

MEMORANDUM

TO: THE HONORABLE MAYOR AND
MEMBERS OF CITY COUNCIL

FROM: IGNACIO B. PESSOA
CITY ATTORNEY



DATE: MARCH 3, 2004

SUBJECT: INITIATION OF ZONING TEXT AMENDMENTS

ISSUE: Adoption of a Resolution to initiate zoning text amendments to (1) increase civil penalties for repeat SUP violations, and (2) improve the process for administratively approving changes in SUP ownership.

RECOMMENDATION: That City Council adopt the attached Resolution.

DISCUSSION: On January 24, 2004 City Council approved the City Manager's recommendation to enhance SUP enforcement by increasing the civil penalty for repeat SUP violations from \$100 to \$500. In addition, Council approved a recommendation to streamline the process for administrative approval of changes in SUP ownership, by allowing staff to approve such changes where there has been a past violation which was not material and which was immediately corrected, and to update the conditions attached to the SUP to address any concerns which may have arisen since the original approval. As under current law, notice of change in ownership applications is published in the newspaper, and if any person so requests, an application must be considered by the Planning Commission, and approved by the City Council. The relevant portions of the Manager's January 22, 2004 memorandum are attached.

In order to move forward with these changes, Council must adopt the attached resolution to initiate the process for amending the Zoning Ordinance.

ATTACHMENTS:

Attachment 1 Excerpts from January 22, 2004 memorandum

Attachment 2 Resolution

City of Alexandria, Virginia

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1-27-04

MEMORANDUM

DATE: JANUARY 22, 2004

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *PS*

SUBJECT: CONSIDERATION OF REPORT ON ENFORCEMENT OF SPECIAL USE PERMIT CONDITIONS AND THE INCLUSION OF PROJECT IMPACT STATEMENTS IN CITY STAFF REPORTS

ISSUE: Enhancements to special use permit (SUP) practice: project impact statements and enforcement.

RECOMMENDATION: That City Council endorse staff's efforts to refine the SUP system in the following ways:

- (1) Include project impact statements in development SUP reports;
- (2) Include specific triggers in conditions for infrastructure requirements; and
- (3) Enhance SUP enforcement by
 - increasing outreach to the community on SUP enforcement
 - increasing fines for repeat SUP violators
 - eliminating necessity of a hearing for minor infractions
 - providing Council with an annual report on enforcement.

BACKGROUND: The special use permit is the approval mechanism the City uses for our discretionary land use cases. SUP cases include both large development projects, as well as use cases, such as restaurants or day care centers or auto repair businesses. In addition, there are a series of land use approvals, such as a parking reduction or an increase in density, that also require special use permit approval.

Over the last few months, a series of issues has been raised about specific aspects of the SUP process and enforcement of SUPs. Specifically, Councilmen Krupicka and Smedberg asked staff to report on improving special use permit enforcement, especially the enforcement of critical infrastructure requirements, and on improving the description of project impacts in SUP reports,

ATTACHMENT 1-1

providing an example from Las Vegas, Nevada (Attachment 1.) Councilmen Gaines and Macdonald also discussed issues about SUP enforcement generally, and suggested methods used in other jurisdictions, most notably Bloomington, Indiana (Attachment 2). The issues raised in those two memoranda are addressed below.

1. Project Impact Statements

Major policy issues, such as transportation, open space, neighborhood compatibility and quality of life, are evaluated as part of Planning staff's comprehensive planning initiatives as the City identifies appropriate land use mixes and densities and balances impacts and goals. The policy framework for future development is established through these adopted plans, which have extensive community input and review. The specific and additional impacts of individual development proposals are identified and analyzed in light of these adopted plans, in the separate development application process and conditions are recommended to mitigate those impacts.

Each development SUP report includes a detailed analysis in order to give decision makers and the public a description and evaluation of the impacts and benefits of a proposal. (A "development" SUP is a development project that requires at least a site plan and a SUP; it is not just a "use" SUP, such as a restaurant.) The report's executive summary is an opportunity to present in a clear and concise manner the major impacts of a project, proposed mitigation measures, community concerns and staff conclusions as to the balance achieved among impacts and benefits. As part of the executive summary, staff will now begin to address these major development issues and conclusions. Specific impacts will be addressed in an outline format with bullets, and will reference 1) the section within the report where more detailed information and analysis can be found, and 2) the more important conditions recommended to mitigate the potential impacts. Staff will also concisely identify the more important community benefits arising from the project, as well as community impacts.

