

Docket Item # 11
TEXT AMENDMENT #2002-0001

Planning Commission Meeting
June 4, 2002

CASE: TEXT AMENDMENT #2002-0001
NOTICE OF APPEALS TO CITY COUNCIL

ISSUE: Consideration of an amendment to Section 11-300 of the Zoning Ordinance to provide for additional notice of appeals to City Council in land use cases.

PLANNING COMMISSION ACTION, JUNE 4, 2002: On a motion by Mr. Dunn, seconded by Mr. Robinson, the Planning Commission voted to recommend approval of the text amendment. The motion carried on a vote of 7 to 0.

Reason: The Commission agreed with the staff analysis.

Speakers:

There were no speakers.

PLANNING COMMISSION ACTION, MAY 7, 2002: By unanimous consent, the Planning Commission deferred the request..

Reason: Although generally in favor of the proposal, the Planning Commission raised an issue regarding the appropriate party to be required to send the written notice. The Commission voiced concern about the potential problem created by requiring written notice of an appellant who has an interest in delaying the project, and discussed other alternatives, including the City providing the written notice, or there being no requirement for written notice.

Speakers:

Mark Feldheim, President, Old Town Civic Association, spoke in favor of the request, and explained that it had been OTCA that had originated the concern about insufficient notice of BAR appeals. As to those appeals, he stated that providing a placard would be a significant improvement.

STAFF RECOMMENDATION:

Staff recommends that the Planning Commission on its own motion initiate and recommend approval of the following text amendment:

- Sec. 11-300 **Notice of public hearings**
 11-301 *Required notice.* Except as provided in section 11-302 below, written notice, placard notice and newspaper notice shall be given before each public hearing before the planning commission, the city council, the board of zoning appeals, the subdivision committee and the board of architectural review.
- (A) *Written notice.* For hearings before the planning commission, the city council, the board of zoning appeals and the subdivision committee, the applicant shall, by registered or certified mail, send written notice at least ten and no more than 30 days prior to the hearing. Restricted delivery or return receipt is not required. For hearings before the board of architectural review, the applicant shall, by first class mail, send written notice at least ten and no more than 30 days prior to the hearing.

- (B) *Placard notice.* The city shall post placards at least ten days and no more than 30 days prior to the hearing.

- (C) *Newspaper notice.* The director shall give newspaper notice at least ten days and no more than 30 days prior to the hearing.

- 11-302 *Notice requirements for particular hearings.* The following particular public hearings require only the following form of notice:
- (A) *Appeals to city council.* Public hearings held on appeals to city council require that the city provide written notice, placard notice and newspaper notice of the hearing, as well as notice to the applicant, the appellant, and persons who are subscribers pursuant to section 11-304. In the case of an appeal brought by a petition of property owners, then the group of petitioners shall select a representative who

shall be the recipient of the city notice. In the absence of formal notice to the city clerk otherwise, the city shall assume that the first name on the petition represents the group.

....

- (G) *City provided written notice.* The director shall be responsible for providing the written notice, in addition to the placard and newspaper notice, in the case of an appeal to the board of zoning appeals, ~~or the recommended revocation of a special use permit,~~ or an appeal to city council.

Note: underlining indicates proposed new text; ~~strikeout~~ indicates text to be deleted.

DISCUSSION:

This text amendment addresses a procedural need with regard to appeals before City Council. Specifically, the proposal is to amend the zoning ordinance to increase the amount and types of notice given to the public prior to a city council hearing on any appeal, by requiring the same amount and type of notice as is now given for other hearings before council, the planning commission or the board of architectural review on land use matters.

Current rules for notice

Section 11-301 of the zoning ordinance outlines the notice required for most types of land use cases for which a public hearing is required. Three types of notice are given for the typical hearing:

- 1) the city posts the property with a sign announcing the hearing;
- 2) the city advertises the hearing in the Gazette and the Journal newspapers; and
- 3) the applicant sends written notice, usually a letter, to each adjacent property owner.

Each of these events must occur no sooner than 30 and no fewer than ten days prior to the hearing. The detailed requirements for each of these notices are set out in the zoning ordinance. See full text of the notice provisions attached.

