the act of submitting the statement itself for the purpose of the protest petition. The Secretary of the Board signed the Board's Statement, had it notarized, and caused it to be submitted. The President of the Board was not required to sign the Board's Statement for these actions on behalf of the condominium to be valid. Indeed, there is no prescribed City form for a protest petition, nor does the Zoning Ordinance or the City Charter specify a particular format for a protest petition submission. And even if there were such a form, there is no way such form, or any other aspect of the zoning process, could effectively restrict the powers conferred upon the executive organ of a condominium by Virginia law.

(The President of the Board did sign the protest petition in exercising the procedural voting rights allocated to *individual units owned by the association*, but that act obviously and logically pertained to exercising protest rights attributable to the "non-common" or exclusive elements of those individual units owned by the Association, and not to an exercise of the protest rights attributable to the condominium's common elements. The Secretary signed, certified and submitted the Board's

Revised Part B – BZA Case # 2011-0013

Statement for purposes of exercising protest rights attributable to the common elements of Alexandria House.)

The language in the Board's Statement referring to Rezoning App. 2011-0001 -- that "if approved would adversely impact and affect the common elements of the Alexandria House Condominium due to increase pedestrian traffic, vehicular traffic, light pollution, increase air pollution, noise, and other considerations" -- could not be more clear in terms of stating the fact and rationale of the Board's opposition to Rezoning App. 2011-0001, as the legally designated, exclusive spokesman for, and exerciser of, all substantive and procedural rights relating to the condominium's common elements.

The submission of the Board's Statement was the Board's protest. The Director should have included Alexandria House land for purposes of assessing the sufficiency of the protest petition.

Determination #3

The Director, in making her calculation of the land within 300 feet of the project being rezoned pursuant to Rezoning Application #2011-0001, did not include the "land" or real property rights that were created by operation of the Virginia Condominium Act. The Director's exclusion of this firmly-established real property from the calculation thereby operated to deprive the owners of this land of their right to be counted -- to the full extent of their ownership interests in the land to be affected -- in the exercise of the protest petition procedure available to all affected landowners in the city.

The Director's determination not to include in her calculation the "land" or real property ownership interests attributable to individual unit owners at Alexandria House operated to deprive the Petitioners, as well as each of the other unit owners, of their property and procedural rights under Virginia law and the constitutions of Virginia and the United States.

Section 55-79.41 of the Condominium Act states,

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. **Parcels of airspace constitute land within the meaning of this chapter.** Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum. (Emphasis added.)

Moreover, the Supreme Court of Virginia has held:

Within the definition of "land," the Condominium Act provides that "parcels of airspace constitute land within the meaning of this chapter." This severance from the soil "of an estate in the subdivided cubes in the

Revised Part B – BZA Case # 2011-0013

sky” is analogous to the accepted rule that minerals below the topsoil may be severed from the surface lot.

United Masonry, Inc. v. Jefferson Mews, Inc., 218 Va. 360, 237 S.E.2d 171 (1977). Thus, when real property owned in condominium form is affected by any action being considered by the City of Alexandria, the Director must look to the Virginia Code, and to the Condominium Act in particular, to find the rules and principles pertaining to the condominium form of land ownership under Virginia law.

The Petitioners, along with most condominium unit owners in the City of Alexandria, have their land assessed by the Department of Finance for real estate tax purposes, and they pay taxes on the value of their ownership interests in the land comprising the condominium. The Director’s exclusion of unit owners, and in particular the Petitioners, from the calculations of the land represented by the signatories to this protest petition, or from full and equal consideration with fee simple owners in any other zoning matter, amounts to a deprivation of their due process and other procedural and property rights under the Virginia and U.S. constitutions.

When an apartment building owner is taxed, the City issues one tax bill for the building because a single person or entity owns the land. But when a condominium is taxed, each unit owner – consistent with his or her exclusive ownership of an interest in real property created and recognized by Virginia law – gets his own tax bill. The fact that properly counting these ownership interests may present difficult issues does not justify excluding these recognized and fully taxed interests from municipal procedures capable of drastically affecting the use and value of this type of property.

Conclusion

The Petitioners respectfully request that the BZA find that the Director improperly excluded Alexandria House common elements from the calculation of the percentage of affected land owners protesting the Harris Teeter Project, including Rezoning App. 2011-0001, and that the area consisting of the individual units of the Petitioners, as well as all other unit owners in the Alexandria House, should have been included in the land calculations. The BZA should further find that the Harris Teeter Project was not properly approved and that City Council must take the necessary steps to hold a new public hearing, including an opportunity and process for the filing of protest petitions judged by methods that give proper and legal weight to the wishes and interests of all the land owners within 300 feet of the land pertaining to Rezoning App. 2011-0001

7

STATEMENT OF REPRESENTATION AND VALIDATION THEREOF

This action is taken consistent with and pursuant to Article IV, Sections 2 and 3 of the Bylaws of the Council of Co-Owners of Alexandria House Condominium ("Council") which gives the Board of Directors the powers and duties necessary for the administration of the affairs of the Council and the responsibility to care for the common elements and facilities. In addition, this action is also taken consistent with and pursuant to Section 55-79.80B of the Virginia Condominium Act, which gives the executive organ the "*irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title with respect to the common elements including without limitation the right in the name of the unit owners' association to assert, through litigation, or otherwise, defend against, compromise, adjust and settle any claims or actions related to common elements.*" This action is related and pertains to the proposed zoning map amendment for the Harris Teeter of Old Town North, Rezoning Application #2011-0001, which if approved would adversely impact and affect the common elements of the Alexandria House Condominium due to increased pedestrian traffic, vehicular traffic, light pollution, increased air pollution, noise, and other considerations, and therefore, the Board has proper authority and power under the Bylaws and under the Virginia Condominium Act to act for and on behalf of the unit owners of the Council.

As the Secretary of the Board of Directors of the Council of Co-Owners of Alexandria House, I attest to the vote taken by the Board of Directors to authorize the action of submitting the attached zoning protest petition to the City of Alexandria and for the President to speak on behalf of the Council and the Board of Directors, the executive organ of the Council with regard to this matter.

[Handwritten Signature] ROBERT J. ADAMS 6/23/11
Secretary of the Board Signature Printed Name Date

[Handwritten Signature]
Acting Secretary

COMMONWEALTH OF VIRGINIA
CITY OF Alexandria

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Robert J. Adams, whose name is signed to the foregoing Statement of Representation and Validation Thereof, has acknowledged the same before me in the aforesaid jurisdiction.
GIVEN under my hand and seal on June 23rd, 2011.

[Handwritten Signature] [SEAL]
Notary Public

My Commission Expires: 7-31-12
My Identification Number: 343817



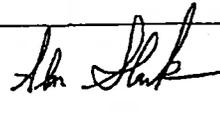
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JUN 24 2011
-11:01 AM [Signature]



~~A~~

Formal Zoning Protest Petition to City of Alexandria

This is a formal zoning protest to the City of Alexandria, pursuant to Section 9.13 of the Charter of the City of Alexandria and Section 11-808 of the Zoning Ordinance of the City of Alexandria. The undersigned are property owners of real property located within 300 feet of the property proposed to be rezoned. The undersigned protest the proposed zoning map amendment for the Harris Teeter of Old Town North (Rezoning # 2011-0001) to be heard by the City Council on June 25, 2011. The zoning map amendment proposes to change the zoning from CD to CDD#20 at property located at 717, 719, 723, 735 N. St. Asaph Street and 716, 724 N. Pitt Street.

#	Name	Address	Signature	Tax Map # (If known)
	ALAN Shark	500 Wythe St. Alex. VA 22314		054.04
	Nancy Blatt	500 Wythe Street Alexandria, VA 22314		054.04
	Ryan Trainer Pres. ISPA	501 Wythe Street Alexandria, VA 22302		054.04 0B 0A
	Melissa Viscovich	707 N. St. Asaph St. Alexandria VA 22314		
	Tri Phan	525 Wythe St. Alexandria, VA 22314		

B x

Formal Zoning Protest Petition to City of Alexandria

This is a formal zoning protest to the City of Alexandria, pursuant to Section 9.13 of the Charter of the City of Alexandria and Section 11-808 of the Zoning Ordinance of the City of Alexandria. The undersigned are property owners of real property located within 300 feet of the property proposed to be rezoned. The undersigned protest the proposed zoning map amendment for the Harris Teeter of Old Town North (Rezoning # 201-0001) to be heard by the City Council on June 25, 2011. The zoning map amendment proposes to change the zoning from CD to CDD#20 at property located at 717, 719, 723, 735 N. St. Asaph Street and 716, 724 N. Pitt Street.