Regarding fiscal analyses, in the past we have performed in-depth fiscal impact analyses on very large projects, such as PTO and Potomac Yard. Planning staff is currently exploring the elements to be included in a fiscal impact model that could be applied to development SUP projects. Staff has developed the revenue models and is working with the City Manager, Finance and Budget offices, and with other Departments on the formulas for evaluating the cost impacts on City services and infrastructure. Some impacts, such as on school resources and fire and police services, are difficult to quantify on smaller projects. Thus, staff will include a recommended project threshold for the presentation of this more complex fiscal impact. We will describe this fiscal analysis in a separate memorandum to Council.

2. Infrastructure Requirements

It is important in development cases that significant infrastructure improvements be tied to specific, early events in the construction process, so that the developer cannot proceed with construction as planned unless all applicable infrastructure requirements have been satisfied. To

achieve this result, conditions for major infrastructure improvements must be clearly written in development cases so that specific infrastructure-related actions (e.g., design, construction start, construction x% complete) are tied to and must occur by specific dates or relate to specific permits or other actions involving the overall development project. In addition, systems must be established to track those key requirements. Staff proposes the following to address the issue of compliance with infrastructure improvements:

- writing infrastructure conditions so that one or more phases of the required infrastructure are tied to specific dates or to the release of permits or other actions relating to the overall project;
- establishing a tracking system to monitor the timing requirements imposed by these infrastructure conditions; and
- using the City's automated permit system to schedule and monitor key requirements by deadline dates.

Off-Site Improvements

Over the past several years, conditions of approval have specific triggers so that the required infrastructure construction take place before or at a specific, discernable event such as the final site plan, building permit or certificate of occupancy permit. These conditions have included construction of internal roads, pedestrian bridges, open space contribution and sewer line construction. For example, the completion of a new trunk sewer that would serve Potomac Yard was required prior to any development taking place. Attached are several examples of recent conditions included in Mill Race, Potomac Yard, and other development cases with specific triggers for the accomplishment of off-site construction of infrastructure.

Due to the developed nature of the City, most of the developments within the City are smaller infill projects that do not require off-site improvements. The developments that require off-site improvements are typically limited to the larger projects such as Carlyle and Potomac Yard. It is important in these larger cases that the City continue the interagency review and tracking that has been implemented in the past several months as part of the development review process. The enhanced interagency coordination and coordination with the developer, along with the above-discussed tracking and "specific conditions" steps, will help ensure the completion of future off-site improvements in a timely manner.

On-Site Improvements

The required construction of on-site improvements, or of immediately adjacent work, such as sidewalks, street widening or street trees, is typically self-regulating, and addressed through the final site plan, building permit and certificate of occupancy processes. In other words, the release of a final site plan, a building permit, or a certificate of occupancy, or all of them, are tied to the successful completion of the on-site infrastructure construction. In that way, the developer may not proceed to the next step of the building for the overall projects, and people will not be allowed to occupy structures, unless the on-site infrastructure requirement are met.

3. Enhanced SUP Enforcement for Other Conditions

For SUP cases that do not involve development (see Note 1), conditions are important elements of the SUP approval, designed to ensure that the approved use operates without serious impact on nearby properties. For example, it is typical in restaurant cases that litter be picked up on a regular basis, including on adjacent rights of way. In some cases, it is important that the applicant take steps to ensure its employees do not park on the public street. Some of the cases also require the construction or installation of relatively minor improvements, such as dumpster screening or landscaping.

Applicants in these non-development SUP cases are generally less knowledgeable about City processes than developers, and there has been discussion in the past about the need to impress on these applicants the importance of compliance with SUP conditions. Planning staff has worked over the years with applicants both before and after SUP approval to ensure that they understand the SUP system, and the consequences of not complying with SUP conditions. Significant staff resources, including two planners, administrative staff, and a part of the department's two zoning inspectors, are devoted to working with SUP applicants and on enforcement.

