

Memo to BZA from Barbara Ross, Deputy Director, Planning and Zoning

Subject: Findings and Fact and Conclusions of Law in BZA #2011-0013

Attached is staff's proposed Findings for the Board's consideration on December 8, 2011. We have discussed them with the appellants but, to date, have not received any suggested revisions.

THE BOARD OF ZONING APPEALS
OF THE CITY OF ALEXANDRIA

BZA Case 2011-0013

Findings of Fact and Conclusions of Law

This matter came before the Board of Zoning Appeals (“BZA”) for hearing on November 10, 2011 on appeal by Judith Jones and Jerry Warner by Counsel from the Director of Planning and Zoning’s (“Director”) determination regarding a protest petition filed pursuant to section 11-808 of the Zoning Ordinance (“Determination”).

At the conclusion of the public hearing on the matter, the BZA voted to deny the petition of appeal on the grounds that the appellant is not an aggrieved party and the case is moot. The BZA made the following findings of fact and conclusion of the law to support this decision:

1. Section 11-808 of the Zoning Ordinance provides a procedure by which citizens who oppose a rezoning of property can require that the City Council only approve the rezoning with a $\frac{3}{4}$ majority vote.
2. The City Council’s vote on REZ # 2011-0001, rezoning the property adjacent to appellant’s property was approved by the City Council with a unanimous (7-0) vote on June 25, 2011.
3. Section 11-1203 of the Zoning Ordinance requires that a party be aggrieved in order to appeal a decision of the Director of Planning and Zoning to the Board of Zoning Appeals.
4. In order to be aggrieved, the appellant must be able to show that there is some denial of a personal or property right.
5. The appellant is not aggrieved because Section 11-808 of the Zoning Ordinance requires a $\frac{3}{4}$ majority vote on a rezoning and the City Council voted unanimously on this rezoning, therefore, there is no denial of any right.
6. The matter is moot and there is no justiciable case for the Board of Zoning Appeals to decide, given the unanimous vote by City Council.

Appellants' Proposed Findings of Fact
and Conclusions of Law for BZA
#2011-0013

THE BOARD OF ZONING APPEALS OF THE CITY OF ALEXANDRIA

BZA Case 2011-0013

Appellants' Proposed Findings of Fact and Conclusions of Law

This matter came before the Board of Zoning Appeals ("BZA") for hearing on November 10, 2011 on appeal by Judith Jones and Jerry Warner ("Appellants") by Counsel from the Director of Planning and Zoning's ("Director") determinations regarding a protest petition filed pursuant to Section 11-808 of the Zoning Ordinance ("Determinations").

At the conclusion of the public hearing on the matter, the BZA members deliberated and voted to deny the appeal on the grounds that the Appellants did not have standing as an aggrieved party. The BZA makes the following findings of fact and conclusion of the law to support of this decision:

1. The BZA found that Section 11-808 of the Zoning Ordinance provides a procedure where owners of at least 20% of the land within 300 ft of the boundaries of the land proposed to be rezoned may file a petition with the City Council and the City Council may not approve the rezoning except by an affirmative vote of three-fourths of its members (6-1).
2. The BZA found that the Appellants were owners of land within the 300 ft of the boundaries of the land to be rezoned, signatories to the timely filed protest petition, and unit owners in the Alexandria House Condominium.
3. The BZA found that the Director made certain Determinations that deemed the protest petition signed by the Appellants as invalid and that the City Council only needed an affirmative simple majority vote (4-3) to approve the underlying rezoning at issue ("REZ # 2011-0001").
4. The BZA found that the City Council unanimously voted (7-0) to approve REZ # 2011-0001 on June 25, 2011.
5. The BZA found that the Appellants were not an aggrieved party.
6. The BZA concluded that when the City Council only needed a simple majority (4-3) to approve REZ # 2011-0001 and the City Council unanimously voted (7-0) to approve REZ # 2011-0001, the City Council essentially afforded the Appellants the same benefit of a valid protest petition, because under a protest petition the City Council would have only been informed of the requirement for a three-fourths majority vote to approve the rezoning and then the City Council would have had to actually vote at least 6-1 in favor of the rezoning.

7. The BZA concluded that a requirement for the City Council to hold a public meeting and vote knowing that it needed to approve a measure by a three-fourths vote (6-1) is not relevant and deemed moot if the City Council's vote is unanimous, even if the City Council was not informed of the existence of a protest.

BZA Dissenting Members' Findings of Fact and Conclusions of Law

8. The Dissenting members of the BZA concurred with paragraphs 1, 2, and 4.
9. The Dissenting members of the BZA found that the City staff has never in their tenure provided a staff report to the BZA taking the position that an appellant before the BZA was not an aggrieved party and this appeal was the first case the staff asserted this position.
10. The Dissenting members of the BZA found that the Appellants were an aggrieved party and that the BZA should hear the Appellants' Appeal and make a decision on the Director's Determinations.
11. The Dissenting members concluded that had the Director determined that the protest petition was valid and City Council held the public meeting knowing that to approve the REZ # 2011-0001, it would require a three-fourths (6-1) affirmative vote, there is no guarantee or way to conclude that the City Council's vote would have necessarily been unanimous or 6-1 in favor of the rezoning under those circumstances, thus the Director's Determinations are not made moot by the City Council's unanimous vote.