055.03-0A -

#	Name	Address	Signature	Tax Map # (If known)
404	JOHN F. Weimaster	400 Madison St Apt 404 Alexandria VA 22314	John F. Weimaster	0404
908	Cynthia H. Ford	400 Madison St # 908 Alexandria, VA 22314	Cynthia H Ford	0908
1104	Charlotte F. Homan	400 Madison #1104 Alexandria, VA 22314	Charlotte Homan	1104
905	Holly Vorhies	400 Madison ST # 905 22314 Alexandria VA	Holly Voh	0905
802	JIM BOOTH	400 MADISON ST #802 ALEXANDRIA, VA	James E. Booth	0802
1902	Victor E. Stamey	400 MADISON ST. UNIT 1902 ALEXANDRIA, VA 22314	Victor E. Stamey	1902
610	Karen Frank	400 Madison U. #610 Alex VA 22314	Karen Frank	0610
1702	Victor G. Spranger	400 MADISON ST # 1702	Victor G. Spranger	1702

7(a)

Formal Zoning Protest Petition to City of Alexandria

This is a formal zoning protest to the City of Alexandria, pursuant to Section 9.13 of the Charter of the City of Alexandria and Section 11-808 of the Zoning Ordinance of the City of Alexandria. The undersigned are property owners of real property located within 300 feet of the property proposed to be rezoned. The undersigned protest the proposed zoning map amendment for the Harris Teeter of Old Town North (Rezoning # 2011-001) to be heard by the City Council on June 25, 2011. The zoning map amendment proposes to change the zoning from CD to CDD#20 at property located at 717, 719, 723, 735 N. St. Asaph Street and 716, 724 N. Pitt Street.

055.03-0A-

#	Name	Address	Signature	Tax Map # (If known)
-	KENNETH HOFFMAN	400 MADISON ST, #407 ALEXANDRIA VA	Kenneth H Hoffman	
1604	Gwen Metzger	" " unit#	Gwen Metzger	1604
1710	Michael WENK	400 MADISON ST #1710 Alexandria, VA 22314	Michael W Wenk	1710
1002	Barbara Rosefeld	400 Madison St #1002 VA 22314	Barbara Rosefeld	1002
202	Richard W. Keneff	400 Madison St #202 VA 22314	Richard W Keneff	0202
202	Mary J. Keneff	400 MADISON ST #202 VA 22314	Mary J Keneff	0202
-	Kevin Roberts	400 Madison St #1006 Alexandria, VA 22314	Kevin Roberts	
2206	Nancy O Kraeger	400 Madison #2206 Alexandria	Nancy O Kraeger	2206

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

055.03-0A-1

#	Name	Address	Signature	Tax Map # (If known)
701	Henry M JOHNSON II	400 MADISON ST #701 ALEXANDRIA VA 22314		0701
2108	CARRETT E. (E) Stan	400 Madison St. #2108 Alexandria, Va 22314		2108
1402	Charles E. Ratliff	400 Madison St #1402 Alexandria VA 22314		1402
310	Mary Whitt	400 Madison Unit 310 310		0310
806	MARIE T. WEBER	400 MADISON ST #806		0806
902	Jennifer (J) L. Adams	400 Madison St #902		0902
	JAMES E.P. RING	400 MADISON ST #1201		
1406	JO A. HOOKS	400 MADISON ST #1406		1406
	Laura Ann Hutcheson	400 Madison St # 808 Alexandria VA 22314		
504	VERA S. WALLER	400 MADISON ST. # 504 ALEXANDRIA, VA 22314		0504
762	FRANCES ZORN	400 Madison St #308		

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

055.03-0A-

#	Name	Address	Signature	Tax Map # (If known)
1502	Marshall E. Whitenton	400 Madison St # 1502 Alexandria, VA	<i>Marshall E. Whitenton</i>	1502
1102	MAX A. STOLPER	400 Madison Str. - 1102 Alexandria, VA 22314	<i>Max A. Stolper</i>	1102
1101	WILLIAM SULLIVAN	400 MADISON ST Apt 1101 Alexandria VA	<i>William F. Sullivan</i>	1101
1001	REGINA CHAPMAN	400 MADISON ST # 1001 ALEXANDRIA VA 22314	<i>Regina Chapman</i>	1001
2107	PATRICIA ROLAND	400 MADISON ST # 2107 ALEXANDRIA VA 22314	<i>Patricia Roland</i>	2107
2004	MARY L. PARRAMORE	400 MADISON ST. # 2004 ALEXANDRIA, VA 22314	<i>M. Parramore</i>	2004
1308	Ailyn H. Treatment	400 Madison st, # 1308 Alexandria, Va, 22314	<i>Ailyn H. Treatment</i>	1308
	PANGILAN, MALIA	400 MADISON ST. # 407 ALEXANDRIA, VA 22314	<i>Malia Pangilan</i>	
	Charlotte	400 Madison St # 1402 Alexandria VA 22314	Charlotte	
2104	deborah l. halley	400 madison st # 2104 alexandria, VA 22314	<i>d.l. halley</i>	2104
1804	MONTABE	400 Madison	1804	1804

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

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#	Name	Address	Signature	Tax Map # (If known)
201	SUZANNE CAVANAUGH	400 MADISON ST APT 201 ALEX, VA	<i>[Signature]</i>	0201
1308	ROBERT TRAUTMAN	400 MADISON ST APT 1308 ALEX VA 22314	<i>[Signature]</i>	1308
1203	Pauline Porter	400 Madison St #1203 Alex VA 22314	<i>[Signature]</i>	1203
1801	Judith K JONES	400 Madison #1801 Alex. VA 22314	<i>[Signature]</i>	1801
1208	LOUISE KENNY	400 MADISON ST #1208 ALEXANDRIA VA 22314	<i>[Signature]</i>	1208
1107	Sheryl Swisher	400 Madison St. #1107 Alexand. VA 22314	<i>[Signature]</i>	1107
1303 1304	Marianne Ginsburgs	2 Alexandria House Madison St. 1303 Alex. Va 22314	<i>[Signature]</i>	1303 1304
1101	JANET Weston.	UNIT 401.	<i>[Signature]</i>	
	BARBARA KAYE	400 MADISON ST # 1202 ALEX. VA. 22314	<i>[Signature]</i>	
1607	ARTHUR WHITLEY	1607 400 MADISON ST ALEXANDRIA VA 22314	<i>[Signature]</i>	1607
2008	DAVID N. WEINMAN	400 MADISON ST, APT. 2008 ALEXANDRIA, VA. 22314	<i>[Signature]</i>	2008

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

055.03-0A-

#	Name	Address	Signature	Tax Map # (If known)
2008	P. D. Schoeni	400 Madison St #2008		2008
1003	ISABELLA REGA	400 Madison St 1003		1003
709	Roderick Clarke	400 MADISON #709		0709
502	Rick Gutwald	400 Madison St #502		0502
1602	JOHN RATHING	400 MADISON ST #1602		1602
508	Alice COHAN	400 Madison St #508	Alice Cohan	0508
1408	NANCY KINCAID	400 MADISON ST #1408	Nancy Kincaid	1408
	DAVID WEINMAN PRESIDENT	400 MADISON ST. APT. 207 ALEX., VA. 22314	David H. Weinman	0207
	DAVID WEINMAN PRESIDENT	400 MADISON ST., APT. 304 ALEX., VA. 22314	David H. Weinman	0304

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

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#	Name	Address	Signature	Tax Map # (If known)
609	June Whelan	400 Madison St #409 Alexandria, Va. 22314	June Whelan	0609
410	ANN SPENCER FLYNN	400 MADISON ST #410 ALEXANDRIA, VA. 22314	Ann S. Flynn	0410
2206	Nancy Kruger	400 Madison St Alex VA 22314	Nancy Kruger	2206
1908	AMY LEE	400 MADISON ST. #1908 ALEX. VA 22314	Amy Lee	1908
1809	FRANCIS RISON	400 MADISON ST #1809 ALEX VA 22314	Francis Rison	1809
1902	VICTOR E STAMEY	400 Madison St UNIT 1902 Alexandria, VA 22314	Vita E. Stamey	1902
908	CYNTHIA H. FORD	400 Madison St unit 908 Alexandria, VA 22314	Cynthia H. Ford	908
1707	Nancy G. Hamilton	400 Madison #1707 Alexandria, VA, 22314-1729	Nancy G. Hamilton	1707
1402	Anna Gimmell Chris Gimmell	400 Madison St # 1402 Alexandria, VA 22314	Anna + Chris Gimmell	
1703 1005 1703	Jacqueline Luten	400 Madison #1703 Alexandria Va 22314 703 201 6668	Jacqueline Luten	0703 1005 1703
1509	Virginia Lester 400 Madison Alexandria	VIRGINIA LESTER	Virginia Lester	1509