However, appeals to city council are treated differently. Under section 11-302(A) of the zoning ordinance, only newspaper notice is required for the general public. In addition, the city is required to notify the applicant and the appellant of the date of the hearing.

Appeal cases heard by Council

The great majority of appeal cases heard by City Council are those regarding cases heard by the boards of architectural review and it is in that context that citizens have expressed concern about and suggested that the City provide for additional notice of appeal cases. The current system for limited notice assumes that interested parties, having been fully notified of the case below, could follow any appeal process easily by calling the city clerk or planning staff to check on any appeal.

In addition to the BAR cases, Council will occasionally be asked to hear an appeal of a site plan or a subdivision decision made by the Planning Commission. Unlike special use permit cases, where the final decision is made by Council, the Planning Commission makes a final decision in site plan and subdivision cases. Council only hears a site plan or subdivision case on appeal.

Finally, in the environmental arena, Council was recently asked to hear an appeal from a decision of the Director of Transportation and Environmental Services with regard to exceptions from and modifications of resource protection areas (RPAs) under the Chesapeake Bay regulations in the zoning ordinance. Additional appeals of this type may occur in the future.

Proposed text change

This text amendment would require that hearings on appeals before Council receive the same notice as hearings on other land use cases, such as special use permits and requests before the boards of architectural review. Specifically, each appeal hearing would require that the hearing be advertised in the newspaper, that the property be placarded, and that written notice be sent to the owners of each property adjacent to the site that is the subject of the appeal. These forms of notice are standard in Virginia for land use cases.

In other land use cases, the city is responsible for providing newspaper and placard notice. The appellant is responsible for sending the written notice to adjacent owners. In the case of an appeal of a site plan, subdivision or BAR decision, the appellant may be a group of neighbors, as distinguished from an individual or the applicant. Therefore, there is the potential for some confusion regarding the party responsible for sending the written notice in such a case. In addition, as suggested by the Planning Commission, it could create a problem for a BAR applicant to ask an appellant to send the written notice if the appellant has an interest in delaying the appeal hearing. In order to avoid potential problems, the revised proposed text makes clear that written notice will be sent by the city in the case of appeals to city council.

Staff recommendation

Staff recommends that the Planning Commission initiate and recommend approval of the proposed amendment, and that City Council approve the change to the zoning text. Providing more notice can only lead to a better informed citizenry and an opportunity for those affected by a decision to be heard on the subject at the public hearing before Council.

STAFF: Eileen Fogarty, Director, Planning and Zoning;
Barbara Ross, Deputy Director.

Attachments: Section 11-300, zoning ordinance.

*City of Alexandria, Virginia*

DEPARTMENT OF PLANNING AND ZONING

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DATE: MARCH 26, 2002

TO: CIVIC ASSOCIATIONS AND INTERESTED GROUPS

FROM: EILEEN FOGARTY, DIRECTOR *Eileen Fogarty*
DEPARTMENT OF PLANNING AND ZONING

SUBJECT: NEW TEXT AMENDMENT: REQUIRING MORE NOTICE FOR APPEAL
CASES BEFORE CITY COUNCIL

Enclosed is a draft text amendment that staff plans to present to the Planning Commission and City Council for consideration in May 2002. We invite your comments.

The text amendment addresses the issue of the amount and type of notice that should be given to the public prior to a public hearing on an *appeal* before City Council. Currently the only requirement is that the City advertise the hearing in the newspaper. In other land use cases, such as special use permit hearings before both the Planning Commission and Council, and hearings on requests before the Boards of Architectural Review, there is additional notice in the form of written letters to the owners of adjacent properties and a sign posted on the site in question to better advertise the hearing. The city provides the newspaper notice and posts the property with the sign. The applicant is responsible for providing the written notice. Staff is recommending that the same type of notice required in SUP and BAR cases be required for hearings before City Council in appeal cases.

Council appeal cases include BAR appeals, appeals of site plan or subdivision decisions made by the Planning Commission, and, as in the recent Clermont Cove case, appeals from decisions of the Director of Transportation and Environmental Services with regard to resource protection areas under the Chesapeake Bay regulations in the zoning ordinance.