Nevertheless, there have been suggested improvements, including from Councilmen Gaines and Macdonald, and planning staff have met with citizens in the past to discuss some specific changes to the system. In response, staff intends to undertake the following:

1. Increased Community Outreach. In addition to the ongoing work within the planning department with individual applicants, staff discusses the SUP compliance system with business groups and civic associations on an ongoing basis. In addition, when planning staff works in a specific neighborhood on a small area planning study, it includes SUP discussions in its work with businesses. As an example, in Arlandria, staff attends Arlandria Business Association meetings and discusses the SUP requirements and the importance of complying with SUP conditions with both existing SUP businesses and those who may apply in the future. In addition, in Arlandria, a pilot program with different, more relaxed rules for SUP requirements has been in place for over a year. Planning staff will work with the City's new business facilitator on additional community outreach that can take place for small businesses throughout the City.
2. Increased Fines for Repeat Offenders. Under the zoning ordinance, SUP condition violations are class 5 violations, punishable by either criminal prosecution or civil fines. Staff typically proceeds with enforcement under its civil penalty authority, issuing warnings and then tickets with fines if the warning is not heeded. Under the zoning ordinance, staff is authorized to assess a fine of \$50 for a first violation and \$100 for a second or subsequent violation, up to a maximum of \$3,000 for any single violation. In addition, in the case of a serious violation, the Planning Director is authorized to, and has in the past, issued an order requiring that the event, activity or business cease. Violators who fail to heed the order can be arrested.

Although existing fines are lower than allowed by state statute (\$100 for first violation; \$250 for each additional; and \$5,000 cap), staff believes that they are effective in most cases. In the typical case, if staff finds a violation and issues a ticket for it, there is compliance after one or two tickets. Where there is room for additional tools to make SUP enforcement more effective is in the case of repeat offenders.

Specifically, staff recommends that the existing fine structure be changed to add a fine of \$500 for a third violation of an SUP condition within any 12 month period. See attached proposed ordinance language. This increased fine is designed to address those permittees who choose to ignore City requirements and continue to violate SUP requirements. A graduated approach to enforcement, being able to distinguish among the type and degree of violations, especially with regard to repeat offenders, has been suggested by the Federation of Civic Associations in the past.

The Bloomington, Indiana, example submitted by Councilmen Gaines and MacDonald includes a highly refined schedule of different violation types and fines; it also includes preset deadlines for complying with different types of zoning requirements. Staff does not believe this approach is appropriate in Alexandria. First, as to deadlines, the SUP conditions typically include a date for compliance with the requirement or, if no date is specified, there is a near universal one year review requirement, which acts as a default deadline. An SUP operation that is not in compliance at the one year point, in addition to being fined, is required to return to the Planning Commission and City Council for two public hearings. As to the highly differentiated system of fines used by Bloomington, the City's statutory authority for fines is limited by state law. The City has proposed a charter change to allow it to have its own charter authority, instead of state law, for fines for zoning violations. If that change is approved by the legislature, the proposal for greatly differentiated fine system can be pursued in the future.

3. Elimination of Hearing Requirement for Minor Infractions. Under two circumstances, on the one year review of a SUP or when an applicant seeks to amend an SUP to change the ownership of it, staff is required to docket the case for public hearing for any violation of the SUP conditions. Under these rules even minor violations now lead to a requirement for hearings before the Planning Commission and City Council. The business community has raised this hardship in the past, and staff and some community representatives agree that Commission and Council hearings are not required in such cases, assuming the violation is a minor one or, in the case of a change of ownership application, the violation is corrected or there is an agreement by the applicant to comply with new conditions or otherwise correct the problem.

Therefore, staff recommends that (1) the language of the standard review condition be changed so as not to require a hearing in all cases and (2) the zoning ordinance be changed so that applicants for a change of ownership who either correct or agree to new conditions, need not go through the process of a new hearing. Specific language to address each change is attached. Zoning ordinance changes must come back to Council for approval as a text amendment. This change assists businesses by allowing minor violations to be addressed administratively, but

requiring substantive, serious, or repeated violators to be docketed for hearing before the Planning Commission and City Council.

4. Annual Reporting. Planning staff can report annually to Council on its enforcement efforts generally, and with regards to SUP enforcement specifically.

The above additions to the SUP enforcement system will enhance it. They also respond to the various questions and suggestions raised over the last year or so regarding SUP enforcement. The suggested changes will educate the community about SUP enforcement, will impose citations for violations fairly, and will relieve businesses of undue consequences for minor infractions. This balanced approach creates a stronger, more comprehensive enforcement program that is responsive to the concerns of both the residential and business community.

