

**W-1/WATERFRONT MIXED USE ZONE TEXT AMENDMENT
BZA #2012-0003, BZA #2012-0004, BZA #2012-0005
APPEAL
APRIL 12, 2012**

Staff Report Responding to Appeal

- City's Staff Report
 - o Exhibit A: January 24, 2012 Determination Letter
(pg. 12)
 - o Exhibit B: May 14, 2011 City Council Staff Report on
Master Plan Amendment 2011-0001 and Text
Amendment #2011-0005 (pg. 15)
 - o Exhibit C: Meeting minutes from the May 14, 2011
meeting (pg. 64)

Docket Item #1A-C
BZA Case #2012-0003,
#2012-0004, #2012-0005

Board of Zoning Appeals
April 12, 2012

Address: Not applicable
Zone: W-1/Waterfront Mixed Use Zone
Appellants: April Burke, Elizabeth Gibney, Marie Kux (BZA #2012-0003)
Michael Peck (BZA #2012-0004)
Elizabeth Baldwin (BZA# 2012-0005)
Issue: Determination by Director that the protest petition filed against Text Amendment 2011-0005 was invalid.

SUMMARY OF THE CASE ON APPEAL

This case involves the requirements for a protest petition under section 11-808 of the Zoning Ordinance and relates to the City Council's approval of the Waterfront Small Area Plan. Residents who live near the Alexandria waterfront opposed both the Waterfront Small Area Plan and Text Amendment #2011-0005 which changes the terms of the W-1/Waterfront Mixed Use zone to allow additional development pursuant to the Waterfront Small Area Plan ("Text Amendment"). The appellants were part of a group of residents who signed a petition attempting to require a super majority (6-1) vote by City Council on the Text Amendment. The Director of Planning and Zoning ("Director") reviewed the protest petition and determined that Section 11-808 does not allow for protest petitions in the case of a text amendment but instead is limited to only map amendments, otherwise known as rezonings. The appellants disagree and appealed the Director's decision. This BZA appeal pertains only to the Text Amendment.

BACKGROUND

In the Spring of 2009 the Alexandria Department of Planning and Zoning began the task of planning an amendment to the City of Alexandria Master Plan to incorporate a new Small Area Plan for the Waterfront area of the City ("Master Plan Amendment"). The planning process involved numerous community meetings, charrettes, tours of the Alexandria waterfront and other waterfronts as well as meetings with various boards and commissions of the City including the Planning Commission and City Council. This process culminated in February of 2011 when a draft Waterfront Small Area Plan was released. The matter was brought forward to the Planning Commission in April 2011 and consisted officially of two components: (1) a master plan amendment recommending approval of the Waterfront Small Area Plan and (2) the Text Amendment fashioned to implement some of the changes contemplated by the Master Plan Amendment. The Planning Commission, after holding two public hearings, voted to initiate both the Master Plan Amendment and the Text Amendment and recommended approval of both items to the City Council.

On May 14, 2011, the City Council held its first public hearing on the Master Plan Amendment and the Text Amendment. After taking public testimony, City Council voted to defer action on both items. After further discussion, City Council convened an advisory group of stakeholders to discuss the differences among the community members about the Master Plan Amendment and Text Amendment. In December 2011, the Waterfront Plan Workgroup, after meeting for 6 months, issued a report to City Council regarding their findings about the Master Plan Amendment and Text Amendment. City Council accepted the report on January 10, 2012 and scheduled its second public hearing on the Master Plan Amendment and Text Amendment for January 21, 2012.

On January 19, 2012, a number of Alexandria landowners, including appellants April Burke, Elizabeth Gibney, Marie Kux, Michael Peck and Elizabeth Baldwin (collectively "the Landowners"), filed a petition protesting the proposed Text Amendment ("the Protest"). *See Ex. A to Appeal Appl.* Their petition was filed pursuant to Section 11-808 of the Zoning Ordinance and Section 9.13 of the City Charter.

On January 20, 2012, three of the appellants attempted to appeal the director's decision even though no decision had yet been made. The Department of Planning and Zoning staff correctly rejected the appeal because there was no decision yet to be appealed.

On January 21, 2012, the City Council held the second public hearing on the Master Plan Amendment and the Text Amendment and, after an all-day session, approved both items by a 5-2 vote. On the morning of the January 21, 2012 public hearing, the Director issued her oral determination that the Landowners' Protest was invalid to the City Council and informed them that a super majority vote on the Text Amendment was not required. Section 11-808 of the Zoning Ordinance does not have any provision requiring that the Director make her decision known to the petitioners ahead of time. In fact, since the petitions typically include numerous signatories and do not require that the signatories include contact information, it would be difficult for her to contact the signatories to let them know ahead of time whether the petition is valid or not. Additionally, Section 11-808(E)(1) indicates that no changes can be made to the petition after the deadline so there would be no need for the signatories to know ahead of time because they would not be allowed to amend the petition to fix any default anyway. Therefore, in accordance with the requirements of Section 11-808, the Director informed City Council of the petition and her determination at the hearing.

During the afternoon of City Council's public hearing, several hours after the Director made her determination, three of the appellants again attempted to appeal her decision. At this point, a decision had been made, however the Department of Planning and Zoning was not open for the processing of appeals on that Saturday during the City Council's public hearing. The Department of Planning and Zoning necessarily has a process that it must follow for any filing of an application. That process involves a review of the application material to ensure that all parts of the application are provided and a processing of the filing fee including providing a receipt to the applicant. The application filed by the three appellants was left by the appellants' attorney in the City Council Chambers. The appellants' attorney was promptly informed that the appeal would not be accepted by the staff that just happened to be in the City Council chambers on that

day and instead he was told that he must file it in the proper manner during regular business hours.¹

In addition to her verbal determination on January 21, and in response to a written request for a determination about the validity of the protest petition, on January 24, 2012, the Director issued a written determination explaining the reasons for her decision. A true and accurate copy of the Director's determination letter is attached as **Exhibit A**. Specifically, the Director determined that because § 11-808 of the Zoning Ordinance contemplates protests only to map amendments and not text amendments, the City Council did not need a supermajority vote to approve the Amendment. *See id.*

The Landowners have now appealed the Director's determination to the Board of Zoning Appeals ("the BZA"). In their appeal the Landowners raise one issue: that the Director's decision was incorrect. They contend that the supermajority vote requirement of § 11-808 applies to both map amendments and to text amendments. Appeal Appl., at 7.²

Protest Petition Provision

The Zoning Ordinance provides a mechanism whereby landowners adjacent to a rezoning site 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 (6-1) 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.**

¹ Note, appellants Burke, Gibney and Kux filed an action in the Alexandria Circuit Court to require the Director of Planning and Zoning to have accepted the appeal during the Saturday hearing. On March 16, 2012, the Court rejected their case and granted the City's Motion to Dismiss on the grounds that the Court had no authority to require the Director of Planning and Zoning to accept the appeal at that time. *Burke et al v. Hamer et al*, CL11001432.

² Although appellants Burke, Gibney and Kux recently filed Second Supplement appears to raise a number of other procedural issues under its "Background" section, even the Second Supplement acknowledges, under "Analysis" that there is only the one issue relating to text amendments properly appealed. See Second Supplement to Part B, Case #2012-0003, page 9.

(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 provision is a protection for property owners in cases involving map amendments, otherwise known as rezoning cases. Where the City initiates a rezoning against the wishes of the property owners of the parcel being rezoned, the owners may protest the rezoning under section 11-808. If a property owner asks for rezoning but property owners who live within 300 feet of the property to be rezoned 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 the City Council. The provision is specific to rezoning cases only.

The authorization for this provision to be included in the Zoning Ordinance comes from Section 9.13 of the Alexandria City Charter. Section 9.13 of the Charter provides:

Sec. 9.13 - Effect of protest by twenty per cent of the owners of property.

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-fourths affirmative votes of the members of council. Streets, alleys and lands dedicated to public use or lands owned by the city, Commonwealth, or federal government shall not be included in computing the abovementioned areas.

Any such protest shall be filed not later than 12 o'clock noon on the last working day before the day on which a public hearing on the application or motion is first conducted by the city council. Once any such protest has been filed no changes thereto by way of addition, substitution, amendment or withdrawal, may be made after said 12 o'clock noon deadline. (Emphasis Added)

ARGUMENT

The Director's determination should be affirmed for three reasons. First, the Director was correct in deeming the Protest invalid because § 11-808 of the Zoning Ordinance and § 9.13 of the Alexandria City Charter apply only to map amendments. Second, regardless of whether the protest provision applies to text amendments or not, the Protest is untimely under § 11-808(B). Lastly, the Director's determination is entitled to substantial deference and should not be disturbed because it was based on a reasonable interpretation of the Zoning Ordinance.

A. Section 11-808 of the Zoning Ordinance does not apply to Text Amendments.

In their appeal the Landowners contend that the Director improperly concluded that § 11-808 does not apply to text amendments. *See* Ex. A to Appeal Appl. In doing so, the Landowners rely on a single sentence in the ordinance, namely that “[i]f 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.” ALEXANDRIA, VA., ZONING ORDINANCE § 11-808(D).³

The Landowners' argument completely ignores the fact of law in Virginia that the local government only has the power to do that which the General Assembly has granted it the power to do. One quick review of Section 9.13 of the City Charter, the section that provides the authorization for Section 11-808 of the Zoning Ordinance, shows not only that 11-808 must legally be limited to map amendments, but that the word “text” in 11-808(D) was referring to the

³ Appellants Burke, Gibney and Kux raise a second argument which is that the mere reference to the height district map in the Text Amendment converted the text amendment to a map amendment. The reference to the height district map did not amend the map itself, it merely references the existing map rather than listing what the map shows. By appellants' reasoning, the fact that each zone is shown on the zoning map and therefore only applies in specific locations would render the entire zoning text a map, and a change to the zoning text would then become a change to the boundaries of a zone. This would be an absurd result, ignoring all distinction between map and text, something even appellants do not suggest.

text of a proffer which is a part of a map amendment not to the text of the Zoning Ordinance. Additionally, the Landowner's argument ignores the language of the remainder of § 11-808 and the distinct difference between a text amendment and a map amendment. Lastly, even if the language used in Section 11-808(D) to describe proffers could be subject to multiple interpretations and therefore considered ambiguous, it must be construed accordingly. *Virginia-Am. Water Co. v. Prince William Serv. Auth.*, 246 Va. 509 (1993).

a. The City is legally bound by what is authorized by Section 9.13 of the City Charter.

“The Dillon Rule of strict construction controls [the] determination of the powers of local governing bodies.” *City Council of Alexandria v. Lindsey Trusts*, 258 Va. 424, 427 (1999) (citations omitted). The Dillon Rule provides that “municipal corporations have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.” *Bd. of Zoning Appeals v. Bd. of Supervisors*, 276 Va. 550, 552 (2008). Because municipalities exist solely as local agencies of the state, they can act only when clearly authorized by the law-making power. *Whiting v. Town of West Point*, 88 Va. 905, 906 (1892). “If there is a reasonable doubt whether legislative power exists, the doubt must be resolved against the local governing body.” *Bd. of Supervisors v. Reed's Landing Corp.*, 250 Va. 397, 400 (1995).

In applying the Dillon Rule, the first step is to examine the applicable statute to determine whether the General Assembly expressly granted a particular power to the municipality. *City of Chesapeake v. Gardner Enters.*, 253 Va. 243, 246-47 (1997). If the power is not expressly granted, the next step is to determine whether the power can be fairly implied from the powers expressly granted by the statute. *Gardner Enters.*, 253 at 247. “To imply a particular power from a power expressly granted, it must be found that the legislature intended that the grant of the express also would confer the implied.” *Commonwealth v. Bd. of Arlington Cnty.*, 217 Va. 558, 577 (1977). The intent of the legislature is discerned from the plain meaning of the words in the statute. *City of Richmond v. Confrere Club of Richmond*, 239 Va. 77, 80 (1990).

The relevant legislative enactment in this case, through which the General Assembly has enabled the City of Alexandria to act, is the Alexandria City Charter. On its face, the City Charter Section 9.13, in authorizing protest petitions, allows them exclusively as to map amendments. The City Charter requires a three-fourths vote of the City Council members only with respect to protests “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.” ALEXANDRIA, VA., CITY CHARTER § 9.13 (1950). In other words, the three-fourths voting requirement is triggered only if the protest concerns: (1) an amendment of zoning boundaries; or (2) an amendment of a conditional zoning proffer or zoning condition. *Id.*

Neither amendment described in Section 9.13 contemplates text changes to the Zoning Ordinance. The first category falls squarely within the definition of a map amendment, which is defined as “a proposal to change the boundaries established by the official zoning map.” ZONING ORDINANCE § 11-801. Similarly, conditional zoning exists in the context of and “[a]s part of an application for a map amendment.” ZONING ORDINANCE § 11-804. In contrast to a map amendment, a text amendment does not address either boundaries of a zone or conditional

zoning, but merely seeks to “supplement, change, modify or repeal the provisions of the *text* of this ordinance.” ZONING ORDINANCE § 11-801.

Because text amendments are specifically excluded from § 9.13 and the General Assembly specifically chose to use the words map amendment and amendment of conditional zoning proffer which have very different meaning than text amendment, the City does not have an express or implied power to require a three-fourths City Council vote when a text amendment is involved. To the contrary, the plain meaning of the words in § 9.13 suggests that in enacting the City Charter the General Assembly did not intend to extend the three-fourths voting requirement to text amendments and therefore, the City has no legal authority to allow the protest petition provision to apply to text amendments.

b. Statutory Construction rules require the interpretation that Section 11-808 applies to map amendments only and not to text amendments.

Under the principles of *expressio unius est exclusio alterius*, an expression of one thing implicates direct exclusion of others. *Trustees of Am. Bank v. McComb*, 105 Va. 473, 477 (1906). Here, § 11-808(A) requires a protest to be signed by 20% of owners of either “[t]he land proposed to be rezoned by the *map* amendment” or “[a]ll land within 300 feet of the boundaries of the land proposed to be changed by the *map* amendment.” (emphasis added).

According to the principles of construction articulated in *McComb*, the express inclusion of map amendments in § 11-808(A) works to exclude text amendments from its scope. To hold otherwise would result in an absurd application of § 11-808(A). Specifically, calculating the ownership requirement would be impossible with respect to a text amendment. Because a text amendment does not modify physical aspects of a zone but merely deals with the text of the ordinance, the Director would not have a defined corporeal area within which the protesters would have to reside to qualify under § 11-808(A).

Additionally, subsection (A) of § 11-808 which addresses only map amendments must prevail because it is more specific than subsection (D). *Commonwealth ex rel. Virginia Dep't of Corrections v. Brown*, 259 Va. 697, 706 (2000). For example in *Brown*, the Court held that the code section that generally enabled the courts to issue orders in aid of their jurisdiction gave way to the specific section that empowered the courts to issue transportation orders for prisoners. *Brown*, 259 Va. at 706. Similarly here, § 11-808(A), which specifically describes the protest procedure solely in the context of map amendments, must prevail over § 11-808(D) which only generally mentions protests to “text and map amendments.” Furthermore, with respect to zoning in particular, zoning ordinances should be given a construction that supports the intent of the legislature. *VEPCO v. Bd. of Cnty. Supervisors of Prince William Cnty.*, 226 Va. 382 (1983). An ordinance that is ambiguous must be construed with related statutes as to give meaning and effect to the provisions of each. *Lillard v. Fairfax Cnty. Airport Auth.*, 208 Va. 8, 13 (1962).

Therefore, to avoid meaningless application of § 11-808 and to acknowledge that the more specific language in a statute governs over the less specific, the BZA should hold that § 11-808 in general and the supermajority vote requirement in particular was intended to apply to map amendments only and do not apply to text amendments.

- c. The language in Section 11-808(D) was intended to refer to the "text" of a proffer condition, not the text of the Zoning Ordinance.*

While it is true that the language in Section 11-808(D) uses the term "text" and may on first glance appear to refer to the type of "text" change defined by the Zoning Ordinance as a "text amendment", there are several conclusive reasons that the one word cannot be made to give the entire protest provision meaning it does not and cannot legally have.

First, the Charter, under Section 9.13 is the source of the city's power as to the protest process. The Charter unequivocally gives the City power as to protests in only two contexts: (1) a map amendment or rezoning and (2) the text of a proffer. If there is any word, intent, meaning, or provision in the Zoning Ordinance intending to do or even *doing* something beyond the Charter it is a nullity and without effect. The City may not proceed and act on that void interpretation. The City is not free to enact laws for which it does not have authority. That is the teaching of the Dillon Rule. Yet that is precisely what the appellants here suggest that the City should do and that the BZA should confirm.

However, the word text in Section 11-808(D) does have a meaning, just not the meaning that appellants argue it does. Very simply, reading all of the statutes together, as the Board must do, makes it clear that the word "text" was meant to refer only to the *text* of proffer conditions, not the text of the Zoning Ordinance. A zoning proffer or condition is specific language that accompanies a zoning map and part of what is known in Virginia as conditional zoning. Proffers, also known as a proffered rezoning, are considered to be a part of the zoning map, thus any change to the text of a proffer constitutes a rezoning of land and does trigger the protest petition provision. Thus, what the word "text" means in the proffer context is the text of a proffer, which can be changed by a rezoning procedure and when a change is suggested, can be challenged by a protest petition. Given the limitations of the Charter, that is the only thing it can mean, and that is what it has always been read to mean.

Second, map amendments and text amendments are two very different zoning mechanisms. Map amendments and text amendments are both generally addressed in the Zoning Ordinance as "zoning amendments" in Section 11-800, however the ordinance purposefully distinguishes between the two throughout. As an initial matter, they are defined differently by Section 11-801 of the Zoning Ordinance. First, a text amendment is "a proposal to change the boundaries established by the official zoning map." ZONING ORDINANCE § 11-801. On the other hand, a map amendment is considered an action to "supplement, change, modify or repeal the provisions of the *text* of this ordinance." ZONING ORDINANCE § 11-801. In addition, Section 11-806 of the Zoning Ordinance addresses action on motion for text amendment while Section 11-807 addresses the action on motion for a map amendment. When the intent is for a section to apply to one or the other type of zoning amendment, the ordinance calls it out specifically.

This distinction between map amendments and text amendments is not unique to the City's Zoning Ordinance, it is a cornerstone of zoning in general. The official zoning map and the official zoning ordinance are two very distinct tools used in zoning in very different ways. The map is specific to each particular piece of property and it affects the property more directly while the text of the ordinance applies generally and is considered to affect properties more

indirectly. Many of the requirements for each kind of amendment show this distinction. For example the notice required for a rezoning includes written notice to adjacent property owners and newspaper notice, while the notice required for a text amendment only requires newspaper notice.

Finally, the Director's reading of the Zoning Ordinance and Charter is the only one that makes sense. The remainder of the language of Section 11-808 is directed to specific land areas, properties, measurement, dimensions, and property owners. Those measurements, locations and specific findings as to specific properties cannot be made for a text amendment that applies to an entire zone. In this case the text amendment changes heights and density for some parcels **and uses for every property within the entire W-1 zone**. See Staff Report for Master Plan Amendment #2011-0001 and Text Amendment #2011-0005 attached hereto as **Exhibit B**, specifically pages 13-15 and 19-23 for discussion of the Text Amendment.⁴ Being part of a generalized ordinance change applicable to everyone within the zone, and being part of a text change, not a map change, a protest petition is not available.

Therefore, taking all of the specific language about map amendments in Section 11-808 and the fact that ambiguous language must be construed with related statutes, it becomes clear that the intent of the word "text" in Section 11-808(D) was that the protest petition provision applies to applications for amendments to the text of a zoning proffer or condition, which is considered the same as a map amendment or rezoning in the Zoning Ordinance. The use of the word "text" which is the same word used to describe amendments to the Zoning Ordinance does not change the fact that the Charter Section authorizing this provision clearly explains what was meant, or what legally could be meant, by the word text in this context. The protest petition provision has never been applied, nor could it legally be applied, to a text amendment. Therefore, the only legally permissible result is that the word "text" in Section 11-808(D) must be referring to the text of a proffer as directly contemplated by the City Charter.

Thus, the BZA should affirm the Director's determination that § 11-808 does not apply to text amendments. Holding otherwise would be inconsistent with the Dillon Rule, the City Charter, and the long-standing principle that a more specific legislative provision must prevail over a general one.

⁴ The relevant documents in this case have all been provided to the BZA either as attachments to this memo, or as attachments to the appellants' applications. Appellants Burke, Gibney and Kux make a claim in their Second Supplement to Part B that additional documents should be identified and that the Director of Planning and Zoning is not entitled to attorney client privileged communications with the City Attorney's office. It cites no authority for such a claim. The documents referenced by appellants are entitled to be withheld from a FOIA request by Section 2.2-3705.1(2) of the Virginia Code and Section 9.17 of the City Code does not require the Director to waive the long standing tenant of the attorney-client privilege. Additionally, appellants request that the BZA conduct an evidentiary hearing with witnesses and testimony. Appellants cite Section 15.2-2312 of the Virginia Code as the authority for the BZA to call witnesses and take testimony. However, it is Sections 9.16 through 9.19 of the City Charter that govern the BZA's procedures not Section 15.2-2312 of the State Code. The Alexandria BZA takes its testimony by giving every party the opportunity to be heard, either in person, by agent or by attorney. See City Charter Section 9.17. We see no reason why the BZA would vary its practice in this case.

B. The Protest is Untimely.

Regardless of whether the Director and/or the BZA were to find that Section 11-808 of the Zoning Ordinance applies to a text amendment, which as explained above, could not be legally correct, the petition filed by the Landowners does not meet the filing requirements for such petitions. Very simply, the protest petition was filed about six months too late. Section 11-808 requires that a protest must be filed “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.” ZONING ORDINANCE § 11-808(B) (emphasis added); *see also* CITY CHARTER § 9.13.

In this case, the petition was filed on January 19, 2012 (Ex. A to Appeal Appl.), prior to the second, not the first, public hearing by City Council which took place on May 14, 2011. Under section 11-808(B), the Landowners' Protest had to be filed no later than noon of the last working day preceding May 14, 2011, or on May 13, 2011. The Action Docket/Minutes of the May 14, 2011, public hearing is available at http://alexandria.granicus.com/ViewPublisher.php?view_id=2. A copy of the Minutes is attached hereto as **Exhibit C**.

The Protest Petition therefore was time barred, and the Director was correct not to find that a super majority vote by Council was necessary on January 21, 2012. . Consequently, the BZA should uphold the Director's determination that the Protest was invalid.

C. The BZA Should Afford the Director the Required Degree of Deference and Affirm the Director's Determination.

The Alexandria Zoning Ordinance gives the authority to the Director of Planning and Zoning to administer the Zoning Ordinance. ZONING ORDINANCE § 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;” ZONING ORDINANCE § 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.

Here, the BZA should defer to the Director and uphold the determination that the Protest was invalid. Given the language of the Zoning Ordinance and the City Charter that contemplates protests exclusively with respect to map amendments, it cannot be said that the Director's determination that § 11-808 does not apply to text amendments was made without a reasonable basis.

CONCLUSION

For the foregoing reasons, the BZA should affirm the Director's determination that the Landowners' Protest was invalid.

Attachments:

- Exhibit A: January 24, 2012 Determination Letter
- Exhibit B: May 14, 2011 City Council Staff Report on Master Plan Amendment 2011-0001 and Text Amendment #2011-0005.
- Exhibit C: Meeting minutes from the May 14, 2011 meeting

January 24, 2012 Determination Letter



DEPARTMENT OF PLANNING AND ZONING

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January 24, 2012

Via US Mail and Electronic Mail

Roy R. Shannon, Jr., Esquire
Rich, Rosenthal, Brincefield, Manitta, Dzubin and Kroeger, LLP
201 North Union Street, #140
Alexandria, VA 22314

Dear Mr. Shannon:

You have requested a determination with regard to the protest petition filed by you on January 19, 2012. My determination was made verbally to City Council at its hearing on January 21. At that time I stated the following:

The City received a protest petition, filed Thursday, January 19, 2012. Additional signatures were filed yesterday. The filing is called, "Landowners' Protest to Proposed Text Amendment 2011-0005," and it refers to the proposed changes to the W-1 zone recommended to make it consistent with the Waterfront Plan. Both the W-1 text amendment and the Waterfront Plan on Council's docket today, January 21, 2012, (Item #4).

Section 11-808 of the City of Alexandria Zoning Ordinance provides a mechanism to require a three-fourths majority vote (6-1) for City Council to approve an application for a zoning map amendment if a valid protest petition meeting the requirements of the ordinance is filed with the city clerk. Section 11-808(A) indicates who may successfully protest and states specifically,

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.

Section 11-800 of the Zoning Ordinance addresses zoning amendments generally and distinguishes between "map amendments" and "text amendments." A map amendment is a change to the official Zoning Map of the city to change the zoning of a particular property, and sometimes known as a rezoning, and it is specific to that property. A text amendment is an amendment of the official Zoning Ordinance text to change the language of a zone, or other



Roy R. Shannon, Jr., Esquire
Rich, Rosenthal, Brincefield, Manitta, Dzubin and Kroeger, LLP
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Page 2

section of the ordinance, with more general application within the zoning districts. The text amendment to be considered by Council today is an amendment revising the W-1 zone text to apply generally to applicable properties within that zone.

By the terms of section 11-808(A) as well as the Protest Petition itself, the proposed zoning change before Council today is a text amendment and not a rezoning or map amendment. Because Council is considering a text amendment, and not a map amendment, Section 11-808 does not apply. Consequently, the petition does not require a three-quarter, supermajority vote for today's zoning text amendment.

The protest does not apply in any way to the Plan before Council. It applies only to the text amendment.

Sincerely,



Faroll Hamer
Director

Attachment: Determination request letter dated January 19, 2012

cc: James Banks, City Attorney
Joanna Anderson, Assistant City Attorney



RICH
ROSENTHAL
BRINCEFIELD
MANITTA
DZUBIN &
KROEGER, LLP

January 19, 2012

Via Hand Delivery and Electronic Mail (Joanna.Fritzell@alexandriava.gov)

Farroll Hamer, Director
Department of Planning and Zoning
c/o Joanna Anderson
301 King Street, Suite 1300
Alexandria, VA 22314

Re: Protest Filed Today - January 19, 2012

Dear Ms. Hamer:

I am submitting this letter to you, care of the City Attorney's office as requested by the City Attorney's office. I represent clients relating to the protest that was filed earlier today.

I requesting that you provide me with your determination regarding this protest, as soon as possible. I would prefer a written determination; however, in the interest of expediency I would accept a verbal determination now, followed by a written determination shortly thereafter.

If you have any questions or would like to discuss this matter, please feel free to contact me, through the City Attorney's office. I am available for telephone conference or a meeting at your office.

Sincerely,

Roy R. Shannon, Jr.

Copy: City Attorney, James Banks (e-mail only)

**May 14, 2011 City Council Staff Report on Master Plan Amendment
2011-0001 and Text Amendment #2011-0005**



DOCKET ITEM # 2 A&B

Master Plan Amendment #2011-0001
Text Amendment #2011-0005
Waterfront Small Area Plan

6b
5-14-11

Issue: Initiate and consider an amendment to the City's Master Plan to include the Waterfront Small Area Plan chapter, and initiate and consider a text amendment to Section 5-500 of the Zoning Ordinance for the W-1/Waterfront mixed use zone	Planning Commission Hearing:	April 5, 2011 May 3, 2011
	City Council Hearing:	May 14, 2011
Staff: Karl Moritz, Deputy Director karl.moritz@alexandriava.gov Nancy Williams, Principal Planner nancy.williams@alexandriava.gov		

PLANNING COMMISSION ACTION, MAY 3, 2011:

MPA #2011-0001

On a motion by Commissioner Wagner, seconded by Commissioner Dunn, the Planning Commission voted to initiate the Master Plan Amendment. The motion carried on a vote of 6 to 1, with Commissioner Fossum voting against.

On a motion by Commissioner Wagner, seconded by Commissioner Robinson, the Planning Commission voted for the following amendments:

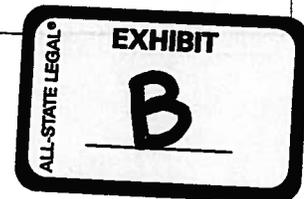
- To limit the hotel use described in the Plan to boutique hotels, defining it as no more than 150 rooms and limited meeting space;
- To emphasize that the Plan's proposal for the foot of King Street, including a new public pier and Fitzgerald Square, is the optimal design while acknowledging the potential value of interim options
- To include a hotel and restaurant policy in the plan with guidelines for the review of restaurants, hotels, and other commercial uses to ensure that community concerns are addressed; and
- Other amendments recommended by staff in the May 3 memorandum to the Commission.

The motion carried on a vote of 6 to 1, with Commissioner Fossum voting against.

On a motion by Commissioner Wagner, seconded by Commissioner Robinson, the Planning Commission approved the Master Plan Amendment by resolution. The motion carried on a vote of 6 to 1, with Commissioner Fossum voting against.

TA #2011-0005

On a motion by Commissioner Wagner, seconded by Commissioner Lyman, the Planning Commission voted to initiate the Text Amendment. The motion carried on a vote of 6 to 1, with Commissioner Fossum voting against.



Master Plan Amendment #2011-0001
Text Amendment #2011-0005
Waterfront Small Area Plan

On a motion by Commissioner Wagner, seconded by Commissioner Jennings, the Planning Commission voted to recommend approval of the Text Amendment. The motion carried on a vote of 6 to 1, with Commissioner Fossum voting against.

Reason: The Planning Commission endorses the Waterfront Plan, saying that it balances the aspirational with the practical by setting forth a strong and clear vision for a world-class waterfront that is also technically and financially attainable; that it meets the needs of all Alexandrians while safeguarding nearby neighborhoods; that it adds more open space than it does new development; that it finds multiple avenues to bring Alexandria's history back to life along the water; and that it addresses major challenges such as flooding and parking in cost-effective and harmonious ways. It creates a waterfront that keeps what Alexandrians love the most, and it provides a clear path forward to achieving what they have been missing. Over the last 2 years and 100 meetings, Alexandrians were unequivocal about what they wanted for their waterfront and this plan delivers on those goals in an inspired and practical way.

Speakers:

James McCall, Alexandria Archaeological Commission, asked that the plan be deferred so that the community can review a new version of the document with all the changes proposed, including AAC's.

John Gosling, President, Old Town Citizens Association, said that OTCA has not taken a position on the changes, including options for the ODBC parking lot, and asked for a delay so it can review the information.

Eric DeSoto, Board Chairman, Old Dominion Boat Club, discussed the history of the ODBC as a charitable club, the fact that the parking lot is the only boat yard left in Alexandria, and the ODBC's plan to make improvements to the property. He noted that settlement efforts took place to end the federal law suit but that on January 11, 2011 a court decision confirmed that the ODBC is the property owner of 1 and 2 King Street, with riparian rights. He raised concerns about whether the Planning Commission's decision affects ODBC's rights to improve its property and about the City rezoning or master planning the ODBC property from the WPR zone to a public use zone could be considered unreasonable and confiscatory. He explained that ODBC representatives have met during the past month with City staff and Planning Commissioners to discuss conceptual ideas for the parking lot. He described the two options published by the staff and indicated that ODBC had agreed they could be published, although ODBC would continue to talk to staff about concerns they have with Option B. He also added that the Eisenhower boat storage and the Torpedo Factory docks were identified as incentives to ODBC to allow public access along the water and to allow parts of the parking lot to be made smaller.

Andrew MacDonald, 217 Columbus Street, objected to the plan and requested a deferral.

Van Van Fleet, 26 Wolfe Street, identified himself as the only dissenting voice on the Waterfront Committee support for keeping Fitzgerald Square in the plan. He also objects to the 3-4 hotels and the marina at Robinson Terminal South and supports a deferral.

Master Plan Amendment #2011-0001
Text Amendment #2011-0005
Waterfront Small Area Plan

Peter Pennington, Vice Chairman, Waterfront Committee, recommended that Fitzgerald Square remain in the plan along with ideas about solving the ODBC parking lot issue.

Beal Lowen, 321 South Lee Street, said the ODBC is the only remaining boat yard in the City and the club is committed to being good citizens; he believes Option A is a good option.

Michael Peck, 420 N. Union Street, thinks the ODBC members are good citizens and spoke about Virginia law granting certain legal rights to citizens who live within 300 feet of a property.

William Rogalski, Jr., 408 Hanson Lane, raised concerns about the cost of the plan and requested a deferral so that more information could be obtained.

Julie Van Fleet, 26 Wolfe Street, asked for a deferral so that the community has more time to consider the ODBC options.

Boyd Walker, Chair, Greater Alexandria Preservation Alliance, referred to a petition against the rezoning of the waterfront including hotels, increased density and adjustments to the height restrictions. He asked that the hotels be taken out of the plan before moving forward.

Elizabeth Baldwin, 428 N. Union Street, referred to a lawsuit she and several of her neighbors brought against the Washington Post and stated they will continue to pursue the case if the Planning Commission continues to pursue hotels at Robinson Terminal.

Sarita Schotta, 104 Prince Street, expressed concern about congestion, traffic, noise, bus and parking issues that residents along the waterfront face.

Bert Ely, 200 S. Pitt Street, asked for a deferral to review new information, including the restaurant/hotel policy, and expressed continuing concerns about costs and revenues of the plan.

Poul Hertel, 1217 Michigan Court, referred to his testimony on the plan last month that included alternative schemes for the foot of King Street. He indicated Option B, with some modifications, is closer to his preference for the foot of King Street.

Robert Montague, 207 Prince Street, Vice President of the Northern Virginia Conservation Council, stated that he has been involved in the waterfront planning process since 1973 beginning with Founders Park. He asked for a deferral and raised concerns about open space. He added that he believes the ODBC should be a part of the waterfront plan but that hotels and parking lots should not.

Bill Schaeffer, 327 N. St. Asaph, compared the plan to National Harbor and stated that she thinks Option A is better because she does not want to see cars at the foot of King Street.

John Bly, 418 N. Union Street, raised concerns about legal costs and lower property values if the zoning for Robinson Terminal is changed.

Katy Cannady, 20 East Oak Street, prefers Options A and B to Fitzgerald Square because they are less expensive. She asked why the FAR is still being increased from 2.0 to 3.0 for hotels on the development sites if Fitzgerald Square is no longer there.

Jeremy Taylor, 213 S. Royal Street, objects to both Options A and B and asked that the entire plan be rejected because the plan was done in a clandestine manner and contains too much density.

PLANNING COMMISSION ACTION, APRIL 5, 2011: The Planning Commission closed the public hearing and continued the discussion of the Master Plan Amendment and Text Amendment to the May 3 hearing. Chairman Komoroske stated that the Planning Commission may reopen the public hearing if deemed necessary.

Speakers:

Bert Ely, 200 South Pitt Street, spoke in opposition, raising questions about permitting issues, congestion and costs. He suggested the plan adoption be postponed.

Judy Noritake, representing the Parks and Recreation Commission, spoke in support of the Plan, describing it as a park plan that integrates art, history and commerce. She stressed the fact that the Commission is geographically representative of the entire City, and spoke to the importance of park maintenance and a profitable marina.

Andrew MacDonald, 217 N. Columbus Street, spoke in opposition as a private citizen. He thought there should be options such as more parkland instead of hotels and economic models for the options. He criticized the process as not involving residents. As a member of HARC, he submitted a letter from that Commission stating support of the art and history components of the Plan.

Nathan Macek, Chair, Waterfront Committee, spoke in support of the Plan as necessary to guide redevelopment and City investments, and providing a balance between economic development and parks. He added several suggestions related to parking, balance of uses, density controls, the Waterfront Park building and funding for Windmill Hill Park.

Michael Wenk, Alexandria House HOA, spoke in support and said the concerns expressed by the speakers, including flood control, open space, connectivity, access, history, development, and regulatory controls, have been included in the Plan.

John Gosling, President, Old Town Civic Association, spoke in opposition, citing a recent OTCA poll reflecting the need to reduce density and to include more open space, a stronger commitment to civic/cultural uses, limits on commercial uses including hotel rooms, the elimination of the Waterfront Park building and a demonstration that the Plan is revenue neutral.

Andrew Palmieri, Chairman-elect, Chamber of Commerce, spoke in support of the Plan, citing a long public participation process, the fact that the Plan is consistent with the City's Economic Sustainability Plan, and that development in the Plan is needed to make it economically sustainable.

Tina Leone, President and CEO, Chamber of Commerce, spoke in support. She explained that the Chamber, representing 900 businesses with half of those businesses resident-owned, considers the waterfront an asset for the entire City and hotels to be good uses because they have lower impacts and higher revenues than alternative uses.

Bill Lowen, 321 S. Lee Street, expressed concern about the process, and objection to the idea of a promenade along the River. He thought the process should be slowed down and that decisions are being made without good data.

Charlotte Hall, representing the Alexandria Convention and Visitors Association, spoke in support of the Plan. She stated it is consistent with the City's Economic Sustainability Plan and the Council's Strategic Plan, and it will create a world class waterfront. She added that as Vice President of the Potomac Riverboat Company, she supports an expanded commercial marina, indicating that PRC now docks three boats at National Harbor because the City's current marina lacks space.

Jody Manor, owner of Bittersweet restaurant and ACVA board member, spoke in support, citing the extensive public participation and the enhancement of public access and public open space. He stated that the waterfront today does not serve as the cultural, public or economic asset it should be. He indicated that ACVA urges support of the Plan in its entirety so that the waterfront can achieve its potential as a recreational resource and economic tool.

John Renner, business owner and Chair of the Public Affairs Committee of the ACVA, spoke in support of the Plan generally and of the concept of hotel use and tourism specifically. He stated that hotels promote public access to the water, generate 6 times the revenue that residential uses do, and cited the recent investment of \$400 million by hotels in Alexandria.

Kenneth Wire, McGuire Woods, representing the owner of the Sheet Metal Workers building, requested that the Plan be amended to reference the potential for a rezoning for that site that is compatible with uses in the Plan should the building redevelop in the future.

James McCall, Chair, History Plan Committee of the Alexandria Archeological Commission, expressed AAC's support of the history component of the Plan, and suggested a series of specific additions and changes to the text.

Miles Holtzman, President, Old Dominion Boat Club, asked to preserve the right to speak at the May Planning Commission meeting and stated that the City and ODBC were currently in discussion regarding possible options for the foot of King Street.

Lauren Garcia, Vice Chair, Alexandria Economic Development Partnership, indicated the AEDP Board supports and urges adoption of the Plan, stating that the Plan includes unique open space and other improvements that will benefit a variety of stakeholders and will draw investment to help pay for the improvements.

Boyd Walker, Alexandria Preservation Alliance, spoke in opposition to the Plan and expressed concern about the Plan's lack of concern about history and historic sites on the Waterfront.

Matthew Harwood, Alexandria Commission for the Arts, spoke in support of the Plan's incorporation of public art, but raised concern about finding a new home for the Art League.

Bill Harvey, 2151 Jamieson Avenue, raised concern about the Plan as a whole indicating it is not tied to Alexandria and a concern that the proposed piers would be exposed to ice, currents flotsom and jetsam. He proposed a scaled down version of the piers.

Van Van Fleet, 26 Wolfe Street, supports the Plan's deferral indicating it has no backing from residents, and stating a need for an economic analysis, regulatory approvals have not been obtained, the piers are too long, replacement parking for Dandy and Chadwicks' is needed, and too much density has been proposed--including space for 14 Virtue size equivalent restaurants. He recommended implementation of flood mitigation and bulkhead repairs now.

William Rogalski, Jr., 408 Hansen Lane, spoke against the Plan, suggesting a deferral so that a smaller plan could be devised with the necessary cost/benefit analysis.

Bruce Miller, 410 Hansen Lane, encouraged the Commission to get answers to the questions raised at the hearing.

Woody Morris, American Medical Group, One Prince Street, supports an improved waterfront but objects to a building in Waterfront Park.

Bob Wood, 711 Potomac Street, recommended caution because he sees the Plan as one for economic development only.

Val Hawkins, President and CEO, AEDP, spoke in support. He has been a resident of Alexandria for 37 years and noted the monumental work that went into this Plan by staff, citizens and the various involved stakeholders. He stated the AEDP adopted a resolution in support of the Plan stating its consistency with the City's Strategic Plan and Economic Sustainability Plan.

Poul Hertel, 1271 Michigan Court, provided an alternative Plan with the Beachcomber as the cultural center, housing a museum with possibly a restaurant. He recommended that the Waterfront Park building be removed and the ODBC parking lot remain but in modified form.

Julie Van Fleet, 26 Wolfe Street, also recommended an alternative from the Waterfront Alliance that does not include hotels, but does include flood control and uses the Robinson Terminal South location for a maritime museum, the Seaport Foundation, an art museum and the Archeological Museum. She suggested thinking outside the box on the Cummings and Robinson Terminal North sites.

Robert Riker, 118 Waterford Place, raised questions about the value of Robinson Terminal, private marina development, ODBC piers, and commercial boating generally.

Katy Cannady, 20 East Oak, spoke against the Plan, stating it violates the Waterfront Park settlement agreement and did not include an interactive citizen's participation process.

Joe Demshar, 302 Prince Street, raised issues about the vision for the waterfront and the cost of the Plan.

Dana de Montigny, 302 Prince Street, spoke against the Plan and the density, arguing that changing the waterfront would change Old Town and its authenticity.

Michael Hobbs, 419 Cameron Street, discussed the fact that there are many areas of consensus in the Plan, but scale and density are points of contention.

John Bly, 418 N. Union Street, stated there is a need for more meetings in order to have greater dialogue and a consensus Plan.

Michael Vea, 420 N. Union Street, opposed the Plan; he has studied the Plan and it will drive him out of Alexandria if adopted; he is concerned about the use of Robinson Terminal North as a hotel.

I. BACKGROUND

The Waterfront Plan proposed for adoption is the culmination of a great effort, over two years, and many people's involvement. The Department of Planning and Zoning began the planning process in April 2009. Extensive community outreach, including some 100 small group, community-wide, and staff meetings have occurred. There have been activities such as charrettes, tours, and topical nights on art, history, and the marina. The Planning Commission and City Council have conducted work sessions and briefings on the Plan's overall content as well as specific issues.

Technical expertise was also applied during the planning process in the areas of marine engineering; flood mitigation; architecture, park and public space design through staff and consultants; hotel and marina market assessments through consultants; preliminary regulatory and permitting analysis through consultants and communication with the District of Columbia, the Corps of Engineers, the Commonwealth of Virginia, and the National Park Service (NPS) for pier and marina expansion; parking and traffic analysis through consultants; production of Art and History Waterfront Plans by the City's art and history communities; and more. The Plan also benefited from the *Old Town Area Parking Study*, the *Potomac River Waterfront Flood Mitigation Study*, and the *Waterfront Traffic Impact Study*, with results integrated into the Plan.

The public outreach meetings and activities along with technical expertise facilitated a vision to create a 21st century waterfront that meets the needs of residents and visitors alike and that is sustainable economically and environmentally. The vision then helped to shape a series of illustrative designs for redevelopment of the waterfront.

Although the Plan looks toward the future, it is also bolstered by past planning efforts, all of which share the goals of a publicly-oriented and accessible waterfront; multi-modal connectivity via a walkway and bicycle trail; creation of parks and open space; and redevelopment of remaining development sites through a mixture of uses to promote an active waterfront. While some objectives have been realized, the Plan's overarching goal is to enhance what has been accomplished to-date by:

- expanding the provision of open and public space;
- strengthening the visual and physical connectivity along the waterfront;
- generating more water-oriented and related public activity along the waterfront;
- fostering adaptive reuse of historic buildings; and
- guiding redevelopment of the limited remaining development sites.

II. ISSUES

During the planning process, several key issues were discussed, and remain critical to any conversation about the waterfront. Additionally, City Council, during a work session on February 8, 2011, highlighted a series of issues for further, more detailed review: flood mitigation, parking, a smaller scale Waterfront Park Building, and implementation issues such as costs/revenues and phasing. Information was released on March 23, 2011 to the public, regarding those items, and it is also provided in this staff report as Attachments 7, 8, 9 and 10 respectively. Summaries of these and other issues/solutions are included below.

A. Flood Mitigation

Participants in the planning process urged that a solution to the frequent flooding in Old Town be included in the Plan. The Plan reflects the flood mitigation approach determined to be the most cost effective, and it incorporates those solutions into improvements to parks and public spaces. Flood mitigation will be one of the first priorities for Plan implementation.

In 2007, the Transportation & Environmental Services Department conducted an initial assessment of flooding along the City of Alexandria's waterfront within the Potomac River watershed. That assessment led to the *2010 Potomac River Waterfront Flood Mitigation Study* to determine the causes of the flooding problem, identify potential solutions, analyze these potential solutions and recommend the best solutions. Three flood levels were examined in the study: [Nuisance (4 feet NAVD88), Intermediate (8 feet NAVD88) and Extreme (100-year, 10.2 feet NAVD88)].

The flood study area is bounded by Third Street to the north, Fairfax Street to the west, the Capital Beltway to the south, and the Potomac River to the east and, then, is further divided into four focus areas: Jones Point, King Street, Waterfront Commercial, and North Union.

Twenty-seven flood mitigation measures were identified and discussed in a series of public and staff meetings that occurred from October 2007 through November 2008. During that process, a numerical scoring system was developed to select mitigation measures to consider further. The following nine mitigation measures were selected for detailed evaluation using this scoring system.

- *Structural measures:* provide dry flood proofing; acquire properties; elevate structures; construct engineered structural barriers (i.e., waterfront floodwall and Jones Point berm); construct an elevated walkway that would also be a floodwall structure; and increase the inlet and road elevation in the vicinity of the Lower King Street area.

- *Nonstructural measures:* relocate internal supplies, products/goods above the flooding depth; improve the City's floodplain and zoning ordinances; and improve the sandbag programs or provide other temporary flood deterrents

A benefit-cost analysis (BCA) was performed for the six structural mitigation measures. A BCA was not computed for the proposed nonstructural mitigation measures. Therefore, nonstructural mitigation measures were evaluated only for applicability and technical feasibility. The historic nature of the City adds to the cost and complexity of the mitigation measures considered. Additionally, conceptual designs were developed for the floodwall, Jones Point berm, the elevated walkway, and roadway improvements.

After considerable analysis of different flood levels and a variety of potential flood mitigation areas, the study found that the most cost-effective level of protection is 6 feet NAVD88, which has a recurrence interval of approximately 10 years. At higher protection elevations, the physical size and cost of the work increases dramatically, and BCA drops quickly.

The study does not recommend a single flood mitigation solution, but rather a series of measures are recommended to provide protection against flood events on the Potomac River, including several of the structural measures that can be constructed by the City: (1) inlet and roadway improvements along King Street, Union Street and The Strand; (2) an elevated walkway approximately 1,280 feet in length; and (3) approximately 550 feet of floodwall. An additional recommendation involves flood proofing private properties that are currently vulnerable to nuisance flooding. This idea would require participation from private property owners, although the City can provide expertise and guidance.

The Plan incorporates the three recommended structural flood mitigation measures as follows: The first, inlet and roadway improvements include raising the roadway elevation and associated drainage structures in the vicinity of the intersections of King Street and The Strand and King Street and Union Street. The City encounters flooding in these areas due to storm drain and because of the low elevations of the catch basins. The improvements would raise the roadway by approximately a foot to one and a half feet, as well as raising storm drain manholes and catch basins, reducing the most frequent occurrences of flooding in this area. The frequency of shallow nuisance flooding could be reduced from over 150 times a year to about 10 times a year, depending on the roadway elevations that are achieved.

In the case of the second and third structural recommendations, namely an elevated walkway and floodwall system, the Plan includes a variation of these so that, instead of the full structures being located along the promenade, blocking the river view, they are in part naturally incorporated into the parks and landscape along this area. The layout of these structural elements is shown in concept in this Plan. The exact

locations will be developed in the implementation phase as more extensive engineering analysis and design takes place.

The effectiveness of the proposed flood protection up to Elevation 6.0 is dependent upon the entire limits of the mitigation being constructed. If the improvements are phased in over time, the flood protection will not be realized until the final phase is completed. More information regarding flood mitigation is included in Attachment 7 – Flood Mitigation Measures and Graphics.

B. Parking

Early in the planning process, many people identified parking as a critical issue that would have to be fully addressed for the Plan to succeed. The Plan includes a comprehensive approach to Old Town parking management.

In the past year, the City prepared a comprehensive study of Old Town parking supply and demand, developed recommended strategies based on the new information, worked through the summer with a community stakeholder group to prioritize solutions, and began their implementation. Enforcement has been increased, new parking wayfinding signs will be installed this spring, and new multi-space parking meters are being installed.

The Old Town parking initiatives have been conducted jointly with waterfront planning, which the Plan describes in some depth on pages 114-121.

A key finding is that – even at peak times -- there are many unused parking garage spaces within 3-4 blocks of the King/Union intersection. This finding made it clear that there is a big opportunity to improve Old Town parking by getting people to use garages, especially when parking for more than a few hours.

The Plan shows that, numerically, existing parking demand and capacity leave room to park any increase in cars attracted to the waterfront. There are more than 700 unused spaces available today at peak times in public garages; additional close-by private garages are willing to open for public parking when and if there is demand. Adding garage attendants and valet parking programs to the toolbox increases garage capacity even more.

Beyond its parking analysis, however, the Plan recognizes that having theoretical capacity is only part of the answer; action steps need to be taken and then continued into the future so that an assessment of parking can be made and steps taken to address parking on a regular basis.