If you have any questions or wish to discuss this issue, please contact me or Barbara Ross. You may also wish to send your comments to the Planning Commission and Council directly.

cc: Honorable Mayor and Member of City Council
Phil Sunderland, City Manager

Attachment to
Docket Item # 9
TA 2002 - 01

DEVELOPMENT APPROVALS AND PROCEDURES

§ 11-301

Sec. 11-300 Notice of public hearings.

11-301

Required notice. Except as provided in section 11-302 below, written notice, placard notice and newspaper notice shall be given before each public hearing before the planning commission, the city council, the board of zoning appeals, the subdivision committee and the board of architectural review.

- (A) *Written notice.* For hearings before the planning commission, the city council, the board of zoning appeals and the subdivision committee, the applicant shall, by registered or certified mail, send written notice at least ten and no more than 30 days prior to the hearing. Restricted delivery or return receipt is not required. For hearings before the board of architectural review, the applicant shall, by first class mail, send written notice at least ten and no more than 30 days prior to the hearing.
- (1) *Recipients of written notice.* Written notice shall be sent to the owner of the subject property, if different from the applicant, and to the owners of all abutting property. In the case of a condominium, written notice may be sent to the president of the board of the unit owners' association instead of to each individual unit owner.
- (2) *Contents of written notice.* Written notice shall contain the following information:
- (a) The time, date and place of all hearings scheduled; and
- (b) A description of the matter being heard, including the tax map number of the property and complete street address of the property.
- (3) *Certification.* At least five days prior to the hearing, the applicant shall supply the director with a copy of the notice, the names of those persons to whom notice has been given, and copies of the post office receipts for registered or certified mail, if registered or certified mail is required, and shall certify that notice has been sent to those to whom notice is required to be given. The applicant shall use the records and maps maintained by the city's office of real estate assessments to determine the proper recipients of notice and reliance upon such records shall constitute compliance with the requirements of this section 11-301(A).
- (4) *Waiver of notice.* A person's actual notice of, or participation in, the proceedings for which written notice is required to be provided by this section shall waive the right of that person to challenge the validity of the proceedings based on a failure

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to receive such written notice. Any person entitled to receive notice under this section may waive the right to notice by filing a waiver in writing with the director prior to the hearing. No waiver shall be accepted for an applicant's failure to file or to timely file a required certificate.

- (5) *Failure to receive notice.* Failure to receive any notice required by this section shall not by itself invalidate any action taken at the hearing for which notice was given.
- (B) *Placard notice.* The city shall post placards at least ten days and no more than 30 days prior to the hearing.
 - (1) *Location of placards.* Placards shall be posted along all street frontages of the property in question with the number of placards posted depending upon the length of street frontage on the lot in question.
 - (2) *Contents of placards.* Placards shall contain:
 - (a) The time, date and place of all hearings scheduled; and
 - (b) A description of the matter being heard.
 - (3) *Removal of placards.* The city shall remove all posted placards no later than seven days after a final determination has been made on the application in question.
 - (4) *Destruction of placards.* It shall be unlawful for any unauthorized person to destroy, deface or remove such placard notice. Any person taking such action shall be subject to the penalties set forth in section 11-200 of this ordinance.
- (C) *Newspaper notice.* The director shall give newspaper notice at least ten days and no more than 30 days prior to the hearing.
 - (1) *Type of newspaper.* Notice shall be published in a newspaper of general circulation in the city.
 - (2) *Contents of newspaper notice.* The notice shall contain:
 - (a) The time, date and place of all hearings scheduled; and
 - (b) A description of the matter being heard.

11-302

Notice requirements for particular hearings. The following particular public hearings require only the following form of notice:

- (A) *Appeals to city council.* Public hearings held on appeals to city council require that the city provide newspaper notice of the hearing, as well as notice to the applicant, the appellant, and persons who are subscribers pursuant to section 11-304.