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

055.03-0A-

#	Name	Address	Signature	Tax Map # (If known)
1906	Dolores BENAVIDES	400 MADISON ST. APT 1906 ALEXANDRIA, VA. 22314	Dolores Benavides	1906
1003	ISABELLA RIVER	400 MADISON ST APT 1003 ALEXANDRIA VA 22314	I. River	1003
1607	ARTHUR WHITELY	400 MADISON ST APT 1607 ALEXANDRIA VA 22314	Arthur Whitely	1607
2109	Janet Pearson	400 Madison # 2109 Alexandria VA 22314	Janet Pearson	2109
2109	Paul Pearson	400 Madison # 2109 Alexandria, VA 22314	Paul Pearson	2109
507	ROBERT E. PURSLEY	400 MADISON ST #507 ALEXANDRIA, VA. 22314	Robert E. Pursley	0507
902	Jennifer L. Adams	400 Madison St # 902 Alexandria VA 22314	J Adams	0902
2103	Joel Leonard	400 MADISON ST # 2103 ALEXANDRIA VA 22314	Joel Leonard	2103
2103	Calva Leonard	400 Madison St. # 2103 Alexandria VA 22314	Calva Leonard	2103
1409	Anna Brych	400 Madison St. # 1409 Alexandria VA 22314	Anna Brych	1409
1807	Mollie Crockett	400 Madison St. # 1807 Alexandria VA 22314	Mollie A. Crockett	1807

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

055.03-0A-

#	Name	Address	Signature	Tax Map # (If known)
308	Frances E. Zorn	400 Madison St # 308 Alexandria 22314	<i>Frances E. Zorn</i>	0308
1204	BEVERLY KIMES	400 MADISON ST #1204 ALEX N22 22314	<i>Beverly Kimes</i>	1204
2004	MARY L. PARRAMORE	400 Madison St. #2004 Alexandria, VA 22314	<i>Mary Parramore</i>	2004
2108	GAERST SHAH	400 Madison St. #2108 Alexandria, VA	<i>[Signature]</i>	2108
2109	Janet Pearson	400 Madison St. APT # 2109 Alexandria Va. 22314	<i>Janet M Pearson</i>	2109
2201 2202	REMMEL DICKINSON	400 MADISON STREET # 2201 AND #2202 ALEX. VA 22314	<i>PT Nutini</i>	2201 2202
1806	GLORIA SIKORA	400 Madison St. #1806 Alex VA 22314	<i>[Signature]</i>	1806
1303 1304	Marianne GINSBURS	400 Madison St. #1303/04 Alex. Va 22304	<i>Marianne Garsy</i>	1303 1304
1706	JUNE HAJJAR	400 MADISON ST # 1706 ALEX 22314	<i>June Hajjar</i>	1706
908	CYNTHIA FORD	400 Madison #908 Alexandria, VA 22314	<i>Cynthia Ford</i>	0908
1903	Willare Whitman	400 Madison St. Apt 1903	<i>Willare W.</i>	1903

Roy Shannon

From: Joanna Anderson <Joanna.Anderson@alexandriava.gov>
Sent: Thursday, July 21, 2011 12:02 PM
To: Roy Shannon (rrshannon@rrbmdk.com)
Cc: James Banks; Barbara Ross
Subject: FW: Harris Teeter Protest Petition

Hi Roy: In follow up to our conversation, below please find the email that was sent to Mr. Wenk of the Alexandria House setting out the director's determination about the protest petition that was presented verbally on June 25.

Please let me know if you have any questions regarding this matter.

Joanna

From: Faroll Hamer
Sent: Thursday, July 21, 2011 10:52 AM
To: MgwScrp03@aol.com
Cc: ombudinc@aol.com; Joanna Anderson; Barbara Ross
Subject: Harris Teeter Protest Petition

Dear Mr. Wenk:

You have requested that we set out in writing our determination, made on June 24, 2011 and presented verbally to City Council at its June 25, 2011 public hearing, that the protest petition filed with regard to the Harris Teeter rezoning (REZ #2011-0001) was insufficient to require a supermajority vote by Council under the Zoning Ordinance and City Charter.

Under sections 9.13 of the City Charter and 11-808 of the Zoning Ordinance, Council is required to approve a rezoning application by supermajority vote if a petition protesting the rezoning is filed by the owners of 20% of the land within 300 feet of the boundaries of the subject property. See Section 11-808(A)(2). In this case, a petition was timely filed on June 24, 2011. After reviewing the petition, the Director of Planning and Zoning determined that, even if every signature on the petition was counted, ignoring questions raised by several signatures about whether they should be counted, the signatures represented an insufficient amount of land to trigger a supermajority vote.

As to the methodology employed, staff reviewed each and every one of the signatures to determine if the signature matched the title owner's name on the city's real estate records. The land area represented by the signatures was computed and compared to the amount of land that is 20% of the land within 300 feet of the boundaries of the subject property.

Many of the signatories on the petition were Alexandria House condominium owners. In addition to the actual petition, the acting secretary of the Board filed a single page document which states that the Board has the power under the Board Bylaws and state law to act as an attorney-in-fact on behalf of all owners of the condominium building in regard to certain matters relating to the common elements and attested to a vote of the Board of Directors which authorized the act of submitting the zoning protest petition and authorizing the Board President to speak on behalf of the Council and the Board.



As to the question of methodology when part of the relevant land is held in condominium ownership, and after consultation with the City Attorney's office, the Director's determination took into consideration the following two issues:

1. Whether the Condominium Act, under section 55-79.80 of the state code, gives a condo Board the authority to speak for all of its owners as to their opposition to a zoning matter, in this case specifically a protest petition.

The Director determined that for purposes of a protest petition under section 11-808, a condo Board does not have the authority to speak for all owners of the entire land area, and that to allow it to do so would deprive individual owners of their due process rights to speak as to land use issues.

2. Whether the petition, including the document filed by the Secretary of the Board, was an action by the board to sign the petition on behalf of all of the unit owners.

The Director determined that even if the answer to the first question was different – that a condo Board had the power to speak for all owners as to a zoning protest petition – in this case, the Board president had not signed the petition on the behalf of all condo owners and the document filed with the petition by the Board secretary did not officially and properly state the Board's opposition to the rezoning.

We hope the above explanation is helpful to you. As we discussed when we met, given the fact that the Council decision to adopt the rezoning of the property for the Harris Teeter project was unanimous, the issue of whether the protest petition filed in regard to the rezoning is moot and we do not think it appropriate for the BZA to be deciding a case if there is no current matter in controversy.

You may have the right to appeal this decision within thirty days in accordance with Section 15.2-2311 of the Code of Virginia. The decision shall be final and unappealable if not appealed within thirty days.

Faroll Hamer, Director
Department of Planning and Zoning
City of Alexandria
301 King Street
Alexandria, VA 22314
703-746-4666
Faroll.Hamer@alexandriava.gov

**City of Alexandria Circuit Court
Civil Case Cover Sheet**

PLAINTIFF LAST NAME	FIRST NAME
Warner and Jones	Jerry and Judith
DEFENDANT LAST NAME	FIRST NAME
City Council for the City of Alexandria	

(SHOW ONLY FIRST PLAINTIFF AND FIRST DEFENDANT)

PLAINTIFF ATTORNEY: Roy R. Shannon, Jr., Esquire
Firm: Rich Rosenthal Brincefield Manlita Dzubin & Kroeger, LLP
 ****ADDRESS and PHONE NUMBERS REQUIRED FOR ALL FILERS****
Address: 201 North Union Street
Suite 140
Alexandria, VA 22314
703-299-3440 # 66724
 Phone Number Attorney Bar Number

**P
R
O
C
E
S
S**

- Serve by Sheriff (Sheriff fee included with filing fee)
- Private Service. When ready, please call Arlene @ 703-299-3440
- Clerk to prepare Acceptance Before Notary When ready, please call _____
- Acceptance and/or Waiver of Process Filed (attorney prepares)
- Acceptance and/or Waiver of Process to be Filed later (attorney prepares)
- Statutory Agent. Separate fee, necessary affidavits and extra copies of process included.
- Accept and Waive Before Clerk (\$10.00 Fee)
- Order of Publication. Separate fee for Newspaper included.
- Do Not Issue Summons At This Time
- Other _____

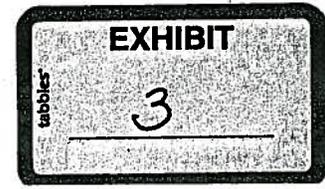
CLERK'S USE:

Case Number: CL11003771e
 Is this a divorce or annulment yes no
 Are they seeking monetary damages in the case? Yes No
 Amount of damages sought: \$ _____
 Amount Filing Fee Paid: \$ 0.00
 Number of Sheriff Services Paid: _____
 Name change requested - Fee paid _____
 Fee for Newspaper for Order of Publication
 Check(s) for Statutory Agents
 Order & Affidavit to Waive Filing Fees
 VS-4 Form included VS-21 Form included
 Notice or Praecipe to Schedule- Date To Schedule: _____

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA

2011 JUL 25 P 3:54

EDWARD SEMENIAN, CLERK



ole

VIRGINIA :

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

JERRY B. WARNER
400 Madison Street
Unit 2208
Alexandria, Virginia 22314

and

JUDITH K. JONES
400 Madison Street
Unit 1801
Alexandria, Virginia, 22314

Plaintiffs,

v.

CITY COUNCIL FOR
THE CITY OF ALEXANDRIA

Serve: JAMES L. BANKS, CITY ATTORNEY
Office of the City Attorney
301 King Street, Suite 1300
Alexandria, Virginia 22314

Defendant.