Specifically, the Plan would formally extend and continue the progress made in the past year on Old Town parking issues through a Waterfront Parking Implementation Plan. The Parking Implementation Plan would be both a living document and a public

process to monitor conditions, evaluate options, and take action. The Parking Implementation Plan must include specific triggers, such as development activity or renewed utilization/capacity studies, with the necessary enhanced capacity that must be available. This level of detail and commitment by the City to the Plan's outline for the future is absolutely required. The Plan, on page 120, lists specific measures which, at a minimum, must be included in any Implementation Plan, including:

- Monitoring public garage capacity at peak times on a regular basis and using an 85% capacity measure to trigger the need to make additional capacity available;
- Requiring additional parking capacity at the point that new demand generators are constructed on the waterfront;
- Implementing a systematic valet parking program for Old Town, King Street and the waterfront core area;
- Protecting parking in residential areas after testing and monitoring the effects of waterfront development.

The Plan calls for an interagency team with support by affected stakeholders to create the Parking Implementation Plan. Additional summary information on parking is in Attachment 8 – Parking Summary.

C. Proposed Waterfront Park Restaurant Building

No Plan recommendation has inspired as much debate as the proposal to construct a building along the western edge of Waterfront Park. The Waterfront Park building was initially proposed for three main reasons:

- It would both *finance* and *hide* a replacement surface parking lot for the Old Dominion Boat Club...and, in the process, result in a larger amount of open space at the heart of the waterfront.
- Proposed for restaurant use, it would provide additional options for waterfront dining, something identified early on by Alexandrians as one of the things they wanted most from the Plan.
- It would activate Waterfront Park and connect King Street to The Strand redevelopment sites.

The Plan document proposes two options for a restaurant building within Waterfront Park. Both options yield approximately 30,000 square feet of development. Staff was asked to develop a smaller option.

The new proposal, developed at the request of the City Council and community, is for a much smaller scale building: narrower, not as long, and much shorter in height. The conceptual design is a largely glass structure, taking architectural cues from the Mount Vernon orangery, resulting in a low-slung market style building which activates Waterfront Park and is better integrated into the neighborhood fabric. The building's design creates a large roof top space suitable for seasonal outdoor dining, offering panoramic views of the Potomac River.

The proposed building is approximately 60 feet in depth and 175 feet in length along The Strand, yielding approximately 10,500 square feet. It would leave more than 180 feet of park depth from shoreline to the new building, thereby extending far less (35 feet less) into the park than earlier designs. The exterior façade of the building, with exception of two gable elements, is only 14 feet high above the adjacent walkway fronting Waterfront Park, and steps back to a maximum height of 18 feet at the roof parapet. This lower height mitigates most of the potential view blocking of rear-facing tenants in the adjacent buildings.

A building at this location is important because it would help connect the waterfront between King Street and points south and north along the waterfront by enlivening the area, drawing people into the park, providing them with opportunities for outdoor and indoor dining, and affording them great views of people along the adjacent walkway, Point Lumley Park, and the water and marinas. Finally, a restaurant would provide sufficient tax revenues to significantly contribute to the high level of maintenance required for expanded parkland and public space envisioned by the Plan. More information regarding the new smaller scale option for the Waterfront Restaurant Building is in Attachment 9 - Waterfront Park Restaurant Building.

D. Plan Costs and Revenues

The great majority of recommendations in this Plan call for additions and improvements to waterfront public spaces, the shoreline, and the marina. Because there are few redevelopment sites on the waterfront, many people expressed concern that the potential revenues from new development would not be sufficient to support the Plan's recommendations.

The Plan is able to balance costs and revenues, including enhanced maintenance levels, by carefully calibrating permitted densities and land uses to be those which generate the greatest public benefits with the lowest neighborhood impacts. The following summarizes anticipated costs and revenues associated with the Plan, as does Attachment 10 – Waterfront Costs/Revenues and Phasing:

- The Plan balances costs and revenues.
- At build-out, a redevelopment scenario with a mixture of housing, hotel, and restaurant/retail yields net tax revenue of \$4.8 million in 2011 dollars

per year. With a phased build-out over 15 years, cumulative tax revenues at the end of 15 years will reach \$42 million in 2011 dollars.

- The park and public space improvements recommended in the Plan would cost up to \$39 million while flood mitigation would cost \$6.5 million (all in 2011 dollars). Even including flood mitigation, the Plan's projected revenues will exceed expenditures within 20 years.
- Once public improvements are made, \$1.0 million of the net tax revenue per year can be used to help the City maintain the new improvements and improve maintenance on existing parks.
- Hotels are a major reason why the Plan can pay for itself. On average, a square foot of hotel space generates six times the tax revenue of a square foot of housing.
- Over the past month, City staff extensively validated the cost estimates for the Plan with government and private industry experts. The analysis included comparisons to recent and current waterfront projects at National Harbor, Washington DC, and Arlington.
- Numerous figures were double-checked and some figures were adjusted, but only a few changes were substantial:
 - About \$4.7 million was added to the contingency fund and engineering cost estimates. In the interest of being extra conservative, City staff chose to increase the contingency fund from 15% to 30% of total cost and increase the expected design/engineering cost from 15% to 20%.
 - The proposed civic/cultural building rose in price from \$1.6 million to \$3.6 million. Smaller or less expensive buildings are possible; the new estimate shows the cost of a high quality 10,000 square foot building.
 - Completing flood mitigation at the same time as other improvements provide some cost savings.
 - Operating costs have been included in the cost/revenue calculation. The cost/revenue scenario contains an increase of \$1 million per year in operating costs over current levels by year 11. That figure would cover not only increased operating costs due to new facilities, but also an increased level of maintenance for existing parks, public spaces, and marina areas.

- The capital costs of the Plan include the purchase of a waterborne debris skimmer and the operating costs cover additional staff for its operation.

E. Plan Phasing Program

There is considerable flexibility in how waterfront improvements could be phased. The proposed phasing would prioritize flood mitigation, improvements that provide *both* public amenities *and* economic value, and improvements at the heart of the waterfront: the foot of King Street.

Staff divided the Waterfront into 10 “phasing locations.” Public Improvements that are logically completed at the same time were grouped into elements. The cost and relative timing of each element is estimated.

- The timeframes for phasing are: 0-3 years, 4-6 years, and 7-15 years.
- Flood mitigation is a high priority.
- The phasing analysis anticipates that the King Street/The Strand/Union Street flood mitigation work and the Point Lumley Park improvements, including floodwall elements, would be completed in the first three years, the Fitzgerald Square/Waterfront Park initiatives in years 4-6, and the balance of the recommended improvements in years 7-15. However, the timing of the phasing elements is very flexible and can respond to opportunities that may occur. For example, if agreement is reached on the Old Dominion Boat Club parking lot issue, then the Fitzgerald Square and Waterfront Park initiatives could accelerate and Point Lumley Park initiatives could be scheduled later.
- Public art and historic interpretation could occur in any phase, but will also be considered as part of any of the proposed improvements.

For the mixed use redevelopment scenario noted under costs/revenues above, it is also anticipated that redevelopment will occur in the three identified phases as well: 0-3 years, 4-6 years, and 7-15 years.

- In years 0-3, anticipated redevelopment includes the Beachcomber, redevelopment of the Cummings warehouse at 220 South Union Street, and adaptive reuse of the historic buildings in that block.
- In years 4-6, anticipated redevelopment includes Robinson Terminal North and the balance of the redevelopable properties in the Cummings/Turner block.

- In years 7-15, the anticipated redevelopment is Robinson Terminal South.

More information on costs/revenues/phasing is contained in Attachment 10 – Costs/Revenues/Phasing.

F. Hotels

The Plan does not *require* hotels. The Plan would *permit* hotels, and would *encourage* hotels in locations where the public should feel welcome.

- The mixed use redevelopment scenario includes 625 hotel rooms spread over the three sites: 250 at Robinson Terminal South, 200 at Robinson North, and 175 in the Cummings/Turner block.
 - The actual number of hotel rooms constructed will depend on many factors, including market conditions, developer interest, and public participation in the development review process.
 - If built, the hotels could yield fewer rooms than anticipated or involve smaller hotels.
 - To help illustrate a potential hotel: a 250-room hotel on Robinson Terminal South could be similar to the Hotel Monaco near Market Square. The Hotel Monaco is a good neighbor: while there is cab activity at the entrance, King Street is not congested; hotel activity does not congest the nearby sidewalks; the hotel is quiet; and the hotel appears to accommodate the parking demand it generates.
 - Reducing the number of hotel rooms to 500 (replaced with housing) would reduce net annual revenues available to pay for the Plan from \$4.8 million to \$3.5 million per year. Reducing hotel rooms to 375 would further reduce net annual revenues to \$2.8 million.
- Hotel uses have reduced impacts on traffic and parking. Hotels generate fewer trips than many other non-residential uses (such as office and retail) and these trips are spread out over the day, rather than concentrated during rush hours. Hotels also demand fewer parking spaces, as a large share of guests arrive by means other than driving a car that needs to be parked.
- A 2011 *Hotel Technical Memorandum* prepared by W-ZHA is included in the Plan as Appendix 3; it covers an area defined for study purposes as East Alexandria; rooms for this area currently totals 2,780 according to Smith Travel Research. These properties maintained an effective 2009

occupancy of just over 70%, which is considered healthy by industry standards.

- There is only one hotel included in the Plan study area, namely the Crowne Plaza. Due to current zoning restrictions on land use, there is no opportunity to create high quality lodging along the Potomac River in Alexandria. The Plan and a rezoning as outlined in Section IV would allow hotels under the W-1 zone for development sites in the planning area with an SUP. This will allow access to this yet untapped and highly desirable feature of Old Town. Redevelopment sites identified the Plan will be afforded a geographic premium unavailable to any other property in the City.

More summary information on hotels is included in Attachment 11 – Hotel Use Analysis.

III. KEY PLANNING ELEMENTS AND DEVELOPMENT SITES

A. Planning Elements

There are several key planning elements which are integral to the Plan's ability to enhance past and present goals of expanding public access, parkland, and connectivity; improving public amenities to enliven the waterfront through water-based and land-based activity; incorporating the use of art and history; increasing the waterfront's financial and environmental sustainability; preserving historic structures; and completing the redevelopment of remaining development sites. These include:

- **Establishing the foot of King Street as the gateway to the City** by extending the King Street pier out into the water, creating a signature harbor for Alexandria's waterfront and a hub for water taxis.
- **Rediscovering The Strand as a place for fun** with new parks offering activities for families and individuals, new waterfront dining options, historic ships, and highlighting The Strand as one of several **cultural anchors** along the waterfront with new opportunities to learn about Alexandria's history.
- **Creating new places for people to get together and enjoy themselves**, by adding approximately five acres of public space, including new public piers, new parks and plazas, re-opened alleys, pedestrian-oriented streets, and a continuous walkway along the waterfront.
- **Making sure new development contributes to our quality of life**, by guiding the transformation of three remaining development sites in the core

of the planning area: Robinson Terminal North and South and the 200 Block of Union Street, so as to provide restaurants and outdoor dining, hotels, retail, a marina, and adaptive reuse of the historic warehouses.

- **Sustaining our shoreline and environmental resources** by creating a more natural shoreline, introducing native plants, fortifying the bulkhead, and integrating flood mitigation.
- **Incorporating history** through interpretative activities and uses that reflect the history of the waterfront, architecture that recalls the past, adaptive reuse of buildings, use of materials in creating or enhancing public spaces and buildings, marking historical places, and more.
- **Incorporating art** through an art walk; public art and features; and creative, fun and educational art and cultural activity and utilizing art and history as unifying features along the waterfront.

B. Remaining Development Sites

Very few redevelopment sites remain along the waterfront. The Plan identifies three private sites, as depicted on page 84, and includes Development Goals and Guidelines for each one. The sites are:

- Robinson Terminal North
- Robinson Terminal South
- Cummings/Turner Block

Beyond technical regulatory provisions, the adopted land use plans that now govern the waterfront have little guidance for redevelopment. The Plan, with its Goals and Guidelines and other tools, provides greater clarity regarding the City's expectations for redevelopment and greater certainty that redevelopment will address public expectations. The more refined approach for each development site focuses on design, historic importance and amenities and, most importantly, each site's physical connection with the new public open spaces and facilities in the Plan.

As to each site, the Plan proposes opportunity for a mixed use scenario with active ground floor uses. A system of active frontages is integral in connecting waterfront places, as illustrated on pages 86 and 87 of the Plan. Further, the Plan proposes some increase to what existing zoning already permits, but does so with additional requirements. Thus, increases in density are permitted but only with SUP approval, and only if the proposed development is found to comply with the specific Development Goals and Guidelines outlined below.

Each of the Development sites will continue to be subject to the W-1 zone, but, as Section IV outlines, the zone text is proposed to be modified to allow hotels with SUP approval; to allow additional density with SUP approval; and to require compliance with the Development Goals and Guidelines in the Plan. No height limits are proposed to change with the exception of the portion of Robinson Terminal North to the west of Union Street, which is proposed to increase from 55 ft. to 66 ft. This change will align the Zoning Ordinance with the Height Districts for this area.

As to Robinson Terminal South and the Cummings/Turner block, each are located within both the Old and Historic Alexandria District and the Potomac River Vicinity Height District, making them already subject to design guidelines and standards in existing zoning regulations that will not change at sections 6-404 and 10-105(A)(4)).

IV. PROPOSED ZONING CHANGES

The W-1 zone was adopted as part of the City's Zoning Ordinance in 1982. It has remained relatively the same since that time, with some few changes in 1992. The zone has provided the development rights for several of the private properties developed since that time along the River, including Fords Landing, Harborside and Rivergate. The Plan recommends amending that zone as to the three remaining sites on the waterfront for which future private development is anticipated.

As discussed in great detail at pp. 84 - 101 in the Plan, these sites are currently zoned W-1 which already allows some development opportunities, and are subject to certain BAR and height district regulations. However, under the current W-1 Zone, the particular type and design of development that is most conducive to coexistence with public parks, activity and access ways along the waterfront is not as clearly defined. If the W-1 Zone is not changed, those sites are likely to develop as private townhouses.

It is significant to note that the proposed zoning changes to W-1 do not delete any rights that exist today. To the extent a developer prefers the existing zoning, with its permitted uses and densities, the ability to develop in accord with those rules continues. The additional use and density are provided as incentives to achieve the particular development and design the Plan has outlined as most desirable.

The following specific W-1 Zone changes are recommended, consistent with the information about uses, density and height in the Plan document itself *and relying on the Development Goals and Development Guidelines listed in the Plan document.*

1. Hotel Use: Amendment to section 5-503 to add hotels as a use, provided a SUP is approved and the development is consistent with the Design Goals and Guidelines in the Waterfront Plan for the site. A central part of the Plan is to encourage hotels as opposed to private residential uses, especially townhouses because residential essentially makes the land closest to the river private. The design

guidelines do provide some flexibility for residential uses, already allowed in the W-1 zone, but they are best on the blocks away from the river. However, residential development could still be allowed along the river if there is a showing that it can coexist with the planned public activity, provide a welcoming presence to visitors, and preferably not include permanent owner-occupied units. (See, e.g, for Robinson Terminal North, Guideline #4 at p. 90.)

2. FAR Increase: Amendment to section 5-504 to allow increased FAR for the three development sites, provided a SUP is approved and provided the development is consistent with the Design Goals and Guidelines in the Waterfront Plan for the site. The current densities allowed in the W-1 zone are lower than the maximum permitted under the 1983 Robinson Terminal Settlement Agreement with the Federal Government and City, and lower than what will permit a quality development with underground parking to be built. Therefore, the proposed zoning allows FAR up to the maximums provided in the 1983 Robinson Terminal Settlement Agreement, and consistent with the amounts shown in the chart on p. 101 of the Plan. A more detailed chart with additional information, including a before and after comparison of FAR for each part of each development is included as Attachment 12 – Detailed Zoning Chart. This table replaces the table located in the Plan document at p. 101. The table is expanded to show calculations for all of the individual parcels. In addition, it is expanded to show how the *entire* Cumming/Turner block could redevelop under the proposed zoning (the table in the Plan document assumed that some parcels would redevelop but others would not). The table is also revised to more accurately convey the potential for redevelopment under current zoning.

As an example, the chart shows that for Robinson Terminal North, current zoning allows a FAR of 2.0; the 1983 Settlement Agreement and proposed zoning actually allows an effective FAR of somewhat less than that, or 1.69. The lower number includes the entire land within the site in the calculation, although some of it may not be used for development. As to Robinson Terminal South, current zoning allows an FAR of 2.0; the 1983 Settlement Agreement and proposed zoning allow a bit more than that, or 2.32. For the Cummings Turner block, the proposed zoning increases the FAR from 2.0 to 3.0, but the increase is necessary to achieve a cohesive development of the block's separate parcels, as well as retention of the historic buildings. The physical model of the waterfront which has been on public display at City Hall for six weeks demonstrates the ability of these FAR numbers to result in buildings that are well designed, do not overwhelm the surrounding area, provide breaks through the blocks and significant open space, and otherwise work compatibly with the adjacent residential neighborhood as well as with nearby active open space areas.

In order to achieve the increased FAR, the zoning requires that the developments obtain SUP approval and comply with the long list of Development Goals and Guidelines set out in the Plan. Those Guidelines are detailed and tailored to address

the multitude of issues at each individual site while at the same time providing the City with an opportunity for enhanced development and quality design over what current zoning would produce.

3. Height Correction for one block: Amendment to section 5-507 to state that maximum heights throughout the W-1 Zone will be those that are shown on the height district maps. No height limits are proposed to change on any W-1 zoned land, with the exception of that portion of Robinson Terminal North that is west of North Union Street, which will change from 55 to 66 feet, consistent with the current height district map for that land and for the parcels nearby in Height District #4. (See Plan Figure 26, p. 85.) Nor does the zoning change the fact that, except for that one block, all the remaining developable land is within Height District #3 and is already required to obtain SUP approval for any height over 30 feet, and the process relies on certain design criteria and standards in the zoning ordinance at section 6-404.

4. Elimination of unsuitable uses: Amendment to section 5-503 to delete two uses: rooming house and tourist home. These uses, historically part of the City's Zoning Ordinance, including the W-1 zone, are not compatible or suitable for the City's waterfront. There are no existing developed parcels that would be appropriate for either a rooming house or tourist home; there have been no applications to use waterfront property for those uses in the last 30 years; and those uses would not be suitable or compatible with the development concepts for the future development sites.

Staff recommends that the Planning Commission recommend approval of these zoning text changes because they allow reasonable development, compatible uses, and a design and scale of development particularly suitable for each of the development sites in the Plan.

V. SCHEDULE AND NEXT STEPS

The Planning Commission is scheduled to meet twice on this item, with the first meeting scheduled for April 5, 2011 and the second for May 3, 2011. City Council action is then anticipated in May and/or June 2011. Once adopted, there are a number of recommendations in the Plan which can begin immediately as the City prepares to undertake the phasing program outlined in Section II. Some immediate steps might include.

- (1) Working in partnership with the community on planning and organizational matters relating to implementation.
- (2) Continuing to interface with regulatory agencies to further discussion and processes regarding permitting.
- (3) Initiating the Parking Implementation Plan.

- (4) Preparing for solicitation of engineering and design studies.
- (5) Continuing to work with the art and history communities on implementation aspects of their plans.
- (6) Meeting with property owners regarding redevelopment sites.

VI. STAFF RECOMMENDATION

Staff recommends that the Planning Commission take the following actions:

- A. Initiate and adopt by Resolution the Waterfront Small Area Plan as an amendment to the City's Master Plan; and
- B. Initiate and recommend approval of the proposed text amendment revising Section 5-500 of the Zoning Ordinance, W-1/Waterfront mixed use zone.

VII. ATTACHMENTS

- 1) Master Plan Amendment Resolution
- 2) Zoning Ordinance Text Changes
- 3) April 22 Memo to the Planning Commission
- 4) May 2 Combined Sewer Impacts Memo
- 5) May 3 Guide to Text Changes Memo to Planning Commission

The following attachments are under separate index tabs:

- 6) Waterfront Plan with Appendices
- 7) Flood Mitigation
- 8) Parking
- 9) Restaurant Building
- 10) Costs/Revenues/Phasing
- 11) Hotel Use Analysis
- 12) Detailed Zoning Chart
- 13) Letters

RESOLUTION NO. MPA 2011-0001

WHEREAS, under the Provisions of Section 9.05 of the City Charter, the Planning Commission may adopt amendments to the Master Plan of the City of Alexandria and submit to the City Council such revisions in said plan as changing conditions may make necessary; and

WHEREAS, in 2009, Department of Planning and Zoning staff began the process to create the Waterfront Small Area Plan as a proposed amendment to the City's 1992 Master Plan; and

WHEREAS, the boundaries for the Waterfront Small Area Plan consist of Daingerfield Island at its north end and Jones Point Park at its southern end (both national parks). In between, the plan is bounded to the east by the Potomac River and to the west by (from north to south) East Abingdon Drive beginning just north of Marina Drive to the railroad tracks, Continuing southeast along the railroad tracks to a point just west of Pitt Street, Continuing east along Bashford Lane to North Royal Street, Continuing south along North Royal Street to Third Street, Continuing east along Third Street to North Fairfax Street, Continuing south along North Fairfax Street to Queen Street, Continuing east along Queen Street to a point approximately 100 feet west of North Union Street, Continuing south about 100 feet west of Union Street to Wolfe Street, Following along the northern, western, and southern boundary of Windmill Hill Park until it meets South Union Street, Continuing south on South Union Street to Jones Point Park; and

WHEREAS, the Department of Planning and Zoning has held nearly 100 meetings and events since 2009 with the community, City staff, technical experts, and work sessions with Planning Commission and City Council to gather information and ideas, and to create a vision, goals, and guiding principles for the Waterfront Small Area Plan; and

WHEREAS, these efforts have resulted in the proposed Waterfront Small Area Plan chapter of the City's 1992 Master Plan which is designed to promote an expansion of open and public space, visual and physical connectivity, wider opportunities for water-oriented and land-side recreation, adaptive reuse of historic buildings, and guidelines for the limited number of remaining redevelopment sites along the waterfront; and

WHEREAS, the Planning Commission heard a presentation and held a public hearing on the amendment to the City's 1992 Master Plan to create a Waterfront Small Area Plan chapter on April 5, 2011; and

WHEREAS, after hearing such presentation and public testimony, the Planning Commission voted to initiate the amendment to the City's 1992 Master Plan to create the Waterfront Small Area Plan chapter on May 3, 2011; and

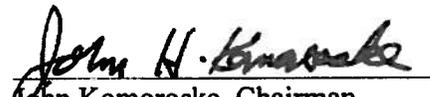
WHEREAS, the Planning Commission finds that:

1. The proposed amendment is necessary and desirable to guide and accomplish the coordinated, harmonious, and sustainable use, development and enjoyment of the **Waterfront Small Area** section of the City; and
2. The proposed amendment is consistent with the overall goals and objectives of the 1992 Master Plan; and
3. The proposed amendment shows the Planning Commission's long-range and sustainable recommendations for the general development of the **Waterfront Small Area Plan**; and
4. Based on the foregoing findings and all other facts and circumstances of which the Planning Commission may properly take notice in making and adopting a master plan for the City of Alexandria, adoption of the amendment for the **Waterfront Small Area Plan** chapter of the 1992 Master Plan will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of the residents of the City;

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Alexandria that:

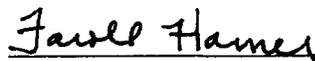
1. The attached document titled Alexandria Waterfront Draft Small Area Plan dated February 25, 2011, any appendices to such document and as such documents may have been amended by the Planning Commission on May 3, 2011 are hereby adopted as an amendment to the 1992 Master Plan of the City of Alexandria, Virginia in accordance with Section 9.05 of the Charter of the City of Alexandria, Virginia creating the **Waterfront Small Area Plan** chapter of said Master Plan.
2. This resolution shall be signed by the Chairman of the Planning Commission and attested by its secretary, and a true copy of this resolution forwarded and certified to the City Council.

ADOPTED the 3rd day of May, 2011.



John Komoroske, Chairman
Alexandria Planning Commission

ATTEST:



Faroll Hamer, Secretary

X 

PROPOSED ZONING TEXT CHANGES

Sec. 5-500 W-1/Waterfront mixed use zone.

- 5-501 Purpose. The W-1 zone is intended to promote mixed use development with suitable public amenities along appropriate portions of the city's waterfront by permitting a mixture of residential, commercial, cultural and institutional uses and by allowing greater densities than would otherwise be permitted to the extent the proposed mix of uses, the design and the location warrant.
- 5-502 Permitted uses. The following uses are permitted in the W-1 zone:
- (A) Single-family dwelling;
 - (A.1) Two-family dwelling;
 - (A.2) Townhouse dwelling;
 - (B) Multifamily dwelling;
 - (C) Business and professional office;
 - (D) Public building;
 - (E) Public park, athletic field or other outdoor recreation facility;
 - (F) Public utility service yard and/or electrical receiving or transforming station, provided the use and/or structure was in existence prior to 1982 and the use has been continued thereafter;
 - (G) Accessory uses, as permitted by section 7-100.
- 5-503 Special uses. The following uses may be allowed in the W-1 zone pursuant to a special use permit:
- (A) Commercial outdoor recreation facility;
 - (B) Commercial shipping and freight terminal;
 - (C) Facilities used for docking or berthing of boats or ships, including public or private marinas and/or boat docks with related facilities limited to water and electricity connections;
 - (D) Health and athletic club;
 - (E) Home for the elderly;
 - (F) Nursery school;
 - (G) Outdoor food and crafts market;
 - (H) Personal service establishment;
 - (I) Privately owned public use building such as civic auditorium or performing arts center;
 - (J) Restaurant;
 - (K) Retail shopping establishment;
 - ~~(L) Rooming house;~~
 - ~~(M) Tourist home;~~
 - (N) Utilities, as permitted by section 7-1200.
 - (O) Hotel, consistent with the Development Goals and Guidelines for Development Sites in the Waterfront small area plan.

- 5-503.1 Prohibited uses. Any use which is not a permitted, special or accessory use pursuant to this section 5-500 is prohibited.
- 5-504 Floor area ratio. The permitted floor area ratio of a development in the W-1 zone depends on whether a single use or mixture of uses is proposed and whether a special use permit is sought.
- (A) *Single use.* If a parcel is developed for only commercial use or for only residential use, the maximum permitted floor area ratio is:
- (1) Commercial: .75, or
 - (2) Residential: 1.0
- In the case of either (1) or (2), an additional .25 of retail use is permitted.
- (B) *Mixed use.* If a parcel is developed for both commercial and residential use, and the residential use constitutes at least 25 percent of the floor space of the development, the maximum permitted floor area ratio is 1.0 plus an additional .25 of retail use.
- (C) *Mixed use or residential/SUP.* If at least 50 percent of the floor space of the proposed development is for residential use and if the commercial use within such a development does not exceed a floor area ratio of .75, then, with a special use permit, the maximum permitted floor area ratio may be increased to an amount not to exceed 2.0.
- (D) Development sites in waterfront plan/SUP. For property that is part of a development site identified in the waterfront small area plan, with a special use permit, the maximum floor area ratio may be increased provided the development meets and is consistent with the Development Goals and Guidelines listed in the Waterfront plan for the property.
- 5-505 *Density and lot requirements.*
- (A) *Density.* Gross density shall not exceed 30 dwelling units per acre.
- (B) *Lot size.*
- (1) Each structure containing multifamily dwellings shall be located on a lot with a minimum of 1,452 square feet of land area for each dwelling unit.
 - (2) Each townhouse dwelling shall be located on a lot with a minimum of 1452 square feet of land area.
 - (3) Each other principal use shall be located on a lot with no minimum land area requirement except that which occurs as a result of other applicable regulations, such as yards, floor area ratio and parking.
- (C) *Lot width and frontage.*
- (1) For multifamily dwellings, the minimum lot width at the front lot and building line shall be 50 feet.
 - (2) For townhouses, the minimum lot width at the front lot and building line shall be 18 feet for all lots except interior lots for which the minimum lot width at the front lot and building line shall be 26 feet.

- (3) For all other principal uses, there shall be no minimum lot and building line requirements except those which occur as a result of other applicable regulations.

5-506 *Yard requirements.*

- (A) *Front yard.* No front yard is required except as may be applicable pursuant to the supplemental yard and setback regulations of section 7-1000 and the zone transition requirements of section 7-900.
- (B) *Side yards.* No side yards are required except in the following cases:
- (1) Each interior end unit in a group of townhouses shall provide a side yard of at least 8 feet.
 - (2) Multifamily residential buildings shall provide two side yards based on a setback ratio of 1:2 and a minimum of 16 feet.
- (C) *Rear yard.* Each lot shall provide a rear yard of at least 8 feet, except that each multifamily residential building shall provide a rear yard based on a setback ratio of 1:2 and a minimum distance of 16 feet.

5-507 *Height.* The maximum permitted height of buildings is ~~55 feet.~~ the height shown in the applicable height district map.

5-508 *Open and usable space.* Residential uses shall provide a minimum of 300 square feet of open and usable space per dwelling unit, exclusive of any area required for off-street parking. The location and shape of such space shall be subject to the director's determination that it is functional and usable space for residents, visitors and other persons. Such open space may be located on landscaped roofs or other areas fully open to the sky which are not at ground level and which are accessible to all residents of the development if the director determines that such space functions as open space for residents to the same extent that ground level open space would. In addition, each use, development or project adjacent to the Potomac River shall provide an open space walkway and bike way adjacent to the high watermark of the Potomac River.

5-509 *Ground floor occupancy regulations.*

- (A) No room or space used for residential purposes or commercial purposes, other than restaurant or retail room or space, shall be permitted on the ground floor of any building.
- (B) The provisions of section 5-509(A) shall not apply if publicly accessible waterfront or waterfront-related amenities are provided in conjunction with a proposed building, subject to approval of a site plan for such amenities and building pursuant to section 11-400.
- (C) Publicly accessible waterfront or waterfront-related amenities may include, but are not limited to, pedestrians walkways and landscaped open space areas connected to the walkway/bikeway required along the waterfront by section 5-508, boat docking facilities, or similar improvements that enhance pedestrian access to and enjoyment of the waterfront area. The planning commission, or city council on appeal,

shall approve the site plan submitted pursuant to section 5-509(B) if the commission or council in its reasonable discretion determines that the amenities to be provided enhance the publicly oriented vitality of the waterfront area.

- (D) As used in this section 5-509, "ground floor" means that floor of a building which is approximately or most nearly level with the ground surface in the general vicinity of the building and includes the headroom above such floor.
- (E) The residential building exclusions of section 11-404(A) shall not apply to any site plan submitted under the provisions of this section 5-500. Nothing in this section 5-509 shall excuse compliance with the use regulations of this section 5-500, including any requirement for a special use permit of section 5-503, or with the floodplain regulations of section 6-300.
- (F) Any ground floor room or space used for residential purposes or commercial purposes other than restaurant or retail room or space, in a building for which a preliminary site plan was approved on or before June 28, 1988, shall be deemed to meet the requirements of this section 5-509.

5-510 *Underground utilities.* All developments containing new or replacement utility facilities within the development shall provide for underground installation of said facilities.

5-511 *Use limitations.* Health club use shall include health, athletic, and bath clubs or establishments, massage establishment, including facilities incidental to such uses; provided, however, that a special use permit granted for the operation of a massage establishment as defined in section 11-4-1 of the city code shall apply exclusively to the permittee named therein and shall not be transferable to any other firm or individual. **5-512** Additional regulations for single-family, two-family and townhouse dwellings.

- (A) *Lot size.* Each single-family dwelling shall be located on a lot with a minimum land area of 5,000 square feet. In the case of a two-family dwelling, the lot shall contain 2,500 square feet of land area for each dwelling unit.
- (B) *Frontage.* When measured at both the front lot line and the front building line, each single-family dwelling and two-family duplex dwelling requires a minimum of 50 feet of frontage, and a semi-detached dwelling requires a minimum frontage of 37.5 feet for each dwelling unit.
- (C) *Yards.* For residential uses the following yard requirements apply: Each single-family, and two-family dwelling shall provide a front yard of 20 feet; a rear yard based on a 1:1 setback ratio and a minimum of eight feet; and side yards based on a 1:3 setback ratio and a minimum of eight feet. Each interior end unit townhouse shall provide a side yard based on a 1:3 setback ratio and a minimum of eight feet.

- (D) *Mixed use.* When a development includes both residential and nonresidential uses, the residential lot size, frontage and yard regulations shall be applicable to the residential component of the development.

5-513

Accessory apartments. One or two apartment dwelling units, located on a floor or floors above retail or commercial uses, shall be permitted as an accessory use. Such apartments shall be categorized as nonresidential for the purpose of applying the area and bulk regulations of this zone, and each such apartment shall provide the parking required for a multifamily dwelling unit of equivalent size.

(Ord. No. 3606, §§ 6--9, 12-12-92; Ord. No. 3612, §§ 1, 3, 1-23-93; Ord. No. 3629, §§ 1--4, 5-15-93; Ord. No. 3753, § 1, 9-27-94)

City of Alexandria, Virginia

MEMORANDUM

DATE: APRIL 22, 2011

TO: CHAIRMAN AND MEMBERS OF PLANNING COMMISSION

FROM: FAROLL HAMER, DIRECTOR OF PLANNING & ZONING

SUBJECT: WATERFRONT SMALL AREA PLAN INCLUDING A FLOOD MITIGATION PLAN AND ZONING TEXT AMENDMENT

BACKGROUND: On April 5, 2011, the Planning Commission received the staff report on the Waterfront Small Area Plan and held a public hearing on the proposed plan and the related zoning text amendment. At the end of the public hearing, the Commissioners made comments and asked questions prompted by the proposed Plan, the staff report, and comments from the public: the live testimony at the public hearing as well as public comments submitted by letter, email, or posted on the Waterfront Plan website and Facebook pages.

The Chairman of the Commission closed the public hearing, and indicated that he would consider reopening testimony only for substantive changes. The following changes recommended by the staff are based on comments, presentations and testimony at the April 5 hearing. In addition, new information concerning the Old Dominion Boat Club discussions is included, but as these discussions have not been completed there is no specific staff recommendation for their implementation, other than that the Planning Commission acknowledge the discussions and the possibility of an agreement with the ODBC in the future. For these reasons, the Planning Commission will not to take additional testimony at the May 3 Commission meeting. Citizens who wish to speak further on the Waterfront Plan will have that option at the City Council hearing on it on May 14.

SUMMARY OF RECOMMENDED CHANGES TO THE PLAN: This memorandum reviews staff's proposed changes to the Waterfront Plan. With the exception of the ODBC-related issues, the changes proposed are ones that respond to public requests (testimony, letters and emails, etc.) or clarify concept that are well-known elements of the Plan.

- Eliminate the Waterfront Park restaurant building and add language supporting an active park through other means.

x (24) 44

- Minor changes to the language for Rivergate and Oronoco Bay Parks regarding potential designs for the observation area at the foot of Montgomery Street and the location of the children's play area (response to public input from Rivergate homeowner's association).
- Add the language about redevelopment of the Sheetmetal Worker's Union building requested at the public hearing by a representative of the building's owners, regarding the importance of the connection to the public spaces if redevelopment takes place.
- Add the cost of Windmill Hill Park implementation to the overall cost of the plan, as requested by the Waterfront Committee in their public testimony.
- Make a series of editorial changes designed to strengthen the connection of plan recommendations to the History Plan. These changes do not raise new ideas, but give more emphasis to ideas in the History Plan appendix by bringing them into the main body of the plan, and by reordering some paragraphs, etc. This responds to testimony from the history community.
- Add language providing flexibility in the spending of the \$3.6 million included in the plan budget for a civic/cultural building. The overall goal is the creation of a history and/or cultural "anchor" in The Strand, and these funds are intended to implement that vision – which could be implemented in a variety of ways, only one of which is a civic building in Point Lumley Park. This responds to testimony from the history community.
- Add language clarifying that the proposed piers can be of a different length or design from those shown in the plan illustratives (responding to several expressions of concern over the pier length).
- Add language detailing how restaurants and hotels would be reviewed during the SUP process to determine if they have unacceptable off-site impacts.
- Further reduce the square footage of restaurants assumed for the revenue estimates – initially 109,000 square feet in the draft plan – to 50,000 square feet, in response to several expressions of concern about the amount in the assumption.
- Potential changes due to discussions with ODBC, including potential that the parking lot will not completely move but may be reconfigured or reduced to improve public access to the river and/or to Waterfront Park. These discussions will affect the placement of the King Street pier, which could, for example, move south to be centered on Waterfront Park.
- Added language to the development guidelines noting that consideration should be given to hotel parking ratios of 0.5/room.

DISCUSSION: For the Planning Commission's consideration of the proposed plan and text amendment, staff has structured this memorandum by highlighting each of the key elements of

the plan, public comments (if any) and staff's response. In some cases, staff is recommending changes to the plan based upon the public input and in other cases staff reiterates why it believes the recommended approach should be approved.

Rather than review all of the key elements, the Planning Commission may prefer to move directly to the issues for which there is the most debate. These are:

- #2: History elements
- #17: Parking
- #18: Waterfront Park building
- #19: Fitzgerald Square and the ODBC parking lot
- #20: The harbor/marina area, including cost and regulatory status of the piers
- #21: Restaurants
- #22: Hotels
- #23: Increasing densities on redevelopment sites
- #24: Development goals and guidelines for the redevelopment sites

WATERFRONT PLAN KEY ELEMENTS

1. **Integrated Flood Mitigation System:** address the most frequent nuisance flooding by elevating roadways in the vicinity of the foot of King Street and mitigate the average 10-year flood in the waterfront core area through a system of low walls integrated into the landscape and automated floodgates at street ends (to preserve views).

The Planning Commission received a suggestion that the City consider a flood mitigation system for the entire length of the Waterfront. The City investigated that option in the 2010 Potomac River Waterfront Flood Mitigation Study, which looked at a number of options to mitigate flooding such as: (a) nuisance flooding (Elevation 4.0) which has a 1.5 year return interval; (b) Elevation 6.0 flooding with a return interval of 10 years; (c) an intermediate level (Elevation 8.0) which has a 30 year return interval and (d) an extreme level (Elevation 10.2) which has a 100 year return interval. The plan incorporates the recommendations in the Flood Mitigation Study. Those recommendations include an Elevation 6.0 flood mitigation option to address flooding that is somewhat higher than nuisance but below intermediate. Elevation is measured as feet above the North American Vertical Datum, and is generally referred to as feet above sea level. Because much of the Waterfront is already at elevation 4.5 feet, another 1.5 feet of protection that is integrated into the landscape would yield a total of 6 feet of protection above sea level. This level of protection would be built from approximately King Street to Robinson Terminal South and between Thompsons Alley and Queen Street. The plan also includes an increase in the roadway elevation in the vicinity of King Street at The Strand and Union Street, another element recommended in the Flood Mitigation Study. This would

reduce shallow nuisance flooding at the waterfront from approximately 150 times a year to approximately 10 to 15 times a year.

Neither the Flood Mitigation Study nor the Waterfront Plan recommend flood mitigation to protect at the extreme flood level. This option is not only more expensive, but it would entail physical impacts that the City staff believe are not appropriate as they would create physical and visual barriers to the water. Flood mitigation elements were investigated along other portions of the City's waterfront. These options are also not recommended due to their significant costs and adverse effects.

A question was raised at the Planning Commission public hearing regarding the impact on the City's combined sewer system from the proposed development in the Waterfront Plan, particularly the construction of hotels. As can be seen in the attached exhibit (Attachment 1), the area of the Waterfront Plan is almost entirely served by separate sanitary and storm sewers, and any new construction would be connected to separate sanitary and storm sewers. Any development or redevelopment within the limits of the Waterfront plan will not add additional flow to the City's combined sewer system.

Staff recommends no changes to the draft Plan.

2. **History Elements:** The plan wholly incorporates the Waterfront History Plan and provides recommendations throughout the plan to support implementation of the history recommendations. The plan budget includes \$3.6 million for a civic building to potentially house a museum or history center and identifies a number of other options for these uses, including historic warehouses in the 200 block of South Union.

The Historic Alexandria Resources Commission and the Archaeology Commission have formally expressed support for the history elements of the Waterfront Plan.

James McCall, the principal author of the Waterfront History Plan, provided testimony at the public hearing that requests a number of language changes to strengthen the plan. Staff agrees with these changes, which are detailed in Attachment 2.

One key recommendation was to strengthen its commitment to a southern history/cultural anchor as recommended in the art and history plans. The plan recommends establishment of the anchor and provides options for its implementation, but staff agrees the wording can be improved to emphasize the City's commitment. The proposed language is shown on page 28.

Planning staff also note that the language can be added to the plan to clarify that the \$3.6 million could be used to implement the southern cultural anchor recommended by both the Art and History Plans as well as the Waterfront Plan itself— in whatever form that implementation takes.

- 3. Transportation and Circulation**, including pedestrian, bicycle, and vehicular (auto, transit and travel by water): the plan includes a variety of recommendations to improve travel accessibility and safety by every mode. Key recommendations include increasing the frequency and hours of the King Street Trolley; separating commercial and pleasure boat activities and greatly increasing the capacity for commercial boat operations; adding services for bicyclists, including more bicycle parking, so that visitors can arrive by bicycle and then explore the Waterfront area by foot; giving priority to the pedestrian in high pedestrian traffic areas such as the unit block of King Street, The Strand, and the street ends of Prince Street and Duke Street. (pp. 106-110, 112, 113).

Comments received have been favorable of these concepts and staff recommends no changes to the draft Plan.

- 4. Complete the continuous waterfront walkway**, embracing the Art Walk and History Plan proposals, including cultural anchors at key points along the Waterfront (p. 37).

Comments received have been favorable of these concepts and staff recommends no changes to the draft Plan.

- 5. Gateway North/Canal Center**: recommendations related to the establishment of a gateway for the Art Walk (p. 38).

No comments were received on this concept and staff recommends no changes to the draft Plan.

- 6. Tide Lock Park**: increase programming and add physical elements that explain or evoke the importance of the canal site in the City's history; add public art, possibly incorporating glass; add a kayak launching ramp in the cove at Tide Lock Park; enhance the observation area at the end of Montgomery Street (p. 39).

The Rivergate homeowner's association is opposed to a kayak launch, citing concern about parking. Staff notes that there are numerous on and off-street parking spaces in the nearby vicinity, especially during evenings and weekends. Staff had previously proposed a kayak/canoe rental facility in this location but changed it to the much less intensive use of a launching area in response to the Rivergate homeowner's concerns.

The Rivergate HOA also notes with concern that one of the plan illustratives shows added parking spaces at the foot of Montgomery Street. Staff agrees with the Rivergate HOA that this should be changed in the drawing because it is not a recommendation of the Plan.

The Rivergate HOA suggests that the observation area be angled toward the north to better capture views of the nation's capital, rather than facing directly east as shown in the graphics. Staff notes that the graphics are illustrative of design concepts and

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changes to the designs are anticipated; nevertheless, staff agrees that the language of recommendation 3.17 should be changed to add "and possibly angled to the north to better capture views of the nation's capital."

7. **Rivergate Park and the Dee Campbell Rowing Facility:** relatively modest changes due to limited parking and proximity to residences, such as reorienting walking paths to be closer to the river, enhancing landscaping to create more appealing public spaces, implementing Art Walk recommendations such as artist-designed seating, and naturalizing shoreline where possible. No changes are recommended for the rowing facility (p. 40).

No comments were received on these ideas and staff recommends no changes to the draft Plan.

8. **Oronoco Bay Park:** a series of recommendations to provide more activities for families and children (including play structures that may be artist-designed), to improve the park's ability to host events both large and small, to improve the natural environment, and to implement the public art and history recommendations. The recommendations include extending the existing curved boardwalk, re-creating a marsh or wetland at the location of "Ralph's Gut," adding a small wooded area, and replacing riprap, where possible, with a more natural shoreline. Several of the recommendations for Oronoco Bay Park come from the Art and History plans, as well as input from the Parks and Recreation Commission (p. 43).

Most of the elements of the plan for Oronoco Bay Park were suggested by community organizations, who have responded positively to how they were incorporated into the Plan.

The Rivergate homeowner's association has expressed concern about some elements of the plan, however.

The Rivergate HOA is opposed to a children's play area in Oronoco Bay Park, but if one is built, suggests that it be located as far away from Rivergate as possible. Staff notes that the plan does recommend that the children's play area be located in the northern half of the park, and agrees that the language should be changed – in part because it is premature to designate a location for the children's play area and that the best location may not be where the plan now shows it. Staff suggests creating a separate recommendation for the children's play area that does not specify a particular location for it.

The Rivergate HOA is opposed to planting additional trees in the northwest corner of Oronoco Bay Park, citing concerns about impacts on views and accessibility.

Representatives of the owners of the Sheet Metal Workers building, immediately adjacent to Oronoco Bay Park, requested the following be added as a recommendation in the Plan: "If the Sheet Metal Workers building were to be redeveloped, such redevelopment shall provide a high level of pedestrian and visual connectivity between the redeveloped property and Oronoco Bay Park. Provided that the redevelopment is compatible with the uses in Oronoco Bay Park, a rezoning may be considered." Staff supports this request.

9. **Founders Park:** retain the current character of the park with modest landscaping improvements such as additional shade trees that do not block views and replacing riprap, where possible, with a more natural shoreline. Implement art and history recommendations (p. 49).

No comments were received on these issues and staff recommends no changes to the draft Plan.

10. **Thompsons Alley:** rebuild and realign the bulkhead, adding a much wider promenade; relocate the fire boat and Seaport Foundation to the foot of Duke Street; improve the Thompsons Alley area as an outdoor dining venue and improve views; screen restaurant back-of-house activities from pedestrians; improve access for patrons of commercial boats (p. 51).

No comments were received on these issues and staff recommends no changes to the draft Plan.

11. **Chart House and Food Court:** support improvements to the public realm around the Food Court and Chart House to be more user-friendly and appealing to visitors; support changes to the structure of, and uses within, the Food Court building to improve its success, including the potential use of the Food Court building as a food market hall or cultural venue (p. 53).

The community has repeatedly expressed a desire to see a more successful use in the Food Court and has indicated that physical changes to the building and the public realm are desirable. The language in the proposed plan reflects those community interests and provides both guidelines and flexibility to support changes to the Food Court to make it more successful, including physical changes to the building and the public spaces that surround it, as well as changes in use, including food market hall, cultural uses, or other use. The company that controls the Food Court has indicated they are exploring restaurant uses.

Staff is recommending no changes to the Plan.

12. **Torpedo Plaza and Cameron Street Wharf:** The plan supports a series of improvements to the public realm and supports more active uses outdoors; supports

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celebrating the Torpedo Factory with public art at a variety of scales in the public spaces around the building, and finding opportunities for interpretation of the significant historic events that occurred at this location (p. 55).

No comments were received on these issues and staff recommends no changes to the draft Plan.

- 13. Torpedo Factory Art Center:** Work with the Torpedo Factory governing board to identify and implement initiatives to strengthen the arts center and its role, including improvements to the retail arcade and entryways to make them more user-friendly and accessible (p.56).

No comments were received on these issues and staff recommends no changes to the draft Plan.

- 14. Point Lumley Park and The Strand south of Waterfront Park:** create a new public park, drawing inspiration for the Strand's role in Alexandria's history as a working waterfront; establish the Strand as a cultural anchor with emphasis on history and art; create a comfortable pedestrian-oriented zone along The Strand.

Apart from the history recommendations mentioned earlier, no comments were received on these issues and staff recommends no changes to the draft Plan.

- 15. Windmill Hill Park to Jones Point Park:** the plan reflects the current approved park plans for Windmill Hill Park and Jones Point Park; recommends improvements to the bike trail over the long term.

The Waterfront Committee requested that the cost of implementing the Windmill Hill Park plan be added to the cost of the Waterfront Plan. Staff has not prepared a cost estimate of all of the elements in the Windmill Hill Park plan, but notes that the bulkhead replacement and shoreline improvements – the largest cost element by far – is estimated to cost about \$5.5 million. Adding this cost to the Waterfront Plan's "budget" would increase the cost of the plan to \$44.5 million and would increase the amount of time until the plan "pays for itself" by a couple of years.

Staff agrees that implementing the Windmill Hill Park is as important as implementing the other elements of the Waterfront Plan and agrees to add the cost to the overall cost of the Plan.

- 16. Tide Lock Park to Daingerfield Island:** the plan requests that the National Park Service begin a master planning effort for Daingerfield Island, in part to explore suggestions made by Alexandrians for a waterside boardwalk and other features; to pursue opportunities to improve access between Potomac Yard and the Mount Vernon Trail; and to support redevelopment that improves the relationship of buildings to the street.

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There were no comments on these elements of the plan and staff recommends no changes.

- 17. Parking:** The plan recommends that implementation of the parking recommendations begin immediately upon adoption of the plan. The Waterfront Plan calls for a Parking Implementation Plan to be developed with members of the public and based on the analysis and recommendations in the Waterfront Plan. The Parking Implementation Plan will be able to be more specific than the small area plan and will include “triggers;” that is, limits on the approval of new parking demand generators until the necessary parking capacity can be demonstrated.