- (B) *Text amendments.* Public hearings on zoning amendments to change, alter, modify or repeal the provisions of the text of this ordinance require that the city provide newspaper notice of the hearing.
- (C) *New zoning ordinance or map.* Public hearings on the adoption of a new zoning map, a substantially revised zoning map (one which revises the zoning of 500 or more parcels of land), or new or substantially revised regulations for the city as a whole or for the territory included within a small area plan adopted as part of the official master plan of the city require that the city provide newspaper notice of the hearing.
- (D) *Master plan amendment.* Public hearings on the adoption of a new or substantially revised official master plan for the city as a whole or for the territory included within a small area plan adopted as part of the official master plan of the city require that the city provide newspaper notice of the hearing.
- (E) *Rezoning of 25—500 parcels.* Public hearings on a rezoning that involves more than 25 but fewer than 500 parcels of land require that written notice be sent by first class mail.
- (F) *City initiated applications.* Public hearings on a matter initiated by the city, for which the city sends written notice, require that written notice be sent by first class mail, provides that the responsible city employee shall make an affidavit that such mailing has been made, and file same with the papers in the case.
- (G) *City provided written notice.* The director shall be responsible for providing the written notice, in addition to the placard and newspaper notice, in the case of an appeal to the board of zoning appeals or the recommended revocation of a special use permit.

11-303

Additional notice required.

- (A) *Deferral or continuance.* For hearings before the planning commission, the city council, the board of zoning appeals and the subdivision committee, if an item is deferred or continued at the time of the public hearing, then all notices required by this section 11-300 shall be given prior to any subsequent public hearing as if it were a new item. For hearings before the board of architectural review, if an item is deferred or continued at the time of the public hearing for a period which exceeds 30 days, then all notices required by this section 11-300 shall be given prior to any subsequent public hearing as if it were a new item.

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(B) *Referral.* If a zoning amendment is referred by the city council back to the planning commission, all notices required by this section 11-300 shall be given prior to any subsequent public hearing as if the referred item were a new item.

(C) *Rescheduled hearing.* If the date for a public hearing is changed after notice has been given of the original date and prior to the hearing, all notices required by this section 11-300 shall be given for the rescheduled hearing as if it were a new item.

11-304 *Subscription notice to interested persons.* Notice of the docket of the public hearings pending before the planning commission, city council, board of zoning appeals and board of architectural review will be mailed to any person who obtains a subscription for same by paying the established annual fee.

(Ord. No. 3781, §§ 1—3, 2-25-95; Ord. No. 4000, § 1, 5-16-98)

DIVISION B. DEVELOPMENT APPROVALS

Sec. 11-400 **Site plan.**

11-401 *Purpose.* The purpose of this section 11-400 is to ensure that the use and development of land as authorized in the zoning ordinance is undertaken in an orderly and proper manner that furthers the public health, safety and welfare and makes adequate provision for assuring the availability of appropriate public and private services and amenities and for minimizing the adverse effects of such development.

11-402 *Administration.* The director has the duty and responsibility to administer and enforce the provisions of this section 11-400 and the authority to establish rules and regulations to do so. To the extent delegated herein, other department directors shall have the duties and responsibilities provided and the authority to establish rules and regulations to administer such responsibilities. The director or the head of any other department referred to in this section 11-400 may delegate in writing to an employee under his supervision any of the functions hereunder for which the director or such department head is responsible. These provisions of section 11-400 are included here for administrative convenience; they derive from section 9.33 of the charter and are technically not part of the zoning ordinance for purposes of section 9.12 of the charter.

11-403 *Approved site plan required.* No permit shall be issued to erect or alter any building or structure or alter the grade of any land that is subject to this section 11-400 until a site plan has been submitted and approved.

TEXT AMENDMENT # 2002-0001

ISSUE DESCRIPTION: AMENDMENT TO ZONING ORDINANCE
to PROVIDE FOR ADDITIONAL NOTICE
of APPEALS to City Council in
LAND USE CASES.

ZONING ORDINANCE SECTION: 11-300

CITY DEPARTMENT: PLANNING + ZONING

Date Application Filed: _____ Legal Advertisement: _____

ACTION - Planning Commission: 6-4-02 RECOMMEND APPROVAL 7-0

ACTION - City Council: 6/15/02PH-- CC approved the Planning Commission
recommendation.