Civil Action No. CL 110037ALE

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA
2011 JUL 25 P 3 54
EDWARD SEMORIAN, CLERK
BY [Signature]

COMPLAINT FOR DECLARATORY JUDGMENT

COME NOW THE PLAINTIFFS, Jerry B. Warner and Judith K. Jones, by counsel, and for their Complaint for Declaratory Judgment against the Defendant City Council for the City of Alexandria (hereinafter "Alexandria City Council," "City Council," or "Defendant") declaring Ordinance No. 4732 void ab initio, and as grounds therefor state as follows:

PARTIES, JURISDICTION, and VENUE

1. Plaintiff Jerry B. Warner is an individual who owns Unit 2208 in the Alexandria House Condominium ("Alexandria House") and has an ownership interest in the common elements of the Alexandria House at 400 Madison Street, Alexandria, Virginia 22314. Mr. Warner is a citizen of the United States and a resident of the Commonwealth of Virginia and the City of Alexandria.

2. Plaintiff Judith K. Jones is an individual who owns Unit 1801 in the Alexandria House and has an ownership interest in the common elements of the Alexandria House at 400 Madison Street, Alexandria, Virginia 22314. Dr. Jones is a citizen of the United States and a resident of the Commonwealth of Virginia and the City of Alexandria.

3. The Defendant City Council is the governing body of the City of Alexandria and presides at 301 King Street, City Hall, Alexandria, Virginia 22314.

4. This Complaint seeks declaratory relief against the City Council. This Court has jurisdiction over this case pursuant to Va. Code Ann. §§ 8.01-184 and 15.2-2285(f).

5. The City of Alexandria is the proper venue for this case because the acts complained of occurred in the City of Alexandria. Venue is appropriate in this Court in accordance with Va. Code Ann. § 8.01-262(4).

FACTUAL BACKGROUND

6. During the Planning Commission's regular public hearing on June 7, 2011, it considered Docket Items #12A-F¹, pursuant to the application of Alexandria Old Town North,

¹ Docket Item #12A-F included the following:
Master Plan Amendment #2011-0002
Rezoning #2011-0001
CDD Concept Plan #2011-0001
Text Amendment #2011-0009
Development Special Use Permit #2010-0027
Special Use Permit/Transportation Management Plan #2011-0001

2

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LLC. The Project Name for the application is Harris Teeter of Old Town North ("Harris Teeter Project").

7. The applicant for the Harris Teeter Project was requesting that the Planning Commission, among other things, amend the Master Plan to create Coordinated Development District ("CDD") #20; change the land use classification from Commercial Downtown ("CD") to CDD #20; initiate and approve a text amendment to the Zoning Ordinance to include CDD #20; recommend approval of a CDD Concept Plan to allow for a 3.0 Floor Area Ratio for a grocery store and residential units; recommend approval of a Development Special Use Permit with Site Plan #2010-0027 to construct an approximately 52,000 sq. ft. grocery store with approximately 175 residential units; and to recommend approval of a transportation management plan.

8. The Planning Commission took action in accordance with the applicant's requests and caused the Harris Teeter Project to be forwarded to the City Council for its consideration.

9. The City Council held a public hearing on June 25, 2011; ("June 25 Hearing") it considered the Harris Teeter Project as Docket Item 13.²

10. The City Council affirmatively voted to approve the Harris Teeter Project, with certain conditions agreed to by the applicant.

11. The City Council had to make certain findings and determinations in order to have a basis for taking action to ordain Ordinance Nos. 4732, 4733, and 4734 and thus enabling the Harris Teeter Project to proceed forward.

12. The City Council, prior to its June 25 Hearing, anticipated approving the Harris Teeter Project since it had on its Action Agenda for that same hearing Docket Items 29-31, which allocated time for the Introduction and First Reading of Ordinances Nos. 4732, 4733, and 4734.

² Docket Item 13 included substantially the same items as the Planning Commission's Docket Item #12A-F.

13. The City Council approved Ordinance Nos. 4732, 4733, and 4734 during the June 25 Hearing after the first reading, and it set those ordinances for a public hearing on June 28, 2011 for a second reading, and final passage. The final passage of those ordinances occurred on June 28, 2011 after the public meeting and the second reading.

14. Prior to the City Council's June 25 Hearing, in accordance with § 9.13 of the City Charter and § 11-808 of the City of Alexandria Zoning Ordinance, the Plaintiffs, along with over one hundred real estate tax-paying landowners, signed and caused to be filed a Protest Petition, attached hereto as Exhibit A and incorporated by reference, with the City Clerk before noon on June 24, 2011 ("Protest Petition").

15. There is no standard form for a protest petition provided by the City of Alexandria.

16. The Section 9.13 of the City Charter, entitled Effect of Protest by Twenty Per Cent of the Owners of Property provides:

If a protest is filed with the city clerk against an application of motion to amend the boundaries of a zone or to amend the terms of an adopted conditional zoning proffer or zoning condition, signed by the owners of twenty percent or more either of the area of land within the boundaries of such proposed change or of the area of land within 300 feet of the boundaries of the land affected by such proposed change, the council shall not approve the application or motion, or adopt the ordinance making such amendment, by less than three-fourths³ affirmative votes of the members of council. ...

(emphasis added).

³ A three-fourths vote requires the City Council to act with a supermajority requiring at least a 6-1 vote to take affirmative action. A 5-2 vote would fail under the three-fourths requirement.

17. Section 11-808 of the City of Alexandria Zoning Ordinance, entitled Protest of

Zoning Map Amendment by Landowners, states in pertinent part:

(A) *Who may protest.* A protest shall be signed by the owners of at least 20 percent of:

(1) ...; or

(2) All land within 300 feet of the boundaries of the land proposed to be changed by the map amendment.

(B) *Deadline for protest.* A protest must be filed with the city clerk no later than noon on the last working day before the day on which city council conducts its first public hearing on the proposed amendment.

(C) *Calculation of ownership.* The director shall verify that those filing are legal property owners. Through mathematical calculation and the use of a planimeter, the department of transportation and environmental services shall verify said 20 percent area. ...

(D) *Effect of protest.* If a protest to proposed text or map amendment is filed, the city council may not approve the proposed amendment except by an affirmative vote of three-fourths⁴ of its members.

(E) *Limitations...*

...

(emphasis added).

18. During the City Council's June 25 Hearing, the Director of Planning and Zoning's staff member acknowledged that the Protest Petition, Exhibit A, was timely filed before noon on June 24; however, the Director of Planning and Zoning ("Director") determined that the total signatures on the Protest Petition, Exhibit A, were insufficient to meet the requirement of having the owners of 20% or more of the land within 300 feet of the boundaries of the land proposed to be rezoned sign the petition.

⁴ See FN 3.

19. The Director's staff member during the June 25 Hearing indicated that there had been an interpretation and decision by the Director regarding whether the Council of Co-Owners of Alexandria House Condominium (the "Board of Directors") could speak on behalf of all owners of the Alexandria House with respect to the common elements and whether the document filed by the Board of Directors (page 1 of the Protest Petition, Exhibit A) was a sufficient act for the Board of Directors to be considered a protest petitioner.

20. The Director's staff member told Councilwoman Alicia Hughes, during the June 25 Hearing, regarding the disagreement between the signatories of the Protest Petition and the Director's determination and decision on whether the Board of Directors should be able to assert the rights of all owners of the Alexandria House relating to the common elements, that "...in any event, there is a test, if there is disagreement about the determination of the planning director in this or any other interpretation and decision, the challenge can be filed with the Board of Zoning Appeals as is typically done and they can hear that and they would make the ruling." In response, Councilwoman Hughes said, "Sounds great. Okay, Thank you so much for that clarification."

21. On July 21, 2011, the Director provided a detailed written statement of determinations, attached hereto as Exhibit B and incorporated by reference ("Written Determinations").

22. The Written Determination, Exhibit B, stated:

As to the question of methodology when part of the relevant land is held in condominium ownership,...the Director's determination took into consideration the following two issues:

1. Whether the Condominium Act, under section 55-79.80 of the state code, gives a condo Board the authority to speak for all of its owners as to their opposition to a zoning matter, in this case specifically a protest petition.

The Director determined that for purposes of a protest petition under section 11-808, a condo Board does not have the authority to speak for all owners of the entire land area, and that to allow it to do so would deprive individual owners of their due process rights to speak as to land use issues.

23. The Written Determination, Exhibit B, directly contradicts the Virginia Condominium Act, Va. Code Ann. §§ 55-79.39, et seq. (the "Condominium Act").

24. The Protest Petition, Exhibit A, specifically cited the provision in the Condominium Act that gives the Board of the Alexandria House the "irrevocable power as attorney-in-fact on behalf of all of the unit owners...with respect to the common elements including without limitation the right in the name of the unit owner's association to assert, through litigation or otherwise, defend against, compromise, adjust and settle any claims or actions related to common elements." Va. Code Ann. § 55-79.80(B) (emphasis added).

25. The Written Determination, Exhibit B, further stated:

2. Whether the petition, including the document filed by the Secretary of the Board, was an action by the board to sign the petition on behalf of all of the unit owners.