This post-plan-adoption parking implementation will build on the work already being done and will have four areas of particular focus: active management of parking spaces, especially parking garage capacity and utilization; reviewing Waterfront development for parking impacts and comparing to available capacity; implementing a broad valet parking program for Old Town and King Street, with emphasis on the Waterfront core area; and protection of residential areas. (p. 120)

The Planning Commission received testimony requesting additional protections related to parking, most notably a “pilot” program or demonstration that the City is being successful. Regular monitoring of parking conditions and program success is a major element of the Plan’s parking recommendations. Through the proposed restaurant/hotel policy, Planning staff is strengthening the review of potential generators of new parking demand and ensuring that actual parking capacity is taken into account. The plan already states that before new restaurant uses that place significant new demand for parking are allowed through the SUP process, parking solutions to meet the demand will need to be calculated, identified and discussed in the SUP report recommendations in order to ensure that sufficient parking is in place contemporaneously with the opening of the restaurant.

- 18. Alternatives to the Waterfront Park building:** The plan proposed a building over a relocated ODBC parking lot to provide activity in Waterfront Park and link King Street to a reactivated Strand.

In light of the ODBC’s opposition to the relocation of their parking lot along the western edge of Waterfront Park, staff is no longer recommending a restaurant building in Waterfront Park.

As an alternative, staff proposes language containing options that would support more active use of Waterfront Park. Some of these options, including small scale activities for families and children and a stage, are already in the Waterfront Plan.

The language for the plan would state the importance of activity linking the south Strand to King Street, and would note that this goal could be accomplished with:

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- *Food and other carts, tables and chairs, small scale recreation activities, and programming of events, displays or performances providing entertainment, culture, history and the arts.*
- *Kiosks and other temporary or seasonal structures serving as outdoor cafes, unique retail (such as made in Alexandria items), cultural or history-themed displays.*
- *An open-air market structure or pergola, suitable for farmer's markets, art shows, and the like...possibly glass enclosed in winter to support ice skating and other winter recreation activities.*
- *A new public pier, which will serve both to bring park users out onto the water as well as a location for water taxis and other boats to bring visitors to Alexandria.*
- *Permanent and/or visiting historic ships and other ships of character.*
- *A stage supporting performances, movies, and other entertainment or cultural events, using the natural slope of Waterfront Park and the low berms or seating walks of the flood mitigation strategy to allow park users to view the stage.*

19. Alternatives to Fitzgerald Square and the ODBC parking lot: The plan calls for reorienting the ODBC parking lot 90 degrees to the rear of Waterfront Park, by doing so, creating a new public plaza ("Fitzgerald Square") at the foot of King Street. Fitzgerald Square would create an important activity hub that greatly strengthens the connection between King Street and the Potomac River and connect the arts and leisure activities of the Torpedo Factory area with the history, culture and recreation activities of Waterfront Park and the Strand. The location of a new pier in close proximity to the foot of King Street would provide natural wayfinding, with visitors arriving by boat seeing King Street ahead of them as well as everything on the waterfront from the Chart House to Robinson Terminal South.

The court decision early this year clarified that the Old Dominion Boat Club (ODBC) owns the land upon which its parking lot and club house sit. ODBC has expressed that it does not like the proposal to reorient their parking lot 90 degrees or a new public pier in close proximity to their property. The Waterfront Park building proposal was incumbent upon the ODBC parking lot relocation; with that relocation concept no longer an option, the restaurant building is also no longer an option.

As the president of the ODBC noted at the April 5 public hearing, the ODBC and City have been engaging in discussions to determine if a mutually agreeable alternative to the current arrangement can be found.

While the City and representatives of the ODBC have been in discussions on and off for many years, the most recent discussions between the City and the ODBC were reinitiated

in recent months. While negotiations of this type are often held just between the two impacted parties, because the public is the ultimate global stakeholder, and because the Waterfront Small Area Plan is currently under public consideration, it was determined that open discussion of the alternatives under active discussion was in the public interest.

Alternatives discussed between the City and the ODBC in recent months have included a wide range of solutions, ranging from minor changes to the current the ODBC parking lot status, to more radical ideas such as the ODBC moving to a new building and compound on the Strand with a new array of boat slips being constructed, and the City obtaining the current ODBC building and ODBC parking lot in exchange. This ODBC facilities building replacement and land exchange alternative, while positively embraced by the ODBC, was determined too expensive for the City to finance, and was set aside as a viable alternative.

Other alternatives have been discussed and two alternatives with similar but also very different characteristics have emerged as the two core alternatives determined by both parties worthy of further discussion.

Option A was produced by the ODBC team; it is a variation of one presented by the City (which was itself representative of a plan drafted and considered by ODBC and the City in the late 1990's). Option B was produced by the City staff.

Option A would create a walkway of about 10 feet in width from the foot of King Street adjacent to the river running across the foot of the ODBC parking lot (which would remain in place) and then connecting to the existing walkway along the river at Waterfront Park. In exchange, ODBC wants the City to grant them the City-owned pleasure boat pier with 28 slips (plus T-head) in front of the Torpedo Factory which is immediately adjacent to the north ODBC pier, as well as the City providing a boat storage facility for ODBC on Eisenhower Avenue adjacent to Lake Cook. The desired City public plaza on the Strand which would provide visual and physical access to Waterfront Park would not be provided under the ODBC proposal.

Option B is one put forth by the City staff knowing that ODBC had issues with the river walkway alternative described above. This new alternative for consideration would change the ODBC parking lot from its current rectangular shape stretching from the river to the Strand Street, to a new "L" shaped alternative which would start at the river and then turn at a right angle towards the ODBC building and then connect to the foot of King Street (see Option B). It would eliminate the current gap between the ODBC - parking and the ODBC building, and create a more complete compound for all of the ODBC's facilities. The new parking area at the foot of King Street would be considered a "peak parking" area and would otherwise remain unused and provide a view of the river from King Street during off-peak periods. In exchange the ODBC would transfer to the City some 50' off the top of their current parking lot as access to, and as an addition to Waterfront Park. This near equal land exchange would give the public better access to

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Waterfront Park at its planned public pier, and at the same time provide the ODBC a solution that met its parking and water access needs, provides a contiguous compound and represents an equitable land exchange. In this alternative the City would not have to provide an Eisenhower Avenue boat storage facility. How the Torpedo Factory pleasure boat slip pier would be handled would be subject to further discussion and negotiation. The City's view is that this should remain a pier owned by the City and available to the public.

It should be noted that both alternatives include a relocated and redesigned King Street pier, as requested by the ODBC to move activity away from their property.

The ODBC representatives requested that this statement about the discussions be included in this memorandum:

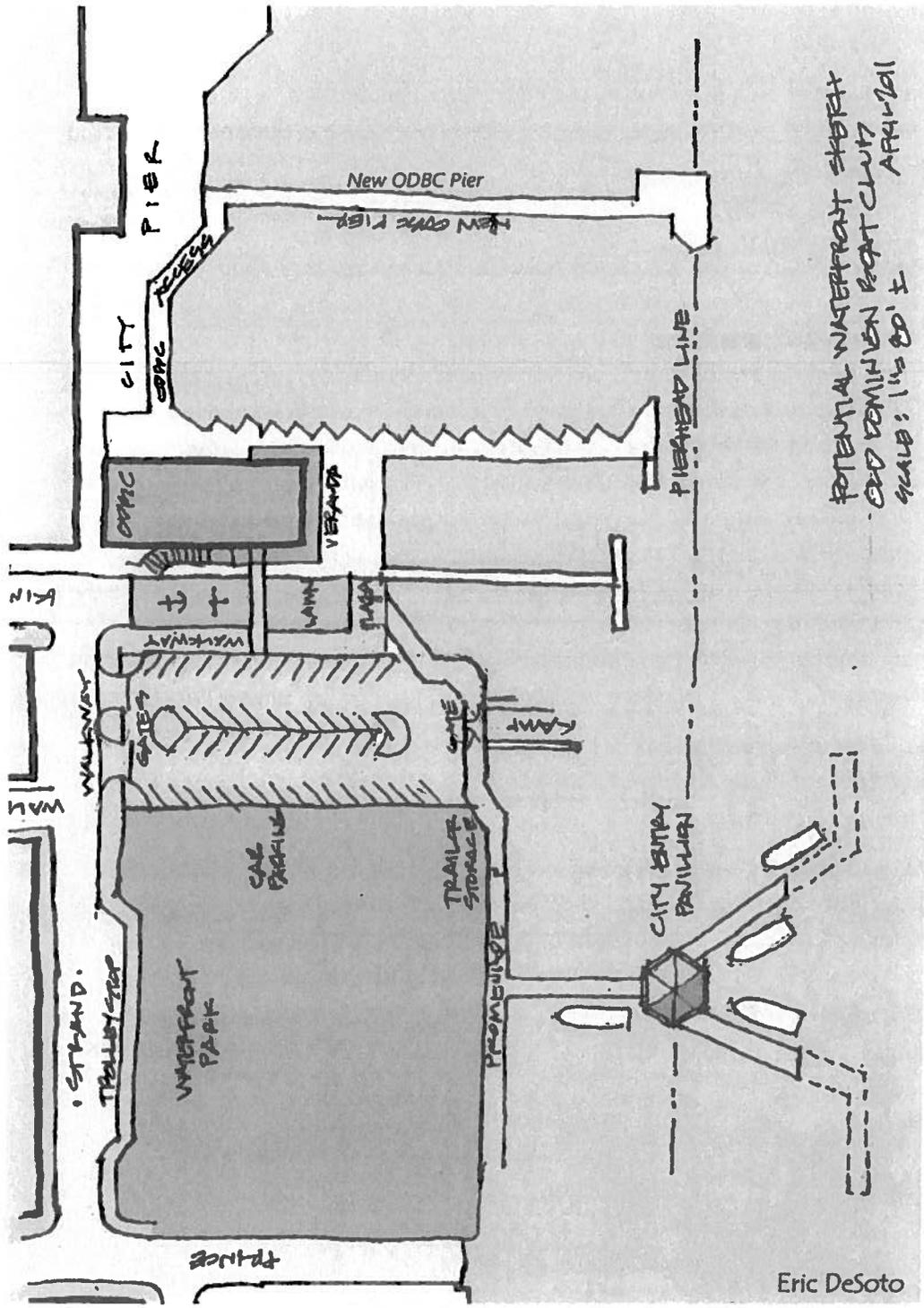
“Representatives of Old Dominion Boat Club have continued dialogue with representatives of the Alexandria City Manager's Office and the Department of Planning and Zoning. Since that time, productive discussions have continued, the purpose being to establish a framework of conceptual ideas wherein the City and the ODBC, could continue moving toward a mutually beneficial outcome that would result in the North/South connectivity desired by the City. At all times in said dialogue, it was understood among parties that any formal agreement between the two entities would be subject to an approval by the ODBC membership and appropriate decision making bodies within the City of Alexandria. It was also made clear on several occasions, that should the City be unsuccessful in gaining approval of its Small Area Waterfront Plan, that it was the intention of the ODBC to continue its efforts to improve itself with regard to its Parking Lot/Boat Yard fence, bulkheads, and the exterior of its building.

All said improvements would be made in a manner consistent with appropriate regulation and designed in way to enhance the intent of the City's vision for the Alexandria Waterfront.”

Staff continues to believe that the proposal for Fitzgerald Square, the King Street Pier, and Waterfront Park contained in the draft Waterfront Plan is the optimal design but also want the Planning Commission to have the opportunity to weigh the pros and cons of these alternatives, which may have a greater likelihood of implementation. Staff will review the pros and cons of the options at the May 3 Planning Commission meeting.

Option "A"

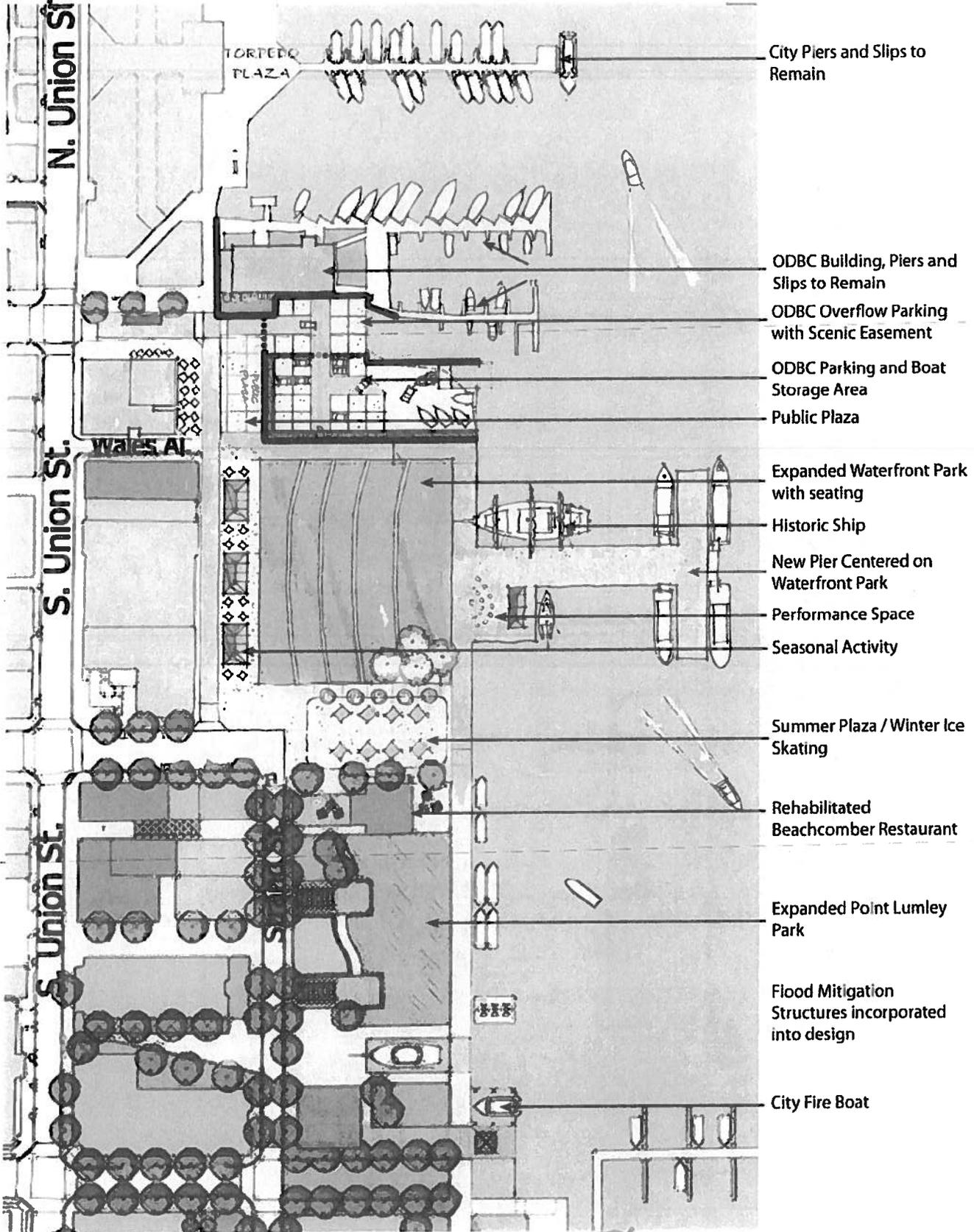
April 21, 2011



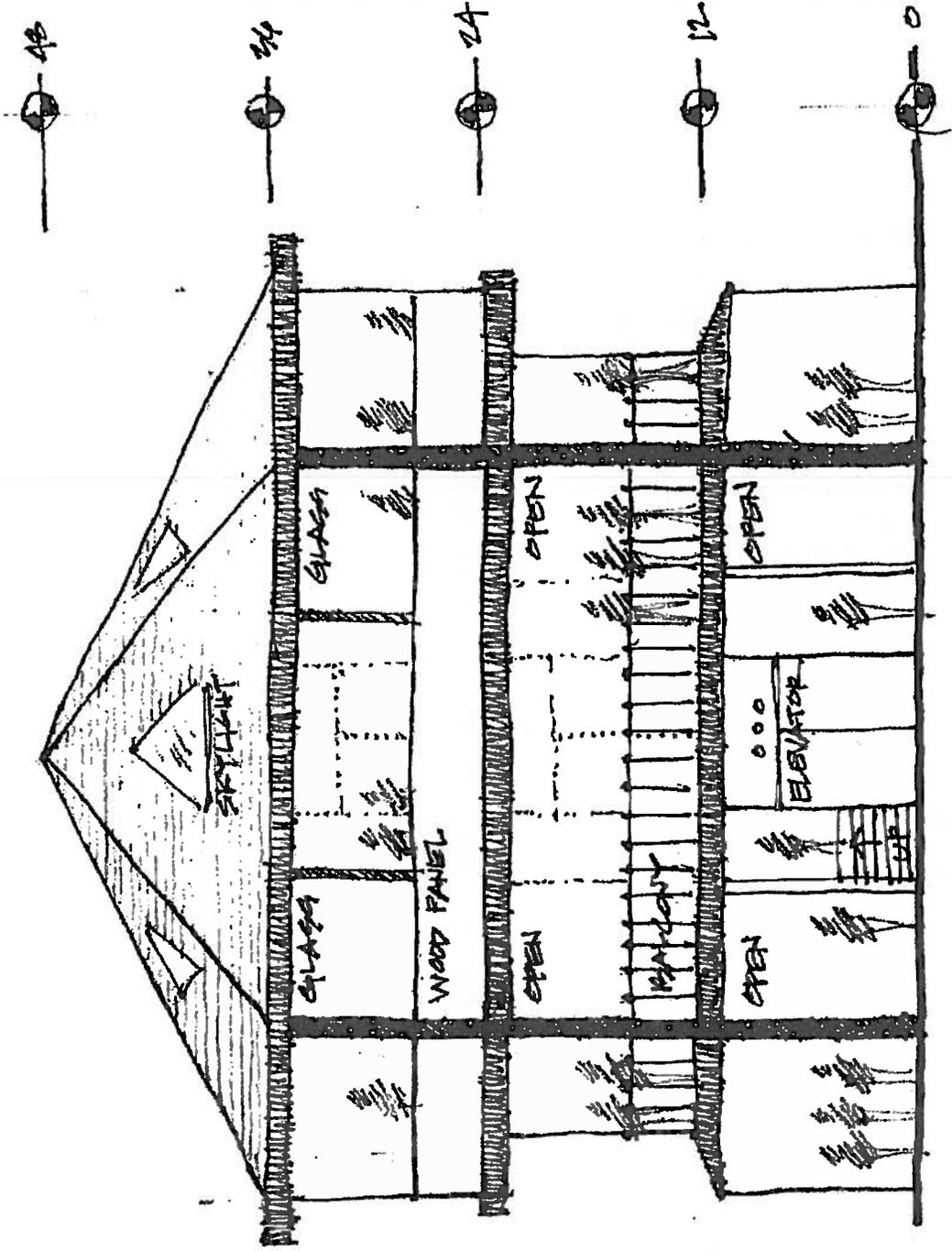
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Option "B"

April 21, 2011 Conceptual Design



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APRIL 2011

ELEVATION / SECTION SKETCH
 ALEXANDRIA ENERGY FIN 111101
 SCALE: 1/8" = 1'-0"

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20. **Harbor/marina area:** Extending piers into the Potomac River as public spaces and for commercial boat operations; designating Robinson Terminal South for a potential pleasure boat marina (pages 68 and 70).

In general, there has been public support for these concepts but concern about specifics. Support for the extended piers as public spaces and for water taxis, etc.; support for separating commercial and pleasure boat marinas and expanding capacity of both; and support for an upgraded pleasure boat marina that could be operated at a profit by the private sector. Public comments on this element of the plan have focused on the expense and length of the main piers; the greater potential for longer piers to be damaged, especially by ice and floating debris; and the challenge of getting regulatory approval.

Although the plan does not specify exact lengths, widths or designs of the piers or marina, the model and the illustratives in the plan could easily be interpreted as recommending a single design. Staff agrees that shorter piers – even substantially shorter – and designs other than the “crab claws” in the plan could work well. Staff recommends that language be added to the plan to make it clear that a range of design options should be considered.

Staff has included the cost of the piers in the plan “budget” including annual and long-range maintenance costs. There was testimony that some additional dredging would likely be needed due to the pilings for the new piers disturbing the river current. It was not really possible to estimate the potential additional cost for dredging when the pier designs are as conceptual as they are. If/when the City gets to the next step in pier design, costs and other economic issues will be taken into account and weighed against anticipated benefits. There are, however, elements in the plan that have the effect of reducing the need for dredging in other area, which will reduce the potential increase in dredging costs over the life of the Plan.

A number of speakers expressed concern about the ability of the City to get regulatory approval for the piers and the marina. Until recently, most of the concern was that the District of Columbia would not approve them, but the City received an official letter from the DC government that cleared that hurdle. Additional approvals are needed, of course, including approvals from the National Park Service, the Army Corps of Engineers, the Coast Guard, and state environmental agencies. City staff has met with the Corps of Engineers, DC and the Commonwealth to provide them with an overview of the concept design for the Waterfront Plan and to review their regulatory processes. Consistent with their review and approval processes, the City would submit a Joint Application to the Corps and other regulatory agencies once: (a) the plan is approved, (b) additional engineering and design work for the piers is complete, and (c) construction drawings are substantially complete. As noted above, final design of the piers would be done so as to minimize costs, silting and other environmental impacts. More information on the regulatory process is provided in the plan.

A question raised at the public hearing is whether the plan addresses marina operations, maintenance, and amenities. The plan does address these – on page 17 in a general way and more specifically on pages 59 and 67, which describe the expanded commercial and pleasure boat marinas, and on page 139, where the plan notes that a new marina at Robinson Terminal South would likely require space for a dock master office, showers, and a laundry room, which could total about 1,100 square feet. The Plan's expectation is that these services would be provided onsite by the operator, and potentially incorporated into the Robinson Terminal South redevelopment

21. **Restaurants:** Restaurants and other retail are a permitted use in the W-1 zone; the plan does not increase the square footage of restaurants currently permitted on the three redevelopment parcels or in any of the existing buildings within the plan area where restaurants are currently a permitted use. However, the plan does encourage ground floor active uses in certain locations, and the plan encourages hotels as a use, and both of these indirectly encourage restaurants. The plan produced anticipated restaurant square footage to prepare revenue estimates. With the elimination of the Waterfront Park restaurant building, the square footage of that estimate is reduced to 73,000 square feet, and the annual net tax revenue from planned development decreases from \$4.8 million to \$4.3 million (active frontages shown on pp 86-87; revenue discussion in the April 5, 2011 staff report).

Several speakers at the public hearing expressed concern about the potential square footage of restaurants. The concerns come in two forms: concern about impacts on existing businesses, and concerns about other off-site impacts, such as parking and noise.

Representatives from the business community testified at the public hearing that a more active Waterfront will support, not diminish, the economic health of nearby businesses. As the 2009 Gibbs King Street Retail Study noted, the Waterfront now serves as a weak anchor to the King Street retail corridor. Moreover, Mr. Gibbs pointed out that visitors are now leaving the Waterfront with money in their pockets – money that they would have been happy to spend in a Waterfront store or restaurant. So it is not just that a more appealing waterfront will attract more visitors, it will likely induce those who already shop or dine to spend more per visit. Mr. Gibbs estimated that those who currently shop or dine in Old Town could support another 100,000 sf of retail and food and beverage space – approximately \$100 million per year in additional annual sales.

Staff is recommending language to address both forms of concern – for both restaurants and hotels, because similar concerns have been raised with regard to hotels.

Staff proposes a "Waterfront Restaurant/Hotel Policy" for inclusion in the Waterfront plan that provides detailed criteria for assessing neighborhood compatibility and offsite impacts during the SUP process for both restaurants and hotels. The proposed policy is similar to the existing Old Town Restaurant Policy. The criteria include but are not

limited to findings that the use does not create significant negative impacts on the vitality and character of King Street or nearby residential neighborhoods.

The draft policy is attached as Attachment 3.

Concern was also expressed that the Waterfront Plan relies to a great extent on restaurant and hotel tax revenues to pay for the Plan's parks, piers, and promenades. It is certainly a challenge to attempt to finance improvements for an entire Waterfront on the revenues of three development sites. Ultimately, however, the amount and type of land use recommended for each site is driven not by revenue goals but by best professional planning objectives, namely neighborhood compatibility and helping to create the best possible experience for visitors to the Waterfront. A graphic showing locations of active ground floor uses in the Waterfront Core Area are attached as Attachment 4 and 5.

The assumption for restaurant square footage in the revenue estimates includes: the Beachcomber (3,600 square feet), about 19,000 square feet of ground floor restaurant in the Cummings/Turner block, about 20,000 square feet at Robinson Terminal North and about 30,000 square feet at Robinson Terminal South.

The draft plan used an estimate of 109,000 square feet of restaurant, which has since been reduced to 73,000 square feet by the elimination of the Waterfront Park restaurant. To further help allay concerns and to illustrate that the restaurant square footage figure is for revenue estimates only, staff proposes further reducing the restaurant square footage assumption to 50,000 square feet, which would result in annual net tax revenues of \$4.1 million. It should be noted that the 50,000 square feet of restaurant space used in the revenue estimates could be partially met with outdoor dining square footage. Outdoor dining is encouraged by the plan and is likely to be lucrative (albeit seasonal). Outdoor dining square footage would reduce the "need" for indoor square footage to meet revenue estimates.

The reduction in assumed restaurant buildout adds 1-3 years the amount of time needed for the plan to "pay for itself."

Testimony was received that the Waterfront Plan calls for the equivalent of 14 Virtue restaurants. The recently-approved Virtue is 7,900 square feet indoors and 803 square feet outdoors for a total of 8,703 square feet. The 50,000 square feet now used for revenue estimates is equal to 6-8 Virtues – spread out over 8 blocks.

Staff recommends reducing the restaurant component of the revenue estimate and the inclusion of the Waterfront Plan Restaurant/Hotel Policy in the Plan.

- 22. Adding hotel as a permitted use in the W-1 zone:** The overwhelming rationale for staff to recommend adding hotels as permitted use in the W-1 zone is their compatibility with nearby residential neighborhoods as well as their contribution to an active and public Waterfront. Of course it is helpful for planned development to be able to contribute

financially to plan implementation, but the revenue calculations were developed well after the hotels were proposed in the early drafts of the Plan.

A number of speakers strongly supported the hotels and others strongly opposed or expressed concern about the potential impacts. Planning staff believes equally strongly that hotels are a highly desirable element that should be included in the Waterfront Plan. The Waterfront Plan's "supplemental material" as well as the April 5 staff report and the staff presentation at the April 5 public hearing addressed the benefits and impacts of hotels in some detail. One of the points in the discussion: the more than 900 hotel rooms within a few blocks on upper King Street: the Lorient (107 rooms), the Hampton Inn (80), the Hilton (246), the Embassy Suites (268), and the Wyndham resort (200). The Planning Commission received comments from upper King Street residents stating that these hotels are good neighbors.

Nevertheless, staff understands that concerns remain. In order to ensure that the individual and cumulative impacts of hotels are fully addressed during the SUP process, staff proposes a "Waterfront Restaurant/Hotel Policy" for inclusion in the Waterfront Plan that provides detailed criteria for assessing neighborhood compatibility and offsite impacts during the SUP process for both restaurants and hotels. As noted above in the restaurant discussion, the proposed policy is similar to the existing Old Town Restaurant Policy. The criteria include but are not limited to findings that the use does not create significant negative impacts on the vitality and character of King Street or nearby residential neighborhoods.

The draft policy is attached as Attachment 2.

Hotels account for about half of the estimated net tax revenues used to balance the plan's costs and revenues.

- 23. Increasing permitted densities on the three redevelopment sites:** All of the redevelopment parcels are zoned W-1 which permits residential, office and retail development at an FAR of up to 2.0 with an SUP. The W-1 zone text amendment would allow an increase to 3.0 FAR but only with SUP approval and only if the proposed development is found to comply with the specific Development Goals and Guidelines in the Plan. Development within the Old and Historic Alexandria district would be subject to the OHAD Design Guidelines and to BAR review.

There are three main development sites in the plan, and the plan pays considerable attention to each. Density recommendations came at the end of a staff analysis that started by listing the multiple objectives for private development, and then determined what kinds of uses and densities best provide those qualities, and then created the Plan's development guidelines to help ensure that development projects contain the desired attributes:

- *Authentic:* The guidelines and recommendations were chosen so that redevelopment would have buildings, uses, and design that reflect Alexandria's identity.
- *Welcoming and accessible:* There are places on the waterfront Alexandrians just can't go because they are privately owned and inaccessible. The Plan's goal: not just that one *can* go there, but that one would *want* to go there, and one would enjoy him or herself when they are there...creating places where activity can happen without bothering people.
- *Historic:* Alexandria history inspires the urban design, the orientation of buildings, the placement of open space, the delineation of alleys in private development...just as it inspires the design of the public spaces. The guidelines are developed to help preserve and celebrate our history.
- *Compatible:* The planned uses and the designs respect the neighborhood – in terms of height, of course, but also architecture, noise, and parking. The 50 foot height limit would be retained (with the exception of the western "half" of Robinson Terminal North where the height limit would increase from 55 to 66 feet).
- *Financially feasible/successful:* There will be public benefits when redevelopment replaces the waterfront warehouses, but redevelopment will not take place if there isn't a profit-making opportunity. More than that, it is in the City's interest that the businesses in the new buildings be successful over the long term.
- *Contributing:* Redevelopment is expected to contribute in three ways: the development adds desired *physical amenities* (and the plan has high expectations for the development sites), the new uses contribute to the *daily life* of the Waterfront; and the development spins off tax revenues to pay for other improvements desired by the public.
- *Appealing:* Over the course of the planning process, there was a lot of input about what people felt would draw them to the waterfront, and what they would enjoy doing when they get there.

The overall increase in development potential (over what is currently allowed) is about 160,000 square feet spread over the three sites (about 8 blocks). For Robinson Terminal North, the increase in development potential is about 43,000 square feet; on the Cummings/Turner block, about 62,000 square feet; and on Robinson Terminal South, about 53,000 square feet. A development table is attached for the Planning Commission's easy reference; it has not been changed from the table included in the previous staff report.

The Planning Commission received testimony in opposition to and in support of the proposed densities and alternatives such as purchasing portions of the redevelopment

Meeting minutes from the May 14, 2011 meeting

CITY COUNCIL OF ALEXANDRIA, VIRGINIA

REGULAR MEETING

Saturday, May 14, 2011 - 9:30 p.m.

Present: Mayor William D. Eulle, Vice Mayor Kerry J. Donley, Members of Council Frank H. Fannon, Alicia R. Hughes, K. Rob Krupicka, Redella S. Pepper and Paul C. Smedberg.

Absent: None.

Also Present: Mr. Johnson, Acting City Manager; Mr. Banks, City Attorney; Mr. Spera, Deputy City Attorney; Ms. Evans, Deputy City Manager; Mr. Jinks, Deputy City Manager; Police Captain Ogden; Deputy Police Chief Reyes; Police Captain Ray; Fire Chief Thiel; Mr. Baier, Director, Transportation and Environmental Services; Mr. Lerner, Deputy Director, Transportation and Environmental Services; Ms. Carrel, Recreation, Parks and Cultural Activities; Mr. McPike, Director, General Services; Mr. Tate, General Services; Ms. Hamer, Director, Planning and Zoning; Ms. Ross, Deputy Director, Planning and Zoning; Ms. Wright, Planning and Zoning; Mr. Mortiz, Planning and Zoning; Ms. Williams, Planning and Zoning; Ms. Blackford, Communications Officer, Office of Communications; Mr. Catlett, Director, Office of Code Administration; Mr. Mallamo, Director, Office of Historic Alexandria; Mr. Skrabak, Director, Environmental Quality; and Mr. Lloyd.

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

OPENING

1. Calling the Roll.

The meeting was called to order by Mayor Eulle, and the City Clerk called the roll; all the members of Council were present. (Councilman Krupicka arrived at 9:41 a.m.)

New Business Item #1:

Mayor Eulle welcomed boy scout troop #1906 from Gum Springs, who were in the Chambers observing the meeting.



2. Public Discussion Period. [No more than 30 Minutes] [This period is restricted to items not listed on the docket.]

(a) Richard Merritt, 2729 Franklin Court, chair, Alexandria Public Health Advisory Commission, stated the Commission recommended to City Council placement of public health signs encouraging smokers to refrain from smoking in parks, playgrounds and bus shelters. He said the Commission's primary objective in making the recommendation is to reduce the level of exposure to second-hand smoke of their children, youth and non-smoking adult population. He said the Commission strongly believes that the placement of signs around the City encouraging the smoking residents and visitors to refrain from smoking in the parks, playgrounds and bus shelters is a critical step toward advancing the City's community health goals and vision.

(b) Mary Anne Weber, 124 Roberts Lane, Apt 201, chair, Community Services Board, said the Board voted to support the proposal by the Partnership for a Healthier Alexandria and the Alexandria Public Health Advisory Commission to discourage smoking in public parks, playgrounds and in and around City bus shelters and for the placement of signs at those sites.

(c) Christopher Koepfel, no address given, spoke of his persecution into homelessness for his political and religious beliefs and is going on in the Alexandria public libraries.

(d) Annabelle Fisher, 5001 Seminary Road, asked Council to look into making policy changes for persons contesting parking or meter tickets. She said when she received a meter ticket awhile ago, she had to pay a \$10 fee to go to the adjudication office, but when she received a ticket in D.C., she did not have to pay a fee. She asked that the Acting City Manager meet with the City Attorney and staff to change it so one doesn't have to pay a \$10 fee.

(e) Allen Lomax, 5021 Seminary Road, vice chair, Partnership for a Healthier Alexandria, said that on May 24, City Council will consider a resolution to authorize placement of signs to discourage smoking at public parks, playgrounds and in and around bus shelters, and the Partnership hopes Council will adopt the resolution.

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES

ACTION CONSENT CALENDAR (3)

Planning Commission

3. DEVELOPMENT SPECIAL USE PERMIT #2011-0008 3000 BUSINESS CENTER DRIVE IMPOUND LOT (DASH SITE) Public Hearing and Consideration of a request for a development special use permit amendment to use a portion of the DASH bus facility for vehicle storage;

zoned I/Industrial. Applicant: City of Alexandria Department of General Services by Gregory Tate PLANNING COMMISSION ACTION; Recommend Approval 7-0

(A copy of the Planning Commission report dated May 14, 2011, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 3; 5/14/11, and is incorporated as part of this record by reference.)

END OF ACTION CONSENT CALENDAR

In response to questions from City Council, Ms. Wright, Planning and Zoning, and Mr. Baier, Director, Transportation and Environmental Services, spoke to the stormwater issue and the reason for the use permit.

WHEREUPON, upon motion by Councilwoman Pepper, seconded by Vice Mayor Donley and carried unanimously, City Council adopted the consent calendar, as follows:

3. City Council adopted the Planning Commission recommendation.

The voting was as follows:

Pepper	"aye"	Fannon	"aye"
Donley	"aye"	Hughes	"aye"
Euille	"aye"	Krupicka	"aye"
	Smedberg	"aye"	

ORDINANCES AND RESOLUTIONS

3.1 Public Hearing, Second Reading and Final Passage of an Ordinance to Establish a Day-Time Parking District for Residents in the Area Impacted by the BRAC-133 Facility. (#19, 5/10/11) [ROLL-CALL VOTE]

(A copy of the City Manager's report dated May 5, 2011, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 3.1, 5/14/11, and is incorporated as part of this record by reference.)

A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 3.1; 5/14/11, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 3 of Item No. 3.1; 5/14/11, and is incorporated as part of this record by reference.)

Mr. Lerner, Deputy Director of Transportation and Environmental Services, made a presentation of the report and responded to questions of City Council.

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

(a) Kathleen Burns, 1036 N. Pelham Street, spoke in support of the concept of the new parking district and noted that she wants the stronger option.

(b) Patrick Devereux, 5324 Polk Street, spoke in favor of the residential permit system.

(c) Shirley Downs, 1007 N. Vail Street, spoke in support of a smaller parking district rather than a single big district and the hours should be broader, and she asked for the counts that came for the proposals.

WHEREUPON, upon motion by Vice Mayor Donley, seconded by Councilwoman Hughes and carried unanimously by roll-call vote, City Council adopted the ordinance to establish a day-time parking district for residents in the area impacted by the BRAC-133, they would ask staff to work with KMS and any other neighborhood to establish a residential parking district if it is warranted. The voting was as follows:

Donley	"aye"	Fannon	"aye"
Hughes	"aye"	Krupicka	"aye"
Euille	"aye"	Pepper	"aye"
	Smedberg	"aye"	

The ordinance reads as follows:

ORDINANCE NO. 4718

AN ORDINANCE to amend Article F (PERMIT PARKING DISTRICTS), of Chapter 8 (PARKING AND TRAFFICE REGULATIONS), of Title 5 (TRANSPORTATION AND ENVIRONMENTAL SERVICES), of the Code of the City of Alexandria, Virginia, 1981, as amended, by adding thereto a new Section 5-8-83.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article F of Chapter 8 of Title 5 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same is hereby amended by adding thereto new Section 5-8-83, to read as follows:

The following is all new language

Section 5-8-83 - Restricted daytime parking district.

(a) *Prohibited parking.* It shall be unlawful for any person to park a motor vehicle within any block face which is posted with one or more restricted daytime

parking district signs contrary to any of the conditions set forth on the sign, unless the vehicle displays a valid City of Alexandria license plate, windshield tag or decal issued pursuant to section 3-2-321, et seq., of this code, or a guest or visitor permit issued pursuant to this section.

- (b) *Parking restrictions.* Restricted daytime parking district signs shall prohibit parking by motor vehicles which do not display a valid City of Alexandria license plate, windshield tag or decal issued pursuant to section 3-2-321, et seq., of this code, or a guest or visitor pass issued pursuant to this section, during the posted daytime hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays. As used in this section, parking means the stopping or standing of a motor vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading of the vehicle.
- (c) *Establishment of district.* The restricted daytime parking district may be established for any block face or adjoining group of block faces within the boundaries set forth in the Daytime Parking District Map approved by the City Council upon passage of the ordinance creating and authorizing this Code Section. City Council may amend the Daytime Parking District Map by resolution. Residents within the district may request that restricted daytime parking district signs be posted on block faces within the district pursuant to the following criteria and procedures:
- (1) A petition requesting the establishment of a placement of restricted daytime parking district signs, describing the area proposed to be designated, and signed by not less than 50 percent of the residents abutting each block face in the proposed area, shall be filed with the city manager.
 - (2) Upon receipt of a petition which meets the minimum criteria, the city manager shall conduct one or more surveys of the on street parking spaces within the proposed area during the proposed restricted parking hours. If the surveys reasonably demonstrate to the satisfaction of the city manager that at least 25 percent of the vehicles parked within the proposed district did not display a valid City of Alexandria license plate, windshield tag or decal issued pursuant to section 3-2-321, et seq., of this code, the director of transportation and environmental services shall forthwith post the signs described in subsection (b) within the proposed area, and record the area on the Daytime Permit Parking District Map.
- (d) *Guest/visitor passes.* The city manager shall provide for the issuance of one guest/visitor pass for each residence with any approved area within the restricted daytime parking district at no cost. Such passes shall be transferable to subsequent occupants of the residence without action by the

City. If any issued guest/visitor pass is lost or stolen, the requesting resident may obtain a replacement from the City at a cost of \$100.

- (e) All relevant provisions of this code, including without limitation the provisions of this article F, which are not in conflict with the provisions of this section, shall apply to the establishment, procedures, penalties and enforcement of a restricted daytime parking district established pursuant to this section.

Section 2. That this ordinance shall become effective upon the date and time of its passage.

REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER

4. Public Hearing on the Report on the Design Proposal for the Alexandria Police Memorial. (#7, 4/26/11)

(A copy of the City Manager's memorandum dated April 18, 2011, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 4; 5/14/11, and is incorporated as part of this record by reference.)

Ms. Carrel, Recreation, Parks and Cultural Activities, made a presentation of the report and responded to questions of City Council.

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

- (a) Matthew Harwood, 1755 N. Cliff Street, co-chair, Public Art Committee, and a member of the selection committee, spoke in support of the design for the memorial.
- (b) Ann Dorman, 2724 Kenwood Avenue, spoke in support of the design for the memorial.
- (c) Harry Mahon, 513 S. Lee Street, a member of the selection committee representing the Historic Alexandria Resources Commission, spoke in support of the design for the memorial.

WHEREUPON, upon motion by Councilman Krupicka, seconded by Councilwoman Pepper and carried unanimously, City Council closed the public hearing and approved the artist and design proposal for the Alexandria Police Memorial, as recommended by the Police Memorial Selection Panel, the Public Art Committee, the Alexandria Commission for the Arts and representatives of the Alexandria Police Department. The voting was as follows:

Krupicka	"aye"	Donley	"aye"
Pepper	"aye"	Fannon	"aye"
Euille	"aye"	Hughes	"aye"

Smedberg "aye"

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

Planning Commission (continued)

5. SPECIAL USE PERMIT #2011-0010 503 KING STREET
CVS/PHARMACY Public Hearing and Consideration of a request for a ground floor retail establishment over 10,000 square feet; zone KR/King Street Retail. Applicant: CVS/Caremark, Inc., represented by Eugene Harris, agent. PLANNING COMMISSION ACTION: Recommend Approval w/amendments 7-0

This item was deferred at the request of the applicant.

6. MASTER PLAN AMENDMENT #2011-0001 TEXT AMENDMENT #2011-0005 WATERFRONT SMALL AREA PLAN Public Hearing and Consideration of a request to A) consider an amendment to the City's Master Plan to include the Waterfront Small Area Plan chapter; and B) consider a text amendment to Section 5-500 of the Zoning Ordinance for the W-1/Waterfront Mixed Use zone. Staff: Department of Planning and Zoning. The Waterfront Small Area Plan boundary includes Dalingerfield Island at its north end and Jones Point Park at its southern end (both national parks). In between, the plan is bounded to the east by the Potomac River and to the west by (from north to south) East Abingdon Drive beginning just north of Marina Drive to the railroad tracks. Continuing southeast along the railroad tracks to a point just west of Pitt Street. Continuing east along Bashford Lane to North Royal Street. Continuing south along North Royal Street to Third Street. Continuing east along Third Street to North Fairfax Street. Continuing south along North Fairfax Street to Queen Street. Continuing east along Queen Street to a point approximately 100 feet west of North Union Street. Continuing south about 100 feet west of Union Street to Wolfe Street. Following along the northern, western, and southern boundary of Windmill Hill Park until it meets South Union Street. Continuing south on South Union Street to Jones Point Park. PLANNING COMMISSION ACTION: MPA 2011-0001: Adopted Resolution w/amendments to the MPA 6-1; TA 2011-0005: Recommend Approval 6-1

(A copy of the Planning Commission report dated May 14, 2011, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 6; 5/14/11, and is incorporated as part of this record by reference.)

Mayor Euille noted that he has polled the members of Council, and Council has decided that it will hear from the public today but will not make a decision on the matter today.

Ms. Hamer, Director, Planning and Zoning, along with Mr. Mortiz, Planning and Zoning, made a presentation of the plan and they, along with Mr. Baler, Director, Transportation and Environmental Services, responded to questions of City Council.

(a) Boyd Walker, 1307 King Street, Greater Alexandria Preservation Alliance, submitted 280 petitions against the plan, and he spoke against the plan as proposed.

(b) Andrew Macdonald, 217 N. Columbus Street, Citizens for an Alternative Alexandria Waterfront Plan, spoke against the plan as proposed and asked that it be revisited.

(c) Stephanie Landrum, 1729 King Street, Suite 410, speaking on behalf of the Alexandria Economic Development Partnership, spoke in support of the plan.

(d) Nathan Macek, 724 Franklin Street, chair, Alexandria Waterfront Committee, spoke in support of a new plan and of the delay in adopting it.

(e) Lauren Garcia, 210 Duke Street, spoke in support of a new plan. Ms. Garcia said she is also vice chair of the board of directors of the AEDP and they are also in support of the plan.

(f) Al Kalvaitis, 17 Franklin Street, spoke against the plan and about the parking and traffic congestion the plan will bring.

(g) Tina Leone, 801 N. Fairfax Street, president and CEO, Alexandria Chamber of Commerce, spoke in support of the original plan.

(h) Mike Anderson, 801 N. Fairfax Street, chair, Alexandria Chamber of Commerce, spoke in support of the original plan.

(i) Skip Maginniss, 801 N. Fairfax Street, said the Alexandria Chamber of Commerce urges adoption of the original plan.

(j) Bob Wood, 711 Potomac Street, spoke in opposition to the plan.

(k) Matthew Harwood, 1755 N. Cliff Street, member, Commission for the Arts and Public Art Committee, spoke in support of the plan.

(l) William Rogalski, Jr. 408 Hanson Lane, spoke in opposition to the plan.

(m) Jaye J Smith, 200 Duke Street, spoke in opposition to the plan.

(n) David Brown, 503 Woodland Terrace, spoke in support of the plan.

(o) Margaret Wood, 711 Potomac Street, spoke in opposition to the plan.

(p) Judy Guse-Noritake, 605 Prince Street, chair, Park and Recreation Commission, spoke of the Commission's concern for the waterfront, including parking, recreation space, the dog park, artful recreation sites, maintenance and use of open space funds on the waterfront.

(q) David Olinger, 100 Prince Street, director of the Old Town Civic Association, spoke in opposition to the plan.

(r) James McCall, 537 S. Fairfax Street, chair, Alexandria Archaeological Commission, said the Commission recommends the plan be postponed until all existing changes have been incorporating into a draft that is available for public comment and they would like to see how the history plan would be implemented.

(s) Dennis Kux, 125 Duke Street, spoke in opposition to the plan.

(t) Linda Couture, 505 Duke Street, president, Founders Park Community Association, said the board of directors is in opposition to the plan.

(u) Cathleen Curtin, 501 Princess Street, chair, Founders Dog Park.com organization, spoke in opposition to the plan.

(v) Katy Cannady, 20 E. Oak Street, spoke in opposition to the plan.

(w) K. Scott Brown, 111 Harvard Street, spoke in support of the plan as proposed.

(x) Bill Hendrickson, 304 E. Spring Street, spoke in support of the plan.

(y) Bruce Miller, 410 Hanson Lane, said he wished to encourage stronger interest and intention to the specifics of the plan and said he was opposed to any plan, but felt it was inadequate.

(z) William Cromley, 421 N. Alfred Street, member of the Park and Recreation Commission and the Park and Rec. representative to the Waterfront Committee, spoke in support of the plan.

(aa) Bernard Schulz, 3272 Martha Custis Drive, vice chair, Historic Alexandria Resources Commission, speaking for the HARC, the Alexandria Archaeological Commission and the Alexandria Historical Restoration and Preservation Commission and the Greater Alexandria Preservation Alliance, said they endorse the plan of the waterfront through a variety of means, and it needs to be routed in the past - the history of the town.

(bb) Van Van Fleet, 26 Wolfe Street, spoke in opposition to the plan and recommended it be rejected or deferred until someone qualified in waterfront planning can develop a reasonable, sane and cost-effective plan.

(cc) Billie Schaeffer, 327 N. St. Asaph Street, spoke in opposition to the plan.

(dd) Elizabeth Baldwin, 428 N. Union Street, spoke in opposition to the plan.

(ee) Robert Atkinson, 1009 Pendleton Street, spoke in support of the plan.

(ff) Michael Jennings, 10 Potomac Court, spoke in opposition to the plan and requested deferral until it has been refined.

(gg) Chris Johnson, 314 S. Alfred Street, spoke in opposition to the plan.

(hh) Donald Templeman, 119 Princess Street, said he is not opposed to the entire plan, but objected to the hotels and restaurants and asked for deferral.

(ii) Michael Hobbs, 419 Cameron Street, spoke in opposition to the plan as currently proposed.

(jj) Richard Larson, 319 S. St. Asaph Street, spoke in opposition to the plan.

(kk) Candace Clary, 305 Duke Street, spoke in opposition to the plan.

(ll) Caton Burwell, 511 S. Lee Street, spoke in opposition to the plan.

(mm) Harry P. Hart, 309 N. Washington Street, attorney representing the Old Dominion Boat Club, said the Boat Club asks that Fitzgerald Square and the King Street Pier be removed from the plan as it affects the use of ODBC's property and raise the issue of confiscation by master plan. Mr. Hart said they appreciate the language on alternative uses on page 62, there is no language in the plan yet about the existing use remaining unless and until any other agreement or arrangement is made and that should be included in the plan. He said there is a strong desire by the both sides to resolve the use of ODBC land quickly and a commitment by the chair of the Board to work hard to accomplish that by June 15.

(nn) William Polak, 205 The Strand, with Potomac Riverboat Company, spoke in support of the plan.

(oo) Charlotte Hall, 205 The Strand, vice president, Potomac Riverboat Company, speaking on behalf of the Old Town Business Association and the Alexandria Convention and Visitors Association, spoke in support of the plan.

(pp) Tom Raycroft, 132 Moncure Drive, spoke about the Robinson Terminal north part of the plan, and he said the important part is large sailing vessels and the

need for large spaces, as large vessels need large spaces and it needs to be maintained.

(qq) Julie Van Fleet, 26 Wolfe Street, spoke in opposition to the plan.

(rr) Poul Hertel, 1217 Michigan Court, spoke about where it needs to go in the future and thought it would take longer than one month to find a solution and he urged Council to give them time to get a focus.

(ss) John Bly, 418 N. Union Street, spoke in opposition to the plan.

(tt) Bill Gordon, 107 Oronoco Street, owner, 105, 107, 117 and 119 Oronoco Street, and he asked that references to the Pipefitters Building be changed to the Dalton Wharf Office Center and that comprehensive planning occurs.