The Director determined that even if the answer to the first question was different – that a condo Board had the power to speak for all owners as to a zoning protest petition – in this case, the Board president had not signed the petition on the behalf of all condo owners and the document filed with the petition by the Board secretary did not officially and properly state the Board's opposition to the rezoning.

26. The Board President was authorized to "speak on behalf" of the Council of Co-Owners of Alexandria House Condominium ("Council") and the Board of Directors; however, it was the Secretary's signature and submission of page 1 of the Protest Petition, Exhibit A, that

X

asserts the Alexandria House's position with regards to the common elements opposing the Harris Teeter Project.

27. The Secretary's statement on page 1 of the Protest Petition, Exhibit A, provides:

STATEMENT OF REPRESENTATION AND VALIDATION
THEREOF

...

This action is related and pertains to...Rezoning Application #2011-0001, which if approved would adversely impact and affect the common elements of the Alexandria House Condominium due to increase pedestrian traffic, vehicular traffic, light pollution, increase air pollution, noise, and other considerations, and therefore, the Board has proper authority and power under the Bylaws and under the Virginia Condominium Act to act for and on behalf of the unit owners of the Council.

As the Secretary of the Board of Directors of the Council of Co-Owners of Alexandria House, I attest to the vote taken by the Board of Directors to authorize the action of submitting the attached zoning protest petition to the City of Alexandria and for the President to speak on behalf of the Council and the Board of Directors, the executive organ of the Council with regard to this matter.

(emphasis added).

28. The first page of the Protest Petition, Exhibit A, is the Secretary's statement explaining the basis of his authority under Alexandria House's Bylaws and the Condominium Act, attesting that the proposed Rezoning Application #2011-0001 would have an adverse impact and affect on the common elements, and confirming that the submission of the document itself, with the other petitioners, was the Board of Director's protest asserting rights associated with the land designated to as common elements of Alexandria House.

29. The Plaintiffs are signatories to the Protest Petition, Exhibit A.

30. The Plaintiffs are members of the Council; thus, they have a vested interest in the common elements of the Alexandria House equal to their individual par value shares of the common elements.

31. The Plaintiffs are each an aggrieved party, given the proximity of their land to the area being rezoned and the violation of their due process rights by the improper exclusion in the relevant calculation of all of the land designated as common elements of the Alexandria House.

32. As indicated by the Director's staff to the City Council during the June 25 Hearing, and in the Written Determination, Exhibit B, the Plaintiffs have the ability to appeal the Director's determination to the Board of Zoning Appeal, and they are doing so, pursuant to Va. Code Ann. § 15.2-2311.

33. On information and belief, the Director determined that 381,884 sq. ft. was the total amount of land within 300 feet of the properties being amended by Rezoning No. 2011-0001.

34. On information and believe, twenty percent (20%) of the total land within 300 feet of the properties being amended by Rezoning No. 2011-0001 is 76,377 sq. ft.

35. On information and belief, the Director determined that the land area of the Alexandria House within the 300 foot area around the area being amended by Rezoning No. 2011-0001 is 82,142 sq. ft.

36. The Alexandria House's land, if properly accounted for in the Director's calculation, would have been enough land, by itself, to satisfy the twenty percent (20%) requirement.

37. On information and belief, the 82,142 sq. ft. of land being calculated by the Director as being attributed to the Alexandria House are part of the Alexandria House's common elements.

COUNT I: DECLARATORY JUDGMENT

The allegations stated elsewhere in this Complaint are incorporated into this Count by reference.

38. The City Council improperly enacted Ordinance No. 4732, attached hereto as Exhibit C and incorporated by reference.

39. The findings and determination made by the City Council as its basis for enacting Ordinance No. 4732 are inaccurate and otherwise violated required procedures.

40. In particular, findings and determinations numbers 1 and 3 of Ordinance No. 4732, Exhibit C, are inaccurate.

41. The City Council approved Rezoning No. 2011-0001 during the June 25, 2011, public hearing; however, the City Council's approval was improper and contravened applicable laws and procedure .

42. The Director's staff dismissed the importance of the determination by the Director, and the impact it had on the June 25 Hearing, by indicating to City Council that the determination of the failure of the Protest Petition could be adjudicated by the Plaintiffs and other signatories by filing an appeal to the Board of Zoning Appeals. However, that process could leave the Plaintiffs without an adequate remedy if they do not challenge the City Council's action with 30 days of its action.

43. The Director's staff told City Council at its June 25 Hearing that the Protest Petition failed for lack of satisfying the twenty percent (20%) requirement, thus signaling to City Council that not many owners of land in the immediate vicinity of the Harris Teeter Project were opposed to Rezoning No. 2011-0001 or the Harris Teeter Project, which is not true.

44. The Director subsequently issued a Written Determination stating that the Board of Directors of the Alexandria House does not have the authority under its own Bylaws and the Virginia Condominium Act to take action involving the assertion of its rights relating to the common elements, which is also not true.

45. The Protest Petition was improperly denied and the failure to give it the required effect violated the law.

46. The City Council's public hearing on the entire Harris Teeter Project and Rezoning No. 2011-0001 should have been held under the procedures and stigma established when a protest petition is upheld as valid.

47. The improper calculation of the land at issue not only divested the protest petitioners of their due process rights as tax paying landowners and residents of the City of Alexandria, but it also misled the City Council about the true level of opposition to Rezoning No. 2011-0001 and the Harris Teeter Project.

48. The City Council found and determined that all requirements of law necessary to the adoption of Ordinance No. 4732 were complied with; however, the Protest Petition was improperly denied and thus all requirements of law were not met in enacting this Ordinance No. 4732.

49. There is a genuine and material dispute as to the legality and effect of the determinations made by the Director.

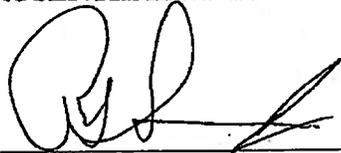
50. Additionally, there is a genuine and material dispute as to the findings and determinations made by City Council, when City Council formed its basis for passing Ordinance No. 4732 on erroneous findings and determinations and applied the wrong procedure. The Court should declare the ordinance void ab initio.

WHEREFORE, the Plaintiffs ask this Honorable Court to enter judgment declaring that Ordinance No. 4732 is void ab initio and granting such other and further relief to Plaintiffs, including but not limited reasonable attorney's fees and the costs of this action, as this Court may deem appropriate.

JERRY B. WARNER
and
JUDITH K. JONES
By Counsel

RICH ROSENTHAL BRINCEFIELD MANITTA DZUBIN & KROEGER, LLP

By:



Roy R. Shannon, Jr., VSB No. 66724
201 North Union Street, Suite 140
Alexandria, Virginia 22314
(T) (703) 299-3440
(F) (703) 299-3441
RRSHANNON@RRBMDK.COM
Counsel for Plaintiffs

STATEMENT OF REPRESENTATION AND VALIDATION THEREOF

This action is taken consistent with and pursuant to Article IV, Sections 2 and 3 of the Bylaws of the Council of Co-Owners of Alexandria House Condominium ("Council") which gives the Board of Directors the powers and duties necessary for the administration of the affairs of the Council and the responsibility to care for the common elements and facilities. In addition, this action is also taken consistent with and pursuant to Section 55-79.80B of the Virginia Condominium Act, which gives the executive organ the *"irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title with respect to the common elements including without limitation the right in the name of the unit owners' association to assert, through litigation, or otherwise, defend against, compromise, adjust and settle any claims or actions related to common elements."* This action is related and pertains to the proposed zoning map amendment for the Harris Teeter of Old Town North, Rezoning Application #2011-0001, which if approved would adversely impact and affect the common elements of the Alexandria House Condominium due to increased pedestrian traffic, vehicular traffic, light pollution, increased air pollution, noise, and other considerations, and therefore, the Board has proper authority and power under the Bylaws and under the Virginia Condominium Act to act for and on behalf of the unit owners of the Council.

As the Secretary of the Board of Directors of the Council of Co-Owners of Alexandria House, I attest to the vote taken by the Board of Directors to authorize the action of submitting the attached zoning protest petition to the City of Alexandria and for the President to speak on behalf of the Council and the Board of Directors, the executive organ of the Council with regard to this matter.

[Signature] ROBERT J. [Signature] 6/23/11
Secretary of the Board Signature Printed Name Date
[Signature]
Deputy Secretary

COMMONWEALTH OF VIRGINIA

CITY OF Alexandria

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Robert J. [Signature], whose name is signed to the foregoing Statement of Representation and Validation Thereof, has acknowledged the same before me in the aforesaid jurisdiction.

GIVEN under my hand and seal on June 23rd, 2011.

[Signature] [SEAL]

Notary Public

My Commission Expires: 7-31-12

My Identification Number: 343817

RECEIVED

JUN 24 2011

-11:01 AM [Signature]



39



KA

Formal Zoning Protest Petition to City of Alexandria

This is a formal zoning protest to the City of Alexandria, pursuant to Section 9.13 of the Charter of the City of Alexandria and Section 11-808 of the Zoning Ordinance of the City of Alexandria. The undersigned are property owners of real property located within 300 feet of the property proposed to be rezoned. The undersigned protest the proposed zoning map amendment for the Harris Teeter of Old Town North (Rezoning # 2011-0001) to be heard by the City Council on June 25, 2011. The zoning map amendment proposes to change the zoning from CD to CDD#20 at property located at 717, 719, 723, 735 N. St. Asaph Street and 716, 724 N. Pitt Street.

#	Name	Address	Signature	Tax Map # (If known)
	ALAN Shark	500 Wythe St. Alex. VA 22314	<i>Alan Shark</i>	054.04
	Nancy Blatt	500 Wythe Street Alexandria, VA 22314	<i>Nancy Blatt</i>	054.04
	Ryan Trainer Pres. ISPA	501 Wythe Street Alexandria, VA 22302	<i>Ryan Trainer</i>	054.04 0B 0A
	Melissa Viscovich	707 N. St. Asaph St. Alexandria VA 22314	<i>Melissa Viscovich</i>	
	Tri Phan	525 Wythe St. Alexandria, VA 22314	<i>Tri Phan</i>	

ALEXANDRIA HOUSE
 400 MADISON STREET
 ALEXANDRIA, VA. 22314

B X

Formal Zoning Protest Petition to City of Alexandria

This is a formal zoning protest to the City of Alexandria, pursuant to Section 9.13 of the Charter of the City of Alexandria and Section 11-808 of the Zoning Ordinance of the City of Alexandria. The undersigned are property owners of real property located within 300 feet of the property proposed to be rezoned. The undersigned protest the proposed zoning map amendment for the Harris Teeter of Old Town North (Rezoning # 2011-001) to be heard by the City Council on June 25, 2011. The zoning map amendment proposes to change the zoning from CD to CDD#20 at property located at 717, 719, 723, 735 N. St. Asaph Street and 716, 724 N. Pitt Street.

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#	Name	Address	Signature	Tax Map # (If known)
404	John F. Weimaster	400 Madison St Apt 404 Alexandria VA 22314	John F. Weimaster	0404
908	Cynthia H. Ford	400 Madison St # 908 Alexandria, VA 22314	Cynthia H. Ford	0908
1104	Charlotte F. Homan	400 Madison #1104 Alexandria, VA 22314	Charlotte Homan	1104
905	Holly Vorhies	400 Madison ST # 905 22314 Alexandria VA	Holly Vorhies	0905
802	JIMBOOTH	400 MADISON ST #802 ALEXANDRIA, VA	James E. Booth	0802
1902	Victor E. Stamey	400 MADISON ST. UNIT 1902 ALEXANDRIA, VA 22314	Victor E. Stamey	1902
610	Kareem Frank	400 Madison St. #610 Alex VA 22314	Kareem Frank	0610
1702	Victor G. Spawyer	400 MADISON ST # 1702	Victor G. Spawyer	1702

X(a)

Formal Zoning Protest Petition to City of Alexandria

This is a formal zoning protest to the City of Alexandria, pursuant to Section 9.13 of the Charter of the City of Alexandria and Section 11-808 of the Zoning Ordinance of the City of Alexandria. The undersigned are property owners of real property located within 300 feet of the property proposed to be rezoned. The undersigned protest the proposed zoning map amendment for the Harris Teeter of Old Town North (Rezoning # 2011-0001) to be heard by the City Council on June 25, 2011. The zoning map amendment proposes to change the zoning from CD to CDD#20 at property located at 717, 719, 723, 735 N. St. Asaph Street and 716, 724 N. Pitt Street.

055.03-0A-

#	Name	Address	Signature	Tax Map # (If known)
-	KENNETH HOFFMAN	400 MADISON ST, # 407 ALEXANDRIA VA	Kenneth H Hoffman	
1604	Gwen Motz	" " unit #	Gwen Motz	1604
1710	Michael WENK	400 MADISON ST # 1710 Alexandria, VA 22314	Michael Wenk	1710
1002	Burhan Rosefield	400 Madison St # 1002 VA 22314	Burhan Rosefield	1002
202	Richard W. Keneff	400 Madison St # 202 VA 22314	Richard W. Keneff	0202
202	Mary J. Keneff	400 MADISON ST # 202 VA 22314	Mary J. Keneff	0202
-	Kevin Roberts	400 Madison St # 1000 Alexandria, VA 22314	Kevin Roberts	
2206	Nancy O Kreger	400 Madison # 2206 Alexandria	Nancy O Kreger	2206

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

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#	Name	Address	Signature	Tax Map # (If known)
701	Henry M JOHNSON II	400 MADISON ST #701 ALEXANDRIA VA 22314		0701
2108	CARRETT E. (E) Shaw	400 Madison St. #2108 Alexandria, Va 22314		2108
1402	Charles E. Ratliff	400 Madison St #1402 Alexandria VA 22314		1402
310	Mary White	400 Madison Unit 310 310		0310
806	MARIE T. WEBER	400 MADISON ST #806		0806
902	Jennifer (J) L. Adams	400 Madison St #902		0902
	JAMES B.P. RING	400 MADISON ST #1201		
1406	JO A. HOOKS	400 MADISON ST #1406		1406
	Laura Ann Hutchison	400 Madison St # 808 Alexandria VA 22314		
504	VERA S. WALLER	400 MADISON ST. #, 504 ALEXANDRIA, VA 22314		0504
702	FRANCES ZORN	400 Madison St #308		

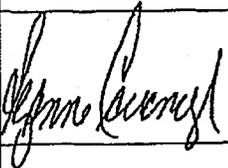
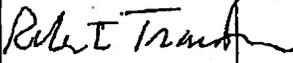
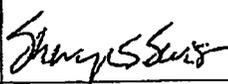
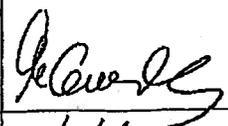
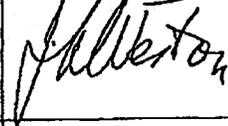
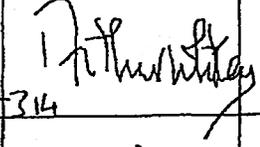
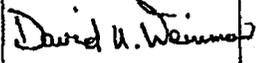
This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

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#	Name	Address	Signature	Tax Map # (If known)
1502	Marshall E. Whitenton	400 Madison St # 1502 Alexandria, VA	Marshall E. Whitenton	1502
1102	MAX A. STOLBER	400 Madison Str. - 1102 Alexandria, VA 22314	Max A. Stolber	1102
1101	WILLIAM SULLIVAN	400 MADISON ST. Apt 1101 Alexandria VA	William F. Sullivan	1101
1001	REGINA CHAPMAN	400 MADISON ST # 1001 ALEXANDRIA VA 22314	Regina Chapman	1001
2107	PATRICIA ROLAND	400 MADISON ST # 2107 ALEXANDRIA VA 22314	Patricia Roland	2107
2004	MARY L. PARRAMORE	400 MADISON ST. # 2004 Alexandria, VA 22314	Mary L. Parramore	2004
1308	ALYN H. TRAUTMAN	400 Madison St. # 1308 Alexandria, Va. 22314	Alyn H. Trautman	1308
	PANGLOSSAN, MALIA	400 MADISON ST. # 409 ALEXANDRIA, VA 22314	Malia Panglossan	
	CHARLOTTE	400 Madison St # 1402 Alexandria VA 22314	Charlotte	
2104	deborah l. halley	400 madison st # 2104 alexandria, VA 22314	d.l. halley	2104
1804	MONTABE	400 Madis	1804	1804

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

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#	Name	Address	Signature	Tax Map # (If known)
201	SUZANNE CADWANAUGH	400 MADISON ST APT 201 ALEX, VA		0201
1308	ROBERT TRAUTMAN	400 MADISON ST APT 1308 ALEX VA 22314		1308
1203	Pauline Porter	400 Madison St #1203 Alex VA 22314		1203
1801	Judith K JONES	400 Madison #1801 Alex. VA 22314		1801
1208	LOUISE KENNY	400 MADISON ST #1208 ALEXANDRIA VA 22316		1208
1109	Sheryl Swisher	400 Madison St. #1109 Alexandria VA 22314		1109
1303 1304	Marianne Gimsbury	Alexandria House Madison St. 1303 Alex. VA 22314		1303 1304
1101	JANET WESTON	UNIT 1101		
	BARBARA KAYE	400 MADISON ST # 1202 ALEX. VA. 22314		
1609	ARTHUR WHITLEY	1609 400 MADISON ST ALEXANDRIA VA 22314		1609
2008	DAVID N. WEINMAN	400 MADISON ST, APT. 2008 ALEXANDRIA, VA. 22314		2008