(uu) Patricia Wooten, 800 S. St. Asaph Street, spoke in opposition to the plan.

WHEREUPON, upon motion by Vice Mayor Donley, seconded by Councilwoman Pepper and carried unanimously, City Council closed the public hearing and will look to study the plan and come up with final action by June 30. The voting was as follows:

Donley	"aye"	Fannon	"aye"
Pepper	"aye"	Hughes	"aye"
Euille	"aye"	Krupicka	"aye"
	Smedberg	"aye"	

ORDINANCES AND RESOLUTIONS (continued)

7. Public Hearing, Second Reading and Final Passage of an Ordinance to Adjust the Precinct Boundaries for the Cora Kelly, Mount Vernon, George Washington, Lee Center and Lyles Crouch Precincts Redistricting Certain Legislative Boundaries in the City of Alexandria. (#10, 5/10/11) [ROLL-CALL VOTE]

(A copy of the City Manager's report dated May 2, 2011, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 7, 5/14/11, and is incorporated as part of this record by reference.)

A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 7; 5/14/11, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 3 of Item No. 7; 5/14/11, and is incorporated as part of this record by reference.)

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

(a) Tom Parkins, 320 East Del Ray Avenue, General Registrar of Voters, speaking on behalf of the bipartisan Alexandria Electoral Board, said the Board unanimously recommends adoption of the ordinance.

WHEREUPON, upon motion by Vice Mayor Donley, seconded by Councilman Smedberg and carried 6-0 by roll-call vote, City Council adopted the ordinance to adjust the precinct boundaries for the Cora Kelly, Mount Vernon, George Washington, Lee Center and Lyles Crouch Precincts redistricting certain legislative boundaries in Alexandria. The voting was as follows:

Donley	"aye"	Fannon	"aye"
Smedberg	"aye"	Hughes	absent
Euille	"aye"	Krupicka	"aye"
	Pepper	"aye"	

The ordinance reads as follows:

ORDINANCE NO. 4719

AN ORDINANCE to amend and reordain Section 2-2-13 (MAP OF ELECTION DISTRICTS AND VOTING PLACES) by adjusting the precinct boundaries for the Cora Kelly, Mount Vernon, George Washington, Lee Center and Lyles Crouch Precincts, and to make conforming amendments to "The Official Map of the City of Alexandria, Virginia, Designating Election Districts and Voting Places," adopted by Section 2-2-13 (MAP OF ELECTION DISTRICTS AND VOTING PLACES), all of Chapter 2 (ELECTIONS), Title 2 (GENERAL GOVERNMENT) of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA

HEREBY ORDAINS:

Section 1. That "The Official Map of the City of Alexandria, Virginia, Designating Election Districts and Voting Places," adopted by 2-2-13 (MAP OF ELECTION DISTRICTS AND VOTING PLACES) is hereby amended as shown on Exhibits 1 and 2, attached hereto and incorporated fully by reference, to reflect the adjusting of precinct boundaries for the Cora Kelly, Mount Vernon, George Washington, Lee Center and Lyles Crouch precincts.

Section 2. That the general registrar of voters be, and he hereby is, directed to record the foregoing amendments on the said map.

Section 3. That this ordinance shall become effective upon the date and at the time of its final passage; provided, however, that the changes in the Election Districts and

voting places herein made shall not be implemented until the changes are first submitted to the Attorney General of the United States and no objection is interposed within 60 days of the submission, as required pursuant to Section 5 of the Voting Rights Act of 1965, as amended.

8. Public Hearing, Second Reading and Final Passage of an Ordinance to Amend the Tier 1 Potomac Yard Special Services District to Exempt Eligible Non-Profit Multi-Family Housing from the District's Tax Levy. (#11, 5/10/11) [ROLL-CALL VOTE]

(A copy of the City Manager's report dated May 2, 2011, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 8; 5/14/11, and is incorporated as part of this record by reference.

A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 8; 5/14/11, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 3 of Item No. 8; 5/14/11, and is incorporated as part of this record by reference.)

WHEREUPON, a motion was made by Councilman Krupicka and seconded by Councilwoman Pepper, that City Council adopt the ordinance.

Deputy City Manager Jinks and City Attorney Banks responded to questions about other projects moving forward for approval.

A MOTION WAS MADE by Councilman Fannon and seconded by Councilwoman Hughes, to defer action.

Councilman Krupicka said that in lieu of deferral, he would like to ask staff to come back with an amendment on a revised approach to the issue of how it applies to the target properties without applicability to other non-intended properties that can be acted upon prior to the next subsequent tax payment cycle.

Councilman Fannon withdrew his motion for deferral.

The roll-call vote on the original motion carried 6-0-1 and was as follows:

Krupicka	"aye"	Donley	"aye"
Pepper	"aye"	Fannon	abstain
Euille	"aye"	Hughes	"aye"
	Smedberg	"aye"	

The ordinance reads as follows:

ORDINANCE NO. 4720

AN ORDINANCE to amend Section 3-2-189 (TIER 1 POTOMAC YARD METRORAIL SPECIAL SERVICES TAX DISTRICT), of Division 1 (REAL ESTATE), of Article M (LEVY AND COLLECTION OF PROPERTY TAXES), of Chapter 2 (TAXATION), of Title 3 (FINANCE TAXATION AND PROCUREMENT), of the Code of the City of Alexandria, Virginia, 1981, as amended, by adding thereto a new Section 3-2-189(g).

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 3-2-189, Division 1 of Article M of Chapter 2 of Title 3 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same is hereby amended by adding thereto new Section 3-2-189(g), to read as follows:

The following is all new language

Sec. 3-2-189 Tier I Potomac Yard Metrorail Station Special Services District Tax.

(g) Notwithstanding Section 3-2-189(f) of the City Code, the special services district levy shall not apply to any multi-family rental property owned in whole or in part by a 501-c-3 non-profit housing corporation that leases at least 65% of its units to households with incomes at or below 60% of median income of the Washington, D.C. Metropolitan Statistical Area. This subsection shall expire at the end of calendar year 2025.

Section 2. That this ordinance shall become effective January 1, 2011, nunc pro tunc.

OTHER

9. Public Hearing on the City's Proposed Energy and Climate Change Action Plan for 2012-2020. (#17, 5/10/11)

(A copy of the City Manager's report dated May 3, 2011, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 9; 5/14/11, and is incorporated as part of this record by reference.)

Mr. Skrabak, Director of Environmental Quality, made a presentation of the report.

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

(a) Poul Hertel, 1217 Michigan Court, spoke in support of the plan, and he urged Council to think about bringing it to the School system and it should think about focusing on the urban forestry planning.

WHEREUPON, upon motion by Councilwoman Pepper, seconded by Vice Mayor Donley and carried unanimously, City Council closed the public hearing and adopted the energy and climate change action plan for 2012-2020. The voting was as follows:

Pepper	"aye"	Fannon	"aye"
Donley	"aye"	Hughes	"aye"
Euille	"aye"	Krupicka	"aye"
	Smedberg	"aye"	

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

DEFERRAL/WITHDRAWAL CONSENT CALENDAR

Planning Commission (continued)

10. SPECIAL USE PERMIT #2011-0014 3601 and 3951 JEFFERSON DAVIS HIGHWAY POTOMAC YARD TERMINAL STATION Public Hearing and Consideration of a request to allow the permanent operation of an electrical terminal station; zoned CDD #10/Coordinated Development District. Applicant: Virginia Electric and Power Company (d/b/a Dominion Virginia Power) represented by Elizabeth Harper PLANNING COMMISSION ACTION: Deferred

END OF DEFERRAL/WITHDRAWAL CONSENT CALENDAR

City Council noted the deferral.

THERE BEING NO FURTHER BUSINESS TO BE CONSIDERED, upon motion by Vice Mayor Donley, seconded by Councilman Smedberg and carried unanimously, City Council adjourned the public hearing meeting of May 14, 2011 at 4:00 p.m. The voting was as follows:

Donley	"aye"	Fannon	"aye"
Smedberg	"aye"	Hughes	"aye"
Euille	"aye"	Krupicka	"aye"
	Pepper	"aye"	

APPROVED BY:

WILLIAM D. EUILLE MAYOR

ATTEST:

Jacqueline M. Henderson, MMC
City Clerk and Clerk of Council

**W-1/WATERFRONT MIXED USE ZONE TEXT AMENDMENT
BZA #2012-0003
APRIL BURKE, ELIZABETH GIBNEY AND MARIE KUX
APPEAL
APRIL 12, 2012**

Appeal Documents

- Application with Exhibits A & B
- Supplement to Part B (*pg. 82*)
- Second Supplement to Part B (*pg. 83*)



APPEAL APPLICATION BOARD OF ZONING APPEALS

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

The Director's determination that the protest that was filed relating to text amendment 2011-0005 was not valid and/or applicable. See attached Exhibit B

On what date was the order, requirement, decision or determination made?

On or about January 19, 20, or 21, 2012 with a written determination provided on January 24, 2012.

*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 See attached

Address c/o Roy R. Shannon, Jr., at RRBMDK, LLP

201 North Union Street, Suite 140, Alexandria, VA 22314

Daytime Phone 703-299-3440

Email Address rrshannon@rrbmdk.com

2. Property Location See attached

3. Assessment Map # See attached Block See attached Lot See attached

Zone See attached

4. Legal Property Owner Name See attached

Address See attached

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?

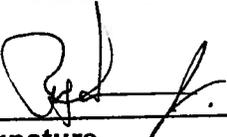
- Yes, Provide proof of current City business license.
- No, Said agent shall be required to obtain a business license prior to filing application.

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



Signature

2/10/2012

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.

PART A

1. **Applicant:** Owner

Name: (1) April L. Burke

Address: c/o Roy R. Shannon, Jr. at RRBMDK, LLP
201 North Union Street, Suite 140, Alexandria, VA 22314

Daytime Phone: 703-299-3440

Email Address: rrshannon@rrbmdk.com

2. **Property Location:** 101 Wolfe Street, Alexandria, VA 22314

3. **Assessment Map #** 075.03 **Block** 05 **Lot** 40

Zone RM

4. **Legal Property Owner Name:** Burke April L. and Flynt Richard A.

Address: 101 Wolfe Street, Alexandria, VA 22314

PART A

1. **Applicant:** Owner

Name: (2) Elizabeth Gibney

Address: c/o Roy R. Shannon, Jr., RRBMDK, LLP

201 North Union Street, Suite 140, Alexandria, VA 22314

Daytime Phone: 703-299-3440

Email Address: rrshannon@rrbmdk.com

2. **Property Location:** 300 S. Lee Street, Alexandria, VA 22314

3. **Assessment Map#** 075.03 **Block** 05 **Lot** 01

Zone RM

4. **Legal Property Owner Name:** Gibney, Elizabeth B. and Brian B.

Address: 300 S. Lee Street, Alexandria, VA 22314

PART A

1. **Applicant:** Owner
Name: **(3) Marie Kux**
Address: c/o Roy R. Shannon, Jr., at RRBMDK, LLP
201 North Union Street, Suite 140, Alexandria, VA 22314
Daytime Phone: 703-299-3440
Email Address: rrshannon@rrbmdk.com
2. **Property Location:** 125 Duke Street, Alexandria, VA 22314
3. **Assessment Map #** 075.03 **Block** 02 **Lot** 26
Zone RM
4. **Legal Property Owner Name:** Kux Marie Marthe T
Address: 125 Duke Street, 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.

OP
2/21/12

Name	Address	Percent of Ownership
1. April L. Burke	101 Wolfe St., Alexandria	100%
2. Elizabeth Gibney	300 S. Lee St., Alexandria	100%
3. Marie Kux	125 Duke St., Alexandria	100%

2. Property. State the name, address and percent of ownership of any person or entity owning an interest in the property located at See below (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. April L. Burke	101 Wolfe St., Alexandria	100%
2. Elizabeth Gibney	300 S. Lee St., Alexandria	100%
3. Marie Kux	125 Duke St., Alexandria	100%

3. Business or Financial Relationships. Each person or entity indicated above in sections 1 and 2, with an ownership interest in the applicant or in the subject property are require 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. All fields must be filled out completely. Do not leave blank. (If there are no relationships please indicated each person or entity below and "None" in the corresponding fields)

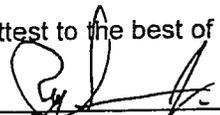
OP
2/21/12

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. None	None	None
2. None	None	None
3. None	None	None

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.

2/10/2012 Roy R. Shannon, Jr.
Date Printed Name


Signature



2011 City of Alexandria Business License

Finance Department, Revenue Administration Division, City of Alexandria
301 King Street, Room 1700, Alexandria, VA 22314
Phone: 703.746.3903 <http://www.alexandriava.gov/>

License Number: 121454-2011
Account Number: 121454
Tax Period: 2011
Business Name: Rich, Rosenthal, Brincefield, Manitta, Dzubin & Kroeger, LLP
Trade Name: Rich, Rosenthal, Brincefield, Manitta, Dzubin & Kroeger, LLP
Business Location: 201 N UNION ST, # 140
Alexandria, VA 22314

Rich, Rosenthal, Brincefield, Manitta, Dzubin & Kroeger, LLP
201 N Union St #140
Alexandria, VA 22314

License Classification(s):
Professional Occupations/Businesses
9-071-007
Attorney-At-Law

April 27, 2011

Dear Taxpayer:

This is your 2011 City of Alexandria Business License. The bottom portion of this page is perforated to allow you to tear off and post the business license in your establishment.

If you paid for your business license via check, please be aware that if your check is not honored by your financial institution, this business license shall be invalid.

As with all taxes, our goal is to administer Business License taxes fairly and in accordance with Commonwealth and Locality code. Our staff strives to provide professional assistance and quality customer service. Your satisfaction is important to us and your comments are always welcome.

If you have any questions regarding this letter, please visit <http://www.alexandriava.gov/> or contact my office via phone at 703.746.3903.

Finance Department, Revenue Administration Division, City of Alexandria

Keep this letter for your records.

City of Alexandria Business License

Revenue Administration Division, City of Alexandria, 301 King Street, Room 1700, Alexandria, VA 22314



License Number: 121454-2011
Account Number: 121454
Tax Period: 2011
Business Name: Rich, Rosenthal, Brincefield, Manitta, Dzubin & Kroeger, LLP
Trade Name: Rich, Rosenthal, Brincefield, Manitta, Dzubin & Kroeger, LLP
Business Location: 201 N UNION ST, # 140
Alexandria, VA 22314
License Classification(s): Professional Occupations/Businesses
9-071-007
Attorney-At-Law

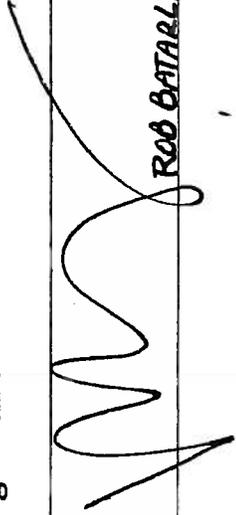
This license has been issued by the Revenue Administration Division of the City of Alexandria and granted to:

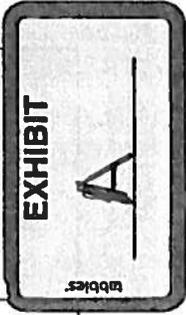
Rich, Rosenthal, Brincefield, Manitta, Dzubin & Kroeger, LLP
201 N UNION ST, # 140
Alexandria, VA 22314

JAN 19 2012

Landowners' Protest to Proposed Text Amendment 2011-0005

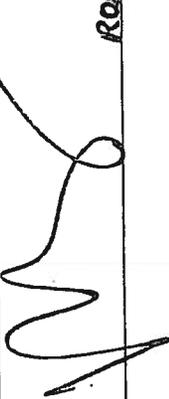
Pursuant to Section 9.13 of the Charter of the City of Alexandria and Section 11-808 of the Zoning Ordinance of the City of Alexandria, the undersigned do hereby protest proposed text amendment 2011-0005. The undersigned are owners of real property within 300 feet of the boundaries of the land affected by the proposed amendment and proposed changes. Section 11-808(D) of the Zoning Ordinance states: "**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." (emphasis added).

Property Address	Owner (Name)	Signature	Map # (if known)
1055 North Fairfax St Alexandria, VA 22314	American Physical Therapy Properties, Inc.	 Rob BATARALA, CEO	



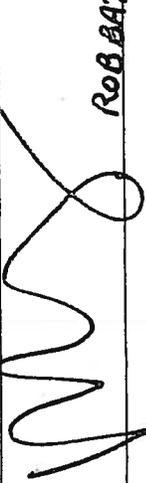
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Property Address	Owner (Name)	Signature	Map # (if known)
1033 North Fairfax St Alexandria, VA 22314	American Physical Therapy Properties, Inc.	 ROB ANTARELLA, CEO	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
1111 North Fairfax St Alexandria, VA 22314	American Physical Therapy Properties, Inc.	 Rob BATARELLA, CEO	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
437 N. LEE ST. ALEXANDRIA, VA. 22314	ROGER L. AMOLE DEBRA S. BRAY	<i>R. L. Amole</i> <i>Debra Bray</i>	
441 N. Lee St. Alexandria VA 22314	CATHOLIC WAR VETERANS USA	<i>Amole, Tobey, Bray</i> Authorized Agent for PATRICK MANNING EXEC. DIRECTOR	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
103 ORANGE STREET ALEXANDRIA, VA 22314	THE PUMBERS • PROPRIETORS NATIONAL PENSION FUND	<p>AUTHORIZED AGENT</p> 	

WATERFORD PLACE HOMEOWNERS ASSOCIATION
318 S. Union Street
Alexandria, VA 22314

January 17, 2012

To Whom It May Concern:

At the annual meeting of the Waterford Place Homeowners Association ("Association") held on January 11, 2012 and in accord with the bylaws of the Association, a majority of the members of the Association properly passed a resolution providing that the Association, as owner of the common property of the Association, sign the Landowners' Protest to Proposed Text Amendment 2011-0005 ("Petition").

As a duly elected director of the Association and the current President, I am authorized to sign the Petition on behalf of the Association.

Regards,



Scott K. Dinwiddie
President
Waterford Place Homeowners Association

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
150 Waterford Place Alexandria, VA 22314	Waterford Place Homeowners Association	 President Waterford Place Homeowners Assoc.	075.03-05-44

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
103 ORONOCO STREET ALEXANDRIA, VA 22314	THE PLUMBERS & PIPEFITTERS NATIONAL PENSION FUND	AUTHORIZED AGENT  <i>William J. Jurek</i> ADMINISTRATOR	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
418 N. Lee St	Susan Taylor	Susan Taylor	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
404 S. Lee St. ALEXANDRIA, VA	ANNE D. MONAHAN <small>TRUSTEE</small>	Anne D. Monahan, trustee	
400 S Lee St	William J. Ingham		
403 S Union St	GEOFFREY CALDWELL	Geoffrey Caldwell	
407 S Union St	Donna C. Trems		
408 S. Lee Street	Michael Gene Freedman	Michael Gene Freedman	
420 S. Lee St.	Thomas E. Byrne	Thomas E. Byrne	
414 S. Lee St	Richard H. Keiser	R.H. Keiser	
414 S. Lee	Megan Evans	Megan Evans	

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Property Address	Owner (Name)	Signature	Map # (if known)
3 Potomac Ct.	MEGAN EVANS.	Megan Evans	
412 S LEE.	Sylvester G. March	Sylvester G. March	
406 S. Lee	DAVID B. MARCUS	D. B. Marcus	
426 S. LEE	WALTER VANCE HALL TRUSTEE	Walter Vance Hall, Trustee	
406 S. LEE	MARGARET M. DESIRE	Margaret M. DeSire	
430 S. Lee	KIRA L. BROOKS	Kira L. Brooks	
402 S. Lee	Joyce METEAKES.	Joyce Metekes (Joyce Metekes)	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
709 Potomac St	Michael Deane		081.03-01-75
708 Potomac St	KINDLEON HENNINGER		081.03-01-73
710 Potomac St	Joey Solis		081.03-01-72
712 Potomac St	James P. Gillis & Alison B. Itokor		081.03-01-71
715 Potomac St	ANNE M. HENNOX		081.03-01-41
717 Potomac St	William J. Hennox, Jr		
717 POTOMAC ST	Jane + Joe Piccolo		081.03-01-42
703 Potomac St	Jean & Joe Piccolo		
703 Potomac St	Mary G. Epstein		081.03-01-38
720 Potomac St	Trustees for Goetzl family trust Goetzl Edwards & Judith Hirs		081.03-01-68

717
715
707
710
708
709

Amberley Joe
Suis Jays

AL KALVAITIS
703-299-9234

Margaret -

Lisa
Pilav } signed
"tall man"
Falls out of town

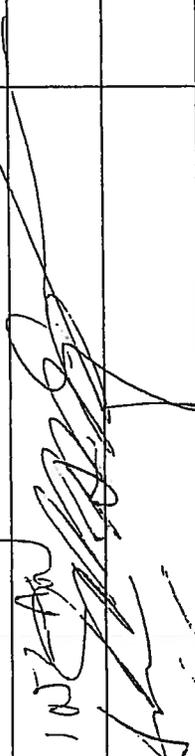
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Property Address	Owner (Name)	Signature	Map # (if known)
123 Duke St Alexandria VA 22314	William A + Carole H Schmidt		
100 Ponce St. Alexandria, VA 22314	David + Miriam Dinger		
121 Duke St. Alexandria, VA 22314	Lynn K. Rogerson		

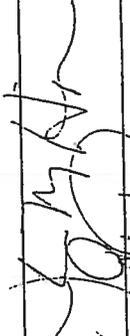
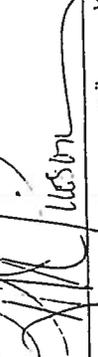
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Property Address	Owner (Name)	Signature	Map # (if known)
117 PRINCE ST ALEXANDRIA VA	JAMES BARALL		
117 PRINCE ST	John D. [unclear] SUZANNE		
123 PRINCE ST	ROBERT L. DEITZ		
330 S Lee St	Robert D Koeppe		
105 WOLFEST	STOYAN TENEN		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
328 S. LEE ST.	JACQUE HOLLISTER		
119 Wolfe Street	KATHERINE PINSON		
2000 Duke Street	JAYE SMITH		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
300 S Lee St. Alexandria, Va 22314	Brian Gibney	<i>Brian Gibney</i>	075.03-05-01
304 S. Lee St ALEXANDRIA, VA 22314	ROBERT J. WEBSTER	<i>Robert J. Webster</i>	075.03-05-03
304 S. Lee St ALEXANDRIA, VA 22314	CATHERINE WEBSTER	<i>Catherine Webster</i>	075.03-05-03
310 South Lee	JONATHAN W WILSON	<i>Jonathan W. Wilson</i>	075.03-05-03
318 South Lee	Mary D. Heiden	<i>Mary D. Heiden</i>	075.03-05-53
316 South Lee	GAMAL R. GRASS	<i>Gamal R. Grass</i>	075.03-05-54
320 South Lee	SARALEE C. BOTELEX	<i>Saralee C. Botelux</i>	075.03-05-52

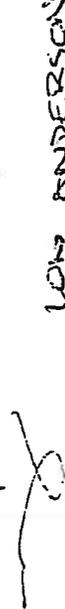
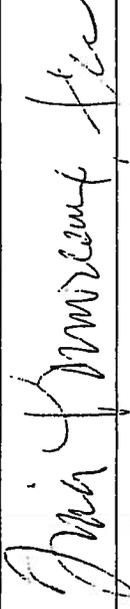
Landowners' Protest to Proposed Text Amendment 2011-0005

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 do hereby protest proposed text amendment 2011-0005. The undersigned are owners of real property within 300 feet of the boundaries of the land affected by the proposed amendment and proposed changes. Section 11-808(D) of the Zoning Ordinance states: "**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." (emphasis added).

Property Address	Owner (Name)	Signature	Map # (if known)
626 826 S. Lee St.	Debra C. Parker	<i>Debra C. Parker</i>	.081.01-02-35

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
3 Potomac Ct	Evans Megan		075.03-08-08
8 Potomac Ct	Mapes Ann Louise Tr		075.03-08-20
5 Potomac Ct	Rideout Bonnie		075.03-08-23
7 Potomac Ct	Petrov Georgi K		075.03-08-21
6 Potomac Ct	Moore Patricia E Tr		075.03-08-22
2 Potomac Ct	Anderson Lon		075.03-08-14
116 Wolfe St	Lamoreaux Tina Tr		075.03-08-12
106 Wolfe St	Rocchio Monica B		075.03-08-16

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
100 Duke Street Alexandria, VA 22314	Ana Rico	<u>Ana Rico</u>	

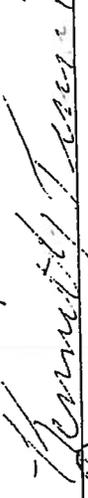
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Property Address	Owner (Name)	Signature	Map # (if known)
226 South Lee Street Alexandria, VA 22314	Andrew + Lisa Lynch	 (Lisa R. Lynch)	
114 Duke St Alexandria, VA 22314	Gretchen R. Moss		
117 Duke Street Alexandria, VA 22314	Patricia + Jeffrey Myers-Mayer		
115 Duke Street Alexandria, VA 22314	Stephen Ray Mitchell Sellen S. Mitchell	 (Stephen Ray Mitchell)	
108 Duke St Alexandria, VA 22314	Hathleen + Bruce Oehler		
112 DUKE ST ALEXANDRIA VA 22314	JEFFREY + MARY K. QUEEN	 (JEFFREY M. QUEEN)	
111 Duke St Alexandria, VA	Joan W. Dixon		
113 Duke St Alexandria, VA	Joan W. Dixon		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
118 Waterford Pl. Alexandria, VA 22314	Robert Diana Deb or Robert J		
110 Waterford Pl Alexandria, VA 22314	Timmer, Kenneth D		
102 Duke St. Alexandria VA 22314	Freeman, Lauren E		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
101 Wolfe St. Alexandria VA 22314	Burke, April L. Flynt, Richard A.	April L. Burke	
103 Wolfe St. Alexandria, VA 22314	Siveton, Gieram and Robert W	Gieram Siveton	
102 Waterford Pl. Alexandria, VA 22314	Brown, James T.	James T. Brown	
124 Waterford Pl Alexandria, VA 22314	Vesprini, Mary-ellen	Mary Ellen Vesprini	
106 Waterford Pl. Alexandria VA 22314	Hardaway, James H	James H. Hardaway	
108 Waterford Pl Alexandria, VA 22314	Torruck, William S.	William S. Torruck	
307 S. Union St. Alexandria, VA 22314	Kiefer, Donald W.	Donald W. Kiefer	
104 Waterford Pl Alexandria, VA 22314 or Shen Bango	Cavaney, Byron M Jr or Shen Bango	Byron M. Cavaney	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
126 Waterford Pl Alexandria, VA 22314	Humphreys, Frederick	Frederick Humphreys	
105 Wolfe St. Alexandria, VA 22314	Tenev, Stoyan V Teneva Katerina E	Stoyan Tenev	
116 Wintonford Pl Alexandria, VA 22314	Morgan, Ruth L or Timothy G	Ruth Morgan	
319 S. Union St Alexandria VA 22314	Dinwiddie, Scott or Menaker, Andrea	Scott Dinwiddie	
317 S. Union St Alexandria VA 22314	Loomis, Ann W or Peter A	Ann W. Loomis	
120 Wintonford Pl Alexandria, VA 22314	Goffman, Lawrence Jr or Forman, Betty J	Betty J. Goffman	
311 S. Union St. Alexandria VA 22314	Haddaway, James H	James H. Haddaway	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
431 NORTH LEE ALEXANDRIA, VA 22314	E. MICHAEL PATRICKS	E. Michael Patrick	
425 North Lee Alexandria, VA 22314	MARY ANN PATRICKS Frank J. Sullivan	Mary Ann Patrick Frank J. Sullivan	
423 North Lee St Alexandria, VA 22314	Frank J. Sullivan	Frank J. Sullivan	
211 S. Union St Alexandria, VA 22314	Valerie R. Fanieri	Valerie R. Fanieri	

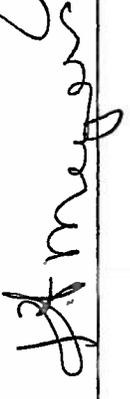
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Property Address	Owner (Name)	Signature	Map # (if known)
125 Duke St.	Marie-Marthe T. Kox	Marie-Marthe T. Kox	
429 S. Lee St	Susan Ginsburg	Susan Ginsburg	
109 Duke St. ^{Alex Va.} 22314	Melanie New	Melanie New	
107 Duke St. ^{Alex Va.} 22314	Melanie New	Melanie New	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
212 S Lee St	John Modzelewski		075-03-02-02
210 S. Lee St	KOSIET DEITZ		075-03-02-04
215 S LEE ST	Anneta Tiemeyer		075-03-01-20
225 S Lee	Jane Coughran		075-03-01-25
227 S Lee	Cristina Pragon		075-03-01-23
214 S Lee	Jane Kelly		075-03-02-02
211A S. Union	Kim Meyers		075-03-02-07

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
525 Tobacco Quay ALEXANDRIA, VA 22314	MARIA del CARMEN O. FEDERLE	<i>Maria del Carmen O. Federle</i>	065, 01-02-39

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
603 S Lee St.	VALORA CHARLES ANTHONY EKSSON	Valora Clark Eksson	081.01-02-18
621 Pompageade St	John S Gero	John S Gero	081.01-02-28

Paul Anderson
205 Locust Lane sent him
Alex 22302

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
603 S. Lee St.			081
159 Franklin St	Dorothy Thompson	[Signature]	081-01-02-38
605 S. Lee St.	Maryloue Hickey Sr	[Signature]	081.01-02-17
1002 Pommery Walk	Virginia Brzozowski	[Signature]	
1919 Pommery Walk	Steve Brown	[Signature]	081.01-02-27
610 S Lee St	Suzanne Kates	[Signature]	081.01-02-23
111 Franklin St	1002 Pommery Walk MGM Real Estate, LLC	Michelle Boggs [Signature]	081.01-02-37
1002 Pommery Walk	John K. Scaler	[Signature]	

* She is not on my list of addressees, but lives next door and wanted to sign.

Toscani

703-548-7452

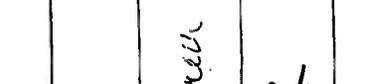
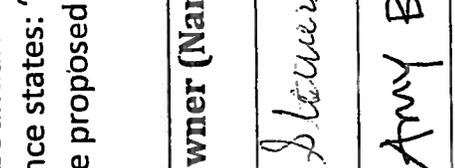
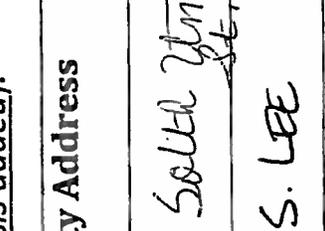
(2) 571-831-6944

Debbie Parks

1814 Park Ave
Richmond, Va. 23220

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
213A South Union St.	Stowers, Andrew	Andrew Stowers	075-03-02-08
209 S. LEE	AMY BAYER		075-03-01-17
211 S LEE	JOHN O.B. SEWALL		075-03-01-18
217 S. LEE	DUSTIN GARD-WEISS		075-03-01-21
214 S LEE	X	Philip A. Lere	/
223 S LEE	Devix Beu		075-03-01-24
219 S. Lee St.	Kenneth L. Weinstein		075-03-01-22
210 S. Lee St.	RICHARD + SARAH COOPER		075-03-02-01

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
302 South Lee St,	EVA M. KENNANAHAN	Eva M. Kennanahan	
330 S. Lee St.	Ashley Lombardi Robert Keppeler JOHN RAMSEY	Ashley R. Lombardi	
106 GIBSON ST.	J.	John B. Ramsey, Jr.	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
820 South Lee Street ALEXANDRIA, VA	ERICA ROSSI & John Medic		081-03-02-10
106 Franklin St 106 Franklin St	David + Carol Clary		081-03-01-47
830 S. Lee St	Margaret Hodgen		081-03-02-15
812 S. Lee St	Suzanne Buden or James F. Ducler		081-0302-07
804 S. Lee St.	Laura Doyle or Eugene Smith		081-03-02-03
734 S. Lee St	James F. Hoffmann Carol E. Hoffmann Lorraine Hoffmann		081-03-01-34
792 S Lee	Lorraine Hoffmann		081-03-01-25

708 S. Lee GRACE L. PRINDLE
FRANK PRINDLE

081-03-01-35

721, 723

100 -	705
102 -	710
104 -	711
106 -	712
108 -	713
110	714
	715

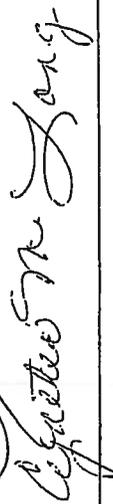
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737, ✕

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Property Address	Owner (Name)	Signature	Map # (if known)
200 Oronoco St Alexandria, VA 22314	Ditimer, David and Sibley		065.01-03-12
412 N. Lee St Alexandria, VA 22314	Bondslin, Arthur		065.01-03-42
204 Oronoco St Alexandria, VA 22314	HOLTZMAN, MILES		065.01-03-10
420 N. LEE ST ALEXANDRIA, VA 22314	GREGORIOS, CHARLES J.		065.01-03-46
215 Oronoco St Alexandria, VA 22314	Long, Cynthia		065.01-03-24

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
410 N UNION STREET	AMY L CURTIS	<i>Amy L Curtis</i>	065.03-04-20
412 N UNION STREET	AMY L CURTIS	<i>Amy L Curtis</i>	065.03-04-21
424 N. UNION ST.	PATHEMIA RANDALL	<i>PatheMia R. Randall</i>	
424 N. UNION ST	ROBERT C. RANDALL	<i>Robert Randall</i>	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
515 Tobacco Quay	Peggy Barton & Trust	William R. Barton Trustee	065.01-02-34
517 Tobacco Quay	William R. Barton Trust	William R. Barton Trustee	065.01-02-35
531 Tobacco Quay	Denise Landers	Denise Landers	065.01-02-42
525 Tobacco Quay	RENEE BONDAROFF	Renee Bondaroff	065.01-02-28
523 Tobacco Quay	Paul Russeau	Paul Russeau	065.01-02-38
519 Tobacco Quay	Melk, Ballard	Jody Melk	065.01-02-36
561 Tobacco Quay	Ann Shack	Ann Shack	065.01-02-27
521 Tobacco Quay	CHRISTOPHER FLTRW	Chris Fltrw	065.01-02-37

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
533 Tobacco Quay	Mary Farrell		065.01-02-43
507 Tobacco Quay	Gregory Panchik Melissa Woodson		065.01-02-30

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
217 Wolfe St.	LEONARD CALVERT III		
60 Wolfe St.	Tisa Bower		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
623 Commander Wells St	Marianne Marzo	Marianne Marzo	081.01-02-31
107 Franklin St	Jimmie Cook	Jimmie Cook	081-01-02-39
103 Franklin St	Timothy B Harvill	Timothy B Harvill	081-01-02-41
225 Raymond Blvd	Janice McCullough	Janice McCullough	081.01-02-32
624 S. Lee St.	Maria Celeste Spmonds Trust	Maria Celeste Spmonds (for the Maria Celeste Spmonds Trust established 2011)	081-01-02-34
628 S. Lee St.	Catherine Thompson	Catherine Thompson	081.01-02-36
640 S. Lee St.	TM Harvill	TM Harvill	081.01-02-30
101 Franklin St.	Amy R. Fries	Amy R. Fries	081.01-02-42

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
600 S Lee Street	August G. Fuchs	MARGARET A. MILLER	
208 S Lee St	Charles W. Greenleaf	CW. Greenleaf	
219 South Lee St.	Elizabeth Weinstein	Elizabeth Weinstein	
203 S. Lee St.	Denise Bell	Denise Bell	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
225 So. Lee	Jane Coughlan		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
110 DUKE ST. ALEXANDRIA, VA 22314	BETTE V. DAVIS	<i>Bette J. Davis</i>	

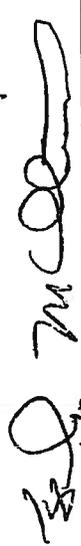
Landowners' Protest to Proposed Text Amendment 2011-0005

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 do hereby protest proposed text amendment 2011-0005. The undersigned are owners of real property within 300 feet of the boundaries of the land affected by the proposed amendment and proposed changes. Section 11-808(D) of the Zoning Ordinance states: "**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." (*emphasis added*).

Property Address	Owner (Name)	Signature	Map # (if known)
105 PENNINGTON DR W. ALEX. VA 22314	ROBERT M & NORMA E GANTS	Robert M Gants	
107 Hammond Walk ALEX VA 22314	LINDA WINDSOR	Linda Windsor	
114 Auburn St Alexandria VA, 22314	NICOLE HAMILTON	Nicole Hamilton	
714 GISSON RD ALEXANDRIA VA	Robert Hamilton	Robert Hamilton	
111 BURNING WOOD AVE ALEX. VA 22314	J. J. Williams	J. J. Williams	

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Property Address	Owner (Name)	Signature	Map # (if known)
716 Potomac St Alexandria VA 22134	Frank McCallister		81-03-01-69
713 Potomac Street Alexandria, VA 22314	Harold Crum		81-03-01-90

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
104 Franklin St.	Cyrus	[Signature]	081.03-01-48
709 S. Union	Nash	[Signature]	081.03-01-51
118 S. Union	COUNES	[Signature]	081.03-01-54
435 S. Union	HUTCHINSON	[Signature]	081.03-01-60
735 S. Union	Lunt Vasquez-Lunt	[Signature]	081.03-01-61
711 POTOMAC ST	JOHN R. WOOD	[Signature]	081.03-01-52
705 Potomac St	Carolyn Wilder	[Signature]	081.03-01-74
714 Potomac St	Carol Terwilliger	[Signature]	081.03-01-70

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
100 Prince Street	David Dinger		
109 Prince St.	Bobby Burke	Bobby Burke (PMB)	
126 PRINCE ST	KATHERINE VIAR		
118 SILVER ST	Gaelitha W		

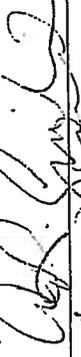
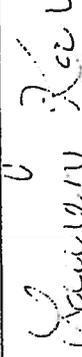
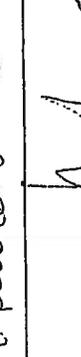
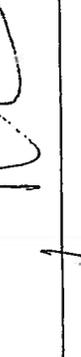
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Property Address	Owner (Name)	Signature	Map # (if known)
2175 LEE	Bridget Weiss		
213 S. Lee St	Susan Agusti		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
111 Prince St.	Phyllis G. Sidorisky	Phyllis G. Sidorisky	075, 01-06-22
144 Prince St.	Sarita Schutte (Trustee)		
117 Prince St.	Andrea Dibulian		
123 Prince St	SUZANNE T. GUNN-AS		
120 Prince St.	Kauren Karch		
113 Prince St	JAMES BARDU		
129 Prince St	Anne HAMBLEY		

Mark Mueller 703-627-8374

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Property Address	Owner (Name)	Signature	Map # (if known)
4188 W. Union St. Alexandria VA 22314	BZY, John A. JR LAWREN S.	<i>[Signature]</i>	055. 01-05-23
416 N Union St Alex, VA 22314	Brewer Fred L TR	Fred L Brewer. Trustee for Fred L Brewer Trust	065. 03-04-23
414 N. Union St ALEXANDRIA VA 22314	VAVID CLAWSON	<i>[Signature]</i>	055.03- 04-22
428 N. UNION ST ALEXANDRIA VA 22314	ELIZABETH P. BALDWIN, TRUST	<i>[Signature]</i> ELIZABETH P. BALDWIN TRUST	065.01- 05-18
422 N. Union St. Alexandria, Va. 22314	CYNTHIA L. FOX	Cynthia L. Fox	
420 N. Union St. ALEXANDRIA VA 22314	Michael A. Pedro	Michael A. Pedro	065.01- 05-22
408 N. Union Street	Warchitekt/Reno Femsky Trust	Warchitekt, Trustee	065.03- 04-19

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Property Address	Owner (Name)	Signature	Map # (if known)
110 PRINCE ST	PATRICIA BURKE		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
202 ORONOZO ST. ALEXANDRIA, VA 22314	LEE, BRUCE S. AND MARGARET W.		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
414 North Lee Street Alexandria, VA 22314	Janet D. Bouvier Revocable Trust	Janet Bouvier, Trustee (for the Janet D. Bouvier Revocable Trust established September 18, 2001)	

64

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
125 Wolfe St Alexandria, VA 22304	Alexandria, VA		075, 03-05-46

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
314 S. Lee St Alexandria, VA 22314	Murphy, Patrick T + Curtis, Deborah		

Landowners' Protest to Proposed Text Amendment 2011-0005

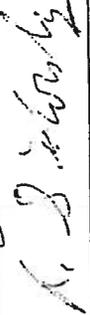
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Property Address	Owner (Name)	Signature	Map # (if known)
430 N. UNION ST. ALEX., VA 22309	TAMI, RICHARD B. AND JOYCE M. TAMI	Joyce M. Tami	

X

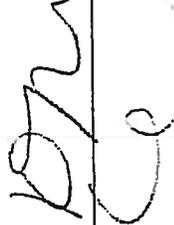
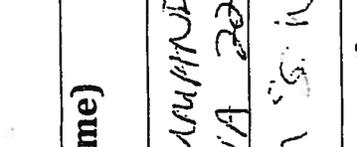
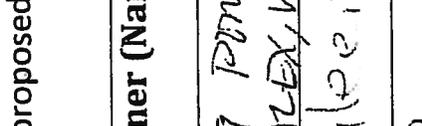
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Property Address	Owner (Name)	Signature	Map # (if known)
112 PRINCE ST ALEXANDRIA, VA. 22314	SMITH, ELIZABETH		
111 PULUCE ST ALEXANDRIA, VA	SLOANER, RALPH		
<i>(Address to be supplied)</i>			

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Property Address	Owner (Name)	Signature	Map # (if known)
KELLY LAUDER 704 S. Lee St	109 POMMUNDER WALK ALEX, VA 22314		
720 S. Lee St	ROBERTS PATRICIA A TRACEY		
728 S Lee ST	Richard L Metzger		
115 Pommunder	C. Anne B. Rector		

Commander U. idly

~~115 come back in an hour~~

113 ~~111~~ Rensen in favor of our pockets

111 ~~111~~ (already signed about a week ago)

~~107~~ signed

107 n/r.

105 n/r.

103 signed about a week ago

101 ~~101~~ will not sign

~~100~~ Baby sister - came back on Monday
102 come back - on Monday or Tuesday

104 signed

106 - no 106. (house)

108 - coming home on Sat. night

110 ~~110~~ 110 114, 110 116, 110 118 (houses)

112

~~120~~ signed
122 would be back in a week

124 n/r.

126 come back in a few days

~~128~~ signed

130 n/r.

132 n/r.

131 - no
136 - n/r

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Property Address	Owner (Name)	Signature	Map # (if known)
106 PRINCE ST. ALEXANDRIA 22314	DENISE D. MCBREARTY	DENISE D. MCBREARTY	

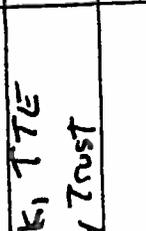
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Property Address	Owner (Name)	Signature	Map # (if known)
116 Prince Street	David + Helen Kenney	<i>Helen Kenney</i>	075.01.11.07

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Property Address	Owner (Name)	Signature	Map # (if known)
106 Duke Street ALEXANDRIA, VA 22314	MARTY CUSACK, TRUSTEE CUSACK FAMILY TRUST		

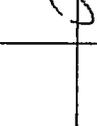
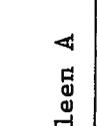
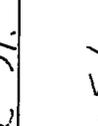
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Property Address	Owner (Name)	Signature	Map # (if known)
110 S. UNION STREET ALEXANDRIA, VA 22314	110 S. UNION STREET, LLC		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
10 Potomac Ct	Jennings Michael V		075.03-08-18
114 Wolfe St	French M H Tr		075.03-08-13
120 Wolfe St	Howcroft Loren S		075.03-08-10
108 Wolfe St	Buck Karen A		075.03-08-15
118 Wolfe St	Atkin Kathleen A		075.03-08-11
220 S. Lee St.	220 VA LLC	 , President	075.03-02-29
224 S. Lee St.	224 South Lee Street LLC	 , President	075.03-02-30.C

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Property Address	Owner (Name)	Signature	Map # (if known)
110 DUKE ST. ALEXANDRIA, VA 22314	BETTE J. DAVIS	<i>Bette J. Davis</i>	

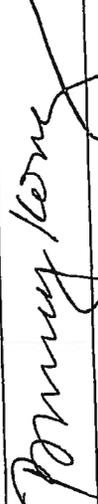
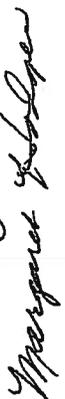
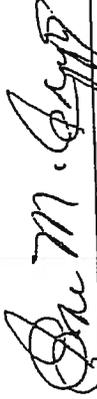
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Property Address	Owner (Name)	Signature	Map # (if known)
300 S. Lee Street	Elizabeth Gbney	Elizabeth Gbney	

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Property Address	Owner (Name)	Signature	Map # (if known)
800 SOUTH LEE ST.	RICHARD AND TERESA MILLER		
810 S. Lee St.	Bessy Kong & John Wasielewski		
832 S. Lee St.	Juan Oswald + Scott Oswald		
828 S. Lee St	Caryn Hollis		
830 S. Lee St	MARGARET HADGERS		
812 S. Lee St.	SUZANNE DUDA Jim Duda		
824 S. Lee St			
814 S. Lee St	KARLYN + JIM BOWMAN		



DEPARTMENT OF PLANNING AND ZONING

301 King Street

Room 2100

Alexandria, Virginia 22314

Phone 703-746-4666

Fax 703-838-6393

www.alexandriava.gov

January 24, 2012

Via US Mail and Electronic Mail

Roy R. Shannon, Jr., Esquire
Rich, Rosenthal, Brincefield, Manitta, Dzubin and Kroeger, LLP
201 North Union Street, #140
Alexandria, VA 22314

Dear Mr. Shannon:

You have requested a determination with regard to the protest petition filed by you on January 19, 2012. My determination was made verbally to City Council at its hearing on January 21. At that time I stated the following:

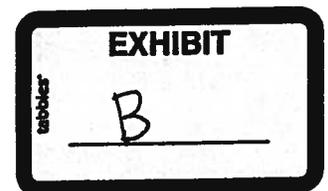
The City received a protest petition, filed Thursday, January 19, 2012. Additional signatures were filed yesterday. The filing is called, "Landowners' Protest to Proposed Text Amendment 2011-0005," and it refers to the proposed changes to the W-1 zone recommended to make it consistent with the Waterfront Plan. Both the W-1 text amendment and the Waterfront Plan on Council's docket today, January 21, 2012, (Item #4).

Section 11-808 of the City of Alexandria Zoning Ordinance provides a mechanism to require a three-fourths majority vote (6-1) for City Council to approve an application for a zoning map amendment if a valid protest petition meeting the requirements of the ordinance is filed with the city clerk. Section 11-808(A) indicates who may successfully protest and states specifically,

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.

Section 11-800 of the Zoning Ordinance addresses zoning amendments generally and distinguishes between "map amendments" and "text amendments." A map amendment is a change to the official Zoning Map of the city to change the zoning of a particular property, and sometimes known as a rezoning, and it is specific to that property. A text amendment is an amendment of the official Zoning Ordinance text to change the language of a zone, or other

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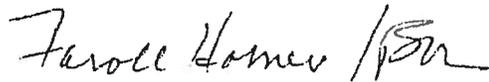
Roy R. Shannon, Jr., Esquire
Rich. Rosenthal, Brincefield, Manitta, Dzubin and Kroeger, LLP
January 24, 2012
Page 2

section of the ordinance, with more general application within the zoning districts. The text amendment to be considered by Council today is an amendment revising the W-1 zone text to apply generally to applicable properties within that zone.

By the terms of section 11-808(A) as well as the Protest Petition itself, the proposed zoning change before Council today is a text amendment and not a rezoning or map amendment. Because Council is considering a text amendment, and not a map amendment, Section 11-808 does not apply. Consequently, the petition does not require a three-quarter, supermajority vote for today's zoning text amendment.

The protest does not apply in any way to the Plan before Council. It applies only to the text amendment.

Sincerely,



Faroll Hamer
Director

Attachment: Determination request letter dated January 19, 2012

cc: James Banks, City Attorney
Joanna Anderson, Assistant City Attorney



RICH
ROSENTHAL
BRINCEFIELD
MANITTA
DZUBIN &
KROEGER, LLP

January 19, 2012

Via Hand Delivery and Electronic Mail (Joanna.Frizzell@alexandriava.gov)

Faroll Hamer, Director
Department of Planning and Zoning
c/o Joanna Anderson
301 King Street, Suite 1300
Alexandria, VA 22314

Re: Protest Filed Today - January 19, 2012

Dear Ms. Hamer:

I am submitting this letter to you, care of the City Attorney's office as requested by the City Attorney's office. I represent clients relating to the protest that was filed earlier today.

I requesting that you provide me with your determination regarding this protest, as soon as possible. I would prefer a written determination; however, in the interest of expediency I would accept a verbal determination now, followed by a written determination shortly thereafter.

If you have any questions or would like to discuss this matter, please feel free to contact me, through the City Attorney's office. I am available for telephone conference or a meeting at your office.

Sincerely,

Roy R. Shannon, Jr.

Copy: City Attorney, James Banks (e-mail only)

Supplement to Part B

Appeal to the Board of Zoning Appeals Filed on February 10, 2012
B.Z.A. Case No.2012- 0003
Supplement to Part B

Appeal of April Burke, Elizabeth Gibney, and Marie Kux (“Appellants”), pursuant to Section 11-1200 of the Alexandria City Zoning Ordinance (“Zoning Ordinance”) and Section 15.2-2311 of the Code of Virginia (“Virginia Code”).

The Appellants appeal the determinations made on or about Saturday, January 21, 2012, by Faroll Hamer as the Director of Planning and Zoning (“Director”), concerning a protest filed pursuant to Section 11-808(D) of the City of Alexandria Zoning Ordinance.

As grounds for their appeal, filed on February 10, 2012, the Appellants state that the Director erred in her determination made on January 21, 2012, during the City Council public hearing, that the Protest for Text Amendment 2011-0005 (previously attached to this appeal as Exhibit A and incorporated by reference) was not valid and that Section 11-808 of the Zoning Ordinance did not apply. The determination was provided orally to the Appellants during the January 21, 2012, City Council public hearing, as well as in a later letter by the Director to the Appellants dated January 24, 2012 (previously attached to this appeal as Exhibit B and incorporated by reference).

Among other reasons, the Appellants are aggrieved in that they were signatories to the Protest that was erroneously deemed invalid and not given its procedural effect.

The plain language of Section 11-808 of the Zoning Ordinance provides that “*Effect of protest.* If a protest to a proposed text or map amendment is filed, the city council may not approved the proposed amendment, except by an affirmative vote of three-fourths of its members.” (emphasis added).

The Protest was timely and properly filed. The Director erred in her determination and this Honorable Board should reverse her determination and determine that the Protest was valid and the provisions of Section 11-808 of the Zoning Ordinance apply to the City Council’s vote taken on January 21, 2012.

In addition, Text Amendment 2011-0005 was a map amendment, in that the proposed text for the W-1 zone now incorporates, for the first time, the Height District Map. The Height District Map is part of the Official Zoning Map. The use of the Official Zoning Map for the W-1 zone, where it had not previously been used, is a map amendment. Accordingly, the provision of Section 11-808 of the Zoning Ordinance does apply.

For the reasons stated above, the Director’s determination should be reversed and the Protest should be deemed valid and applicable to the City Council’s vote on Text Amendment 2011-0005.

Appellants reserve the right and intend to file a Supplemental Part B to this Appeal.

Second Supplement to Part B

Appeal to the Board of Zoning Appeals
B.Z.A. Case No.2012-0003
Second Supplement to Part B

Appeal of April Burke, Elizabeth Gibney, and Marie Kux (“Appellants”), pursuant to Section 11-1200 of the City of Alexandria Zoning Ordinance (“Zoning Ordinance”) and Section 15.2-2311 of the Code of Virginia (“Virginia Code”).

The Appellants appeal the determinations made on or about Saturday, January 21, 2012, by Faroll Hamer as the Director of Planning and Zoning (“Director”), concerning a protest filed pursuant to Section 11-808(D) of the Zoning Ordinance.

Procedural Background

On Saturday, January 21, 2012, the City Council held a public hearing (“Saturday Public Hearing”) and jointly considered Master Plan Amendment 2011-0001 (“Waterfront Plan”) and Text Amendment 2011-0005 (“W-1 Text Amendment”).¹

The W-1 Text Amendment is a zoning amendment² to Section 5-500 of the Zoning Ordinance for the W-1/Waterfront mix use zone. The proposed W-1 Text Amendment deletes certain special uses, adds a new special use, provides for greater floor-area-ratio, deletes the maximum height limit of 55 feet, and now for the first time, incorporates the Official Zoning Map, by incorporating the Height District Map in the W-1 zone.

Prior to the City Council’s Saturday Public Hearing, the Appellants, along with over 200 landowners immediately surrounding sites in the City zoned W-1, signed and caused to be filed with the City Clerk a protest, pursuant to Section 11-808 of the Zoning Ordinance (“Protest”), submitted previously as Exhibit A to this appeal and incorporated herein by reference. The overwhelming majority of signatures to the Protest were filed with the City Clerk on the morning of Thursday, January 19, 2012, with a few additional signatures submitted the next morning. The Protest was purposely filed on Thursday, more than a day before the noon deadline on Friday, in order to give the Director enough time to make her determination and provide the determination to the Appellants, in accordance with their request.

¹ Prior to City Council’s Saturday Public Hearing, the Planning Commission held a meeting and through various motions and affirmative votes, initiated, made certain amendments to, and recommended approval of the Waterfront Plan and it initiated and recommended approval of the W-1 Text Amendment.

² “The city council may by ordinance supplement, change, modify or repeal any provision of this ordinance.... Such action by the city council shall constitute a zoning amendment. A proposal to supplement, change, modify or repeal the provisions of the text of this ordinance shall be referred to as a text amendment.” ZONING ORDINANCE § 11-801.

On January 19, 2012, the Appellants sent a letter, attached here to as Exhibit B and incorporated by reference, to the Director asking her to provide them with her determination regarding the Protest, as soon as she made it. On January 20, 2012, the Appellants sent an email to the Director inquiring about her determination and explaining the importance of receiving her determination as soon as possible. Subsequently the City Attorney's office responded to Appellants email. The exchange of emails is attached hereto as Exhibit C and incorporated by reference. The Appellants made multiple inquiries to the Director requesting her determination. However, the Appellants were rebuffed with the unchanging response that the Director would make her determination and the Appellants would receive it "in due course." Anticipating that the Director might not make her determination (or make it but purposely not provide it to the Appellants until the Saturday Public Hearing), and given the recent ruling by the Board of Zoning Appeals ("BZA") involving a protest pursuant to Section 11-808 of the Zoning Ordinance (BZA Case 2011-0013, Harris Teeter Case), the Appellants took action to protect and preserve their due process rights.

Accordingly, anticipating that the City would refuse the Protest but delay its "official determination" to that effect so as to deny Appellants the right to file an appeal, the Appellants, late on Friday afternoon, filed an appeal with the BZA at the zoning counter on the second floor of City Hall ("First Appeal"), attached hereto as Exhibit D and incorporated by reference.³ Surprisingly, the Director's Deputy of Planning and Zoning, Barbara Ross ("Deputy Director") refused to accept the First Appeal. When the Deputy Director asked what the appeal was relating to, Appellants indicated the public hearing set for the next day. The Deputy Director stated that no determination had been made yet. Appellants explained that because the public hearing was on a Saturday they were filing the appeal on the preceding business day. The Deputy Director, without turning a page to see what was being appealed or on whose behalf it was being submitted, immediately told Appellants that an appeal cannot be filed until the Director made her determination. The Deputy Director then said she had to leave for a meeting. Appellants asked if they could have a letter indicating the appeal was not being accepted. The Deputy Director said that it was 5:00 p.m., indicating that the office was closed. After being made aware that the office clock only showed 4:55 p.m., the Deputy Director stated that the office was getting ready to close, that she had to go to a meeting, and if she wrote a letter she would be there until midnight. Appellants offered a copy of the appeal to the Deputy Director and she declined. Appellants asked for something to show that the office was rejecting the appeal. The Deputy Director agreed and wrote on the first page of the First Appeal, "Rejected. Appeal is premature. [Signed] B. Ross 1/20/12." See Exhibit D, p. 1.

Because the Director refused to accept the First Appeal, the Appellants sent the First Appeal, as an attachment to an email, on Friday evening to the Chairman of the BZA, copying the City Attorney, attached hereto as Exhibit E and incorporated by reference.⁴ In the email, the Appellants explained the events that occurred earlier that day at the Director's office and noted their

³ Exhibit D is the First Appeal and includes the entire appeal, except for space-saving reasons, it only includes the first page of Ex. A of the First Appeal, since that exhibit is the Protest and the Protest is already an exhibit to this appeal.

⁴ Exhibit E is only the email and for space-saving reasons does not include the First Appeal; however, the First Appeal was attached to that email.

authority for filing an appeal with the Chairman. The City Attorney replied to the email, saying to the Chairman that his "preliminary review of the matter indicates that the appeal is premature and was properly rejected," attached hereto as Exhibit F and incorporated by reference.

Whether an appeal to the BZA of a determination made by the Director should be rejected as "premature" is for the BZA to decide, not the Director, her staff, or the City Attorney. *See* ZONING ORDINANCE § 11-1203.⁵ During the BZA hearing on November 11, 2011, involving BZA Case 2011-0013 (Harris Teeter Case), the Deputy Director indicated that in the past 20 years there had only been one time that the department did not forward an appeal to the BZA. The Deputy Director explained that the submission was written on a napkin and that the department offered to work with that individual in filing an appeal. The situation with the First Appeal is not remotely close, in comparison, to the napkin case. Appellants' First Appeal was filed, and the Director should have acted accordingly. Instead, the Deputy Director improperly refused to accept it, thus usurping the authority of the BZA and preventing it from performing its statutory and regulatory duties.

During the Saturday Public Hearing, after the City Clerk called Docket Item Number 4 (consideration of the Waterfront Plan and W-1 Text Amendment), the Director, in her official capacity, incorrectly stated that with regards to the Protest that was filed with the City Clerk it was the "Director's obligation to provide a determination as to the validity of the petition." She failed to cite any authority for that proposition, most likely because there is none.

The Director then orally stated her determination to the City Council and the public, including the Appellants. When providing her determination, it appeared during the public hearing and from the video of the hearing that she was reading her determination from a piece of paper. With the exception of a few words, the determination provided at the Saturday public hearing is verbatim to the text of the determination that she provided in her letter to the Appellants three days later on Tuesday, January 24, 2012, attached hereto as Exhibit G and incorporated by reference.⁶

The Director essentially determined that the Protest was not valid on the ground that Section 11-808 of the Zoning Ordinance did not apply to the proposed zoning amendment that was before the City Council, specifically the W-1 Text Amendment.

⁵ The Director is charged with administering the Zoning Ordinance not the City Attorney. *See* ZONING ORDINANCE § 11-101. When an appeal of her determination is made to the BZA, her only responsibility, pursuant to Zoning Ordinance, is to "forthwith forward to the board all the papers constituting the record upon which the action appealed from was taken." ZONING ORDINANCE § 11-1203. As of the March 30, 2012, it is unclear if the Director has carried out her duty.

⁶ Indeed, the January 24, 2012 letter states throughout, that the denial was in connection with a public hearing for "today, January 21." Obviously, the letter was written before the hearing and the Director (or her Deputy) simply waited to sign and send the letter to the Appellants, until Tuesday, January 24 in order to deny the Appellants and the public due process of law. Thus, the Director and staff were available to convey a determination, make presentations, answer questions, provide general support functions for the City Council and other staff, address concerns about the issues being discussed, receive compensation for the same, deny the public due process, but simultaneously be unavailable for the purpose of allowing the public to petition their government on the very issue being discussed, debated, and considered at the same public hearing. There is no authority for the proposition that the Director and her staff can be selectively available, depending on what outcome they intend to achieve.

During the Saturday Public Hearing after the Director made her determination, the City Attorney explained to the City Council and the public how he advised the Director to interpret a protest filed pursuant to Section 11-808 of the Zoning Ordinance. Later in the public hearing when asked by City Council to explain any "path of redress" one might have from the Director's determination, the City Attorney explained that a person could appeal the Director's determination to the BZA and that the appeal could be filed on Monday.⁷ The City Attorney further explained that any ruling by the BZA can be appealed to the Circuit Court.

The Supreme Court of Virginia, in *Lilly v. Carolina County*, 259 Va. 291 (2000), held:

According to the minutes of the meeting, the [Director] stated "that he had determined that..." The minutes further reflect that [the Director] "explained that the radio tower...could be built...with or without approval of the special exception request. He added that his ruling could be appealed to the Board of Zoning Appeals."

...
The focus of this dispute is upon *Code § 15.2-2311(A)*. As pertinent, that statute provides that an appeal to the board of zoning appeals "may be taken by any person aggrieved...by any decision of the zoning administrator." [omitted text in original citation] **There is no requirement in the statute that the administrator's decision be in writing.** The statute further provides that "the appeal shall be taken within thirty days after the decision appealed from **by filing with the zoning administrator, and with the board**, a notice of appeal specifying the grounds thereof."

Lilly at 295-296 (**emphasis added**). The Court further held that "[a] zoning administrator must make clear the basis of the decision, see *Gwinn v. Alward*, 235 Va. 616, 622, 369 S.E.2d 410, 413 (1988), and the foregoing statement complies with that requirement. The intended finality of that opinion was buttressed by [the Director's]...statement that his ruling could be appealed to the board of zoning appeals." *Id.* at 297.

During the Saturday Public Hearing, after the Director made her determination, but before the City Council closed the public hearing and acted on a single motion incorporating both the Waterfront Plan and the W-1 Text Amendment, the Appellants in the presence of City Council filed with the Director an appeal to the BZA challenging the determination made by the Director earlier in the public meeting ("Second Appeal"), attached hereto as Exhibit H and incorporated by reference. The Appellants provided the Director with copies of the appeal and a check for the filing

⁷ It is not clear why the City Attorney stated that the appeal could be filed on Monday. The Appellants know of no rule limiting the filing of an appeal to certain days of the week.

fee.⁸ The Director was at the public hearing in her official capacity as the Director of Planning and Zoning and was performing her duties as the Director. The Director refused to accept the Second Appeal and instead left it, along with copies of the appeal and the filing fee check on a bench seat reserved for the media in the City Council Chambers.

Prior to filing the Second Appeal with the Director during the Saturday Public Hearing, the Appellants also sent the Second Appeal as an attachment to an email to the Chairman and three members of the BZA for which they had email addresses. The email is attached hereto as Exhibit I and incorporated by reference.⁹ In that email, the Appellants explained the incident that occurred the day before at the office counter, the basis for filing the appeal with the Chairman, and the fact that the office counter was unmanned on Saturday. The Deputy Director who rejected the First Appeal at the office counter was present during the Saturday Public Hearing and took action upon the Appellants filing the Second Appeal with the Director.

The email to the Chairman and other BZA members asked the recipients of the email to let the Appellants know if they received the email. On the afternoon of Sunday, January 22, the Chairman replied by email to the Appellants that he had received their emails, thus acknowledging that he received the emails, along with the corresponding attachments—the First and Second Appeals.

During the Saturday Public Hearing, the Appellants informed the City Council orally and by sending an email with an attached letter, both the email and letter are attached hereto as Exhibit J and incorporated by reference, that they had filed an appeal with the BZA and, in accordance with Section 15.2-2311 of the Code of Virginia, Section 9.17 of the City Charter, and Section §11-1204 of the Zoning Ordinance, the proceedings related to the W-1 Text Amendment should be stayed. The City Council refused to recognize the stay and continued with the proceedings relating to the W-1 Text Amendment. The Director failed to carry out her duty in that she should have insisted that the City Council suspend the proceedings relating to the W-1 Text Amendment, as required by law.

The City Council closed the public hearing, deliberated, and on a single motion, with a second, and with friendly amendments to said motion, affirmatively voted 5-2 to approve the Waterfront Plan and the W-1 Text Amendment together.

⁸ During the Board's deliberation in BZA Case 2011-0013 (Harris Teeter Case – Involving an appeal of the Director's determination relating to Section 11-808 of the Zoning Ordinance), the Deputy Director when discussing the aggrieved status of the appellants in that appeal, asserted that the appellants were aggrieved after the director's determination and that the case was not moot, because at that time the council had not voted [the subsequent vote in that case was 7-0]. She further elaborated on it being a different situation [that is the aggrieved status of the appellants before the City Council vote versus after the City Council vote], because the City Council had not voted yet on the matter. See Video of BZA Case 2011-0013, 02:49:15 –02:50:00.

⁹ Exhibit I is only the email and for space-saving reasons does not include the Second Appeal; however, the Second Appeal was attached to that email.

On Monday, January 23, the Director's Deputy sent an email to Appellants, attached hereto as Exhibit K and incorporated by reference, stating:

...I wanted to reiterate that we have not officially received the appeal that you indicated you would be filing on behalf of your clients pertaining to the decision made by the Director of Planning and Zoning on Saturday, January 21, 2012 about the protest petition on the text amendment to the W-1 zone. The copies that you brought to City Hall on Saturday were not officially filed and were removed by someone other than City staff. In order to have a properly filed appeal, you must bring 12 copies of your appeal application and the filing fee to the office of Planning and Zoning, City Hall, Suite 2100 during the regular business hours.

At this time, the Director has indicated that she is not going to schedule the Second Appeal for a hearing before the BZA. On information and belief, the Director has not forwarded any documents to the BZA relating to her determination, as she is required to do pursuant to the Code of Virginia, the City Charter, and the Zoning Ordinance.

Record

Appellants' counsel recently attempted to obtain, through a Freedom of Information Act (FOIA) Request to the City of Alexandria, a copy of the Director's record upon which she made her determination relating to the Protest and that should have been immediately transmitted to the Board. The FOIA request is attached hereto as Exhibit L and incorporated by reference. The request specifically asks for the record of the Director's determination as it relates to the Protest and her determination thereto.

The City Attorney responded to the FOIA request by identifying only three items that make up the record from which the Director made her determination relating to the Protest; those documents are as follows:

1. Protest Petition filed with the City Clerk's office on January 19, 2012 by Roy Shannon, Esq. and additional pages of the protest petition filed on January 20, 2012 by Julie Van Fleet.
2. Text Amendment#2011-0005, and any references to the intent of the text amendment within the discussion of Master Plan Amendment #2011-0001, which can be found on the website for the City of Alexandria at the following link: <http://alexandriava.gov/Waterfront>.
3. The Zoning Ordinance for the City of Alexandria and the City Charter for the City of Alexandria.

The response to the FOIA request is attached hereto as Exhibit M and incorporated by reference. The response includes a "Privilege Log" that identifies 8 separate documents, plus 2 additional documents that were attached to 2 of the 8 documents. The 8 documents were either generated by, or directed to, the Director or her deputy. It is unclear as to the author of the 2 attached documents. The relevant time for those 8 documents was from January 18 through January 23. The 8 documents are each categorized into one of the following subject matters: "Protest petition preparation," "Zoning protest," "Protest Determination Letter," "Waterfront Protest Petition," "Protest determination," "Protest," and "Urgent Matter – Appeal to the Board of Zoning Appeals."

All 8 documents, plus the 2 additional documents that were attached, were withheld by the City Attorney's office, pursuant to a claim of the attorney-client privilege, presumably because those 8 documents were communications between the City Attorney's office and one of its clients. On close reading, however, it is unlikely that the 2 additional attachments included in 2 of the allegedly privileged communications would be protected by the asserted privilege. One of the attached documents is part of the presumed communication on January 18, 2012 at 4:18 p.m. with the subject matter of the communication being "Protest Determination Letter." The other attachment is part of the presumed communication on January 20, 2012 at 10:08 a.m. with the subject matter of the communication being "Protest determination."

Appellants request that the BZA instruct the Director to forward these 8 documents, along with the 2 attachments, and any other materials she considered in making her determination, to the BZA and provide them to the Appellants no later than April 9, 2012. The Appellants request that the Honorable Chairman, pursuant to Virginia Code Ann. § 15.2-2312, compel both the Director and the Deputy Director to attend all hearings on this appeal so they may be administered an oath and be required to provide testimony as to the events surrounding the Director's determination. It is clear from the subject matter and dates of at least 7 of these documents, not including the two attached documents, that they were relevant and considered by the Director and/or her staff in making her determination.

The BZA acting in its appellate judicial capacity needs to review the whole record on which the Director made her determination, not just what the Director selectively chooses to provide to the BZA. More importantly, the Appellants are entitled to the whole record. At a minimum the 2 attached documents should be provided to both the BZA and the Appellants. Further, if there is any question as to whether any privilege exists that permits the Director to exclude relevant documents or communications from the record, the BZA should conduct an *in camera* inspection of those documents to determine whether they are relevant to the record.

The assertion of the attorney-client privilege is misplaced, in that the privilege is either not applicable or has been waived. First, in response to the FOIA Request for the record that the Director was to have immediately forwarded to the BZA pursuant to her duties, the City Attorney identified those 8 documents, plus the 2 attached documents, stating that they might be responsive

to the FOIA Request. If those documents are responsive, then those documents are part of the administrative record and the privilege would not apply. Those documents should be considered by the BZA and the Appellants have a right to review those documents.

Second, during the City Council's Saturday Public Hearing, the City Attorney in the presence of the Director disclosed to the City Council and the public his communications, analysis, and advice that he had provided to the Director; and she did not object to his disclosure of that information. The subject matter of these 8 documents, plus the 2 attached documents, would have been covered by the disclosure made by the City Attorney that was allowed by the Director. Having disclosed his advice in a public hearing, the City Attorney, with the acquiescence of the Director, waived whatever privilege might have been deemed to apply.

The issue of these 8 documents, along with the 2 attachments, needs to be further vetted by the BZA. The 1 page attachment identified on January 20, 2012, at 10:08 AM should be part of the record, especially if it is the "Protest determination" as it is identified.

Lawsuit

The Appellants filed an Application / Petition of Writ of Mandamus and Complaint for Declaratory Judgment in the Circuit Court for the City of Alexandria -- Case No. 12001432, attached (without exhibits) hereto as Exhibit N and incorporated by reference. The Appellants' lawsuit requests that the Court (1) issue a writ of mandamus to the Director to perform her duties pursuant to the Code of Virginia, the City Charter, and the Zoning Ordinance, and forthwith transmit the record relating to her determination, including the Second Appeal, the records relating to the Second Appeal and her determinations, as well as to schedule a BZA hearing; (2) declare that the Second Appeal was filed as of January 21; (3) declare that all proceedings had been stayed automatically by the filing of the appeal on Saturday, January 21; (4) declare the vote approving the Waterfront Plan and the W-1 Text Amendment void *ab initio*; and (5) declare that all proceedings relating to the W-1 Text Amendment shall be stayed until the Second Appeal is heard and ruled on by the BZA.

BZA's Authority

The BZA was "established to perform those duties set forth in section 9.18 of the city charter and in this Division C of Article XI." ZONING ORDINANCE § 11-1001.

The BZA shall have the power and duty to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination by the director of planning in the administration and/or enforcement of the provisions of the ordinance. CITY CHARTER § 9.18 and ZONING ORDINANCE § 11-1004.

"The board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination, appealed from, and make such order, requirement, decision or

determination as should be made, and to that end shall have all the power of the director of planning.” CITY CHARTER § 9.19.

“The board may, in conformity with the provisions of this ordinance, reverse or affirm wholly or partly or may modify the order, requirement, decision, or determination appealed from.” ZONING ORDINANCE § 11-1202.

Standing

The Appellants are aggrieved in that (1) they were signatories to the Protest that was erroneously determined to be invalid and not applicable, (2) all of the Appellants’ properties are within close proximity to sites zoned W-1 and will be impacted by the changes to the W-1 zone as proposed in the W-1 Text Amendment, and (3) their due process rights were violated by (a) the Director’s improper refusal to accept the First Appeal based on the Deputy’s commandeering of the BZA’s authority, by improperly rejecting the First Appeal on the merits as to its ripeness to be heard, (b) the Director’s refusal to perform her duties in that she did not accept the Second Appeal filed with her during the Saturday Public Hearing and forthwith transmit it with all other documents relating to her determination to the BZA, and (c) the Director’s and City Council’s refusal to recognize the automatic stay for all proceedings relating to the W-1 Text Amendment, after being provided notice that an appeal to the BZA had been filed.

Analysis

The Appellants are appealing the determination made by the Director that the Protest was not valid and that Section 11-808 of the Zoning Ordinance did not apply to the zoning amendment being considered by City Council, on Saturday, January 21, 2012. The Director’s determination that Section 11-808 of the Zoning Ordinance does not apply to a text amendment is contrary to the plain language of the Zoning Ordinance and constitutes error. In addition to reversing the Director, the BZA should modify the determination to hold that Section 11-808 of the Zoning Ordinance does apply to text amendments, thus the Protest was valid, and the three-fourths voting requirement was in effect at the time of the City Council’s vote on the W-1 Text Amendment.

The city council may by ordinance supplement, change, modify or repeal any provision of this ordinance or of the boundaries of the zones established by the official zoning map. **Such action by the city council shall constitute a zoning amendment.** A proposal to supplement, change, modify or repeal the provisions of the text of this ordinance shall be referred to as a **text amendment**. A proposal to change the boundaries established by the official zoning map shall be referred to as a **map amendment**.

ZONING ORDINANCE § 11-801 (**emphasis added**).

Since the City Council was considering a text amendment, the Appellants signed and filed the Protest, with the expectation that Section 11-808(D) would be given its full effect, and that an affirmative three-fourths vote (6-1 or 7-0) would be required to approve the proposed W-1 Text Amendment.

The Protest that the Appellants signed states:

Landowners' Protest to Protested Text Amendment 2011-0005

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 do hereby protest proposed text amendment 2011-0005. The undersigned are owners of real property within 300 feet of the boundaries of the land affected by the proposed amendment and proposed changes. Section 11-808(D) of the Zoning Ordinance states: "*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."

See Exhibit A, previously submitted (**emphasis added**).

The Protest states that the Appellants are filing a protest pursuant to Section 11-808 of the Zoning Ordinance, specifically Section 11-808(D), and that they live within the boundaries of the land impacted by the proposed W-1 Text Amendment.

The City Council was the governing body that approved and enacted this Zoning Ordinance, and presumably the Department of Planning and Zoning and the Office of the City Attorney assisted in drafting the Zoning Ordinance. The City needs to obey its own ordinance. Notwithstanding the plain language of Section 11-808(D), the Director following the City Attorney's advice determined, as follows:

By the terms of section 11-808(A) as well as the Protest Petition itself, the proposed zoning change before Council today is a text amendment and not a rezoning or map amendment. Because Council is considering a text amendment, and not a map amendment, Section 11-808 does not apply. Consequently, the petition does not require a three-quarters, supermajority vote for today's zoning text amendment.

The Director prematurely stopped her analysis by only looking at the title of Section 11-808 of the Zoning Ordinance and its first subsection (A) *Who may protest*,¹⁰ as reflected by her determination; accordingly, she erred in not adequately analyzing the rest of the plain language of the provision.

Section 11-808 of the Zoning Ordinance provides as follows:

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.* ...
- (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....¹¹
- (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)...(2)...(3)...

ZONING ORDINANCE § 11-808.

This section of the Zoning Ordinance provides a protection for landowners to protest a “proposed text or map amendment.” The W-1 Text Amendment is a text amendment; accordingly, Section 11-808(D) is applicable.

The language in Section 11-808(D) of the Zoning Ordinance is clear and plain: “[i]f a protest to a proposed text or map amendment is filed, the city council may not approve the proposed

¹⁰ The Zoning Ordinance states: “(A) *Interpretation of terms.* For the purpose of this ordinance, the following words and terms are to be interpreted as follows: ... (13) *Headings and titles.* **The headings and titles or catchlines of the several sections of this ordinance printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section...**” ZONING ORDINANCE § 1-400 (emphasis added).

The Virginia Court of Appeals has held that “[a]s a general rule, ‘the title of a statute does not give meaning to a statute.’ [citations omitted] . All the more, we cannot extrapolate a statute’s meaning from the title of a Code chapter.” *Washington v. Commonwealth*, 46 Va. App. 276, 285 FN 7 (2005).

¹¹ Upon request by the Board, the Appellants will provide the drawings and calculations used to calculate the land area at issue in this matter. A planimeter was used for Section 11-808(c).

amendment except by an affirmative vote of three-fourths of its members.” ZONING ORDINANCE § 11-808(D). There is no judgment call for the Director to make on this matter.

The City Attorney made it clear before the Saturday Public Hearing that any protest would be considered invalid. The City Attorney and the Director in a memorandum to City Council, dated June 13, 2011, explained the pros and cons for adopting the Waterfront Plan now, and addressing zoning issues later, when individual development applications are considered. It is concerning and discouraging when the Director, along with the City Attorney, consider a procedural safeguard for landowners in land use matters -- that in all likelihood was proposed and prepared by their predecessors -- as an undesirable and a negative hurdle for the responsible administration of the ordinance, that should be avoided.¹²

The City Attorney’s position, understandably, can fluctuate based on the goals of his current clients. However, the Director’s position should be dictated not by convenience, but by her charge in the ordinance for the responsible administration of the same. ZONING ORDINANCE § 11-101. The Zoning Ordinance was “enacted in order to promote the health, safety and welfare of the **residents** of the City of Alexandria and to implement the consolidated master plan of the city.” ZONING ORDINANCE § 1-102 (**emphasis added**).

“[M]atters involving ‘judgment calls’ as to ordinance interpretation are best resolved by the officials enforcing the ordinance. *Trustees of the Christ and St. Luke’s Episcopal Church v. Bd. of Zoning Appeals of Norfolk*, [citation omitted]. However, there is no authority, ... which requires the BZA to afford deference to the zoning official on appeal. *Higgs v. Kirkbride*, [citation omitted]. *Coleman v. BZA of City of Fairfax*, 2011 Va. Cir. LEXIS 66 at 8 (Fairfax 2011).

In *Coleman v. BZA of City of Fairfax*, the Fairfax Circuit Court further held that

...the BZA has the power to reverse the zoning official’s decision. Va. Code Ann. § 15.2-2312 (2011). In exercising this power, the BZA need not defer to the zoning administrator. See *Higgs*, 258 Va. at 575 n.4 (“It is an appropriate [*9] function of the board to reverse a decision of a zoning official where the board determines that the decision is contrary to the **plain meaning of the ordinance** and the legislative intent expressed therein. The board owes no deference to the zoning official in that circumstance.”). The BZA in this case exercised its authority under § 15.2-2312 and reversed the Zoning Administrator. I find that the BZA was not required to afford any deference to the Administrator.

Coleman at 8-9 (**emphasis added**).

¹² “There are also potential negative consequences: 1.... 2. A rezoning action includes additional potential restrictions and procedures for both the applicant and for the Planning Commission and Council, such as a protest petition and super majority vote requirements. 3.... 4....5....” Memo. dated June 13, 2011, Subject: Waterfront Zoning, To: City Council, From: The Director and the City Attorney, p. 2, ¶ 2

The Zoning Ordinance limits the BZA in that, “[a]ll provisions of this ordinance relating to the board of zoning appeals shall be strictly construed. The board, as a body of limited jurisdiction, shall act in full conformity with all provisions and definitions in this ordinance and in strict compliance with all limitations contained therein.” ZONING ORDINANCE § 11-1005. As this Board has pointed out in recent BZA cases, courts focus upon the plain language of the law and find claims based upon vague histories unpersuasive.

“No provision of this section shall be construed as granting any board the power to rezone property or to **base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.**” Va. Code. Ann. § 15.2-2309 (**emphasis added**).

It is clear that the plain language of Section 11-808(D) of the Zoning Ordinance provides for a protest to a text amendment, and if such a protest is filed, then an affirmative vote of three-fourths (6-1 or 7-0) by the City Council is required to approve the proposed text amendment.

In any event, the W-1 Text Amendment was a map amendment, in that the proposed text now incorporates part of the Zoning Map not previously identified or incorporated in the W-1 zone.¹³

The Zoning Ordinance states that, “this Ordinance and the official zoning map made a part hereof shall be known and may be cited and referred to as the City of Alexandria Zoning Ordinance.” ZONING ORDINANCE § 11-101. The City Charter provides for the incorporation of maps, among other items, and provides for maps to be “incorporated by reference.” “Whenever there is incorporation by reference the matter incorporated shall be reasonably identified.” CITY CHARTER § 9.34.

The Height District Map is part of the Official Zoning Map, thus the new use and incorporation of the Height District Map for the W-1 zone, proposed by the W-1 Text Amendment is in fact a map amendment. The Height District Map now applies to zone W-1 when it had not previously been applied, thus the boundaries of the map have been changed.

Accordingly, Section 11-808 of the Zoning Ordinance would be deemed applicable, and the Protest should have been given its full effect under Section 11-808(D).

¹³ As pointed out above, the June 13, 2011, memorandum shows that the Director and the City Attorney were well aware of Section 11-808’s applicability to this matter, and expressed concern about the public asserting its rights under that provision. The use of the title “text amendment” could be viewed as a ploy to deny the public due process and make the process easier for the applicant (landowners and/or developers), planning commissions and City Council. See Memo. dated June 13, 2011, Subject: Waterfront Zoning, To: City Council, From: The Director and the City Attorney, p. 2, ¶ 2.

Conclusion

It should not be this hard to invoke the due process rights afforded under the laws of our Country, Commonwealth, and City. We understand that the waterfront issue is tough, and there is a tremendous amount of money at stake for the City's tax revenue and those landowners (developers) in the City with land zoned W-1. However, there are hundreds of other landowners and thousands of residents who also have a stake in this process and they have been ignored and deprived their due process. The plain language of the rules are at their most critical in these circumstances and it is the integrity of the process that must be protected to provide assurances that all are playing by the same rules, not rules changed or ignored to achieve a pre-ordained result.

We ask this honorable Board to reverse and/or modify the Director's determination and deem that the Protest was valid, thus Section 11-808(D) of the Zoning Ordinance was applicable, and that the affirmative three-fourths requirement was in effect, at the time of the vote, and a 6-1 or 7-0 vote was necessary to approve the W-1 Text Amendment.



RICH
ROSENTHAL
BRINCEFIELD
MANITTA
DZUBIN &
KROEGER, LLP

January 19, 2012

Via Hand Delivery and Electronic Mail (Joanna.Frizzell@alexandriava.gov)

Faroll Hamer, Director
Department of Planning and Zoning
c/o Joanna Anderson
301 King Street, Suite 1300
Alexandria, VA 22314

Re: Protest Filed Today - January 19, 2012

Dear Ms. Hamer:

I am submitting this letter to you, care of the City Attorney's office as requested by the City Attorney's office. I represent clients relating to the protest that was filed earlier today.

I requesting that you provide me with your determination regarding this protest, as soon as possible. I would prefer a written determination; however, in the interest of expediency I would accept a verbal determination now, followed by a written determination shortly thereafter.

If you have any questions or would like to discuss this matter, please feel free to contact me, through the City Attorney's office. I am available for telephone conference or a meeting at your office.

Sincerely,

Roy R. Shannon, Jr.

Copy: City Attorney, James Banks (e-mail only)

97

EXHIBIT

B

Roy Shannon

From: Joanna Anderson <Joanna.Frizzell@alexandriava.gov>
Sent: Friday, January 20, 2012 3:49 PM
To: Roy Shannon
Cc: James Banks
Subject: RE: City Council Meeting - January 21, 2012 - Protest

Roy – thank you for your email. We advised the Planning Director of your correspondence yesterday and we will also provide her with this information below. The director is considering all of the necessary information and will make her decision regarding the petition accordingly. Your request for a determination is also being processed and will be responded to in due course.

Joanna

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

From: Roy Shannon [mailto:rrshannon@rrbmdk.com]
Sent: Friday, January 20, 2012 3:26 PM
To: Joanna Anderson
Cc: James Banks
Subject: FW: City Council Meeting - January 21, 2012 - Protest

Joanna,

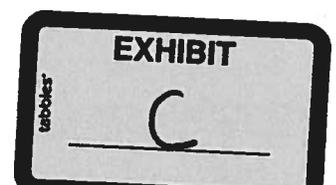
As requested I am directing my communications to Director Faroll Hamer care of the City Attorney's office. Please forward this email to Director Faroll Hamer.

As you know, from my letter yesterday I represent clients relating to the protest that was submitted regarding the proposed text amendment 2011-0005. Have you made any decisions and/or determinations as to the submitted protest? If so, I am asking that you provide me with those decisions or determinations, as soon as possible. As you probably already know, there are certain actions that my clients may choose to exercise or refrain from exercising once we know what decisions and/or determinations you make relating to the protest. As I explained to the City Attorney's office yesterday, the protest was submitted yesterday morning in order to give you and the City staff more time for your verification of the land owners, than what normally would have been afforded if the protest was filed today at the noon deadline. It was my hope, as I mentioned to the City Attorney's office, that with the extra time you would be able to let me know your decisions and/or determinations early today. If possible, it would be appreciated if you could provide me with your decisions and/or determinations relating to the protest today before 4:00 pm.

If you have any questions, please contact me through the City Attorney's office, as they have requested.

Thank you.

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Sincerely,
Roy

From: Roy Shannon [<mailto:rrshannon@rrbmdk.com>]
Sent: Friday, January 20, 2012 11:36 AM
To: Joanna Anderson (Joanna.Frizzell@alexandriava.gov); James.Banks@alexandriava.gov
Subject: City Council Meeting - January 21, 2012 - Protest

Jim and Joanna,

Thank you for taking the time yesterday to speak with me. If you have not already, please pass on to the Director (Faroll Hamer) the information I conveyed to both of you during our conversations yesterday.

Do you know if Ms. Hamer has made her determination yet regarding the submitted protest? If you could let me know, as soon as she has made it and what that determination is, I would appreciate it.

Thank you. If you have any questions, please contact me.

v/r,
Roy



RICH
ROSENTHAL
BRINCEFIELD
MANITTA
DZUBIN &
KROEGER, LLP

Roy R. Shannon, Jr.

Attorney at Law

RICH ROSENTHAL BRINCEFIELD MANITTA DZUBIN & KROEGER, LLP

201 North Union Street, Suite 140

Alexandria, VA 22314

Phone: (703) 299-3440 ext. 217

Fax: (703) 299-3441

Email: RRShannon@RRBMDK.com

website: www.RRBMDK.com

NOTICE: Unless otherwise specified, the contents of this transmission are strictly confidential. They may involve privileged attorney-client communications or work product and are intended to be received by the recipient(s) specified above, and no one else. The receipt, appropriation, or use of the information transmitted above by anyone other than the designated recipient(s) is unintended and strictly forbidden. If this message reaches anyone other than the intended recipient(s), or his/her/their authorized representative(s), we request that you notify us of the error immediately and ask for instructions concerning its proper disposition.



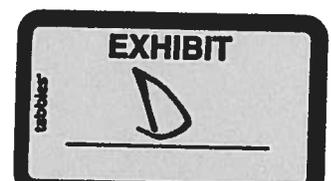
APPEAL APPLICATION BOARD OF ZONING APPEALS

INSTRUCTIONS

1. **FILING:** Appeals to the Board of Zoning Appeals must be filed within **30 days from the date that the order, requirement, decision or determination was made.**
2. **APPLICATION FORMS:** Complete the form titled "Application for Appeal, Board of Zoning Appeals." Please use blue or black ink. Sign the form and include a daytime phone number and email address.
3. **PLANS:** Twelve (12) copies of supporting materials are to be submitted with each application. Plans, drawings, photos, or other materials should not exceed 11" x 17" and should not be smaller than 8.5" x 11". All plan sets must be to scale. In addition, applicants should submit all images, photographs, and drawings in digital format. Larger or additional copies may be requested by staff for large scale projects. Applications without the required supporting materials will be deemed incomplete and will not be scheduled for hearing by the BZA.
4. **FILING FEE:** Applicants must submit a filing fee with the application. Exact amount may be obtained from the Department of Planning and Zoning.
5. **HEARING DATE:** Once staff has reviewed the application for completeness and validity, a hearing date will be scheduled. The appellant shall be notified by staff of the scheduled hearing date.
6. **PROPERTY OWNER NOTIFICATION:** In the case of an appeal to the Board of Zoning Appeals, the City shall send written notice to all adjoining and facing property owners; notices must be sent by certified or registered mail **at least ten days** prior to the Board of Zoning Appeals public hearing (not counting the date of the hearing) and **not more than 30 days** prior to the hearing. In the event the application is deferred, notification shall be given again.

*Rejected.
Appeal is premature.*

*Thomas S
1/20/12*



BOARD OF ZONING APPEALS PROCESS

PUBLIC HEARINGS – BOARD OF ZONING APPEALS

The Board of Zoning Appeals meets on the second Thursday of each month in the City Council Chambers, City Hall, at 7:30 P.M. Meeting dates should be verified by the applicant prior to the hearing as they are subject to change. **The applicant or a representative must attend the meeting.**

DEFINITION OF APPEAL

The Board of Zoning Appeals is authorized to hear appeals where it is alleged there is error from any order, requirement, decision or determination made by the Director in the administration or enforcement of the Zoning Ordinance of the City of Alexandria, Virginia and jurisdiction is not given to another body. The appeal must be filed within 30 days of such order, requirement, decision or determination made by the Director.

APPEAL POWERS – BOARD OF ZONING APPEALS

The Board of Zoning Appeals may reverse or affirm wholly or partly or may modify the order, requirement, decision or determination appealed from.

STAY OF PROCEEDINGS

A properly filed appeal shall stay all proceedings in furtherance of the action appealed from, unless the Director certifies to the Board after the notice of appeal has been filed that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by restraining order which may be granted by the Board or by a proper court on notice to the Director and on due cause shown.

DECISIONS ON APPEAL

Within a reasonable time after the appeal has been filed, the Board shall hold a public hearing, giving public notice thereof as well as due notice to parties of interest, decide the appeal and file with the Director written findings of fact and conclusions regarding the appeal. The concurring vote of four members is needed to reverse a decision. The Director will provide a copy of the decision to the applicant and to each other person who was a party of record at the hearing.

APPEAL OF THE BOARD OF ZONING APPEALS DECISION

Any person jointly or severally aggrieved or affected by a decision of the Board of Zoning Appeals may appeal such decision by filing a petition in the Circuit Court of the City. The petition shall set forth the alleged illegality of the Board's action, and shall be filed within 30 days from the date of the decision of the Board.

**For assistance with any of these procedures or processes, please call the
Department of Planning and Zoning at 703-746-4333.**



APPEAL APPLICATION BOARD OF ZONING APPEALS

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

Any decision or determination of the Director that does not hold the protest relating to text amendment 2011-0005 valid. See Part B of this Application.

On what date was the order, requirement, decision or determination made?

See Part B of this Application - Presumably, on or around January 20-21, 2012.

*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 See attached

Address c/o Roy R. Shannon, Jr., at RRBMDK, LLP

201 North Union Street, Suite 140, Alexandria, VA 22314

Daytime Phone 703-299-3440

Email Address rrshannon@rrbmdk.com

2. Property Location See attached

3. Assessment Map # See Attached Block See Attached Lot See Attached

Zone See Attached

4. Legal Property Owner Name See attached

Address See attached

PART A

1. **Applicant:** Owner

Name: (1) April L. Burke

Address: c/o Roy R. Shannon, Jr. at RRBMDK, LLP

201 North Union Street, Suite 140, Alexandria, VA 22314

Daytime Phone: 703-299-3440

Email Address: rrshannon@rrbmdk.com

2. **Property Location:** 101 Wolfe Street, Alexandria, VA 22314

3. **Assessment Map #** 075.03 **Block** 05 **Lot** 40

Zone RM

4. **Legal Property Owner Name:** Burke April L. and Flynt Richard A.

Address: 101 Wolfe Street, Alexandria, VA 22314

PART A

1. **Applicant:** Owner

Name: **(2)** Elizabeth Gibney

Address: c/o Roy R. Shannon, Jr., RRBMDK, LLP

201 North Union Street, Suite 140, Alexandria, VA 22314

Daytime Phone: 703-299-3440

Email Address: rrshannon@rrbmdk.com

2. **Property Location:** 300 S. Lee Street, Alexandria, VA 22314

3. **Assessment Map#** 075.03 **Block** 05 **Lot** 01

Zone RM

4. **Legal Property Owner Name:** Gibney, Elizabeth B. and Brian B.

Address: 300 S. Lee Street, Alexandria, VA 22314

PART A

1. **Applicant:** Owner

Name: (3) Marie Kux

Address: c/o Roy R. Shannon, Jr., at RRBMDK, LLP

201 North Union Street, Suite 140, Alexandria, VA 22314

Daytime Phone: 703-299-3440

Email Address: rrshannon@rrbmdk.com

2. **Property Location:** 125 Duke Street, Alexandria, VA 22314

3. **Assessment Map #** 075.03 **Block** 02 **Lot** 26

Zone RM

4. **Legal Property Owner Name:** Kux Marie Marthe T

Address: 125 Duke Street, Alexandria, VA 22314

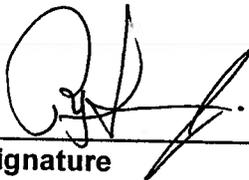
5. If property owner or applicant is being represented by an authorized agent, such as an attorney, realtor or other person for which there is a form of compensation, does this agent or the business in which they are employed have a business license to operate in the City of Alexandria, Virginia?
- Yes, Provide proof of current City business license.
 - No, Said agent shall be required to obtain a business license 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

Print Name



Signature

January 20, 2012

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.

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 attached (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. See attached	See attached	See attached
2.		
3.		

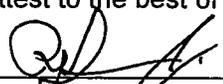
3. Business or Financial Relationships. Each person or entity indicated above in sections 1 and 2, with an ownership interest in the applicant or in the subject property are require to disclose any business or financial relationship, as defined by Section 11-350 of the Zoning Ordinance, existing at the 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. **All fields must be filled out completely. Do not leave blank. (If there are no relationships please indicated each person or entity below and "None" in the corresponding fields)**

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.

1-20-2012 Roy R. Shannnon
 Date Printed Name



 Signature

OWNERSHIP AND DISCLOSURE STATEMENT

2. Property.

Name	Address	Percent of Ownership
1. April L. Burke	101 Wolfe Street Alexandria, VA 22314	100%
2. Elizabeth Gibney	200 S. Lee Street Alexandria, VA 22314	100%
3. Marie Kux	125 Duke Street Alexandria, VA 22314	100%

Alexandria City Council

William Euille
Kerry Donley
Frank Fannon IV
Alicia Hughes
Redella "Del" Pepper
Paul Smedberg
Rob Krupicka

Planning Commission

John Komoroske
H. Stewart Dunn, Jr.
Jesse Jennings
Mary Lyman
J. Lawrence Robinson
Eric Wagner
Donna Fossum

Board of Zoning Appeals

Mark Allen
Geoffrey Goodale
John Keegan
Stephen Koenig
David Lantzy
Jennifer Lewis
Eric Zander

**Board of Architectural Review
Old and Historic District**

Chip Carlin
Oscar Fitzgerald
Thomas Hulfish
Arthur Keleher
Wayne Neale
Peter Smeallie
John Von Senden

Board of Architectural Review

Parker-Gray District

William Conkey
Theresa del Ninno
Robert Duffy
Christina Kelley
Douglas Meick
Philip Moffat

Updated 8/2/2011

Definition of business and financial relationship.

Section 11-305 of the Zoning Ordinance defines a business or financial relationship as any of the following:

- (1) a direct one;
- (2) by way of an ownership entity in which the member or a member of his immediate household is a partner, employee, agent or attorney;
- (3) through a partner of the member or a member of his immediate household;
- (4) through a corporation in which any of them is an officer, director, employee, agent or attorney or holds 10 percent or more of the outstanding bonds or shares of stock of a particular class. In the case of a condominium, this threshold shall apply only if the applicant is the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium;
- (5) not as an ordinary customer or depositor relationship with a professional or other service provider, retail establishment, public utility or bank, which relationship shall not be considered a business or financial relationship;
- (6) created by the receipt by the member, or by a person, firm, corporation or committee on behalf of the member, of any gift or donation having a value of more than \$100, singularly or in the aggregate, during the 12-month period prior to the hearing on the application from the applicant.

8

JAN 19 2012

Landowners' Protest to Proposed Text Amendment 2011-0005

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 do hereby protest proposed text amendment 2011-0005. The undersigned are owners of real property within 300 feet of the boundaries of the land affected by the proposed amendment and proposed changes. Section 11-808(D) of the Zoning Ordinance states: "**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." (emphasis added).

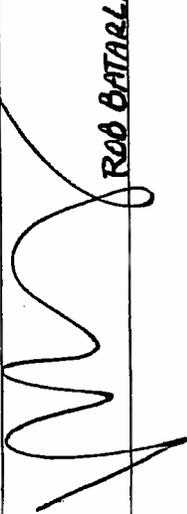
Property Address	Owner (Name)	Signature	Map # (if known)
1055 North Fairfax St Alexandria, VA 22314	American Physical Therapy Properties, Inc.	 ROB BATALA, CEO	

EXHIBIT
A

Roy Shannon

From: Roy Shannon <rrshannon@rrbmdk.com>
Sent: Friday, January 20, 2012 8:41 PM
To: 'mallen@markallenlaw.com'
Cc: James.Banks@alexandriava.gov
Subject: Urgent Matter - Appeal to the Board of Zoning Appeals
Attachments: BZA Appeal Jan. 20, 2012.pdf; Check and Business License.pdf

Good evening Mr. Chairman,

My name is Roy Shannon and I represent a number of landowners here in Alexandria. Attached is the appeal to the Board of Zoning Appeals (BZA) that I tried to file today; however, the planning director's staff improperly refused to accept my appeal to the BZA. I also included a copy of the filing fee check and the firm's business license.