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#	Name	Address	Signature	Tax Map # (If known)
2008	P. D. Schoeni	400 Madison St #2106		2008
1003	ISABELLA REGI	400 Madison St 1003		1003
709	Roderick W. Clarke	400 MADISON #709		0709
502	Rick Gutwald	400 Madison St #502		0502
1602	JOHN RATHNIG	400 MADISON ST #1602		1602
508	Alice COHAN	400 Madison St #508		0508
1408	NANCY KINCAID	400 MADISON ST #1408		1408
	DAVID WEINMAN PRESIDENT	400 MADISON ST. APT. 207 ALEX., VA. 22314		0207
	DAVID WEINMAN PRESIDENT	400 MADISON ST., APT 304 ALEX., VA. 22314		0304

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

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#	Name	Address	Signature	Tax Map # (If known)
609	June Whelan ①	400 Madison St #409 Alexandria, VA 22314	June Whelan	0609
410	ANN SPENCER FLYNN	400 MADISON ST #410 ALEXANDRIA, VA 22314	Ann S. Flynn	0410
2206	Nancy Krueger ②	400 Madison St Alex VA 22314	Nancy Krueger	2206
1908	AMY LEE	400 MADISON ST. #1908 ALEX. VA 22314	Amy Lee	1908
1809	FRANCIS RISSON	400 MADISON ST #1809 ALEX VA 22314	Francis Risson	1809
1902	VICTOR E STAMEY ③	400 Madison St Unit 1902 Alexandria, VA 22314	Victor E. Stamey	1902
908	CYNTHIA H. FORD ④	400 Madison St Unit 908 Alexandria, VA 22314	Cynthia H. Ford	908
1701	Nancy G. Hamilton	400 Madison #1701 Alexandria, VA, 22314-1729	Nancy G. Hamilton	1701
1402	Anna Gummell Chris Gummell	400 Madison St # 1402 Alexandria, VA 22314	Anna + Chris Gummell	
1703 1705 1703	Jacqueline Luken	400 Madison #1705 Alexandria VA 22314 703 201 6668	Jacqueline Luken	0703 1005 1703
1509	Virginia Lester 400 Madison Alexandria	VIRGINIA LESTER	Virginia Lester	1509

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

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#	Name	Address	Signature	Tax Map # (If known)
1906	Dolores BENAVIDES	400 MADISON ST. APT 1906 ALEXANDRIA, VA. 22314	Dolores Benavides	1906
1003	ISABELLA RECI	400 MADISON ST APT 1003 ALEXANDRIA VA 22314	I. Requi	1003
1607	ARTHUR WHITNEY	400 MADISON ST APT 1607 ALEXANDRIA VA 22314	Arthur Whitney	1607
2109	Janet Pearson	400 Madison # 2109 Alexandria VA 22314	Janet Pearson	2109
2109	Paul Pearson	400 Madison # 2109 Alexandria, VA 22314	Paul Pearson	2109
507	ROBERT E. PURSLEY	400 MADISON ST #507 ALEXANDRIA, VA. 22314	Robert E. Pursley	0507
902	Jennifer L. Adams	400 Madison St # 902 Alexandria VA 22314	J Adams	0902
2103	Joel Leonard	400 MADISON ST # 2103 ALEXANDRIA VA 22314	Joel Leonard	2103
2103	Calva Leonard	400 Madison St. # 2103 Alexandria VA 22314	Calva Leonard	2103
1409	Anna Bynch	400 Madison St. # 1409 Alexandria VA 22314	Anna Bynch	1409
1807	Mollie Crockett	400 Madison St. # 1807 Alexandria VA 22314	Mollie A. Crockett	1807

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

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#	Name	Address	Signature	Tax Map # (If known)
308	Francis E. Zorn	400 Madison St # 308 Alexandria 22314	<i>Francis E. Zorn</i>	0308
1204	BEVERLY KIMES	400 MADISON ST #1204 ALEX VA 22314	<i>Beverly Kimes</i>	1204
2004	Mary L. Perramore	400 Madison St. #2004 Alexandria, VA 22314	<i>Mary Perramore</i>	2004
2108	CHRISTINA Shaw	400 Madison St. #2108 Alexandria, VA	<i>Christina Shaw</i>	2108
2109	Janet Pearson	400 Madison St. APT # 2109 Alexandria Va. 22314	<i>Janet M Pearson</i>	2109
2201 2202	REMMEL DICKINSON	400 MADISON STREET # 2201 AND # 2202 ALEX. VA 22314	<i>Remmel Dickinson</i>	2201 2202
1806	GLORIA SIKORA	400 Madison St. # 1806 Alex VA 22314	<i>Gloria Sikora</i>	1806
1303 1304	Marianne Ginsburs	400 Madison St. # 1303/04 Alex. Va 22304	<i>Marianne Ginsburs</i>	1303 1304
1706	JUNE HAJJAR	400 MADISON ST # 1706 ALEX 22314	<i>June Hajjar</i>	1706
908	CYNTHIA FORD	400 Madison #908 Alexandria VA 22314	<i>Cynthia Ford</i>	0908
1903	Willara Whitman	400 Madison St. Apt 1903	<i>Willara Whitman</i>	1903

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

055.03-0A-

#	Name	Address	Signature	Tax Map # (If known)
1802	Elizabeth R. Wiley	400 Madison St #1802 Alexandria, VA 22314	Elizabeth R. Wiley	1802
410	Charles Flynn	400 Madison St #410 Alexandria VA 22314	Charles Flynn	0410
2207	HERBERT HARMON	400 MADISON ST # 2207 ALEXANDRIA VA 22314		2207
2207	DIANE HARMON	400 MADISON ST # 2207 ALEXANDRIA VA 22314	Diane Harmon	2207
1803	JAMES MURPHY	400 MADISON ST ALEXANDRIA, VA	James Murphy	1803
1507	CHARLES BAKALY	400 MADISON ST #1507 ALEXANDRIA, VA	Charles Bakaly	1507
1309	ELIZABETH CLARK	400 MADISON ST #1309 ALEXANDRIA, VA	Elizabeth Clark	1309
303	BARBARA LOCKETT	400 MADISON ST #303 ALEXANDRIA, VA.	Barbara Lockett	0303
810	MARY TALPEY	400 MADISON ST APT 810 ALEXANDRIA, VA	Mary Talpey	0810
1704	ERICK WASHINGTON	400 MADISON APT 1704 ALEXANDRIA.	Erick Washington	1704
	Dawn Jones	400 Madison St #207 Alexandria VA 22314	Dawn Jones	

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

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#	Name	Address	Signature	Tax Map # (If known)
301	Marian de Regt	400 MADISON ST # 301	M. de Regt	0301
306	Rita Schlabach	400 Madison St # 306	Rita Schlabach	0306
2207	HENRY N. HARMON	400 MADISON ST # 2207 ALEX, VA. 22314	H. N. Harmon	2207
1503	R.F. Rodriguez	400 - MADISON ST # 1503 ALEX. VA 22314	R.F. Rodriguez	1503
1404	Susan Twitchell	400 Madison St # 1404 ALEXANDRIA VA 22314	Susan Twitchell	1404
705	Susan Twitchell	400 Madison St # 705 ALEXANDRIA VA 22314	Susan Twitchell	705
2001	Edward C. Maeder	400 Madison St. # 2001 22314 ALEXANDRIA, VA.	Ed Maeder	2001
1209	GORDON PEARSON	400 MADISON ST # 1209 ALEXANDRIA, VA	Gordon Pearson	1209

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

053.03-0A-1

#	Name	Address	Signature	Tax Map # (If known)
901	Diana Scott	400 madison #901 Alex, Va 22314	<i>[Signature]</i>	0901
1403	BOBIE SCHULNER	400 Madison St Apt #1403	<i>[Signature]</i>	1403
1608	Barbara J. Bamford	400 madison st Apt 1608 Alex, 22314	Barbara J. Bamford	1608
1103	CHRISTINA M. GRAHAM	400 MADISON ST # 1103 ALEX, VA 22314	<i>[Signature]</i>	1103
609	June ^(P) Whelan	400 madison st #609 Alexandria, Va 22314	<i>[Signature]</i>	0609

14

Formal Zoning Protest Petition to City of Alexandria

This is a formal zoning protest to the City of Alexandria, pursuant to Section 9.13 of the Charter of the City of Alexandria and Section 11-808 of the Zoning Ordinance of the City of Alexandria. The undersigned are property owners of real property located within 300 feet of the property proposed to be rezoned. The undersigned protest the proposed zoning map amendment for the Harris Teeter of Old Town North (Rezoning # 2011-0301) to be heard by the City Council on June 25, 2011. The zoning map amendment proposes to change the zoning from CD to CDD#20 at property located at 717, 719, 723, 735 N. St. Asaph Street and 716, 724 N. Pitt Street.