Today at 4:50pm, during normal business hours, I went to the office where appeals to the BZA are supposed to be filed with one of the paralegals from our office. I attempted to file the appeal and was told to wait. On or about 4:55 pm, the Deputy Director, Barbara Ross, told me that they would not accept my submission. I indicated it dealt with a protest and she indicated that they were not going to accept it. She indicated that it was premature and that the office was "closed" whereby I try to explain it was only 4:55pm and she indicated that they were preparing to close. I offered the Deputy Director a copy of the appeal and she refused it. I asked for a letter or receipt indicating that I submitted it but that it was being refused. She said no and indicated she had to go to a meeting. I said I needed something from them, at least her writing rejection on it, to show I attempted to file. The Deputy Director wrote on the first page of the submission "Rejected. Appeal is premature." She signed it (B Ross) and dated it 1/20/12. At no point, did she or any other member of the planning department even attempt to review the submission – it was flatly rejected. The planning department does not even know on whose behalf I was filing. The refusal was predetermined, inappropriate, and a violation of my clients rights.

As you know, the Virginia Code, the City Charter, and the Zoning Ordinance all require that an appeal be filed with the zoning administrator, director of planning, and director, respectively, and **the board**. See Va. Code Ann. 15.2-2311, City Charter 9.17, and the Zoning Ordinance 11-1203 (emphasis added). The director has inappropriately refused to accept my clients appeal to the BZA. As a result of the improper action of the director, I am submitting the appeal to you as the Chair of the Board.

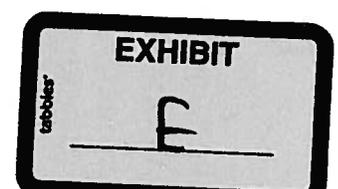
I have copied the City Attorney on this email.

I wanted to let you know before you made the procedural decision on whether to accept my clients' appeal that I will submit, in hard copy, an amended ownership and disclosure statement from one of my clients. It came to my attention after the City refused to accept my appeal package, that one of my clients for this appeal, April Burke, needed to update her ownership and disclosure statement. She indicated that your firm conducted four real estate closings for her in 2011. I wanted you to know this information before you made the procedural decision on whether the Board would accept the appeal, if you are not able to make the procedural decision on whether to accept my clients appeal, than I ask that you forward this email with attachments to another Board member. I ask the you have that Board member get back to me as soon as possible on whether the Board will take the appeal.

Thank you for your consideration and I look forward to hearing from you soon. If you have any questions, you can reach me on my cell phone 703-328-8285.

Sincerely,

1/11/2



Roy



RICH
ROSENTHAL
BRINCEFIELD
MANITTA
DZUBIN &
KROEGER, LLP

Roy R. Shannon, Jr.

Attorney at Law

RICH ROSENTHAL BRINCEFIELD MANITTA DZUBIN & KROEGER, LLP

201 North Union Street, Suite 140

Alexandria, VA 22314

Phone: (703) 299-3440 ext. 217

Fax: (703) 299-3441

Email: RRShannon@RRBMDK.com

website: www.RRBMDK.com

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Roy Shannon

From: James Banks <James.Banks@alexandriava.gov>
Sent: Friday, January 20, 2012 8:49 PM
To: Roy Shannon
Cc: mallen@markallenlaw.com
Subject: Re: Urgent Matter - Appeal to the Board of Zoning Appeals
Attachments: image001.gif

Mr. Chairman,

My preliminary review of the matter indicates that the appeal is premature and was properly rejected.

James L. Banks, Jr.
City Attorney.

Sent from my iPhone

On Jan 20, 2012, at 8:41 PM, "Roy Shannon" <rrshannon@rrbmdk.com> wrote:

> Good evening Mr. Chairman,

>

> My name is Roy Shannon and I represent a number of landowners here in Alexandria. Attached is the appeal to the Board of Zoning Appeals (BZA) that I tried to file today; however, the planning director's staff improperly refused to accept my appeal to the BZA. I also included a copy of the filing fee check and the firm's business license.

>

> Today at 4:50pm, during normal business hours, I went to the office where appeals to the BZA are supposed to be filed with one of the paralegals from our office. I attempted to file the appeal and was told to wait. On or about 4:55 pm, the Deputy Director, Barbara Ross, told me that they would not accept my submission. I indicated it dealt with a protest and she indicated that they were not going to accept it. She indicated that it was premature and that the office was "closed" whereby I try to explain it was only 4:55pm and she indicated that they were preparing to close. I offered the Deputy Director a copy of the appeal and she refused it. I asked for a letter or receipt indicating that I submitted it but that it was being refused. She said no and indicated she had to go to a meeting. I said I needed something from them, at least her writing rejection on it, to show I attempted to file. The Deputy Director wrote on the first page of the submission "Rejected. Appeal is premature." She signed it (B Ross) and dated it 1/20/12. At no point, did she or any other member of the planning department even attempt to review the submission – it was flatly rejected. The planning department does not even know on whose behalf I was filing. The refusal was predetermined, inappropriate, and a violation of my clients rights.

>

> As you know, the Virginia Code, the City Charter, and the Zoning Ordinance all require that an appeal be filed with the zoning administrator, director of planning, and director, respectively, and the board. See Va. Code Ann. 15.2-2311, City Charter 9.17, and the Zoning Ordinance 11-1203 (emphasis added). The director has inappropriately refused to accept my clients appeal to the BZA. As a result of the improper action of the director, I am submitting the appeal to you as the Chair of the Board.

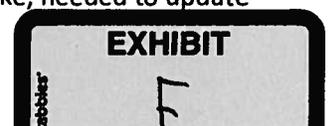
>

> I have copied the City Attorney on this email.

>

> I wanted to let you know before you made the procedural decision on whether to accept my clients' appeal that I will submit, in hard copy, an amended ownership and disclosure statement from one of my clients. It came to my attention after the City refused to accept my appeal package, that one of my clients for this appeal, April Burke, needed to update

114



her ownership and disclosure statement. She indicated that your firm conducted four real estate closings for her in 2011. I wanted you to know this information before you made the procedural decision on whether the Board would accept the appeal, if you are not able to make the procedural decision on whether to accept my clients appeal, than I ask that you forward this email with attachments to another Board member. I ask the you have that Board member get back to me as soon as possible on whether the Board will take the appeal.

>

> Thank you for your consideration and I look forward to hearing from you soon. If you have any questions, you can reach me on my cell phone 703-328-8285.

>

> Sincerely,

>

> Roy

>

>

> [Description: [cid:image001.gif@01CBE58A.C7798AB0](#)]

>

>

> Roy R. Shannon, Jr.

> Attorney at Law

> RICH ROSENTHAL BRINCEFIELD MANITTA DZUBIN & KROEGER, LLP

> 201 North Union Street, Suite 140

> Alexandria, VA 22314

> Phone: (703) 299-3440 ext. 217

> Fax: (703) 299-3441

> Email: RRShannon@RRBMDK.com<<mailto:RRShannon@RRBMDK.com>>

> website: www.RRBMDK.com<<http://www.RRBMDK.com>>

>

>

> NOTICE: Unless otherwise specified, the contents of this transmission are strictly confidential. They may involve privileged attorney-client communications or work product and are intended to be received by the recipient(s) specified above, and no one else. The receipt, appropriation, or use of the information transmitted above by anyone other than the designated recipient(s) is unintended and strictly forbidden. If this message reaches anyone other than the intended recipient(s), or his/her/their authorized representative(s), we request that you notify us of the error immediately and ask for instructions concerning its proper disposition.

>

> <image001.gif>

> <BZA Appeal Jan. 20, 2012.pdf>

> <Check and Business License.pdf>

**PETITION FOR NOMINATION OF ALAN S. ANDERSON
TO THE VIRGINIA STATE BAR COUNCIL
EIGHTEENTH JUDICIAL CIRCUIT**

The undersigned, all active 18th Judicial Circuit members in good standing, hereby nominate Alan S. Anderson as a representative to the Virginia State Bar Council for the 18th Judicial Circuit, for re-election to fill the vacancy for the period July 1, 2012 to June 30, 2015.

Signature:

1 Michael W. Tompkins

Name: Michael W. Tompkins

Bar No.: 31888

2 _____

Name: _____

Bar No.: _____

3 _____

Name: _____

Bar No. _____

4 _____

Name: _____

Bar No.: _____

5 _____

Name: _____

Bar No.: _____

6 _____

Name: _____

Bar No.: _____

7 _____

Name: _____

Bar No.: _____

8 _____

Name: _____

Bar No.: _____



DEPARTMENT OF PLANNING AND ZONING

www.alexandriava.gov

301 King Street
Room 2100
Alexandria, Virginia 22314

Phone 703-746-4666
Fax 703-838-6393

January 24, 2012

Via US Mail and Electronic Mail

Roy R. Shannon, Jr., Esquire
Rich, Rosenthal, Brincefield, Manitta, Dzubin and Kroeger, LLP
201 North Union Street, #140
Alexandria, VA 22314

Dear Mr. Shannon:

You have requested a determination with regard to the protest petition filed by you on January 19, 2012. My determination was made verbally to City Council at its hearing on January 21. At that time I stated the following:

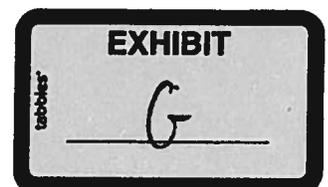
The City received a protest petition, filed Thursday, January 19, 2012. Additional signatures were filed yesterday. The filing is called, "Landowners' Protest to Proposed Text Amendment 2011-0005," and it refers to the proposed changes to the W-1 zone recommended to make it consistent with the Waterfront Plan. Both the W-1 text amendment and the Waterfront Plan on Council's docket today, January 21, 2012, (Item #4).

Section 11-808 of the City of Alexandria Zoning Ordinance provides a mechanism to require a three-fourths majority vote (6-1) for City Council to approve an application for a zoning map amendment if a valid protest petition meeting the requirements of the ordinance is filed with the city clerk. Section 11-808(A) indicates who may successfully protest and states specifically:

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.

Section 11-800 of the Zoning Ordinance addresses zoning amendments generally and distinguishes between "map amendments" and "text amendments." A map amendment is a change to the official Zoning Map of the city to change the zoning of a particular property, and sometimes known as a rezoning, and it is specific to that property. A text amendment is an amendment of the official Zoning Ordinance text to change the language of a zone, or other

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Roy R. Shannon, Jr., Esquire
Rich. Rosenthal, Brincefield, Manitta, Dzubin and Kroeger, LLP
January 24, 2012
Page 2

section of the ordinance, with more general application within the zoning districts. The text amendment to be considered by Council today is an amendment revising the W-1 zone text to apply generally to applicable properties within that zone.

By the terms of section 11-808(A) as well as the Protest Petition itself, the proposed zoning change before Council today is a text amendment and not a rezoning or map amendment. Because Council is considering a text amendment, and not a map amendment, Section 11-808 does not apply. Consequently, the petition does not require a three-quarter, supermajority vote for today's zoning text amendment.

The protest does not apply in any way to the Plan before Council. It applies only to the text amendment.

Sincerely,



Faroll Hamer
Director

Attachment: Determination request letter dated January 19, 2012

cc: James Banks, City Attorney
Joanna Anderson, Assistant City Attorney



RICH
ROSENTHAL
BRINCEFIELD
MANITTA
DZUBIN &
KROEGER, LLP

January 19, 2012

Via Hand Delivery and Electronic Mail (Joanna.Frizzell@alexandriava.gov)

Farroll Hamer, Director
Department of Planning and Zoning
c/o Joanna Anderson
301 King Street, Suite 1300
Alexandria, VA 22314

Re: Protest Filed Today - January 19, 2012

Dear Ms. Hamer:

I am submitting this letter to you, care of the City Attorney's office as requested by the City Attorney's office. I represent clients relating to the protest that was filed earlier today.

I requesting that you provide me with your determination regarding this protest, as soon as possible. I would prefer a written determination; however, in the interest of expediency I would accept a verbal determination now, followed by a written determination shortly thereafter.

If you have any questions or would like to discuss this matter, please feel free to contact me, through the City Attorney's office. I am available for telephone conference or a meeting at your office.

Sincerely,

Roy R. Shannon, Jr.

Copy: City Attorney, James Banks (e-mail only)



**APPLICATION
BOARD OF ZONING APPEALS**

APPEAL

\$ 350.00 Filing Fee

Jan 25 / Mar 1 Filing Deadline

March 8 / April 12 Board of Zoning Appeals Hearing

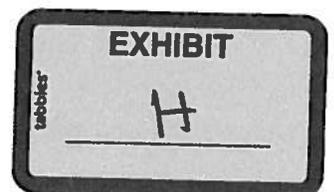
The City will send written notice of public hearings by certified or registered mail to all adjoining and facing property owners at least 10 days prior to the Board of Zoning Appeals hearing, and not more than 30 days prior to the hearing.

Board of Zoning Appeals hearing _____

Send notices by certified or registered mail between the dates of

_____ and _____

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APPEAL APPLICATION BOARD OF ZONING APPEALS

INSTRUCTIONS

- 1. FILING:** Appeals to the Board of Zoning Appeals must be filed within **30 days from the date that the order, requirement, decision or determination was made.**
- 2. APPLICATION FORMS:** Complete the form titled "Application for Appeal, Board of Zoning Appeals." Please use blue or black ink. Sign the form and include a daytime phone number and email address.
- 3. PLANS:** Twelve (12) copies of supporting materials are to be submitted with each application. Plans, drawings, photos, or other materials should not exceed 11" x 17" and should not be smaller than 8.5" x 11". All plan sets must be to scale. In addition, applicants should submit all images, photographs, and drawings in digital format. Larger or additional copies may be requested by staff for large scale projects. Applications without the required supporting materials will be deemed incomplete and will not be scheduled for hearing by the BZA.
- 4. FILING FEE:** Applicants must submit a filing fee with the application. Exact amount may be obtained from the Department of Planning and Zoning.
- 5. HEARING DATE:** Once staff has reviewed the application for completeness and validity, a hearing date will be scheduled. The appellant shall be notified by staff of the scheduled hearing date.
- 6. PROPERTY OWNER NOTIFICATION:** In the case of an appeal to the Board of Zoning Appeals, the City shall send written notice to all adjoining and facing property owners; notices must be sent by certified or registered mail **at least ten days** prior to the Board of Zoning Appeals public hearing (not counting the date of the hearing) and **not more than 30 days** prior to the hearing. In the event the application is deferred, notification shall be given again.

BOARD OF ZONING APPEALS PROCESS

PUBLIC HEARINGS – BOARD OF ZONING APPEALS

The Board of Zoning Appeals meets on the second Thursday of each month in the City Council Chambers, City Hall, at 7:30 P.M. Meeting dates should be verified by the applicant prior to the hearing as they are subject to change. **The applicant or a representative must attend the meeting.**

DEFINITION OF APPEAL

The Board of Zoning Appeals is authorized to hear appeals where it is alleged there is error from any order, requirement, decision or determination made by the Director in the administration or enforcement of the Zoning Ordinance of the City of Alexandria, Virginia and jurisdiction is not given to another body. The appeal must be filed within 30 days of such order, requirement, decision or determination made by the Director.

APPEAL POWERS – BOARD OF ZONING APPEALS

The Board of Zoning Appeals may reverse or affirm wholly or partly or may modify the order, requirement, decision or determination appealed from.

STAY OF PROCEEDINGS

A properly filed appeal shall stay all proceedings in furtherance of the action appealed from, unless the Director certifies to the Board after the notice of appeal has been filed that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by restraining order which may be granted by the Board or by a proper court on notice to the Director and on due cause shown.

DECISIONS ON APPEAL

Within a reasonable time after the appeal has been filed, the Board shall hold a public hearing, giving public notice thereof as well as due notice to parties of interest, decide the appeal and file with the Director written findings of fact and conclusions regarding the appeal. The concurring vote of four members is needed to reverse a decision. The Director will provide a copy of the decision to the applicant and to each other person who was a party of record at the hearing.

APPEAL OF THE BOARD OF ZONING APPEALS DECISION

Any person jointly or severally aggrieved or affected by a decision of the Board of Zoning Appeals may appeal such decision by filing a petition in the Circuit Court of the City. The petition shall set forth the alleged illegality of the Board's action, and shall be filed within 30 days from the date of the decision of the Board.

**For assistance with any of these procedures or processes, please call the
Department of Planning and Zoning at 703-746-4333.**

2 122

BZA Case # _____



APPEAL APPLICATION BOARD OF ZONING APPEALS

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

The Director's determination that the protest that was filed relating to text amendment 2011-0005 was not valid and/or applicable. I have requested a copy of the written determination that she read today, but she has not provided it. See Exhibit B

On what date was the order, requirement, decision or determination made?

Or or about January 21, 2012

*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 See attached

Address c/o Roy R. Shannon, Jr., at RRBMDK, LLP

201 North Union Street, Suite 140, Alexandria, VA 22314

Daytime Phone 703-299-3440

Email Address rrshannon@rrbmdk.com

2. Property Location See attached

3. Assessment Map # See Attached Block See Attached Lot See Attached

Zone See Attached

4. Legal Property Owner Name See attached

Address See attached

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PART A

1. **Applicant:** Owner

Name: (1) April L. Burke

Address: c/o Roy R. Shannon, Jr. at RRBMDK, LLP

201 North Union Street, Suite 140, Alexandria, VA 22314

Daytime Phone: 703-299-3440

Email Address: rrshannon@rrbmdk.com

2. **Property Location:** 101 Wolfe Street, Alexandria, VA 22314

3. **Assessment Map #** 075.03 **Block** 05 **Lot** 40

Zone RM

4. **Legal Property Owner Name:** Burke April L. and Flynt Richard A.

Address: 101 Wolfe Street, Alexandria, VA 22314

PART A

1. **Applicant:** Owner

Name: (2) Elizabeth Gibney

Address: c/o Roy R. Shannon, Jr., RRBMDK, LLP

201 North Union Street, Suite 140, Alexandria, VA 22314

Daytime Phone: 703-299-3440

Email Address: rrshannon@rrbmdk.com

2. **Property Location:** 300 S. Lee Street, Alexandria, VA 22314

3. **Assessment Map#** 075.03 **Block** 05 **Lot** 01

Zone RM

4. **Legal Property Owner Name:** Gibney, Elizabeth B. and Brian B.

Address: 300 S. Lee Street, Alexandria, VA 22314

PART A

1. **Applicant:** Owner

Name: (3) Marie Kux

Address: c/o Roy R. Shannon, Jr., at RRBMDK, LLP

201 North Union Street, Suite 140, Alexandria, VA 22314

Daytime Phone: 703-299-3440

Email Address: rrshannon@rrbmdk.com

2. **Property Location:** 125 Duke Street, Alexandria, VA 22314

3. **Assessment Map #**075.03 **Block** 02 **Lot** 26

Zone RM

4. **Legal Property Owner Name:** Kux Marie Marthe T

Address: 125 Duke Street, Alexandria, VA 22314

BZA Case # _____

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?

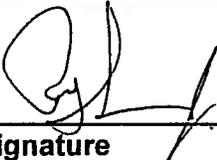
- Yes, Provide proof of current City business license.
 No, Said agent shall be required to obtain a business license prior to filing application.

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

Print Name



Signature

January 21, 2012

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.

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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 Part B of this Applicatio (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. April L. Burke	101 Wolfe St., Alexandria	100%
2. Elizabeth Gibney	200 S. Lee St., Alexandria	100%
3. Marie Kux	125 Duke St., Alexandria	100%

3. Business or Financial Relationships. Each person or entity indicated above in sections 1 and 2, with an ownership interest in the applicant or in the subject property are require 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. **All fields must be filled out completely. Do not leave blank. (If there are no relationships please indicated each person or entity below and "None" in the corresponding fields)**

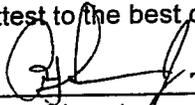
Name of person or entity	Relationship as defined by Section 11-350 of the Zoning Ordinance	Member of the Approving Body (i.e. City Council, Planning Commission, etc.)
1.		
2.		
3.		

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.

1-21-2012 Roy R. Shannon

 Date Printed Name



 Signature

Alexandria City Council

William Euille
Kerry Donley
Frank Fannon IV
Alicia Hughes
Redella "Del" Pepper
Paul Smedberg
Rob Krupicka

Planning Commission

John Komoroske
H. Stewart Dunn, Jr.
Jesse Jennings
Mary Lyman
J. Lawrence Robinson
Eric Wagner
Donna Fossum

Board of Zoning Appeals

Mark Allen
Geoffrey Goodale
John Keegan
Stephen Koenig
David Lantzy
Jennifer Lewis
Eric Zander

**Board of Architectural Review
Old and Historic District**

Chip Carlin
Oscar Fitzgerald
Thomas Hulfish
Arthur Keleher
Wayne Neale
Peter Smeallie
John Von Senden

**Board of Architectural Review
Parker-Gray District**

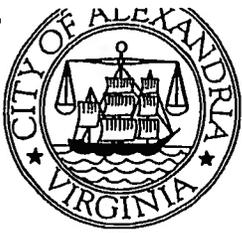
William Conkey
Theresa del Ninno
Robert Duffy
Christina Kelley
Douglas Meick
Philip Moffat

Updated 8/2/2011

Definition of business and financial relationship.

Section 11-305 of the Zoning Ordinance defines a business or financial relationship as any of the following:

- (1) a direct one;
- (2) by way of an ownership entity in which the member or a member of his immediate household is a partner, employee, agent or attorney;
- (3) through a partner of the member or a member of his immediate household;
- (4) through a corporation in which any of them is an officer, director, employee, agent or attorney or holds 10 percent or more of the outstanding bonds or shares of stock of a particular class. In the case of a condominium, this threshold shall apply only if the applicant is the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium;
- (5) not as an ordinary customer or depositor relationship with a professional or other service provider, retail establishment, public utility or bank, which relationship shall not be considered a business or financial relationship;
- (6) created by the receipt by the member, or by a person, firm, corporation or committee on behalf of the member, of any gift or donation having a value of more than \$100, singularly or in the aggregate, during the 12-month period prior to the hearing on the application from the applicant.



2011 City of Alexandria Business License

Finance Department, Revenue Administration Division, City of Alexandria
301 King Street, Room 1700, Alexandria, VA 22314
Phone: 703.746.3903 <http://www.alexandriava.gov/>

License Number: 121454-2011
Account Number: 121454
Tax Period: 2011
Business Name: Rich,Rosenthal,Brincefield,Manitta,Dz
ubin & Kroeger, LLP
Trade Name: Rich,Rosenthal,Brincefield,Manitta,Dz
ubin & Kroeger, LLP
Business Location: 201 N UNION ST, # 140
Alexandria, VA 22314

Rich,Rosenthal,Brincefield,Manitta,Dzubin & Kroeger, LLP
201 N Union St #140
Alexandria, VA 22314

License Classification(s):
Professional Occupations/Businesses
9-071-007
Attorney-At-Law

April 27, 2011

Dear Taxpayer:

This is your 2011 City of Alexandria Business License. The bottom portion of this page is perforated to allow you to tear off and post the business license in your establishment.

If you paid for your business license via check, please be aware that if your check is not honored by your financial institution, this business license shall be invalid.

As with all taxes, our goal is to administer Business License taxes fairly and in accordance with Commonwealth and Locality code. Our staff strives to provide professional assistance and quality customer service. Your satisfaction is important to us and your comments are always welcome.

If you have any questions regarding this letter, please visit <http://www.alexandriava.gov/> or contact my office via phone at 703.746.3903.

Finance Department, Revenue Administration Division, City of Alexandria

Keep this letter for your records.

City of Alexandria Business License

Revenue Administration Division, City of Alexandria, 301 King Street, Room 1700, Alexandria, VA 22314



License Number: 121454-2011
Account Number: 121454
Tax Period: 2011
Business Name: Rich,Rosenthal,Brincefield,Manitta,Dzubin & Kroeger,
LLP
Trade Name: Rich,Rosenthal,Brincefield,Manitta,Dzubin & Kroeger,
LLP
Business Location: 201 N UNION ST, # 140
Alexandria, VA 22314
License Classification(s): Professional Occupations/Businesses
9-071-007
Attorney-At-Law

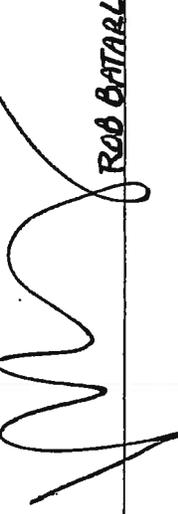
**his license has been issued by the Revenue
Administration Division of the City of Alexandria and
granted to:**

Rich,Rosenthal,Brincefield,Manitta,Dzubin & Kroeger, LLP
201 N UNION ST, # 140
Alexandria, VA 22314

JAN 19 2012

Landowners' Protest to Proposed Text Amendment 2011-0005

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 do hereby protest proposed text amendment 2011-0005. The undersigned are owners of real property within 300 feet of the boundaries of the land affected by the proposed amendment and proposed changes. Section 11-808(D) of the Zoning Ordinance states: "**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." (emphasis added).

Property Address	Owner (Name)	Signature	Map # (if known)
1055 North Fairfax St Alexandria, VA 22314	American Physical Therapy Properties, Inc.	 ROB BATARLA, CEO	

Roy Shannon

From: Roy Shannon Jr. <rrshannon@rrbmdk.com>
Sent: Saturday, January 21, 2012 5:04 PM
To: Mark Allen; Geoffrey; Stephen; John; Jim Banks
Cc: Roy Shannon
Subject: Fw: Urgent Matter - BZA Appeal
Attachments: BZA Appeal Jan. 21, 2012 - Determination.pdf

Please see the email below and attached document.

Roy R. Shannon, Jr.
Rich Rosenthal Brincefield Manitta Dzubin & Kroeger, LLP
201 North Union Street, Suite 140
Alexandria, Virginia 22314
Phone: (703) 299-3440 ext. 217
Fax: (703) 299-3441
Email: RRShannon@RRBMDK.com
website: www.RRBMDK.com

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From: "Roy Shannon" <rrshannon@rrbmdk.com>
Date: Sat, 21 Jan 2012 14:23:43 -0500
To: 'roy' <rshannon@rrbmdk.com>
Subject: Urgent Matter - BZA Appeal

Dear Chairman and Members of the Board of Zoning Appeals,

Attached hereto is an Appeal to the BZA I am filing on behalf of my clients. I have copied the City Attorney on this email.

Yesterday, I attempted to file a similar appeal and the Deputy Director refused to accept the submission. The Deputy Director simply refused to take it, not having turned a single page. The planning department did not even know on whose behalf I was appealing. Because, I was improperly denied the ability to file the appeal, I sent it to the Chair of the BZA last night. I would be happy to provide each of the members a copy, if requested.

As you know, the Virginia Code, the City Charter, and the Zoning Ordinance all require that an appeal be filed with the zoning administrator, director of planning, and director, respectively, and **the board**. See Va. Code Ann. 15.2-2311, City Charter 9.17, and the Zoning Ordinance 11-1203 (emphasis added).

Because the City offices are closed today and, as a result of the improper refusal by the planning department to accept my appeal yesterday, I am submitting the appeal to you as the Board. Please forward this email to all of those members, for whom I do not have email addresses for.

Please let me know you received my email. Thank you.

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Sincerely,
Roy



Roy R. Shannon, Jr.
Attorney at Law
RICH ROSENTHAL BRINCEFIELD MANITTA DZUBIN & KROEGER, LLP
201 North Union Street, Suite 140
Alexandria, VA 22314
Phone: (703) 299-3440 ext. 217
Fax: (703) 299-3441
Email: RRShannon@RRBMDK.com
website: www.RRBMDK.com

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Roy Shannon

From: Roy Shannon Jr. <rrshannon@rrbmdk.com>
Sent: Saturday, January 21, 2012 5:04 PM
To: Jim Banks
Cc: Roy Shannon
Subject: Fw: BZA Appeal Stay
Attachments: Letter to City Council Jan. 21, 2012.pdf

Please see the email and attached letter.

Roy R. Shannon, Jr.
Rich Rosenthal Brincefield Manitta Dzubin & Kroeger, LLP
201 North Union Street, Suite 140
Alexandria, Virginia 22314
Phone: (703) 299-3440 ext. 217
Fax: (703) 299-3441
Email: RRShannon@RRBMDK.com
website: www.RRBMDK.com

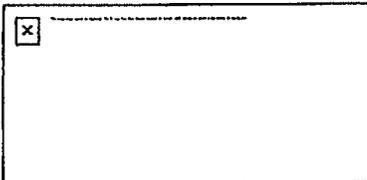
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From: "Roy Shannon" <rrshannon@rrbmdk.com>
Date: Sat, 21 Jan 2012 09:19:08 -0500
To: <rrshannon@rrbmdk.com>
Subject: BZA Appeal Stay

Dear Mr. Banks,

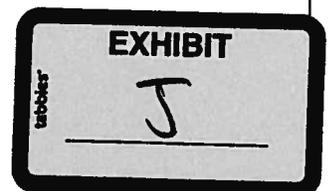
Please see the attached letter to the City Council for its immediate consideration. Again, I am sending all communications through you as you requested.

Sincerely,
Roy



Roy R. Shannon, Jr.
Attorney at Law

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RICH ROSENTHAL BRINCEFIELD MANITTA DZUBIN & KROEGER, LLP
201 North Union Street, Suite 140
Alexandria, VA 22314
Phone: (703) 299-3440 ext. 217
Fax: (703) 299-3441
Email: RRShannon@RRBMDK.com
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RICH
ROSENTHAL
BRINCEFIELD
MANITTA
DZUBIN &
KROEGER, LLP

January 21, 2012

Mayor Euille and Honorable Councilmembers
c/o James Banks, City Attorney
301 King Street, Suite 1300
Alexandria, VA 22314

Re: BZA Appeal

Dear Mayor Euille and Members of the City Council,

I am submitting this letter to you, care of the City Attorney's office as requested by Mr. Banks. I represent petitioners that have filed an appeal to the BZA regarding the protest that was submitted to the City Clerk's office relating to text amendment 2011-0005.

Pursuant to the City Charter Sec. 9.17, the Zoning Ordinance of the City of Alexandria Sec. 11-1204, and Va. Code § 15.2-2311. I am requesting that the City Council not consider text amendment 2011-0005 today and that the proceeding be stayed as it relates to the proposed text amendment 2011-0005.

If you have any questions or would like to discuss this matter, please feel free to contact me, through the City Attorney's office.

Sincerely,

Roy R. Shannon, Jr.

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Roy Shannon

From: Barbara Ross <Barbara.Ross@alexandriava.gov>
Sent: Monday, January 23, 2012 1:31 PM
To: rrshannon@rrbmdk.com
Cc: Faroll Hamer; Joanna Anderson
Subject: Waterfront Text Amendment Appeal

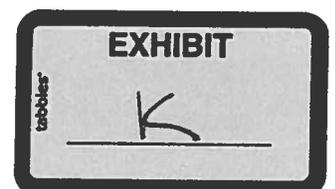
Dear Roy:

In follow up to the discussions between you and various members of the City Staff and BZA late on Friday and on Saturday, I wanted to reiterate that we have not officially received the appeal that you indicated you would be filing on behalf of your clients pertaining to the decision made by the Director of Planning and Zoning on Saturday, January 21, 2012 about the protest petition on the text amendment to the W-1 zone. The copies that you brought to City Hall on Saturday were not officially filed and were removed by someone other than City staff. In order to have a properly filed appeal, you must bring 12 copies of your appeal application and the filing fee to the office of Planning and Zoning, City Hall, Suite 2100 during regular business hours.

In regard to your request for a determination letter regarding the protest petition, you should be receiving your response in the next few days.

Barbara Ross
Deputy Director
Planning and Zoning
(703)746-3802

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Roy Shannon

From: Roy Shannon <rrshannon@rrbmdk.com>
Sent: Tuesday, March 06, 2012 4:52 PM
To: 'FOIArequests@alexandriava.gov'
Cc: Joanna Anderson (Joanna.Frizzell@alexandriava.gov)
Subject: Freedom of Information Request

Name: Roy Shannon Jr.
Organization: Rich Rosenthal Brincefield Manitta Dzubin & Kroeger, LLP
Address: 201 N. Union Street, Suite 140
City: Alexandria
State: Virginia
Zip: 22314
Telephone: 702-299-3440
Email: rrshannon@rrbmdk.com
Signature: /s/

I authorize charges up to \$200.00. Please contact me if the charges will exceed that amount.

Information sought/requested:

1. I am requesting all the papers constituting the record upon which the determination(s) made by Faroll Hamer, Director of Planning and Zoning for the City of Alexandria (hereinafter "Director"), relating to the protest petition filed on January 19, 2012, and/or January 20, 2012, relating to Proposed Text Amendment 2011-0005.
2. I am requesting all the papers constituting any submissions to the Director relating to any attempted appeals to the Board of Zoning Appeals from January 15, 2012 to February 11, 2012, including, but not limited to, any emails or documents sent to and from the City Attorney or the City Attorney's Office.
3. I am requesting all the papers constituting the record upon which the determination(s) made by the Director relating to the protest petition filed on January 19, 2012 and January 20, 2012, including, but not limited to, all materials the Director considered in making and/or coming to her determination relating to the protest petition filed on January 19, 2012, and January 20, 2012.

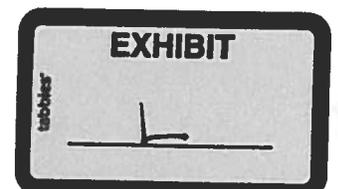
Please give me a call when the request is ready for pickup. If you have any questions, please feel free to contact me.

Very Respectfully,

Roy



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Roy R. Shannon, Jr.

Attorney at Law

RICH ROSENTHAL BRINCEFIELD MANITTA DZUBIN & KROEGER, LLP

201 North Union Street, Suite 140

Alexandria, VA 22314

Phone: (703) 299-3440 ext. 217

Fax: (703) 299-3441

Email: RRShannon@RRBMDK.com

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OFFICE OF THE CITY ATTORNEY

301 KING STREET, SUITE 1300
ALEXANDRIA, VIRGINIA 22314

JAMES L. BANKS, JR.
CITY ATTORNEY

CHRISTOPHER P. SPERA
DEPUTY CITY ATTORNEY

JILL A. SCHAUB
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GEORGE McANDREWS
MARY ELLIOTT O'DONNELL
MEGHAN S. ROBERTS
HEATHER SKEELES-SHINER
KAREN S. SNOW

March 13, 2012

VIA EMAIL AND REGULAR MAIL

Mr. Roy Shannon
Rich Rosenthal Brincefield Manitta Dzubin & Kroeger, LLP
201 North Union Street, Suite 140
Alexandria, Virginia 22314

Re: March 6, 2012, Freedom of Information Act (FOIA) Request

Dear Mr. Shannon:

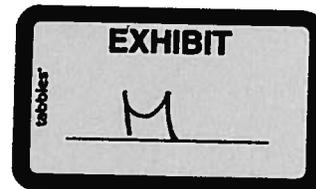
We are in receipt of your FOIA request dated March 6, 2012. As you are aware, this case is currently in litigation (Burke, et al v. Hamer, et al, CL 12001432) and discovery has commenced. Rather than duplicating the discovery mechanisms that are available under the Rules of the Virginia Supreme Court and unnecessarily increasing the cost and effort associated with complying with multiple and arguably inconsistent discovery mechanisms, we will treat your FOIA request as a request for production of documents under Rule 4:9 and provide documents within the context of and consistent with the Rules of the Virginia Supreme Court.

First, it appears that your first request and your third request are requesting the same documents, with the third request being slightly more descriptive. If this is not the case, please provide us with additional information to clarify what additional documents you are looking for.

In regard to your first and third requests, the following is a list of the documents that are responsive to your request:

- Protest Petition filed with the City Clerk's office on January 19, 2012 by Roy Shannon, Esq. and additional pages of the protest petition filed on January 20, 2012 by Julie Van Fleet.
- Text Amendment #2011-0005, and any references to the intent of the text amendment within the discussion of Master Plan Amendment #2011-0001, which can be found on the website for the City of Alexandria at the following link: <http://alexandriava.gov/Waterfront>

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- The Zoning Ordinance for the City of Alexandria and the City Charter for the City of Alexandria.

In regard to your second request, the following is a list of the documents that are responsive to your request:

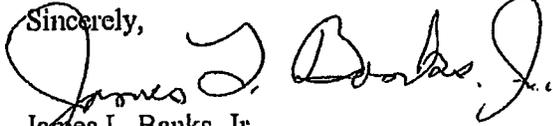
- Email correspondence from Roy Shannon, Esq to Mark Allen, Chairman of the Alexandria Board of Zoning Appeals (BZA) with a copy to James Banks, City Attorney, dated January 20, 2012 at 8:41 PM titled "Urgent Matter – Appeal to the Board of Zoning Appeals."
- Email correspondence from James Banks, City Attorney, to Mark Allen, Chairman of the BZA, with a copy to Roy Shannon, Esq. dated January 20, 2012 at 8:49 PM titled "Urgent Matter – Appeal to the Board of Zoning Appeals."
- Email correspondence from Roy Shannon, Esq. to Mark Allen, Chairman of the BZA with a copy to James Banks, City Attorney dated January 20, 2012 at 9:12 PM titled: "Urgent Matter – Appeal to the Board of Zoning Appeals."
- Email correspondence from Roy Shannon, Esq. to Mark Allen, Chairman of the BZA with a copy to James Banks dated January 21, 2012 at 8:15 AM, titled "Urgent Matter – Appeal to the Board of Zoning Appeals."
- Email correspondence from Roy Shannon, Esq. to Mark Allen, Chairman of the BZA, James Banks, City Attorney and three other email addresses who appear to be members of the Board of Zoning Appeals dated January 21, 2012 at 5:04 PM titled "Urgent Matter – Appeal to the BZA."
- Email correspondence from Barbara Ross, Deputy Director of Planning and Zoning to Roy Shannon, Esq. dated Monday, January 23, 2012 at 1:31 PM titled "Waterfront Text Amendment Appeal."
- Email correspondence from Roy Shannon, Esq. to Mark Allen, Chairman of the BZA with a copy to Joanna Anderson and James Banks dated February 10, 2012 at 4:58 PM titled "Appeal to the BZA – Feb. 10, 2012."
- Email correspondence from Mark Allen, Chairman of the BZA to Roy Shannon, Esq. with a copy to Joanna Anderson and James Banks dated February 10, 2012 at 5:09 PM titled "Appeal to the BZA – February 10, 2012."
- Application for appeal to the BZA and attachments dated February 10, 2012 signed by Roy Shannon, Esq. on behalf of three Appellants, Burke, Gibney and Kux filed in the office of Planning and Zoning by Roy Shannon.

Because all of the documents listed above are either documents submitted by you to the City, received by you from the City, or are documents that are accessible on the City of Alexandria website, we have not provided copies to you of these documents. If you would like to have additional copies, please let us know and we would be happy to provide them.

Roy Shannon, Jr. Esq.
March 13, 2012
Page 3

Additionally, there are a number of documents that may be responsive to your request that are exempt from the FOIA requirements pursuant to Va. Code § 2.2-3705.1(2). We have attached a privilege log listing the documents for which we are invoking this exemption.

Please do not hesitate to contact my office if you have any questions regarding this matter.

Sincerely,

James L. Banks, Jr.
City Attorney

cc: FOIA Systems

FOIA Request – Roy Shannon, Jr. Esq
 Privilege Log

From	To	Date	# of Pages	Subject Matter	Privilege
Withheld in Entirety					
Barbara Ross	Joanna Anderson	01/23/12, 9:11 AM	1	Urgent Matter – Appeal to the Board of Zoning Appeals	Attorney-client privilege
Barbara Ross	Joanna Anderson	01/20/12, 5:34 PM	1	Protest	Attorney-client privilege
Barbara Ross	Joanna Anderson	01/20/12, 10:08 AM	1 and 1 page attachment	Protest determination	Attorney-client privilege
James Banks	City Council, Bruce Johnson, Mark Jinks, Faroll Hamer, Christopher Spera, Joanna Anderson, Rashad Young	01/19/12, 11:58 AM	1	Waterfront Protest Petition	Attorney-client privilege
Joanna Anderson	Barbara Ross	01/18/12, 4:18 PM	1 and 1 page attachment	Protest Determination Letter	Attorney-client privilege;
Joanna Anderson	Barbara Ross	01/18/12, 2:04 PM	3	Zoning protest	Attorney-client privilege
Joanna Anderson	Barbara Ross	01/18/12, 2:58 PM	3	Zoning protest	Attorney-client privilege
Barbara Ross	Joanna Anderson	01/18/12, 1:45 PM	1	Protest petition preparation	Attorney-client privilege

VIRGINIA :

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

APRIL BURKE
101 Wolfe Street
Alexandria, Virginia 22314

and

ELIZABETH GIBNEY
300 South Lee Street
Alexandria, Virginia 22314

and

MARIE KUX
125 Duke Street
Alexandria, Virginia 22314

Plaintiffs,

v.

Civil Action No. CL 12001432

FAROLL HAMER, DIRECTOR OF
PLANNING AND ZONING
FOR THE CITY OF ALEXANDRIA
301 King Street, Suite 2100
Alexandria, Virginia 22314

and

CITY COUNCIL FOR
THE CITY OF ALEXANDRIA

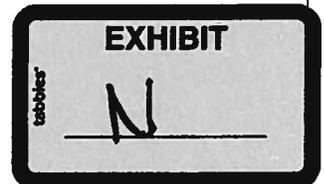
Serve: JAMES BANKS, City Attorney
301 King Street, Suite 1300
Alexandria, Virginia 22314

Defendants.

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA
2012 FEB - 9 A 11:45
BY EDWARD SEMONIAN, CLERK
DEPUTY CLERK

APPLICATION / PETITION FOR WRIT OF MANDAMUS
AND
COMPLAINT FOR DECLARATORY JUDGMENT

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COME NOW THE PLAINTIFFS, April Burke, Elizabeth Gibney, and Marie Kux (“Plaintiffs”), by counsel, and for their application / petition for writ of mandamus and complaint for declaratory judgment against the Defendant Faroll Hamer, in her official capacity, as the Director of Planning and Zoning for the City of Alexandria (“Director”) and the Defendant City Council for the City of Alexandria (“City Council”), state as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff April Burke has an ownership interest in the property located at 101 Wolfe Street, Alexandria VA 22314 and is a resident of the City of Alexandria.
2. Plaintiff Elizabeth Gibney has an ownership interest in the property located at 300 South Lee Street, Alexandria, VA 22314 and is a resident of the City of Alexandria.
3. Plaintiff Marie Kux has an ownership interest in the property located at 125 Duke Street, Alexandria VA 22314 and is a resident of the City of Alexandria.
4. Defendant Faroll Hamer, in her official capacity, as the Director of Planning and Zoning for the City of Alexandria, is responsible for the administration of the City of Alexandria Zoning Ordinance (“Zoning Ordinance”).
5. Defendant City Council is the governing body of the City of Alexandria and presides at 301 King Street, City Hall, Alexandria, Virginia 22314.
6. The Court has jurisdiction, and the Plaintiffs bring these actions, pursuant to Va. Code Ann. §§ 8.01-644, 8.01-184, 17.1-513, and 15.2-2285(f).
7. Venue is appropriate in this Court in accordance with Va. Code Ann. § 8.01-261(5).

INTRODUCTION

8. The goal of this action is to remedy an abuse of procedure carried out by City officials and staff. Delegations of legislative authority from the General Assembly and the actions of the Alexandria City Council over many years have resulted in a series of prescriptive rules and procedures designed to balance and protect the competing interests of individual landowners in the unfettered use of their land with the interests of neighboring landowners and the citizenry as a whole in providing for the common good.

9. The rules governing the City's exercise of the power to play the sovereign in the process of allocating land use rights are critically important. Indeed, it is when the citizens of the City Council propose to act and restrict the property rights of certain of the City's citizens for the benefit of others -- including themselves -- in pursuit of the "common good," that our needs as affected citizens to petition our courts to ensure these important rules are followed is at its greatest. And seemingly insignificant differences on such questions as whether a City official or employee must receive an appeal petition when a citizen tenders it during a public hearing on zoning matters can be seen for the important issues they actually represent.

10. In this case, City officials and unelected administrative employees within the City government have unfairly and improperly violated the rules. They have gone to surprising lengths to prevent citizens negatively affected by a particular zoning action from exercising a fundamental right under the system of procedural safeguards designed to police zoning decisions and avoid abuses.

11. More particularly, City officials and staff -- duty-bound to *facilitate* citizen access to the planning and zoning process and to protect its integrity -- actually went out of their way to prevent Plaintiffs from filing an appeal to the Board of Zoning Appeals ("BZA") challenging a

determination of the Director. Such obvious partiality on the part of administrators undermines public confidence in the fair and impartial administration of the City's affairs.

12. To remedy these violations, Plaintiffs petition this Court to issue a writ of mandamus directing the Director to perform her non-discretionary, ministerial duties of transmitting Plaintiffs' appeal to the BZA, which was tendered for filing on January 21, 2012 ("Second Appeal"), attached hereto as Exhibit 1, and all documents related to the issue being appealed, as well as coordinating with Plaintiffs to schedule a BZA hearing on their appeal.

13. Plaintiffs further ask this Court to declare that the Second Appeal was filed for all purposes, as of January 21, 2012. Plaintiffs further request the Court to declare the City Council's vote approving Master Plan Amendment # 2011-0001 ("Waterfront Plan") and Text Amendment # 2011-0005 ("W-1 Text Amendment") *void ab initio* for having been acted on before the disposition in due course of matters raised by Plaintiffs in their Second Appeal. Finally, Plaintiffs seek an order staying all further proceedings relating to the W-1 Text Amendment until Plaintiffs' appeal is heard and decided by the BZA, and that the stay be considered effective as of the time of their filing of the Second Appeal.

BACKGROUND

14. The City of Alexandria Planning Commission ("Planning Commission") held a meeting on May 3, 2011. During that meeting, the Planning Commission through various motions and affirmative votes initiated, made certain amendments to, and recommended approval of the Waterfront Plan. The Planning Commission also initiated and recommended approval of the W-1 Text Amendment.

15. During the City Council Public Hearing Meeting on Saturday, January 21, 2012 ("Public Hearing"), the City Council on a single motion, seconded, and with friendly

amendments to said motion, affirmatively voted 5-2 to approve the Waterfront Plan and the W-1 Text Amendment.

16. Prior to the Public Hearing, the Plaintiffs, along with over 200 landowners immediately surrounding those sites in the City zoned W-1, signed and caused to be filed with the City Clerk a protest ("Protest"), attached hereto as Exhibit 2, pursuant to § 9.13 of the Charter and § 11-808 of the Zoning Ordinance.

17. The overwhelming majority of signatures to the Protest were filed with the City Clerk on the morning of Thursday, January 19, 2012. A few additional signatures were filed with the City Clerk the next day.

18. The merits of the applicability of § 11-808 of the Zoning Ordinance and the ability of landowners to file a protest to the W-1 Text Amendment are not before the Court; however, the language of the Zoning Ordinance is critical to understanding the importance of the process that now needs to be protected by this Court.

19. Section 11-808 of the Zoning Ordinance is titled "Protest of zoning map amendment by landowner." § 11-808(D) of the Zoning Ordinance states: "**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 the three-fourths of its members." (**emphasis in the original**) (emphasis added).

20. This section of the Zoning Ordinance provides a safeguard for landowners wishing to protest a "proposed text or map amendment."

21. The W-1 Text Amendment is a text amendment; accordingly, § 11-808(D) is applicable.

22. Moreover, the W-1 Text Amendment is also a map amendment, because the new added text now incorporates part of the Zoning Map not previously identified or incorporated for the zone W-1.

23. Prior to the Protest being filed and the Public Hearing, the City, through the City Attorney, conveyed to the public, in particular through the media, that any protest petition would be denied on the ground that a protest petition was not applicable for a text amendment.

24. The City Attorney's office made it clear that it was advising the Director to determine that any protest filed regarding the W-1 Text Amendment was not valid or applicable.

25. After the Protest was filed on January 19, but before the Public Hearing on January 21, Plaintiffs inquired multiple times whether the Director had made a determination regarding the Protest.

26. The City Attorney's office refused to respond to Plaintiffs' inquiries, claiming that the Director was considering the information, that she would make her decision accordingly, and that Plaintiffs would receive their determination in "due course."

27. Plaintiffs, having not heard back from the Director regarding her determination, filed an appeal with the BZA ("First Appeal") on Friday, January 20, 2012, attached hereto as Exhibit 3.

28. Plaintiffs went to City Hall to the office of Planning and Zoning located on the second floor, with the First Appeal in hand, along with copies, and a check for the filing fee.

29. Upon attempting to file the First Appeal at approximately 4:50 p.m., Plaintiffs were told that they would have to wait for a supervisor.

30. The Director's Deputy of Planning and Zoning, Barbara Ross, ("Deputy Director") came to the office counter and asked what was being appealed, and it was indicated that the appeal was for the hearing the next day. The Deputy Director said that there has not

been a determination yet. Plaintiffs explained that because the public hearing was on a Saturday they were filing today. The Deputy Director, without ever turning a page to see what was being appealed or on whose behalf it was being submitted, immediately told them that an appeal cannot be filed until the Director makes a determination. The Deputy Director then said she had to leave for a meeting. Plaintiffs asked if they could have a letter indicating the appeal was not being accepted. The Deputy Director said that it was 5:00 p.m. indicating that the office was closed. After being made aware that the office clock showed 4:55 p.m., the Deputy Director, stated the office was getting ready to close, that she had to go to a meeting, and if she wrote a letter she would be there until midnight. Plaintiffs offered a copy of the appeal to the Deputy Director and she declined. Plaintiffs asked for something to show that the office was rejecting the appeal. The Deputy Director agreed and wrote on the top page of the First Appeal, "Rejected. Appeal is premature. [Signed] B. Ross 1/20/12." See Exhibit 3, pg. 1.

31. Because the Deputy Director had refused to accept the First Appeal, Plaintiffs filed the First Appeal with the Chairman of the BZA ("BZA Chairman").

32. Plaintiffs sent an email, with the First Appeal as an attachment, to the BZA Chairman on Friday, January 20, 2012, copying the City Attorney on that email ("Plaintiffs' Friday Email"), attached hereto as Exhibit 4.¹

33. Plaintiffs' Friday Email explained the refusal by the Director's Deputy that occurred at the Director's office counter earlier that day, and the authority for filing the First Appeal with the BZA Chairman.

34. The City Attorney responded by email to Plaintiffs' Friday Email addressing the BZA Chairman explaining, that his "preliminary review of the matter indicates that the appeal is premature and was properly rejected," attached hereto as Exhibit 5.

¹ Exhibit 4 is only the email and does not include the First Appeal; however, the First Appeal was attached to that email.

35. Whether an appeal of the Director's determination to the BZA should be rejected as "premature" is a decision for the BZA to make, not the Director, Deputy Director, or the City Attorney.

36. During the Public Hearing on Saturday, January 21, 2012, after the City Clerk called Docket Item Number 4 (consideration of the Waterfront Plan and W-1 Text Amendment), the Director stated with regards to the Protest that was filed with the City, that it was the "Director's obligation to provide a determination as to the validity of the petition."

37. The Director, acting in her official capacity, then read her determination to the City Council and the general public, including the Plaintiffs ("Determination").

38. On Tuesday, January 24, 2012, following the Public Hearing that occurred on Saturday, January 21, 2012, the Director sent a letter to the Plaintiffs ("Director's Determination Letter") attached hereto as Exhibit 6.

39. In the Director's Determination Letter, she stated that, "**My determination was made verbally** to City Council at its hearing on January 21. **At that time I stated the following:**" (**emphasis added**), whereby the Director provided the Determination that she read during the Public Meeting. See Exhibit 6.

40. In pertinent part,

By the terms of section 11-808(A) as well as the Protest Petition itself, the proposed zoning change before Council today is a text amendment and not a rezoning or a map amendment. Because Council is considering a text amendment, and not a map amendment, Section 11-808 does not apply. Consequently, the petition does not require a three-quarter, supermajority vote for today's zoning text amendment.

The protest does not apply in any way to the plan before Council. It applies only to the text amendment.

41. During the Public Hearing, Plaintiffs asked the City Attorney for a copy of the Determination that the Director made earlier in the day, whereby the City Attorney responded that Plaintiffs would get it in "due course."

42. After the Director provided her Determination at the Public Hearing to the City Council and the general public, the City Attorney explained to the City Council how he advised the Director to interpret a protest filed pursuant to § 11-808 of the Zoning Ordinance.

43. When asked by City Council to explain any "path of redress" from the Determination, the City Attorney explained that the Determination could be appealed to the BZA and that the appeal could be filed on Monday. The City Attorney explained that any ruling of the BZA could then be appealed to the Circuit Court.

44. During the Public Hearing after the Director made her determination, but before the City Council took action on the W-1 Text Amendment, Plaintiffs, in the presence of City Council, filed their Second Appeal to the Director, along with copies of the same, and tendered a check in the proper amount for the filing fee.

45. The Plaintiffs had no choice but to file their appeal on Saturday to preserve their appellate rights and ensure that their appeal was heard by the BZA.²

46. Plaintiffs informed the City Council that Plaintiffs had also filed their Second Appeal with the Director and with the BZA, by sending an email to a majority of the BZA members, including the BZA Chairman, and the City Attorney, attached hereto as Exhibit 7³.

47. During the Public Hearing, Plaintiffs informed the City Council verbally and by letter ("Stay Letter"), attached hereto as Exhibit 8, that they had filed an appeal with the BZA,

²A recent decision by the Alexandria BZA, held that it is possible for a person to be aggrieved by a decision of the zoning director, and subsequently lose the status as an aggrieved party, depending on how the City Council voted. Not knowing how the City Council was going to vote, it was necessary for the Plaintiffs to file the appeal on Saturday before City Council voted, in order to be considered aggrieved and have standing to have their matter heard before the BZA.

³Exhibit 7 is only the email and does not include the Second Appeal; however, the Second Appeal was attached to that email.

and that in accordance with § 15.2-2311 of the Code, § 9.17 of the Charter, and § 11-1204 of the Zoning Ordinance, all further consideration of the W-1 Text Amendment should be stayed.

48. The email sent to the BZA, which included the Second Appeal as an attachment to the email, outlined the incident that occurred the day before at the Director's office counter, the basis for filing the appeal to the BZA, and explained that the office counter was unmanned on Saturday.

49. The Director, the Deputy Director, and most of the Director's senior staff were at the Public Hearing and working in their official capacity. The Public Hearing was held in City Council Chambers which is located in City Hall on the second floor, the same floor as the Director's office counter.

50. The email to the BZA Chairman and other BZA members asked the recipients of the email to let Plaintiffs know if they received the email.

51. On the afternoon of Sunday, January 22, the BZA Chairman replied by email to the Plaintiffs that he had received their emails.

52. The Chairman's email is an acknowledgement that the Chairman received the emails, along with the corresponding attachments of the First Appeal and the Second Appeal.

53. On Monday, January 23, the Director's Deputy sent an email to Plaintiffs, attached hereto as Exhibit 9, stating:

...I wanted to reiterate that we have not officially received the appeal that you indicated you would be filing on behalf of your clients pertaining to the decision made by the Director of Planning and Zoning on Saturday, January 21, 2012 about the protest petition on the text amendment to the W-1 zone. The copies that you brought to City Hall on Saturday were not officially filed and were removed by someone other than City staff. In order to have a properly filed appeal, you must bring 12 copies of your appeal application and the filing fee to the office of planning and Zoning, City Hall, Suite 2100 during the regular business hours.

54. On Tuesday, January 24, the Director forwarded a letter to Plaintiffs with her written Determination that she read aloud during the Public Hearing. See Exhibit 6.

55. The City Attorney's office told Plaintiffs that the Director is not going to schedule the Second Appeal for a hearing before the BZA.

56. The Second Appeal has not been scheduled for a hearing with the BZA, and on information and belief, no documents relating to the Protest or the Determination have been forwarded to the BZA by the Director.

COUNT I: PETITION FOR WRIT OF MANDAMUS

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

58. Plaintiffs petition this Court to issue a writ of mandamus directing Faroll Hamer, in her official capacity as the Director of Planning and Zoning, to comply with her ministerial duty as stated in § 15.2-2311 of the Code, § 9.17 of the Charter, and § 11-1203 of the Zoning Ordinance, to wit: to "forthwith transmit" to the BZA all the papers constituting the record from her Determination that the Plaintiffs are appealing, including the Second Appeal (Exhibit 1), and coordinate the scheduling of a BZA hearing relating to the same.

59. Section 15.2-2311 of the Code requires that:

The appeal shall be taken **within 30 days after the decision** appealed from **by filing with the zoning administrator [Director], and with the board**, a notice of appeal specifying the grounds thereof. The zoning administrator [Director] **shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.**

(emphasis added).

60. Section 9.17 of the Charter requires that:

Appeals to the board may be taken by any person aggrieved...by any decision of the director of planning, who shall enforce the ordinance.... Appeals shall be taken within such reasonable time as shall be prescribed by the board by general rule **by filing with the said director of planning and with the board** a notice of appeal specifying the grounds thereof. **The director of planning shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.** An appeal stays all proceedings in furtherance of the action appealed from unless.....

(emphasis added).

61. Section 11-1203 of the Zoning Ordinance requires that:

Appeals to the board may be taken by any person aggrieved...affected by a decision of the director. Appeals shall be taken within such reasonable time as shall be prescribed by the board by general rule **by filing with the director and with the board** a notice of appeal specifying the grounds of the appeal. **The director shall forthwith forward to the board all the papers constituting the record upon which the action appealed from was taken.** The board may prescribe a fee to be paid to the city whenever an appeal is taken.

(emphasis added).

62. The Director's Determination that the Protest was not applicable to the W-1 Text Amendment and City Council's proceedings denied the Plaintiffs their due process rights.

63. The Director's Determination was read aloud at the Public Hearing from a preprinted text, indicating that it had already been made prior to the hearing.

64. Whether the Director's Determination was made prior to the hearing and simply read aloud to the City Council, or simply made on the spot, Plaintiffs were entitled to appeal that Determination immediately.

65. After the Determination was provided, the City Attorney later explained that those impacted by the Determination could appeal it to the BZA.⁴

66. The Plaintiffs filed their Second Appeal within 30 days of the Director's Determination, and provided the Director with a sufficient number of copies and a check for the filing fee.

67. The Director refused to accept and process the appeal, the copies of the same, and the check.

68. While the merits of the Second Appeal are not before the Court, it is clear on its face that it is a colorable appeal and it should not have been refused by the Director. Nothing in the Code, the Charter, or the Zoning Ordinance permits the Director to refuse to accept an appeal that is presented to her with the required fee while she is conducting City business – particularly where her refusal to do so (A) has no basis in law and (B) substantively deprives citizens of their right to file an appeal and obtain a stay of proceedings.

69. Plaintiffs are aggrieved in that (1) they signed the Protest that was improperly refused to the W-1 Text Amendment and was not given its effect under § 11-808(D) of the Zoning Ordinance requiring a three-fourths affirmative vote to approve it, (2) their properties are in close proximity to a development site zoned W-1 and will be impacted by the change to the W-1 zone as approved in the W-1 Text Amendment, and (3) their due process rights were violated by (a) the Deputy Director's refusal to accept the First Appeal based on an improper ruling on the merits, as to the ripeness of the appeal, (b) the Director's refusal to accept the Second Appeal filed with her during the Public Hearing and forthwith transmit it with all other documents relating to the Determination to the BZA, and (c) the City Council's refusal to stay all

⁴ In *Lilly, et al. v. Caroline County, et al.*, 259 Va. 291 (2000), the Virginia Supreme Court held that a verbal determination that made the basis of the determination clear was sufficient for purposes of an appeal to the BZA, especially if it was reinforced with a statement that the determination could be appealed to the BZA. *Id.* at 295.

proceedings relating to the Protest to the W-1 Text Amendment, after the City Council was notified that an appeal to the BZA had been filed and was pending.

70. There is no rule or procedure that imposes any requirements governing how an appeal to the BZA has to be filed, other than ensuring that the appeal is filed within 30 days of the determination and the appropriate filing fee is provided.

71. The City of Alexandria's website for Planning and Zoning and the BZA does not have any established rules as to the time of day or what days of the week an appeal can be filed. Specifically, no rule, regulation, or policy prohibits the filing of an appeal while the Director is conducting City business on the very subject related to the appeal.

72. The BZA acts in its judicial capacity when it hears an appeal of a determination by the Director. Accordingly, the Director acts as a clerk of court when tasked with simply forwarding to the BZA all of the documents relating to her determination. After the Director performs her administrative duty, the Director then essentially becomes a party to the appeal and takes an adversarial role in that she defends her determination.

73. An appeal of the Director's determination is different than a BZA hearing involving variances and special exceptions. In variance and special exception cases, the BZA is acting in a legislative capacity and the Director is tasked with reviewing the application on its merits, checking for completeness, conducting research, preparing a report, and then forwarding it to the BZA with her recommendation, as outlined in the Zoning Ordinance.

74. The Director is not afforded any such discretion when it concerns an appeal of her own determination; it is counterintuitive to allow such discretion.

75. The Director overstepped her authority and deprived Plaintiffs of their due process rights by refusing to accept an appeal of her Determination. It is a violation of the Code,

the Charter, and the Zoning Ordinance for the Director to act on the merits of her own Determination.

76. Plaintiffs filed their Second Appeal with the Director and the BZA, within 30 days of the Determination and while the Director was conducting City business related to the subject matter of the appeal itself. Plaintiffs provided the Director with copies of their appeal and tendered the filing fee. Plaintiffs complied with § 15.2-2311 of the Code, § 9.17 of the Charter, and § 11-1203 of the Zoning Ordinance.

77. The Director is improperly refusing to treat the Second Appeal as having been "officially filed," and, on information and belief, has not forwarded anything to the BZA. See Exhibit 9.

78. The Director's refusal to perform her ministerial duties in this matter, is wrong, lacks any authority, is contrary to law, and improperly deprived Plaintiffs of their due process rights. Accordingly, Plaintiffs must petition this Court to issue a writ of mandamus to the Director requiring her to perform her ministerial duties and herewith transmit the Second Appeal (attached as Exhibit 1), the record relating to the Second Appeal and her Determination, as well as to coordinate the scheduling of a BZA hearing.

79. Upon the issuance of the writ of mandamus by the Court, the Plaintiffs will issue a check for the filing fee and tender the filing fee to the Director for a third time.

WHEREFORE, the Plaintiffs respectfully petition and ask this Honorable Court to issue a writ of mandamus to Faroll Hamer, as the Director of Planning and Zoning, to perform her ministerial duties as stated in § 15.2-2311 of the Code, § 9.17 of the Charter, and § 11-1203 of the Zoning Ordinance, and forthwith transmit the record relating to her Determination, including the Second Appeal (attached hereto as Exhibit 1), the record relating to the Second Appeal and her Determination, as well as to coordinate the scheduling of a BZA hearing, and grant such

other and further relief to Plaintiffs, including but not limited to the costs of this action, as this Court may deem appropriate, pursuant to Va. Code Ann. 801-644.

COUNT II: DECLARATORY JUDGMENT

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

81. The City Council improperly approved the Waterfront Plan and W-1 Text Amendment on Saturday, January 21, by proceeding to take action on the W-1 Text Amendment after the City Council was notified that an appeal to the BZA had been filed and was pending.

82. Prior to the City Council's vote on the W-1 Text Amendment, the councilmembers, the City Attorney, and the Director were told that an appeal to the BZA had been filed with the BZA Chairman, and the City Council and City Attorney witnessed the filing of the appeal with the Director during the Public Hearing.

83. Plaintiffs notified City Council that an appeal had been filed with the BZA, that all proceedings related to the W-1 Text Amendment should be stayed, and then asked the City Council to stay the proceedings related to the W-1 Text Amendment.

84. Applicable law provides an automatic stay of all proceedings following the filing of an appeal to the BZA:

§ 815.2-2311(B) of the Code, "An appeal shall stay all proceedings in furtherance of the action appealed from unless...";

§ 9.17 of the Charter, "An appeal stays all proceedings in furtherance of the action appealed from unless..."; and

§ 11-1204 of the Zoning Ordinance, "A notice of appeal properly filed as herein provided shall stay all proceedings in furtherance of the action appealed from, unless...".

85. Plaintiffs told City Council during the Public Hearing about the improper acts the Deputy Director had taken the day before in refusing an appeal to the BZA.

86. Plaintiffs sent an email to the City Attorney, attached hereto as Exhibit 10, along with the Stay Letter, see Exhibit 8.

87. The Stay Letter was sent after the Director made her Determination, but before the City Council voted on the Waterfront Plan and the W-1 Text Amendment.

88. The Stay Letter explained that an appeal to the BZA had been filed, and in accordance with § 15.2-2311(B) of the Code, § 9.17 of the Charter, and § 11-1204 of the Zoning Ordinance, the City Council could not consider the W-1 Text Amendment and that all proceedings related to the W-1 Text Amendment had been stayed.

89. The City Council refused to honor the stay of all proceedings, including the consideration of the W-1 Text Amendment.

90. As a result of the City Council's improper refusal to honor the stay of all proceedings as it related to the W-1 Text Amendment, the Plaintiffs have been prejudiced.

91. Plaintiffs now have to take this legal action in order to have this Court declare the vote and approval of the W-1 Text Amendment *void ab initio*.

92. Any failure to file this action (hoping to rely instead on a simple appeal to the BZA) could create a situation where no meaningful relief may be afforded to Plaintiffs, given the limited powers of the BZA and the resulting restriction on the relief the Circuit Court could grant when hearing an appeal from the BZA. Accordingly, this action is necessary to preserve Plaintiffs' rights.

93. If City Council had honored the stay of all proceedings relating to the W-1 Text Amendment, then the Plaintiffs would have had their appeal to the BZA, and that process would

naturally have concluded. Thereafter, the City Council could have then acted accordingly and commenced the process with regards to the W-1 Text Amendment.

94. Instead, the City Council improperly disobeyed the stay of proceedings, in violation of the Code, the Charter, and the rules and requirements it established in its own Zoning Ordinance.

95. Plaintiffs have now been prejudiced, because they had to file this lawsuit, just to protect their interests that would have been protected had the City Council honored the stay of all proceedings.

96. The City Council's action of taking the vote has now caused the Plaintiffs to take this additional step and file suit in order to preserve their position to seek adequate relief from the City Council's actions.

97. Failure to file suit could have resulted in the Plaintiffs being time barred from seeking any meaningful relief at the conclusion of any appeal to the BZA. It is for this reason, that all proceedings are to be stayed, so that unnecessary lawsuits are not clogging the court's docket.

98. There is a genuine and material dispute as to the legality and effect of the Determination made by the Director, and the BZA should hear it.

99. Had the Protest been deemed to be applicable to the W-1 Text Amendment, then a requirement for a three-fourths majority vote for the approval of the W-1 Text Amendment would have been in effect at the time of the City Council vote, and the requirement could have impacted the City Council vote.

100. The Director's Determination and the resolution of the Second Appeal are too important for the City Council to have ignored the process.

WHEREFORE, the Plaintiffs ask this Honorable Court to enter judgment (1) declaring that the Second Appeal was filed as of January 21, 2012, (2) declaring that all proceedings had been stayed automatically by the filing of the appeal on Saturday, January 21, 2012, (3) declaring the vote approving the Waterfront Plan and the W-1 Text Amendment *void ab initio*, and (4) declaring that the proceedings relating to the W-1 Text Amendment shall be stayed until the Second Appeal is heard and ruled on by the BZA, and grant such other and further relief to Plaintiffs, as this Court may deem appropriate.

APRIL BURKE, BETH GIBNEY,
and MARIE KUX
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
Telephone: (703) 299-3440
Facsimile: (703) 299-3441
rrshannon@rrbmdk.com
Counsel for Plaintiffs

CERTIFICATION

I hereby certify I will cause the Defendants to receive an exact and true copy of the foregoing pleading, including the Petition for Writ of Mandamus, at 300 King Street, Alexandria, Virginia 22314 via private process server, this 7th day of February, 2012.

Elizabeth Gibney
Elizabeth Gibney

AFFIDAVIT

I, ELIZABETH GIBNEY, being duly sworn, do hereby swear, to the best of my knowledge and belief and based upon information supplied to me, that the statements made in the foregoing pleading, including the Petition for Writ of Mandamus are true.

Elizabeth Gibney
Elizabeth Gibney

COMMONWEALTH OF VIRGINIA:
CITY OF ALEXANDRIA:

Subscribed and sworn to before me, Arlene L. Clark, a Notary Public
in and for the Commonwealth of Virginia, by Elizabeth Gibney, on 7th day of February 2012.

Arlene L. Clark
Notary Public

My Commission expires: November 30, 2015

ARLENE L. CLARK
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #274448
My Commission Expires Nov. 30, 2015

**W-1/WATERFRONT MIXED USE ZONE TEXT AMENDMENT
BZA #2012-0004
MICHAEL PECK
APPEAL
APRIL 12, 2012**

Appeal Documents

- Application with Attachment 1
- Exhibit 1 (*pg. 7*)
- Exhibit 2 (*pg. 9*)



APPEAL APPLICATION BOARD OF ZONING APPEALS

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

Mr. Peck appeals the Director's January 21, 2012 oral determination rejecting the validity of a protest petition relating to text amendment 2011-0005, which was confirmed by letter on January 24, 2012. That letter is attached to this Appeal Application as Exhibit 1.

On what date was the order, requirement, decision or determination made?

Orally on January 21, 2012 and confirmed by letter on January 24, 2012. See Exhibit 1.

*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 Michael A. Peck

Address c/o Benjamin G. Chew, Patton Boggs LLP

2550 M Street NW, Washington, DC 20037

Daytime Phone (202) 457-6000

Email Address bchew@pattonboggs.com

2. Property Location 420 North Union Street, Alexandria, VA 22134

3. Assessment Map # 065.01 Block 05 Lot 22

Zone RM

4. Legal Property Owner Name Michael A. Peck

Address 420 North Union Street

Alexandria, Virginia 22314

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 license prior to filing application.

X Not Applicable. See below.*

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:

Benjamin G. Chew
Print Name

Benjamin G. Chew
Signature

February 13, 2012
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.

*The property owner's representative, Patton Boggs LLP, is a professional services business that has no definite place of business in the City of Alexandria. It is therefore not required to obtain a business license under the Alexandria City Code. See Alexandria City Code §§ 9-1-2(16), 9-1-5, and 9-1-71. Patton Boggs has confirmed with the Alexandria Department of Finance that no license is required to conduct business in the City of Alexandria because the firm does not have a definite place of business in the City.

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.

1.	Name	Address	Percent of Ownership
	n/a	n/a	n/a
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 420 North Union Street (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.

1.	Name	Address	Percent of Ownership
	Michael A. Peck	420 North Union Street	100% (tenant by the entirety)
2.	Michelle M. Gates	420 North Union Street	100% (tenant by the entirety)
3.			

3. Business or Financial Relationships. Each person or entity indicated above in sections 1 and 2, with an ownership interest in the applicant or in the subject property are require 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. **All fields must be filled out completely. Do not leave blank. (If there are no relationships please indicated each person or entity below and "None" in the corresponding fields)**

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. Michael A. Peck	None	None
2. Michelle M. Gates	None	None
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.

Feb. 13, 2012 Benjamin G. Chew
 Date Printed Name

Benjamin G. Chew
 Signature

Attachment 1

BZA Appeal Application Attachment 1

Mr. Peck ("Petitioner") was a signatory to a protest pursuant to § 9.13 of the City Charter and § 11-808(D) of the Zoning Ordinance. That protest was filed with the City Clerk relating to the proposed Text Amendment 2011-0005, on which the City Council voted on January 21, 2012. A copy of that petition is attached to this Appeal Application as Exhibit 2 and is incorporated herein by reference. Mr. Peck's signature appears on the first page of Exhibit 2. The effect of the protest, under § 11-808(D) of the Zoning Ordinance, was that the city council could not approve a text amendment "except by an affirmative vote of three-fourths of its members." *Id.*; *see also* City Charter § 9.13.

On January 21, 2012, the Director of Planning and Zoning issued an oral ruling regarding the validity of the petition and its effect on the City Council's vote on Text Amendment 2011-0005. The Director ruled that the petition did not require a three-quarter, supermajority vote on the Text Amendment. The Director based this ruling on an interpretation of § 11-808 of the Zoning Ordinance, which Petitioners contend was erroneous. Specifically, the Director ruled that the protest provision in § 11-808 did not apply to the vote on the Text Amendment, notwithstanding the clear language of § 11-808(D). It provides that "[i]f 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." *Id.* This was the only basis that the Director identified for rejecting the protest. The Director failed to conduct any other assessment of the validity of the petition, such as determining the validity of the signatures or whether owners of a sufficient area of land had signed the petition. The failure to make these determinations constitutes additional violations of § 11-808 of the zoning ordinance. Petitioner was a

signatory to such a petition protesting a proposed text amendment, and, as the owner of property adjacent to the zone affected by the Text Amendment, is aggrieved by the Director's determination. See Exhibit 1.

Petitioner requests that the BZA review the Director's determination, find that it was contrary to the plain language of § 11-808(D) of the Zoning Ordinance, and determine that the protest petition did require a supermajority vote on Text Amendment 2011-0005. Pending resolution of this appeal, Petitioner further requests that the Tuesday, February 14, 2012 votes of the City Council on agenda items 24 and 25, the ordinances relating to the Text Amendment and Waterfront Small Area Plan, be suspended.

EXHIBIT 1



DEPARTMENT OF PLANNING AND ZONING

301 King Street

Room 2100

Alexandria, Virginia 22314

Phone 703-746-4666

Fax 703-838-6393

www.alexandriava.gov

January 24, 2012

Via US Mail and Electronic Mail

Roy R. Shannon, Jr., Esquire
Rich, Rosenthal, Brincefield, Manitta, Dzubin and Kroeger, LLP
201 North Union Street, #140
Alexandria, VA 22314

Dear Mr. Shannon:

You have requested a determination with regard to the protest petition filed by you on January 19, 2012. My determination was made verbally to City Council at its hearing on January 21. At that time I stated the following:

The City received a protest petition, filed Thursday, January 19, 2012. Additional signatures were filed yesterday. The filing is called, "Landowners' Protest to Proposed Text Amendment 2011-0005," and it refers to the proposed changes to the W-1 zone recommended to make it consistent with the Waterfront Plan. Both the W-1 text amendment and the Waterfront Plan on Council's docket today, January 21, 2012, (Item #4).

Section 11-808 of the City of Alexandria Zoning Ordinance provides a mechanism to require a three-fourths majority vote (6-1) for City Council to approve an application for a zoning map amendment if a valid protest petition meeting the requirements of the ordinance is filed with the city clerk. Section 11-808(A) indicates who may successfully protest and states specifically,

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.

Section 11-800 of the Zoning Ordinance addresses zoning amendments generally and distinguishes between "map amendments" and "text amendments." A map amendment is a change to the official Zoning Map of the city to change the zoning of a particular property, and sometimes known as a rezoning, and it is specific to that property. A text amendment is an amendment of the official Zoning Ordinance text to change the language of a zone, or other

7



Roy R. Shannon, Jr., Esquire
Rich, Rosenthal, Brincefield, Manitta, Dzubin and Kroeger, LLP
January 24, 2012
Page 2

section of the ordinance, with more general application within the zoning districts. The text amendment to be considered by Council today is an amendment revising the W-1 zone text to apply generally to applicable properties within that zone.

By the terms of section 11-808(A) as well as the Protest Petition itself, the proposed zoning change before Council today is a text amendment and not a rezoning or map amendment. Because Council is considering a text amendment, and not a map amendment, Section 11-808 does not apply. Consequently, the petition does not require a three-quarter, supermajority vote for today's zoning text amendment.

The protest does not apply in any way to the Plan before Council. It applies only to the text amendment.

Sincerely,



Faroll Hamer
Director

Attachment: Determination request letter dated January 19, 2012

cc: James Banks, City Attorney
Joanna Anderson, Assistant City Attorney

EXHIBIT 2

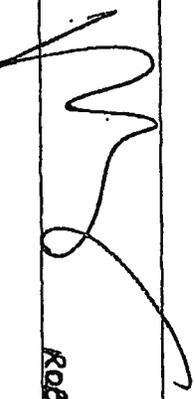
Landowners' Protest to Proposed Text Amendment 2011-0005

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 do hereby protest proposed text amendment 2011-0005. The undersigned are owners of real property within 300 feet of the boundaries of the land affected by the proposed amendment and proposed changes. Section 11-808(D) of the Zoning Ordinance states: "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." (*emphasis added*).

Property Address	Owner (Name)	Signature	Map # (if known)
418 St. Union St Alexandria VA 22304	BRY, JOHN R. SR CAROL S.		065 01-05-23
416 N Union St Alex, VA 22314	Brewer Fred L TR		065. 03-04-23
414 N. Union St Alex, VA 22314	David Chalmers		065.03- 05-22
428 N. Union St ALEXANDRIA VA 22314	ELIZABETH P. BRADWIN TRUST		065.01- 05-18
422 N. Union St. ALEXANDRIA, Va. 22314	CYNTHIA L. FOX	Cynthia L. Fox	
420 N. Union St. ALEXANDRIA VA 22304	MILWAU A. PETER	MILWAU A. PETER	065.01- 05-22
408 N. Union Street	Wendy Peter / Peter Family Trust	Wendy Peter, Trustee	065.03- 04-19

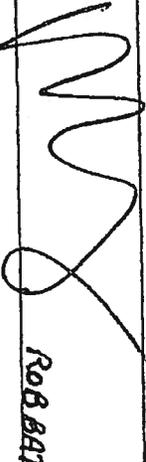
Landowners' Protest to Proposed Text Amendment 2011-0005

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 do hereby protest proposed text amendment 2011-0005. The undersigned are owners of real property within 300 feet of the boundaries of the land affected by the proposed amendment and proposed changes. Section 11-808(D) of the Zoning Ordinance states: "**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." *(emphasis added).*

Property Address	Owner (Name)	Signature	Map # (if known)
1033 North Fairfax St Alexandria, VA 22314	American Physical Therapy Properties, Inc.	 Rob Antella, CEO	

Landowners' Protest to Proposed Text Amendment 2011-0005

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 do hereby protest proposed text amendment 2011-0005. The undersigned are owners of real property within 300 feet of the boundaries of the land affected by the proposed amendment and proposed changes. Section 11-808(D) of the Zoning Ordinance states: "**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." *(emphasis added).*

Property Address	Owner (Name)	Signature	Map # (if known)
1111 North Fairfax St Alexandria, VA 22314	American Physical Therapy Properties, Inc.	 Rob Barabala, CEO	

Landowners' Protest to Proposed Text Amendment 2011-0005

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 do hereby protest proposed text amendment 2011-0005. The undersigned are owners of real property within 300 feet of the boundaries of the land affected by the proposed amendment and proposed changes. Section 11-808(D) of the Zoning Ordinance states: "**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." (*emphasis added*).

Property Address	Owner (Name)	Signature	Map # (if known)
437 N. LEE ST. ALEXANDRIA, VA 22314	ROGER L. AMOLE DEBRA S. BRAY	<i>[Signature]</i>	
441 N. Lee ST. Alexandria VA 22314	CATHOLIC WTR SERVICES/USA	<i>[Signature]</i> Authorized Agent for PATRICK MARCINO Exec. Director	

Landowners' Protest to Proposed Text Amendment 2011-0005

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 do hereby protest proposed text amendment 2011-0005. The undersigned are owners of real property within 300 feet of the boundaries of the land affected by the proposed amendment and proposed changes. Section 11-808(D) of the Zoning Ordinance states: "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." *(emphasis added).*

Property Address	Owner (Name)	Signature	Map # (if known)
103 ORANGE STREET ALEXANDRIA, VA 22314	THE PURVES & PIERFARRES LAWFIRM PASCAD FOUND		

WATERFORD PLACE HOMEOWNERS ASSOCIATION
318 S. Union Street
Alexandria, VA 22314

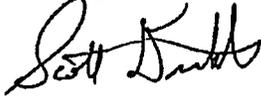
January 17, 2012

To Whom It May Concern:

At the annual meeting of the Waterford Place Homeowners Association ("Association") held on January 11, 2012 and in accord with the bylaws of the Association, a majority of the members of the Association properly passed a resolution providing that the Association, as owner of the common property of the Association, sign the Landowners' Protest to Proposed Text Amendment 2011-0005 ("Petition").

As a duly elected director of the Association and the current President, I am authorized to sign the Petition on behalf of the Association.

Regards,



Scott K. Dinwiddie
President
Waterford Place Homeowners Association

Landowners' Protest to Proposed Text Amendment 2011-0005

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 do hereby protest proposed text amendment 2011-0005. The undersigned are owners of real property within 300 feet of the boundaries of the land affected by the proposed amendment and proposed changes. Section 11-808(D) of the Zoning Ordinance states: "**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." (*emphasis added*).

Property Address	Owner (Name)	Signature	Map # (if known)
150 Waterford Place Alexandria, VA 22314	Waterford Place Homeowners Association	 Beth D. Smith President Waterford Place Homeowners Assoc.	075.03-05-44

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
103 ORONO STREET ALEXANDRIA, VA 22314	THE POWERS & PREFERENCES WASTAKE PENSION FUND	<p style="text-align: center;">AUTHORIZED AGENT</p>  <p style="text-align: center;">William J. Sweeney Administrative</p>	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
418 N. Lee St	Susan Taylor	Susan Taylor	

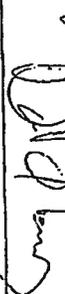
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Property Address	Owner (Name)	Signature	Map # (if known)
404 S. Lee St. ALEXANDRIA, VA	ANNE D. MANAHAN <small>TRUSTEE</small>	Anne D. Manahan, trustee	
405 S Lee St	William J. Lygan	WJ Lygan	
403 S. Oliver	Gretchen Caldwell	Gretchen Caldwell	
407 S. Union St	Donna C. Strubbs	Donna C. Strubbs	
408 S. Lee Street	Michael Gene Freedman	Michael Gene Freedman	
420 S. Lee St	Thomas E. Sibyne	Thomas E. Sibyne	
414 S. Lee St	Richard H. Keiser	Richard H. Keiser	
414A S. Lee	Megan Evans	Megan Evans	

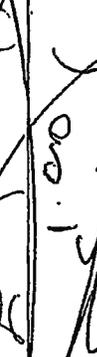
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Property Address	Owner (Name)	Signature	Map # (if known)
3 Potomac Ct.	MEGAN EVANS.		
412 S. LEE.	Syvester S. Harsh		
406 S. Lee	DAVID B. MARCUS		
426 S. LEE	WALTER VANCE HALL <small>Treasurer</small>	Walter Vance Hall, Treasurer	
406 S. LEE A	MARGARET M. DEWINE	Margaret M. Dewine	
430 S. Lee	KIRA L. BRADY		
402 S. Lee	Joyce METERS.		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
704 Potomac St	Michael Deane		081.03-01-75
708 Potomac	KENNETH HINDMAN		081.03-01-73
710 Potomac St	Joey Solis		081.03-01-72
712 Potomac St	James P. Gillis & Alison B. Hooker		081.03-01-71
715 Potomac St	ANNE McKENNOR William T. Kennor, Jr		081.03-01-41
717 Potomac St	Jane & Joe Piccolo		081.03-01-42
717 Potomac St	Jane & Joe Piccolo		081.03-01-42
703 Potomac St	Steve Epstein		081.03-01-38
720 Potomac St	Trustees for Goetzl family trust Goetzl Educational Justice Trusts		081.03-01-68

717
715
707
710
708
709

Margaret
Sols
Joe

AL KALVAITIS
703-299-9234

Margaret -

Lisa } signed
Pilar } "tall man"

Fallons out of town

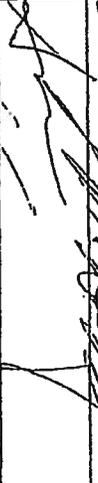
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Property Address	Owner (Name)	Signature	Map # (if known)
123 Duke St Alexandria VA 22314	William A + Carole H Schmidt		
100 Park St. Alexandria VA 22314	David + Miriam Dinger		
121 Duke St. Alexandria, VA 22314	Lynn K. Rogerson		

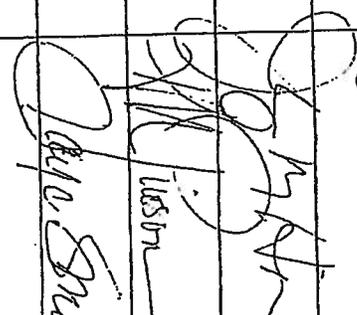
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Property Address	Owner (Name)	Signature	Map # (if known)
117 PRINCE ST 109 PRINCE ST	James GARALL		
117 Trangle	John D. [unclear]		
129 PRINCE	SUZANNE		
218 S. Lee St	ROBERT L. DEITZ		
330 S Lee St	Robert D Koepen		
105 WOLFEST	STYAN TENER		

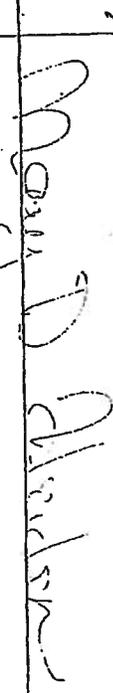
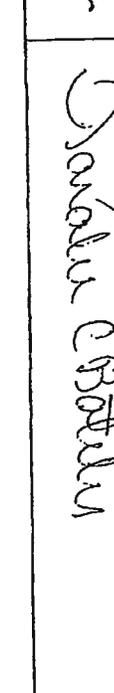
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Property Address	Owner (Name)	Signature	Map # (if known)
328 S. LEE ST.	MARQUIE HOLLISTER		
119 Wolfe Street	KATHERINE PINSON		
200 Duke Street	JAYLE SMITH		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
300 S. Lee ST. Alexandria, Va 22314	Brian Gibrey		015.03-05-01
304 S. LOST ST ALEXANDRIA, VA 22314	ROBERT J. WILBERT		075.03-05-03
304 S. LOST ST ALEXANDRIA, VA 22314	CATHERINE WILBERT		075.03-05-03
310 JOHN LEE	JONATHAN WILSON		075.03-05-03
318 South Lee	Mary D. Hester		015.03-05-53
316 South Lee	SAMUEL R. GRAISS		015.03-05-54
320 South Lee	SARAH C. BETEJER		015.03-05-52

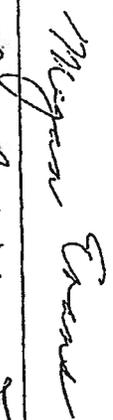
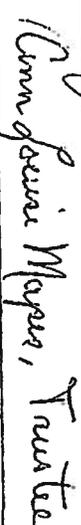
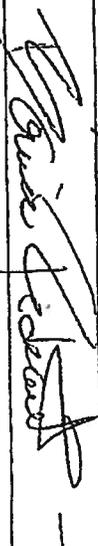
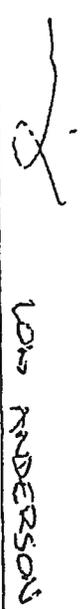
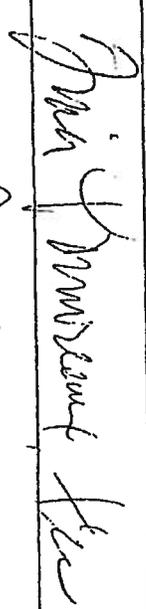
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Property Address	Owner (Name)	Signature	Map # (if known)
1212 636 645 J. Lee St.	Debra C. Parker	Debra C. Parker	.081.01-02-35

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Property Address	Owner (Name)	Signature	Map # (if known)
3 Potomac Ct	Evans Megan		075.03-08-08
8 Potomac Ct	Mapes Ann Louise Tr		075.03-08-20
5 Potomac Ct	Rideout Bonnie		075.03-08-23
7 Potomac Ct	Petrov Georgi K		075.03-08-21
6 Potomac Ct	Moore Patricia E Tr		075.03-08-22
2 Potomac Ct	Anderson Lon		075.03-08-14
116 Wolfe St	Lamoreaux Tina Tr		075.03-08-12
106 Wolfe St	Rocchio Monica B		075.03-08-16

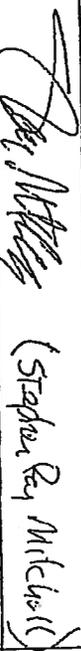
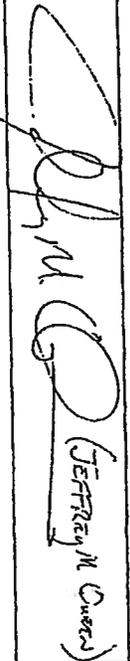
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Property Address	Owner (Name)	Signature	Map # (if known)
100 Duke Street Alexandria VA 22314	Ana Rico	<i>Ana Rico</i>	

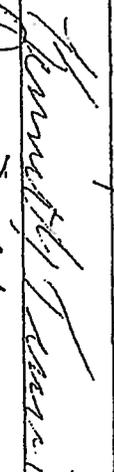
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Property Address	Owner (Name)	Signature	Map # (if known)
226 South Lee Street Alexandria, VA 22314	Andrew + Lisa Lynch	 (Lisa R. Lynch)	
114 Duke St Alexandria, VA 22314	Gretchen R. Moss	 Gretchen R. Moss	
117 Duke Street Alexandria, VA 22314	Patricia + Jeffrey Myers-Hayes	 Patricia Hayes	
115 Duke Street Alexandria, VA 22314	Stephan Ray Mitchell Ellen S. Mitchell	 Stephan Ray Mitchell	
108 Duke St Alexandria, VA 22314	Kathleen + Bruce Oehler	 Kathleen Oehler	
112 DUKE ST ALEXANDRIA VA 22314	JEFFREY + MARY K. QUEEN	 Jeffrey M. Queen	
111 Duke St Alexandria, VA	Joan W. Dixon	 Joan W. Dixon	
113 Duke St Alexandria, VA	Joan W. Dixon	 Joan W. Dixon	

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Property Address	Owner (Name)	Signature	Map # (if known)
118 Waterford Pl. Alexandria, VA 223	Rikon Dians Deb R		
110 Waterford Pl Alexandria, VA 22314	Timmer, Kenneth D		
102 Duke St. Alexandria VA 22314	Freeman, Lauren E		

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Property Address	Owner (Name)	Signature	Map # (if known)
101 Wolfe St. Alexandria VA 22314	Burke, April L.	April L. Burke	
103 Wolfe St. Alexandria, VA 22314	Seveter, Geneva M and Robert WJ	Genevieve Seveter	
102 Waterford Pl. Alexandria, VA 22314	Brown, James T.	James T. Brown	
124 Waterford Pl Alexandria, VA 22314	Vesprini, Nancy Ellen	Nancy Ellen Vesprini	
106 Waterford Pl Alexandria VA 22314	Hudson, James W.	James W. Hudson	
103 Waterford Pl Alexandria, VA 22314	Torrice, William S.	William S. Torrice	
307 S. Union St. Alexandria, VA 22314	Kieber, Donald W.	Donald W. Kieber	
104 Waterford Pl Alexandria, VA 22314	Cavaney, Bryan W Jr on New Range	Bryan W. Cavaney Jr	

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Property Address	Owner (Name)	Signature	Map # (if known)
126 Waterford Rd Alexandria, VA 22314	Humphreys, Frederick	Frederick Humphreys	
105 Wolfe St. Alexandria, VA 22314	Tener, Stefan V Lemera Keltova E	Stefan Tener	
116 Westford Rd Alexandria, VA 22314	Morton, Cynthia A Richard J	Cynthia Morton	
319 S. Union St Alexandria VA 22314	Morgan, Ruth L on Timothy G	Ruth Morgan	
317 S. Union St Alexandria VA 22314	Dinwiddie, Scott or Mercedes, Andrea	Scott Dinwiddie	
132 Westford Rd Alexandria, VA 22314	Leonis, Ann W or Peter A	Ann Leonis	
120 Westford Rd Alexandria VA 22314	Goffman, Leanne J or Forman, Betty J	Leanne Goffman	
311 S. Union St. Alexandria VA 22314	Haddaway, James H	James Haddaway	

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Property Address	Owner (Name)	Signature	Map # (if known)
431 NORTH LEE ALEXANDRIA VA. 22314	E. MICHAEL PATRICKS	E. Michael Patrick	
425 North Lee Alexandria, VA 22314	MARY ANN PATRICKS Frank S. Sellman	Mary Ann Patrick Frank S. Sellman	
423 North Lee St. Alexandria, VA 22314	Frank S. Sellman	Frank S. Sellman	
211 S. Union St Alexandria, VA 22314	Valerie R. Fenner	Valerie R. Fenner	

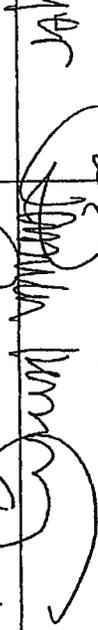
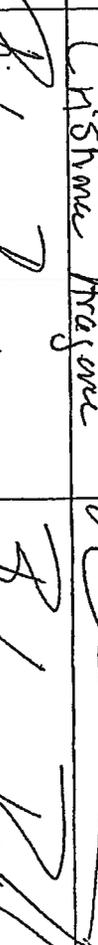
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Property Address	Owner (Name)	Signature	Map # (if known)
125 Duke St.	Marie-Margite T. Rux	Marie-Margite T. Rux	
429 S. Lee St	Susan Ginsburg	Susan Ginsburg	
109 Duke St. ^{AKA} _{VA-22314}	Melanie New	Melanie New	
107 Duke St. ^{AKA} _{VA-22314}	Melanie New	Melanie New	

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Property Address	Owner (Name)	Signature	Map # (if known)
212 S Lee St	John Modalewski		075-03-02-02
218 S. Lee St	KOSKOFF-DEITZ		075-03-02-04
215 S Lee St	Amelia Tiemeyer		075-03-01-20
225 S Lee St	Jane Cochran		075-03-01-25
229 S Lee St	Crishma Prasad		075-03-01-23
214 S Lee St	Barbara Kelly		075-03-02-01
211A S. Union	Kim Morgan		075-03-02-07

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Property Address	Owner (Name)	Signature	Map # (if known)
525 Tobacco Alley ALEXANDRIA, VA 22314	MARIA del Carmen G. PEDERLE	<i>Maria del Carmen G. Pedlerle</i>	065, 01-02-39

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Property Address	Owner (Name)	Signature	Map # (if known)
603 S Lee St.	WALON CLARK ERNST	Walon Clark Ernst	081.01-02-18
621 Pommeroy St	John S Gero	John S Gero	081.01-02-25

Paul Anderson
205 Locust Lane sent him
Alex 22302

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Property Address	Owner (Name)	Signature	Map # (if known)
603 S. Lee St.			081
159 Franklin St	Deborah Reynolds	[Signature]	081-01-02-38
605 S. Lee St	Mary Jane Hickey Sr	[Signature]	081-01-02-17
100 Pommeroy Walk	Virginia Biczanski	[Signature]	
619 Dominion ^{VA} Dr	Steve Brown	[Signature]	081-01-02-27
610 S Lee St	Sugark Foster	[Signature]	081-01-02-23
111 Franklin St	W. E. M. RENT ESTATE LLC W. E. M. RENT ESTATE LLC	[Signature]	081-01-02-37
1022 Pommeroy Walk	John K. Scoble	[Signature]	

* This is not my list of addresses, but lives next door and wanted to sign.

Tessie

703-548-7452

(c) 571-831-6944

Debbie Parker

1814 Park Ave
Richmond, Va. 23220

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Property Address	Owner (Name)	Signature	Map # (if known)
213A Sella Terrace	Stevens, Andrew	Andrew Stevens	075-03-02-08
209 S. Lee	Amy Bayer	[Signature]	075-03-01-17
211 S Lee	Sam O.B. Sewall	[Signature]	075-03-01-18
217 S. Lee	Dustin Ward - Weiss	[Signature]	075-03-01-21
214 S Lee	[Signature]	[Signature]	/
223 S Lee	Devis Bell	[Signature]	075-03-01-24
219 S. Lee St.	Kenneth L. Weinstein	[Signature]	075-03-01-22
210 S. Lee St.	Richard + Stephen Cooper	[Signature]	075-03-02-01

Landowners' Protest to Proposed Text Amendment 2011-0005

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 do hereby protest proposed text amendment 2011-0005. The undersigned are owners of real property within 300 feet of the boundaries of the land affected by the proposed amendment and proposed changes. Section 11-808(D) of the Zoning Ordinance states: "**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." *(emphasis added).*

Property Address	Owner (Name)	Signature	Map # (if known)
302 South Lee St,	EVA M. KENNAN	Eva M. Kennan	
330 S. Lee St	Ashley Lombardi Robert Keppan JOHN RAMSEY	Ashley R. Lombardi	
106 GIBSON ST	JOHN RAMSEY	John B. Ramsey, Jr.	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
820 South Lee Street Alexandria, VA	ERICA RESSI & John Netic		081-03-02-16
106 Franklin St			
830 S. Lee St	Margaret Hodges Suzanne Buda OR James F. Duda		081-03-02-15
812 S. Lee St.	Laura Deyle OR Eugene Smith		081-03-02-03
824 S. Lee St.			081-03-01-34
734 S. Lee St			081-03-01-25
732 S Lee			

708 S. Lee

GRACE L. PRINDLE
FRANK PRINDLE

081-03-01-3.