055-03-0A

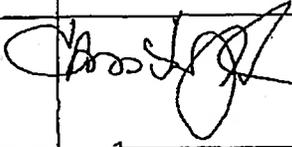
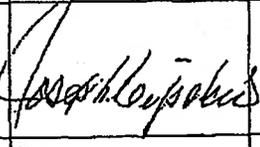
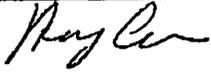
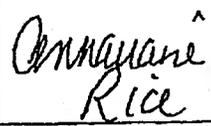
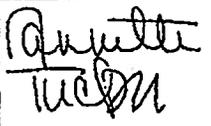
#	Name	Address	Signature	Tax Map # (if known)
1802	Robert H. Willey Jr.	#1802 400 Madison St Alexandria VA 22314		1802

Signed: 04, 02, 08

15

This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

055.03-0A-

#	Name	Address	Signature	Tax Map # (If known)
505	CHRISTINA Dunn	400 Madison St. # 505		0505
5101	Joseph Leipalain	400 Madison St. apt 501		0510 0501
1205	Helen Samuel	400 Madison St. #1205		1205
1401	Mary Ann Mary Cobb	400 MADISON ST. 1401		1401
303	Annamani Rice	400 Madison St apt 303		0303
0206	Annelle Webb	400 Madison St. # 206		0206

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This signature page is part of the formal zoning protest petition regarding the Harris Teeter of Old Town North (Rezoning # 2011-0001).

055-03-0A-

#	Name	Address	Signature	Tax Map # (If known)
2102	Elizabeth Betty Kuehnle	400 Madison St. #2102	Elizabeth Kuehnle	2102
1706	JUNE HAJJAR	400 Madison #1706	June Hajjar	1706
405	JAMES Ringle	400 Madison St. #405		0405
1207	Richard Duffin	1207 Madison St		1207
902	ROBIN ANNALS	400 TADSON St. #902		0902

Roy Shannon

From: Joanna Anderson <Joanna.Anderson@alexandriava.gov>
Sent: Thursday, July 21, 2011 12:02 PM
To: Roy Shannon (rrshannon@rrbmdk.com)
Cc: James Banks; Barbara Ross
Subject: FW: Harris Teeter Protest Petition

Hi Roy: In follow up to our conversation, below please find the email that was sent to Mr. Wenk of the Alexandria House setting out the director's determination about the protest petition that was presented verbally on June 25.

Please let me know if you have any questions regarding this matter.

Joanna

From: Faroil Harner
Sent: Thursday, July 21, 2011 10:52 AM
To: MgwScrp03@aol.com
Cc: ombudinc@aol.com; Joanna Anderson; Barbara Ross
Subject: Harris Teeter Protest Petition

Dear Mr. Wenk:

You have requested that we set out in writing our determination, made on June 24, 2011 and presented verbally to City Council at its June 25, 2011 public hearing, that the protest petition filed with regard to the Harris Teeter rezoning (REZ #2011-0001) was insufficient to require a supermajority vote by Council under the Zoning Ordinance and City Charter.

Under sections 9.13 of the City Charter and 11-808 of the Zoning Ordinance, Council is required to approve a rezoning application by supermajority vote if a petition protesting the rezoning is filed by the owners of 20% of the land within 300 feet of the boundaries of the subject property. See Section 11-808(A)(2). In this case, a petition was timely filed on June 24, 2011. After reviewing the petition, the Director of Planning and Zoning determined that, even if every signature on the petition was counted, ignoring questions raised by several signatures about whether they should be counted, the signatures represented an insufficient amount of land to trigger a supermajority vote.

As to the methodology employed, staff reviewed each and every one of the signatures to determine if the signature matched the title owner's name on the city's real estate records. The land area represented by the signatures was computed and compared to the amount of land that is 20% of the land within 300 feet of the boundaries of the subject property.

Many of the signatories on the petition were Alexandria House condominium owners. In addition to the actual petition, the acting secretary of the Board filed a single page document which states that the Board has the power under the Board Bylaws and state law to act as an attorney-in-fact on behalf of all owners of the condominium building in regard to certain matters relating to the common elements and attested to a vote of the Board of Directors which authorized the act of submitting the zoning protest petition and authorizing the Board President to speak on behalf of the Council and the Board.

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As to the question of methodology when part of the relevant land is held in condominium ownership, and after consultation with the City Attorney's office, the Director's determination took into consideration the following two issues:

1. Whether the Condominium Act, under section 55-79.80 of the state code, gives a condo Board the authority to speak for all of its owners as to their opposition to a zoning matter, in this case specifically a protest petition.

The Director determined that for purposes of a protest petition under section 11-808, a condo Board does not have the authority to speak for all owners of the entire land area, and that to allow it to do so would deprive individual owners of their due process rights to speak as to land use issues.

2. Whether the petition, including the document filed by the Secretary of the Board, was an action by the board to sign the petition on behalf of all of the unit owners.

The Director determined that even if the answer to the first question was different – that a condo Board had the power to speak for all owners as to a zoning protest petition – in this case, the Board president had not signed the petition on the behalf of all condo owners and the document filed with the petition by the Board secretary did not officially and properly state the Board's opposition to the rezoning.

We hope the above explanation is helpful to you. As we discussed when we met, given the fact that the Council decision to adopt the rezoning of the property for the Harris Teeter project was unanimous, the issue of whether the protest petition filed in regard to the rezoning is moot and we do not think it appropriate for the BZA to be deciding a case if there is no current matter in controversy.

You may have the right to appeal this decision within thirty days in accordance with Section 15.2-2311 of the Code of Virginia. The decision shall be final and unappealable if not appealed within thirty days.

Faroll Hamer, Director
Department of Planning and Zoning
City of Alexandria
301 King Street
Alexandria, VA 22314
703-746-4666
Faroll.Hamer@alexandriava.gov

ORDINANCE NO. 4732

AN ORDINANCE to amend and reordain Sheet No. 054.04 of the "Official Zoning Map, Alexandria, Virginia," adopted by Section 1-300 (OFFICIAL ZONING MAP AND DISTRICT BOUNDARIES), of the City of Alexandria Zoning Ordinance, by rezoning the property at 717, 719, 723, 735 N. St. Asaph Street and 716 N. Pitt Street from CD/Commercial Downtown to CDD #20/Coordinated Development District #20 in accordance with the said zoning map amendment heretofore approved by city council as Rezoning No. 2011-0001.

WHEREAS, the City Council finds and determines that:

1. In Rezoning No. 2011-0001, the planning commission, having found that the public necessity, convenience, general welfare and good zoning practice so require, recommended approval to the City Council on June 7, 2011 of a rezoning of the property at 717, 719, 723, 735 N. St. Asaph Street and 716 N. Pitt Street from, CD/Commercial Downtown to CDD #20/Coordinated Development District #20, which recommendation was approved by the City Council at public hearing on June 25, 2011;
2. The said rezoning is in conformity with the 1992 Master Plan of the City of Alexandria, Virginia, as amended;
3. All requirements of law precedent to the adoption of this ordinance have been complied with; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Sheet No. 054.04 of the "Official Zoning Map, Alexandria, Virginia," adopted by Section 1-300 of the City of Alexandria Zoning Ordinance, be, and the same hereby is, amended by changing, in the manner set forth below, the zoning classification of the property hereinafter described:

LAND DESCRIPTION: 717, 719, 723, 735 N. St. Asaph Street and 716 N. Pitt Street with Tax Map Nos 054.04-10-01, 054.04-10-02, 054.04-10-03, 054.04-10-04, and 054.04-10-05 as shown on attached drawing labeled Attachment #1/Rezoning 2011-0001.

From: CD/Commercial Downtown

To: CDD #20/Coordinated Development District #20

Section 2. That the director of planning and zoning be, and hereby is, directed to record the foregoing amendment on the said map.

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Section 3. That Sheet No. 054.04 of the "Official Zoning Map, Alexandria, Virginia," as so amended, be, and the same hereby is, reordained as part of the City of Alexandria Zoning Ordinance.

Section 4. That this ordinance shall become effective on the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Final Passage: June 28, 2011

DISTRICT NO. 1

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6-28-11 ~~6-25-11~~

Introduction and first reading: 6/25/11
Public hearing: 6/28/11
Second reading and enactment: 6/28/11

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Sheet No. 054.04 of the "Official Zoning Map, Alexandria, Virginia," adopted by Section 1-300 (OFFICIAL ZONING MAP AND DISTRICT BOUNDARIES), of the City of Alexandria Zoning Ordinance, by rezoning the property at 717, 719, 723, 735 N. St. Asaph Street and 716 N. Pitt Street from CD/Commercial Downtown to CDD #20/Coordinated Development District #20 in accordance with the said zoning map amendment heretofore approved by city council as Rezoning No. 2011-0001.

Summary

The proposed ordinance accomplishes the final adoption of Rezoning No. 2011-0001, to rezone the property at 717, 719, 723, 735 N. St. Asaph Street and 716 N. Pitt Street from CD/Commercial Downtown to CDD #20/Coordinated Development District #20.

Sponsor

Department of Planning and Zoning

Staff

Faroll Hamer, Director of Planning and Zoning
Joanna C. Anderson, Assistant City Attorney

Authority

§§ 2.04(w), 9.12, Alexandria City Charter
§ 11-800, City of Alexandria Zoning Ordinance

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. _____

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THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

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Section 4. That this ordinance shall become effective on the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Introduction: June 25, 2011
First Reading: June 25, 2011
Publication:
Public Hearing:
Second Reading:
Final Passage:

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