721, 723

100 - 205
102 - 710
104 -
106 - ~~clearly~~ 711
108 - 713
110 - 714
716

737, *

5

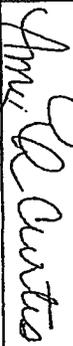
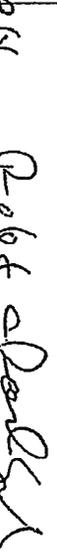
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Property Address	Owner (Name)	Signature	Map # (if known)
200 Oronoco St Alexandria, VA 22314	Ditmer, David and Sibley		065.01-03-12
412 N. Lee St Alexandria, VA 22314	Bondslie, Arthur		065.01-03-42
204 Oronoco St Alexandria, VA 22314	Holtzman, Miles		065.01-03-10
420 N. Lee St ALEXANDRIA, VA 22314	Georgiades, Charles J.		065.01-03-46
215 Oronoco St Alexandria, Va 22314	Long, Cynthia		065.01-02-24

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
110 N UNION STREET	AMY L CURTIS		065.03-04-20
412 N. UNION STREET	AMY L CURTIS		
424 N. UNION ST.	PATHEMIA RANDALL		
424 N. UNION ST	ROBERT C. RANDALL		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
515 Tobacco Quay	Peggy BARTON & S Trust	William R. Barton Trustee	065-01-02-34
517 Tobacco Quay	William R. Barton Trust	William R. Barton Trustee	065-01-02-35
531 Tobacco Quay	Denise Landrus	Denise Landrus	065-01-02-42
525 Tobacco Quay	RENÉE BORDART	Renée Bordart	065-01-02-28
523 Tobacco Quay	Paul FUSSELL	Paul FUSSELL	065-01-02-38
519 Tobacco Quay	Mr. H. Ballard	John Ballard	065-01-02-36
551 Tobacco Quay	Ann Shack	Ann Shack	065-01-02-27
521 Tobacco Quay	CHARLES KEVIN FELTON	CF	065-01-02-37

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
533 Tobacco Alley	Mary Farrell		065.01-02-43
507 Tobacco Alley	Garry Runkle Melissa Jackson		065.01-02-30

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
217 WOLFE ST.	LEONARD PALMER III		
10 White St.	Tisa Bone		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
623 Pennant Hill St	Marianne Marzo	Marianne Marzo	081.01-02-31
107 Franklin St	Jimmie B Cook	Jimmie B Cook	081.01-02-39
103 Franklin St	Jimmie B Cook	Jimmie B Cook	081.01-02-41
1215 Fairwinds Dr	Janice McCallister (Sister Cook's)	Janice McCallister	081.01-02-32
624 S. Lee St.	Mare Celeste Sprouds Trust	Mare Celeste Sprouds (for the Mare Celeste Sprouds Trust established 2011)	081.01-02-34
628 S. Lee St.	Catherine Thompson Alburn Thompson Jr	Alburn Thompson Jr	081.01-02-36
620 S. Lee St.	1 M M... Mary S... Amy R. F...	1 M M... Mary S... Amy R. F...	081.01-02-30
101 Franklin St.	Amy R. F...	Amy R. F...	081.01-02-42

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
600 S. Lee Street	Margaret A. Miller	MARGARET A. MILLER	
208 S. Lee St.	Charles W. Greenleaf	Ch W. Greenleaf	
219 S. Lee St.	Elizabeth Weinstein	Elizabeth Weinstein	
203 S. Lee St.	Debbie Bell	Debbie Bell	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
225 So. Lee	Tare Coupland		

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Property Address	Owner (Name)	Signature	Map # (if known)
110 DUKÉ ST. ALEXANDRIA, VA 22314	BETTE J. DAVIS		

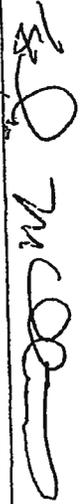
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Property Address	Owner (Name)	Signature	Map # (if known)
105 FARMINGTON CIR WY. ALEX. VA 22314	ROBERT M & YVONNE HANTS	Robert M Hants	
207 Farmington Place Alex VA 22314	LINDA WINDSOR	Linda Windsor	
414 Sutherland St. Alexandria VA, 22314	NICOLE HAMILTON	Nicole Hamilton	
714 Cass St Alexandria VA 22314	Robert Hamilton	Robert Hamilton	
111 Bunker Hill Dr Alex VA 22314	Michael Hants	Michael Hants	

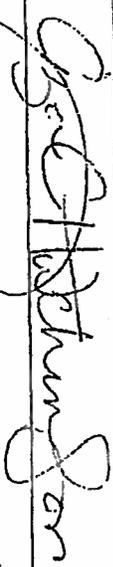
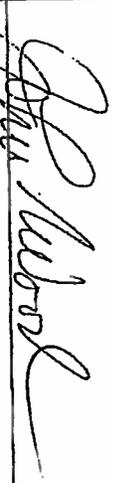
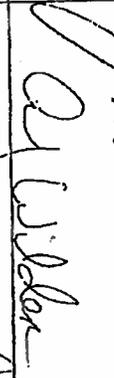
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Property Address	Owner (Name)	Signature	Map # (if known)
716 Potomac St Alexandria VA 22134	Frank McCallister		81-03-01-69
713 Potomac Street Alexandria, VA 22314	Harold Cremer		81-03-01-40

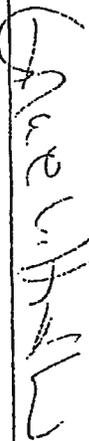
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Property Address	Owner (Name)	Signature	Map # (if known)
104 Franklin St.	Cyrus		081.03-01-48
709 S Union	Nash		081.03-01-51
115 S Union	Couluris		081.03-01-54
435 S Union	Hutchinson		081.03-01-60
735 S Union	Lunt Vasquez-Lunt		081.03-01-61
711 Potomac St	John R. Wood		081.03-01-52
705 Potomac St.	Carolyn Wilber		081.03-01-74
714 Potomac St	Carol Terwilliger		081.03-01-70

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
100 Prince Street	David Dinger		
109 Prince St.	Bobby Burke		
126 PRINCE ST	KATHERINE VINAR		
114 SILEX ST	GARETH W		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
2175 LEE	Bridget Weiss		
213 S. Lee St	Susan Augusti		

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Property Address	Owner (Name)	Signature	Map # (if known)
111 Prince St.	Phyllis G. Sidorosky	Phyllis G. Sidorosky	075, 01-06-23
104 Prince St.	Sarita Scholte (Trustee)	<i>[Signature]</i>	
117 Prince St.	Andrea Dikoulis	<i>[Signature]</i>	
1213 Prince St.	Suzanne T. Quinlan	<i>[Signature]</i>	
1215 1/2 Prince St.	Karen Kerch	Karen Kerch	
113 Franklin St.	James Bardell	<i>[Signature]</i>	
129 Prince St.	Anne Hambley	<i>[Signature]</i>	

Mark Mueller 703-627-8374

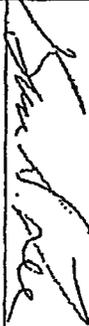
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Property Address	Owner (Name)	Signature	Map # (if known)
110 PRINCE ST	PATRICIA BURKE		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
202 ORANOCO ST. ALEXANDRIA, VA 22314	LEE, BRUCE, AND MRS. W.		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
414 North Lee Street Alexandria, VA 22314	Janet D. Bouvier Revocable Trust	Janet Bouvier, Trustee (for the Janet D. Bouvier Revocable Trust established September 18, 2001)	

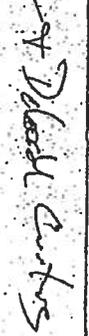
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Property Address	Owner (Name)	Signature	Map # (if known)
125 WOLF ST	ALEXANDRIA VA	ALEXANDRIA VA	075-03-05-46

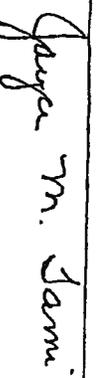
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Property Address	Owner (Name)	Signature	Map # (if known)
314 S. Lee St Alexandria VA 22314	Murphy, Patrick T + Curtis, Deborah	 + 	

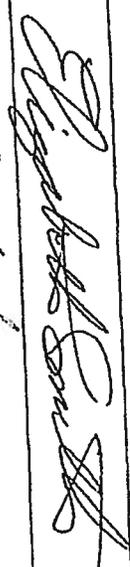
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Property Address	Owner (Name)	Signature	Map # (if known)
X 430 N. UNION ST. ALEX., VA 22309	TAMI RICHARD & AND Joyce M. Tam		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
112 PRINCE ST ALEXANDRIA, VA. 22314	SMITH, ELIZABETH		
111 PRINCE ST ALEXANDRIA, VA	SIDORSKY, RICHARD		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
KELLY LAUDER	109 PRYMANNUDE WALK ALEX, VA 22314		
704 S. COAST ST	ELLEN SMITH		
720 S. Lee St	ROBERT S. HARRIS PATRICIA A. TRACY		
711 Lee St	PATRICIA A. TRACY		
728 S Lee ST	Richard L. Webster		
115 Prymanude	C. Anne B. Rector		

Commander Wiley

~~115 come back in a few~~

113 ~~111~~ Rensen in favor of our pockets

111 ~~111~~ (already signed about a week ago)

~~107~~ signed

107 n/r.

105 n/r.

103 signed about a week ago

101 ~~101~~ will not sign

~~101~~ Baby sister - came back on Monday
702 come back - on Monday or Tuesday

704 signed

~~706~~ no 706. (house)

708 - coming back on Sat. night.

710 ~~700~~ no 710 (house)

712 no 712, no 714, no 716, no 718 (houses)

~~722~~ signed to back in a week

722 will be back in a week

721 n/r

720 come back in a few days

728 signed

730 n/r

732 n/r

734 - no

736 - n/r

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Property Address	Owner (Name)	Signature	Map # (if known)
106 PRINCE ST. ALEXANDRIA 22314	DENISE D. McBREARTY	DENISE D. McBREARTY	

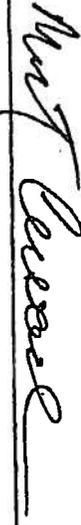
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Property Address	Owner (Name)	Signature	Map # (if known)
116 Rivina Street	David + Helen Kenner	Helen Kenner	075.01.11.07

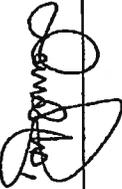
Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
106 Duke Street Alexandria, VA 22314	MARTY CUSACK, TTE Cusack Family Trust		

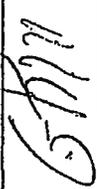
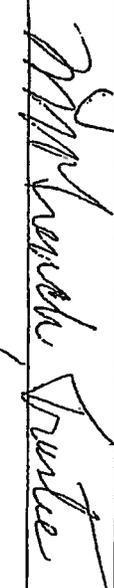
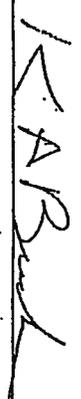
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Property Address	Owner (Name)	Signature	Map # (if known)
110 S. UNION STREET ALEXANDRIA, VA 22314	110 S. Union Street, LLC	 Samuel A. Blumenthal General Partner	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
10 Potomac Ct	Jennings Michael V		075.03-08-18
114 Wolfe St	French M H Tr		075.03-08-13
120 Wolfe St	Howcroft Loren S		075.03-08-10
108 Wolfe St	Buck Karen A		075.03-08-15
118 Wolfe St	Atkin Kathleen A		075.03-08-11
220 S. Lee St.	220 WA LLC	 President	075.03-02-29
224 S. Lee St.	224 South Lee Street LLC	 President	075.03-02-30.C

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
110 DUKE ST. ALEXANDRIA, VA 22314	BETTE J. DAVIS	<i>Bette J. Davis</i>	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
300 S. Lee Street	Elizabeth Gibney	Elizabeth Gibney	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
808 SOUTH LEE ST.	RICHARD AND TERESA MILLER	<i>[Signature]</i>	
810 S. Lee St.	BESSY KONG & JOHN WASSERBERG	<i>[Signature]</i>	
832 S. Lee St.	Susan Dswald + Scott Dswald	<i>[Signature]</i>	
828 S. Lee St.	Caryn Hollis	<i>[Signature]</i>	
830 S. Lee St.	MARGARET THORNTON	<i>[Signature]</i>	
812 S. Lee St.	SUZANNE DUKE Jim Duke	<i>[Signature]</i>	
824 S. Lee St.	<i>[Signature]</i>	<i>[Signature]</i>	
814 S. Lee St.	KARLYN + JIM BOWMAN	<i>[Signature]</i>	

**W-1/WATERFRONT MIXED USE ZONE TEXT AMENDMENT
BZA #2012-0005
ELIZABETH P. BALDWIN TRUST
APPEAL
APRIL 12, 2012**

Appeal Documents

- Application with Attachment 1
- Exhibit 1 (*pg. 7*)
- Exhibit 2 (*pg. 9*)



APPEAL APPLICATION BOARD OF ZONING APPEALS

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

The Elizabeth P. Baldwin Trust appeals the Director's January 21, 2012 oral determination rejecting the validity of a protest petition relating to text amendment 2011-0005, which was confirmed by letter on January 24, 2012. That letter is attached to this Appeal Application as Exhibit 1.

On what date was the order, requirement, decision or determination made?

Orally on January 21, 2012 and confirmed by letter on January 24, 2012. See Exhibit 1.

*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 Elizabeth P. Baldwin Trust

Address c/o Benjamin G. Chew, Patton Boggs LLP

2550 M Street NW, Washington, DC 20037

Daytime Phone (202) 457-6000

Email Address bchew@pattonboggs.com

2. Property Location 428 North Union Street, Alexandria, VA 22134

3. Assessment Map # 065.01 Block 05 Lot 18

Zone RM

4. Legal Property Owner Name Elizabeth P. Baldwin Trust

Address 428 North Union Street

Alexandria, Virginia 22314

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 license prior to filing application.

X Not Applicable. See below.*

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:

Benjamin G. Chew
Print Name

Benjamin G. Chew/REA
Signature

February 13, 2012
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.

*The property owner's representative, Patton Boggs LLP, is a professional services business that has no definite place of business in the City of Alexandria. It is therefore not required to obtain a business license under the Alexandria City Code. See Alexandria City Code §§ 9-1-2(16), 9-1-5, and 9-1-71. Patton Boggs has confirmed with the Alexandria Department of Finance that no license is required to conduct business in the City of Alexandria because the firm does not have a definite place of business in the City.

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. Elizabeth P. Baldwin, trustee of Elizabeth P. Baldwin Trust	428 North Union Street Alexandria, VA 22314	100% Present Beneficial Ownership
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 428 North Union Street (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. Elizabeth P. Baldwin Trust	428 North Union Street	100%
2.		
3.		

3. Business or Financial Relationships. Each person or entity indicated above in sections 1 and 2, with an ownership interest in the applicant or in the subject property are require 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. **All fields must be filled out completely. Do not leave blank. (If there are no relationships please indicated each person or entity below and "None" in the corresponding fields)**

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. Elizabeth P. Baldwin, trustee of Elizabeth P. Baldwin Trust	None	None
2. Elizabeth P. Baldwin Trust	None	None
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.

Feb. 13, 2012 Benjamin G. Chew
Date Printed Name

Benjamin G. Chew
Signature

Attachment 1

BZA Appeal Application Attachment 1

The Elizabeth P. Baldwin Trust ("Petitioner") was a signatory to a protest pursuant to § 9.13 of the City Charter and § 11-808(D) of the Zoning Ordinance. That protest was filed with the City Clerk relating to the proposed Text Amendment 2011-0005, on which the City Council voted on January 21, 2012. A copy of that petition is attached to this Appeal Application as Exhibit 2 and is incorporated herein by reference. The signature of Elizabeth P. Baldwin, trustee of the Elizabeth P. Baldwin Trust, appears on the first page of Exhibit 2. The effect of the protest, under § 11-808(D) of the Zoning Ordinance, was that the city council could not approve a text amendment "except by an affirmative vote of three-fourths of its members." *Id.*; *see also* City Charter § 9.13.

On January 21, 2012, the Director of Planning and Zoning issued an oral ruling regarding the validity of the petition and its effect on the City Council's vote on Text Amendment 2011-0005. The Director ruled that the petition did not require a three-quarter, supermajority vote on the Text Amendment. The Director based this ruling on an interpretation of § 11-808 of the Zoning Ordinance, which Petitioners contend was erroneous. Specifically, the Director ruled that the protest provision in § 11-808 did not apply to the vote on the Text Amendment, notwithstanding the clear language of § 11-808(D). It provides that "[i]f 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." *Id.* This was the only basis that the Director identified for rejecting the protest. The Director failed to conduct any other assessment of the validity of the petition, such as determining the validity of the signatures or whether owners of a

sufficient area of land had signed the petition. The failure to make these determinations constitutes additional violations of § 11-808 of the zoning ordinance. Petitioner was a signatory to such a petition protesting a proposed text amendment, and, as the owner of property adjacent to the zone affected by the Text Amendment, is aggrieved by the Director's determination. See Exhibit 1.

Petitioner requests that the BZA review the Director's determination, find that it was contrary to the plain language of § 11-808(D) of the Zoning Ordinance, and determine that the protest petition did require a supermajority vote on Text Amendment 2011-0005. Pending resolution of this appeal, Petitioner further requests that the Tuesday, February 14, 2012 votes of the City Council on agenda items 24 and 25, the ordinances relating to the Text Amendment and Waterfront Small Area Plan, be suspended.

EXHIBIT 1



DEPARTMENT OF PLANNING AND ZONING

301 King Street
Room 2100
Alexandria, Virginia 22314

Phone 703-746-4666
Fax 703-838-6393

www.alexandriava.gov

January 24, 2012

Via US Mail and Electronic Mail

Roy R. Shannon, Jr., Esquire
Rich, Rosenthal, Brincefield, Manitta, Dzubin and Kroeger, LLP
201 North Union Street, #140
Alexandria, VA 22314

Dear Mr. Shannon:

You have requested a determination with regard to the protest petition filed by you on January 19, 2012. My determination was made verbally to City Council at its hearing on January 21. At that time I stated the following:

The City received a protest petition, filed Thursday, January 19, 2012. Additional signatures were filed yesterday. The filing is called, "Landowners' Protest to Proposed Text Amendment 2011-0005," and it refers to the proposed changes to the W-1 zone recommended to make it consistent with the Waterfront Plan. Both the W-1 text amendment and the Waterfront Plan on Council's docket today, January 21, 2012, (Item #4).

Section 11-808 of the City of Alexandria Zoning Ordinance provides a mechanism to require a three-fourths majority vote (6-1) for City Council to approve an application for a zoning map amendment if a valid protest petition meeting the requirements of the ordinance is filed with the city clerk. Section 11-808(A) indicates who may successfully protest and states specifically,

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.

Section 11-800 of the Zoning Ordinance addresses zoning amendments generally and distinguishes between "map amendments" and "text amendments." A map amendment is a change to the official Zoning Map of the city to change the zoning of a particular property, and sometimes known as a rezoning, and it is specific to that property. A text amendment is an amendment of the official Zoning Ordinance text to change the language of a zone, or other

Roy R. Shannon, Jr., Esquire
Rich, Rosenthal, Brincefield, Manitta, Dzubin and Kroeger, LLP
January 24, 2012
Page 2

section of the ordinance, with more general application within the zoning districts. The text amendment to be considered by Council today is an amendment revising the W-1 zone text to apply generally to applicable properties within that zone.

By the terms of section 11-808(A) as well as the Protest Petition itself, the proposed zoning change before Council today is a text amendment and not a rezoning or map amendment. Because Council is considering a text amendment, and not a map amendment, Section 11-808 does not apply. Consequently, the petition does not require a three-quarter, supermajority vote for today's zoning text amendment.

The protest does not apply in any way to the Plan before Council. It applies only to the text amendment.

Sincerely,



Faroll Hamer
Director

Attachment: Determination request letter dated January 19, 2012

cc: James Banks, City Attorney
Joanna Anderson, Assistant City Attorney

EXHIBIT 2

Landowners' Protest to Proposed Text Amendment 2011-0005

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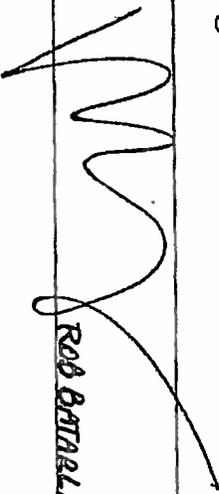
Property Address	Owner (Name)	Signature	Map # (if known)
418 N. Union St Alexandria VA 22314	BRY, JOHN A. JR CORNER S.	<i>[Signature]</i>	065-03-23
416 N Union St Alex, VA 22314	Brewer Fred L TR	<i>[Signature]</i> Fred L Brewer Trustee for	065-03-23
414 N. Union St Alex VA 22314	David Chinnery	<i>[Signature]</i>	065-03-22
428 N. Union St ALEXANDRIA VA 22314	ELIZABETH P. BRADWIN TRUST	<i>[Signature]</i> ELIZABETH P. BRADWIN TRUST	065-01-05-18
422 N. Union St. ALEXANDRIA VA 22314	GYNTHIA L. FOX	Gynthia L. Fox	
420 N. Union St. ALEXANDRIA VA 22314	MILWAU A. PETER	MILWAU A. PETER	065-01-05-22
408 N. Union Street	Wendy / Peter Fennelly Trust	<i>[Signature]</i> Wendy / Peter Fennelly Trust	065-03-04-19

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JAN 19 2012

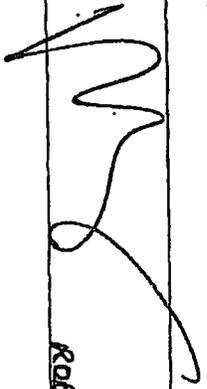
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Property Address	Owner (Name)	Signature	Map # (if known)
1055 North Fairfax St Alexandria, VA 22314	American Physical Therapy Properties, Inc.	 Rob Barabala, CEO	

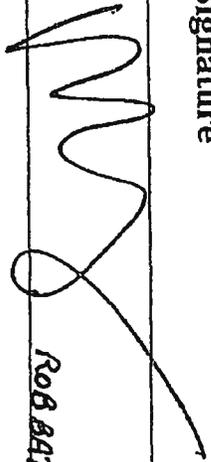
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Property Address	Owner (Name)	Signature	Map # (if known)
1033 North Fairfax St Alexandria, VA 22314	American Physical Therapy Properties, Inc.	 Rob ANTALLA, CEO	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
1111 North Fairfax St Alexandria, VA 22314	American Physical Therapy Properties, Inc.	 Rob Battaglia, CEO	

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Property Address	Owner (Name)	Signature	Map # (if known)
437 N. Lee St. ALEXANDRIA, VA. 22314	Roger L. Amole DEBRA S. BRAY	<i>Roger Amole</i> <i>Debra Bray</i>	
441 N. Lee St. Alexandria VA 22314	Arkolis White Veterans USA	<i>Arkolis White</i> Authorized Agent for PATRICK Marrino Exec. Director	

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Property Address	Owner (Name)	Signature	Map # (if known)
103 OPELOU STREE ALEXANDRIA, VA 22314	THE POWERS & PINEFARERS HARTWELL PENNSION FOUND		

WATERFORD PLACE HOMEOWNERS ASSOCIATION
318 S. Union Street
Alexandria, VA 22314

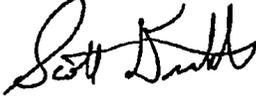
January 17, 2012

To Whom It May Concern:

At the annual meeting of the Waterford Place Homeowners Association ("Association") held on January 11, 2012 and in accord with the bylaws of the Association, a majority of the members of the Association properly passed a resolution providing that the Association, as owner of the common property of the Association, sign the Landowners' Protest to Proposed Text Amendment 2011-0005 ("Petition").

As a duly elected director of the Association and the current President, I am authorized to sign the Petition on behalf of the Association.

Regards,



Scott K. Dinwiddie
President
Waterford Place Homeowners Association

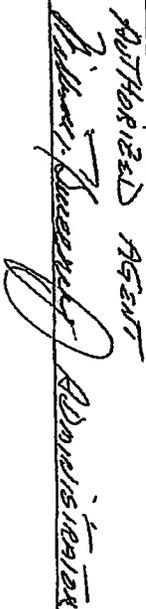
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Property Address	Owner (Name)	Signature	Map # (if known)
150 Waterford Place Alexandria, VA 22314	Waterford Place Homeowners Association	 President Waterford Place Homeowners Assoc.	075.03-05-44

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Property Address	Owner (Name)	Signature	Map # (if known)
103 OROSCO STREET ALEXANDRIA, VA 22314	THE PLUMBERS' REPRESENTIVES UNION LOCAL PERSHD RDND	<i>Authorized Agent</i>  <i>Administrative</i>	

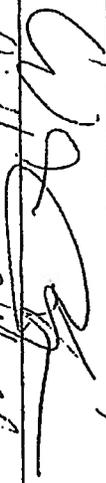
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Property Address	Owner (Name)	Signature	Map # (if known)
418 N. Lee St	Susan Taylor		

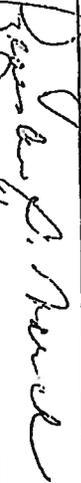
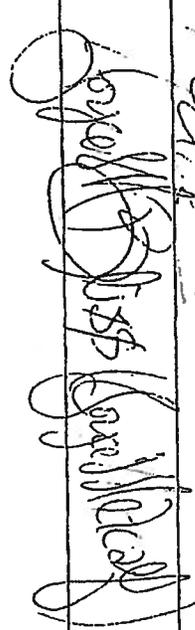
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Property Address	Owner (Name)	Signature	Map # (if known)
404 S. Lee St. ALEXANDRIA, VA	ANNE D. MANAHAN ^{TRUSTEE}	Anne D. Manahan, trustee	
400 S Lee St	William J. Ingram		
405 S. Union	Geddyer Caldwell II	Geddyer F Caldwell	
407 S Union St	Anna C Strebbs		
408 S. Lee Street	Michael Gene Freedman	Michael Gene Freedman	
420 S. Lee St.	Thomas E. Sibyne	Thomas E. Sibyne	
414 S. Lee St	Richard H. Keiser	R.H. Keiser	
417A S. Lee	Megan Evans	Megan Evans	

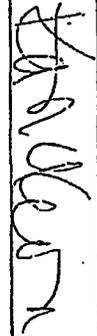
Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
3 Potomac Ct.	MEGAN EVANS.		
412 S LEE.	Sylvester S. March		
406 S. Lee	DAVID B. MARCUS		
426 S. LEE	WALTER VANCE HALL ^{TRUSTEE}	Walter Vance Hall, Trustee	
405 S. LEE A	MARGARET M. DELVINE	Margaret M. DelVine	
435 S. Lee	Kiera L. Brooks		
402 S. Lee	Joyce METCAL.		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
701 Potomac St	Michael Deane		081.03-01-75
708 Potomac	KENNEDY HINDMAN		081.03-01-73
710 Potomac St	Joey Solis		081.03-01-72
712 Potomac St	James P. Gillis & Alison B. Harker		081.03-01-71
715 Potomac St	ANNE M. HENNOX WILLIAM T. HENNOX, TR		081.03-01-41
717 Potomac St	Jane + Joe Piccolo		081.03-01-42
703 Potomac St	Jane & Joe Piccolo Steve Epstein		081.03-01-38
720 Potomac St	Trustees for Goetzl family trust		081.03-01-68

Goetzl Educators Judith HIRS

717
715
707
710
788
709

Margaret
Sols
Joys

AL KALVAITIS
703-299-9234

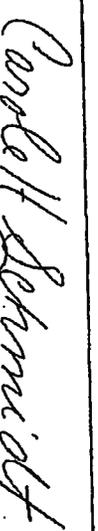
Margaret-

Lisa } signed
Pilar } "tall man"

Fallows out of town

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Property Address	Owner (Name)	Signature	Map # (if known)
123 Duke St Alexandria VA 22314	William A + Carole H Schmidt		
100 Park St. Alexandria VA 22314	David + Miriam Dinger		
121 Duke St. Alexandria, VA 22314	Lynn K. Rogerson		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
117 PRINCE ST BOYKIND DR VA	James GARALL		
117 Prince	John D. Garall		
129 PRINCE	SUZANNE		
218 S. Lee St	MARGUERITE L. DEITZ		
330 S Lee St	Robert D Koeppe		
105 WOLFE ST	STOVAN TENEN		

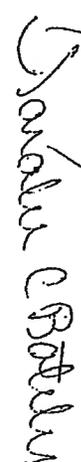
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Property Address	Owner (Name)	Signature	Map # (if known)
328 S. LEE ST.	STACQUE HOLLIERA		
119 Wolfe Street	KATHERINE PINSON		
200 Duke Street	JAYLE SMITH		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
300 S. Lee ST. Alexandria Va 22314	Brian Gibney		015.03-05-01
304 S. Lee ST ALEXANDRIA, VA 22314	ROBERT J. WEBSTER		075.03-05-03
304 S. Lee ST ALEXANDRIA, VA 22314	CHRISTINE WEBSTER		075.03-05-03
310 JUDITH LEE	JONATHAN WILSON		
318 S. WINDYCRE	MARY D. HENDERSON		015.03-05-53
316 SOUTH LEE	EMYL K. GRASS		015.03-05-51
320 SOUTH LEE	SARAH C. BOTELER		015.03-05-52

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Property Address	Owner (Name)	Signature	Map # (if known)
624 625 J. Lee St.	Debra C. Parker	Debra C. Parker	.081.01-02-35

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Property Address	Owner (Name)	Signature	Map # (if known)
3 Potomac Ct	Evans Megan	<i>Megan Evans</i>	075.03-08-08
8 Potomac Ct	Mapes Ann Louise Tr	<i>Ann Louise Mapes, Trustee</i>	075.03-08-20
5 Potomac Ct	Rideout Bonnie	<i>Bonnie Rideout</i>	075.03-08-23
7 Potomac Ct	Petrov Georgi K	<i>Georgi Petrov</i>	075.03-08-21
6 Potomac Ct	Moore Patricia E Tr	<i>Patricia Moore, Trustee</i>	075.03-08-22
2 Potomac Ct	Anderson Lon	<i>Lon Anderson</i>	075.03-08-14
116 Wolfe St	Lamoreaux Tina Tr	<i>Tina Lamoreaux, Trustee</i>	075.03-08-12
106 Wolfe St	Rocchio Monica B	<i>Monica Rocchio</i>	075.03-08-16

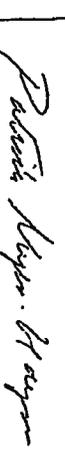
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Property Address	Owner (Name)	Signature	Map # (if known)
100 Duke Street Alexandria VA 22314	Ana Rico	<i>Ana Rico</i>	

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Property Address	Owner (Name)	Signature	Map # (if known)
226 South Lee Street Alexandria, VA 22314	Andrew + Lisa Lynch	 (Lisa R. Lynch)	
114 Duke St Alexandria, VA 22314	Gretchen R. Moss	 Gretchen R. Moss	
117 Duke Street Alexandria, VA 22314	Patricia + Jeffrey Myers-Hayes	 Patricia Hayes	
115 Duke Street Alexandria, VA 22314	Stephan Ray Mitchell Ellen S. Mitchell	 Stephan Ray Mitchell	
108 Duke St Alexandria, VA 22314	Kathleen + Bruce Oehler	 Kathleen Oehler	
112 DUKE ST ALEXANDRIA VA 22314	JEFFREY + MARY K. QUEEN	 Jeffrey M. Queen	
111 Duke St Alexandria, VA	Joan W. Dixon	 Joan W. Dixon	
113 Duke St Alexandria, VA	Joan W. Dixon	 Joan W. Dixon	

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Property Address	Owner (Name)	Signature	Map # (if known)
118 Waterford Pl. Alexandria, VA 22314	Riker Diane Deb or Robert J		
110 Waterford Pl Alexandria, VA 22314	Timmer, Kenneth D		
102 Duke St. Alexandria VA 22314	Freeman, Lauren E		

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Property Address	Owner (Name)	Signature	Map # (if known)
101 Wolfe St. Alexandria VA 22314	Burke, April L. Flunt, Richard A.	April L. Burke	
103 Wolfe St. Alexandria VA 22314	Siveton, Geneva M and Robert WJ	Geneva M Siveton	
102 Waterford Pl. Alexandria VA 22314	Brown, James T.	James T. Brown	
124 Waterford Pl Alexandria VA 22314	Vesprini, Nancy Ellen	Nancy Ellen Vesprini	
106 Waterford Pl. Alexandria VA 22314	Hudson, Stewart	Stewart Hudson	
109 Waterford Pl Alexandria VA 22314	Tornick, William S.	William S. Tornick	
307 S. Union St. Alexandria VA 22314	Kieba, Donald W.	Donald W. Kieba	
104 Waterford Pl Alexandria VA 22314	Cavaney, Bryan M Jr on Shen Banga	Bryan M Cavaney	

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Property Address	Owner (Name)	Signature	Map # (if known)
126 Waterford Rd Alexandria, VA 22314	Humphreys, Frederick	<i>Frederick Humphreys</i>	
105 Wolfe St. Alexandria, VA 22314	Tener, Stacy V Tenera Katrina E	<i>Stacy Tener</i>	
116 W. Stenford Rd Alexandria, VA 22314	Morgan, Cynthia A Nichols J	<i>Cynthia Morgan</i>	
319 S. Union St Alexandria VA 22314	Morgan, Ruth L or Timothy G	<i>Ruth Morgan</i>	
317 S. Union St Alexandria VA 22314	Dinwiddie, Scott or Mercedes, Andrea	<i>Scott Dinwiddie</i>	
132 Westford Rd Alexandria, VA 22314	Leonis, Ann W or Peter A	<i>A. C. Leonis</i>	
120 Waterford Rd Alexandria VA 22314	Goffman, Lawrence J Jr or Forman, Betty J	<i>L. Goffman</i>	
311 S. Union St. Alexandria VA 22314	Hudless, James H	<i>James H. Hudless</i>	

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Property Address	Owner (Name)	Signature	Map # (if known)
431 NORTH LEE ALEXANDRIA VA 22314	E. MICHAEL PATRICKS	<i>E. Michael Patrick</i>	
425 North Lee Alexandria, VA 22314	FRANK A. SILLIMAN	<i>Frank A. Silliman</i>	
423 North Lee St. Alexandria, VA 22314	FRANK A. SILLIMAN	<i>Frank A. Silliman</i>	
211 S. Union St Alexandria, VA 22314	Valerie R. Tarnieri	<i>Valerie R. Tarnieri</i>	

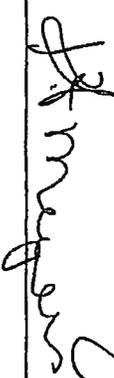
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Property Address	Owner (Name)	Signature	Map # (if known)
125 Duke St.	Marie-Marthe T. Rux	Marie-Marthe T. Rux	
429 S. Lee St.	Susan Ginsburg	Susan Ginsburg	
109 Duke St. ^{Alex VA} ₂₂₃₁₄	Melanie New	Melanie New	
157 Duke St. ^{Alex VA} ₂₂₃₁₄	Melanie New	Melanie New	

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Property Address	Owner (Name)	Signature	Map # (if known)
212 S Lee St	John Modelerwski		075-03-02-02
218 S. Lee St	KOSKOFF DEITZ		075-03-02-04
215 S Lee St	Anneta Tiemeyer		075-03-01-20
225 S Lee St	Jane Cochran		075-03-01-25
229 S Lee St	Crishna Arjane		075-03-01-23
214 S Lee St	Barbara Kelly		075-03-02-01
211A S. Union	Kim Meagan		075-03-02-07

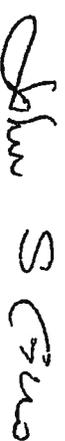
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Property Address	Owner (Name)	Signature	Map # (if known)
525 Tobacco Alley ALEXANDRIA, VA 22314	MARIA DEL CRISTINA O. PERERLE	<i>Maria del Cristina Pererle</i>	065-01-02-39

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Property Address	Owner (Name)	Signature	Map # (if known)
603 Lee St.	NANCY CLARK ANDERSON		081.01-02-18
621 Pamunkey St	John S Gero		081.01-02-25

Paul Anderson
205 Locust Lane sent him
Alva 22302

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Property Address	Owner (Name)	Signature	Map # (if known)
603 S. Lee St.			081
159 Franklin St	Dorothy Taylor	[Signature]	081-01-02-38
605 S. Lee St	Mary Rose Hickley Sr	[Signature]	081-01-02-17
100 Pomander Walk	Virginia Bitenski	[Signature]	
1219 Pomander Walk	Steve Brown	[Signature]	081-01-02-27
610 S Lee St	Suzanne Foster	[Signature]	081-01-02-23
111 Franklin St	John K. Scaler M E M Real Estate, LLC	[Signature]	081-01-02-37
102 Pomander Walk	John K. Scaler	[Signature]	

* Also not on my list of addresses, but lives next door and wants to sign.

Tax

703-548-7452

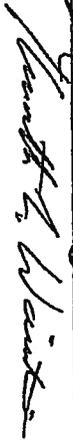
(c) 571-331-6944

Debbie Parker

1814 Park Ave
Richmond, Va. 23220

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Property Address	Owner (Name)	Signature	Map # (if known)
213A South Lincoln St.	Stevens, Andrew	Andrew Stevens	075-0302-08
209 S. Lee	Amy BAYER		075-03-01-17
2-11 S Lee	GRAND O.B. SEWALL		075-03-01-18
217 S. Lee	DUSTIN BARD - WISIS		075-03-01-21
214 S Lee	X	Philipa K. Kelle	/
223 S LEE	Devis Bell		075-03-01-24
219 S. Lee St.	Kenneth L. Weinstein		075-03-01-22
210 S. Lee St.	RICHARD + STEPHAN COOPER		075-03-02-01

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Property Address	Owner (Name)	Signature	Map # (if known)
303 South Lee St.	EVA M. KENNAN	Eva M. Kennan	
330 S. Lee St.	Ashley Lombardi Robert Keppel JOHN RAMSEY	Ashley R. Lombardi	
106 GIBBON ST.	JOHN RAMSEY	John B. Ramsey, Jr.	

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Property Address	Owner (Name)	Signature	Map # (if known)
830 South Lee Street Alexandria, VA	ERICA ROSS' & John Medic		081-03-02-16
100 Franklin St Alexandria, VA			
830 S. Lee St	Margaret Holgren <small>Suzanne Duda or</small>		081-03-02-15
812 S. Lee St.	James F. Duda		081-03-02-09
804 S. Lee St.	Laura Doyle OR Eugene Smith		081-03-02-03
734 S. Lee St	 Eugene Smith		081-03-01-24
732 S Lee	 Eugene Smith		081-03-01-25

708 S. Lee
 APRIL L. PRINDLE
 FRANK PRINDLE

 081-03-01-3.

5

721, 723

100 -
102 -
104 -
106 -
108 -
110 -

205
710
711
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713
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737, *

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Property Address	Owner (Name)	Signature	Map # (if known)
200 Oranoco St Alexandria, VA 22314	Bithner, David and Sibley		065.01-03-12
412 N. Lee St Alexandria VA 22314	Bondslie, Arthur		065.01-03-42
204 Oranoco St Alexandria, VA 22314	Holtzman, Miles		065.01-03-10
420 N. Lee St Alexandria, VA 22314	Gascorins, Charles J.		065.01-03-46
215 Oranoco St Alexandria, Va 22314	Long, Cynthia		065.01-02-24

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Property Address	Owner (Name)	Signature	Map # (if known)
410 N UNION STREET	AMY L CURTIS	<i>Amy L Curtis</i>	065.03-04-20
412 N. UNION STREET	AMY L CURTIS	<i>Amy L Curtis</i>	065.03-04-21
424 N. UNION ST.	PATHEMIA RANDALL	<i>Patheemia Randall</i>	
434 N. UNION ST	ROBERT C. RANDALL	<i>Robert Randall</i>	

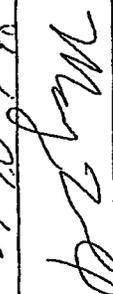
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Property Address	Owner (Name)	Signature	Map # (if known)
515 Tobacco Quay	Peggy BARTON & TRUST	William R. Barton Trustee	065-01-02-34
517 Tobacco Quay	William R. Barton Trust	William R. Barton Trustee	065-01-02-35
531 Tobacco Quay	Denise Landrus	Denise Landrus	065-01-02-42
525 Tobacco Quay	RENÉE BONDAROFF	Renée Bondaroff	065-01-02-28
523 Tobacco Quay	Paul FUSSEU	Paul Fusseu	065-01-02-38
519 Tobacco Quay	Kelly Ballard	Kelly Ballard	065-01-02-36
581 Tobacco Quay	Ann Slack	Ann Slack	065-01-02-27
521 Tobacco Quay	CHARLES ROSSIGNOL FLYNN	CRF	065-01-02-37

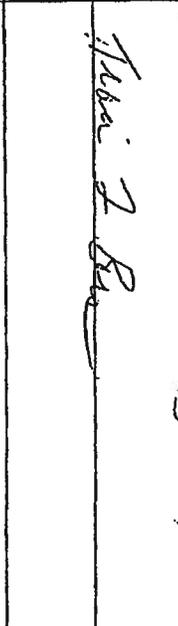
Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
533 Tibbatts Quay	Mary Farrell		065.01-0243
507 Tibbatts Quay	Ernest Pencilide Melissa Jackson	 Melissa Jackson	065.01-02-30

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
217 WLORE ST.	LEONARD CALVERT III		
60 WLORE ST.	Tisa Bone		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
623 Pommardell Walk 5 th	Marianne Marzo	Marianne Marzo	081.01-02-31
107 Franklin St	Jimmie B Cook	Jimmie B Cook	081.01-02-39
103 Franklin St	Timothy B Huron		081.01-02-41
1215 Pommardell Walk 5 th	Jessie McCallister <small>(C/O Jimmie Cook)</small>	Jessie McCallister <small>(for)</small>	081.01-02-32
624 S. Lee St.	Maria Celeste Simonds Trust	Maria Celeste Simonds (for the Maria Celeste Simonds trust established 2011)	081.01-02-34
628 S. Lee St.	Catherine Thompson Catherine Thompson	Catherine Thompson	081.01-02-36
630 S. Lee St.	TM Timothy B Huron	TM Timothy B Huron	081.01-02-30
101 Franklin St.	Mary Sisson Amy F. F. S.	Mary Sisson Amy F. F. S.	081.01-02-42

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Property Address	Owner (Name)	Signature	Map # (if known)
600 S. Lee Street	Margaret A. Miller	MARGARET A. MILLER	
208 S. Lee St.	Charles W. Greenleaf	CW Greenleaf	
219 South Lee St.	Elizabeth Weinstein	Elizabeth Weinstein	
333 S. Lee St.	Dennis Bell	D Bell	

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Property Address	Owner (Name)	Signature	Map # (if known)
225 So. Lee	Tate Coyleman	Tate Coyleman	

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Property Address	Owner (Name)	Signature	Map # (if known)
110 DUKE ST. ALEXANDRIA, VA 22314	BETTE J. DAVIS		

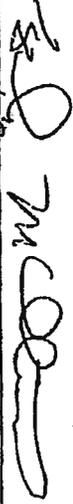
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Property Address	Owner (Name)	Signature	Map # (if known)
105 FERRIMAN DRIVE ALEX. VA 22314	JANET M & VOLANAE DANTS	<i>[Signature]</i>	
107 Ferriman Drive Alex VA 22314	LINDA WINDSOR	<i>[Signature]</i>	
114 Jackson St. Alexandria VA, 22314	NIGOLE HAMILTON	<i>[Signature]</i>	
714 Cassin Alexandria VA 22314	Rachel Hamilton	<i>[Signature]</i>	
111 BURNHARDT DR ALEX. VA 22314	<i>[Signature]</i>	<i>[Signature]</i>	

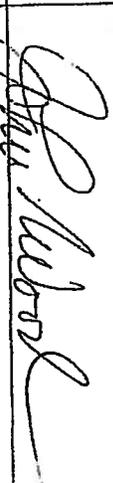
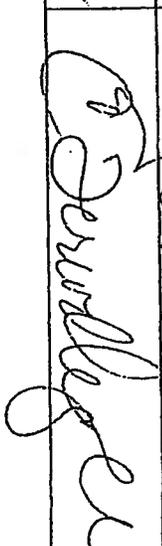
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Property Address	Owner (Name)	Signature	Map # (if known)
716 Potomac St Alexandria VA 22134	Frank McCallister		81-03-01-69
713 Potomac Street Alexandria, VA 22314	Harold Cromer		81-03-01-40

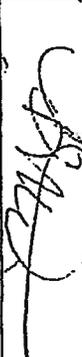
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Property Address	Owner (Name)	Signature	Map # (if known)
104 Franklin St.	Cyrus		081.03-01-48
709 S. Union	Nash		081.03-01-51
153 S. Union	Cowles		081.03-01-54
735 S. Union	Hutchinson		081.03-01-60
735 S. Union	Lunt Vasquez-Lunt		081.03-01-61
711 Potomac St	John R. Wood		081.03-01-52
705 Potomac St.	Carolyn Wilder		081.03-01-74
714 Potomac St	Carol Terwilliger		081.03-01-70

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Property Address	Owner (Name)	Signature	Map # (if known)
100 Prince Street	David Dinger		
109 Prince St.	Bobby Burke	 (PMB)	
126 PRINCE ST	KATHERINE VIBAR		
114 Siga St.	Garret Johnson		

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
2175 LEE	Bridget Weiss		
213 S. Lee St	Susan Agusti		

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Property Address	Owner (Name)	Signature	Map # (if known)
111 Prince St.	Phyllis G. Sidorosky		075.01-06-23
144 Prince St.	Serita Sabotta (Trustee)		
117 Prince St.	Andre Ditrulian		
123 Prince St.	SUZANNE T. QUINLAN		
125 S. Lee St.	Kauren Kerch		
113 FINNID ST	JAMES BARDALL		
189 Prince St	Aime HAMBLY		

(2)

Frank Mueller 703-627-8374

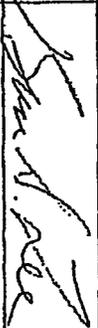
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Property Address	Owner (Name)	Signature	Map # (if known)
110 PRINCE ST	PATRICIA BURKE	Patricia Burke	

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Property Address	Owner (Name)	Signature	Map # (if known)
202 ORONOCO ST. ALEXANDRIA, VA 22314	LEE, BRUCE S. and MRS. SHARON W.		

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Property Address	Owner (Name)	Signature	Map # (if known)
414 North Lee Street Alexandria, VA 22314	Janet D. Bouvier Revocable Trust	Janet Bouvier, Trustee (for the Janet D. Bouvier Revocable Trust established September 18, 2001)	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
125 Wolf St	Alexandria, VA	[Signature]	075-03-05-46
Alexandria, VA	Alexandria, VA	[Signature]	

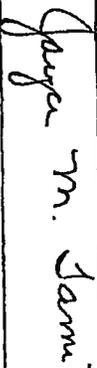
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Property Address	Owner (Name)	Signature	Map # (if known)
314 S. Lee St Alexandria, VA 22314	Murphy, Patrick T Curtis, Deborah	 Patrick T. Murphy Deborah Curtis	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
X 430 N. Union St. ALEX., VA 22309	TAMI RICHARD G. AND Joyce M. Tam		

Vanessa

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
112 Prince St Alexandria, VA 22314	SMITH, ELIZABETH		
111 Prince St Alexandria, VA	SLOONSKY, RICHARD	R. S. S. S.	
[Address obscured]			

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
KELLY LAUBER	109 PENNMANAUBER WAY ALEX, VA 22314		
704 S. COAST	ELLEN S. WILK		
720 S. Lee St	ROBERT S. HARRIS PATRICIA A TRACY		
715 Lee St	HAT TRACY		
728 S Lee ST	Richard L Webster		
115 Hammond	C. Anne B. Rector		

Forrester U. idly

~~115~~ ~~1196~~ ~~1111~~ ~~in an hour~~

113 ~~1115~~ Rensen in favor of our books

111 ~~1117~~ (already signed about a week ago)

~~111~~ signed

107 n/r.

105 n/r.

103 signed about a week ago

101 ~~1117~~ will not sign

~~100~~ Baby sister - came back on Monday
702 come back - on Monday or Tuesday

704 signed

706 no 706. (house)

708 - coming back on Sat. night.

710 ~~700~~ no 710 (house)

712 no 712, no 114, no 716, no 718 (houses)

~~720~~ signed

722 will be back in a week

724 n/r

726 come back in a few days

728 signed

730 n/r

732 n/r

734 - no

736 - n/r

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
106 Prince St. Alexandria 22314	Denise D. McBrearty	Denise D. McBrearty	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
116 Rivina Street	David + Helen Kennerly	Helen Kennerly	015.01.11.07

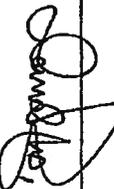
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Property Address	Owner (Name)	Signature	Map # (if known)
106 Duke Street Alexandria, VA 22314	MARTY COSACK, TRUSTEE COSACK FAMILY TRUST	<i>Marty Cosack</i>	

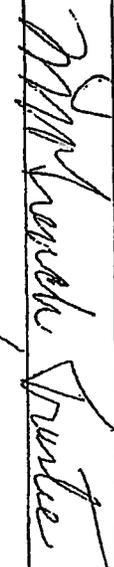
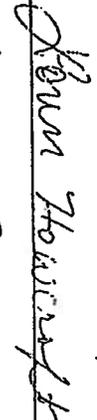
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Property Address	Owner (Name)	Signature	Map # (if known)
110 S. UNION STREET ALEXANDRIA, VA 22314	110 S. UNION STREET, LLC	 Samuel P. ... General Partner	

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Property Address	Owner (Name)	Signature	Map # (if known)
10 Potomac Ct	Jennings Michael V		075.03-08-18
114 Wolfe St	French M H Tr		075.03-08-13
120 Wolfe St	Howcroft Loren S		075.03-08-10
108 Wolfe St	Buck Karen A		075.03-08-15
118 Wolfe St	Arkin Kathleen A		075.03-08-11
220 S. Lee St.	220 WM LLC	 , President	075.03-02-29
224 S. Lee St.	224 South Lee Street LLC	 , President	075.03-02-30.C

Landowners' Protest to Proposed Text Amendment 2011-0005

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JAN 20 2012

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Property Address	Owner (Name)	Signature	Map # (if known)
110 DUKE ST. ALEXANDRIA, VA 22314	BETTE N. DAVIS	Bette Davis	

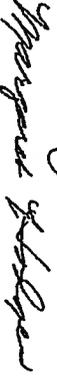
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Property Address	Owner (Name)	Signature	Map # (if known)
300 S. Lee Street	Elizabeth Gibney	Elizabeth Gibney	

Landowners' Protest to Proposed Text Amendment 2011-0005

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Property Address	Owner (Name)	Signature	Map # (if known)
808 SOUTH LEE ST.	RICHARD AND TERESA MILLER		
810 S. Lee St.	Bessy Kong & John Macalewski		
832 S. Lee St.	Susan Dzwil + Scott Dzwila		
828 S. Lee St	Careyn Hollis		
830 S. Lee St	MARGARET THODES		
812 S. Lee St	SUZANNE DUDA Tim Duda		
824 S. Lee St			
814 S. Lee St	KARLYN + TIM BOWMAN		