ATTACHMENTS:

Attachment 1. October 9, 2003 Memorandum from Councilmen Krupicka and Smedberg

Attachment 2. October 27, 2003 Memorandum from Councilmen Gaines and Macdonald

Attachment 3. Proposed language for changes to conditions and ordinance for SUP enforcement

Attachment 4. Examples of Conditions with Specific Triggers for Compliance

STAFF:

Eileen Fogarty, Director, Planning and Zoning

Barbara Ross, Deputy Director, Planning and Zoning

**PROPOSED NEW LANGUAGE FOR CONDITIONS AND ORDINANCE REGARDING
SUP ENFORCEMENT**

1. Proposed new ordinance language for increasing fines for repeat offenders

Sec. 11-207 (C)(5) For a class five civil violation, the penalty for each individual offense shall be \$50.00 for the first violation, ~~and~~ \$100.00 for each subsequent violation of the same regulation or requirement arising from the same set of operative facts, **and 500.00 \$for the third violation of a special use permit condition within any one 12 month period.**

2. Proposed new review condition language to require a hearing only for serious SUP violations.

The Director of Planning and Zoning shall review the special use permit after it has been operational for one year, and shall docket the matter for consideration by the Planning Commission and City Council if (a) there have been documented violations of the permit conditions **which were not corrected immediately, constitute repeat violations or which create a direct and immediate adverse zoning impact on the surrounding community;** (b) the director received a request from any person to docket the permit for review as the result of a complaint that rises to the level of a violation of the permit conditions, (c) the director has determined that there are problems with the operation of the use and that new or revised conditions are needed.

3. Proposed new ordinance language for change of ownership applications, allowing administrative changes to conditions with applicant agreement and requiring a hearing only for serious violations.

- f. Change in ownership only. Where an application under this section 11-500 is necessitated solely by a change in ownership of the use that is subject to the special use permit, and the circumstances set forth below in paragraph (1) below apply, the director may administratively approve such application and transfer the special use permit to the new applicant only.
 - i. The circumstances which are a condition to such administrative approval are as follows:
 - (a) The applicant is not requesting a change in the conditions of the special use permit.
 - (2) There have been no substantiated violations of the special use permit **which were not corrected immediately, constitute repeat violations or which create a direct and immediate adverse impact on the surrounding community.**
 - (3) There are no changes proposed or anticipated in the operation of

the use involved.

- (4) The director has concluded that no new conditions, other than standard conditions promulgated by the director, approved by city council and agreed to by the applicant, and no amendments to existing conditions are necessary, other than to conform to such standard conditions. **The standard conditions included here shall include any condition that the director finds to be necessary for the public benefit, in keeping with the use and the prior Council approval, and agreed to by the applicant in writing.**
- (5) Following notice of the application in a newspaper of general circulation in the city, no person has requested the director to forward the application to city council.

RESOLUTION NO. _____

WHEREAS, the Alexandria City Council may initiate the amendment of the Alexandria Zoning Ordinance whenever it determines that public necessity, convenience, general welfare or good zoning practice requires an amendment; and

WHEREAS, the current provisions of the Zoning Ordinance which establish civil penalties for the violation of special use permit conditions provide an insufficient deterrent to repeat violations; and

WHEREAS, providing adequate deterrence of repeat violations of special use permit conditions represents good zoning practice that is important to the public necessity and convenience and the general welfare; and

WHEREAS, the current provisions of the Zoning Ordinance for the administrative approval of changes in the ownership of uses subject to special use permit regulation are unnecessarily restrictive; and

WHEREAS, providing procedures for the administrative approval of changes in the ownership of uses subject to special use permit regulation, which properly balance the public interest in maintaining the protections of the special use permit process, while minimizing unnecessary burdens on business subject to such regulation, represents good zoning practice that is important to the public necessity and convenience and the general welfare;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Alexandria:

Section 1. That the public necessity, convenience, general welfare or good zoning practice requires consideration of a Text Amendment to increase the civil penalties for repeat violations of special use permit conditions, and to streamline the process for administrative approval of changes in ownership of uses subject to special use permit regulation.

Section 2. That the City council does hereby initiate such Text Amendment, and refer the same to the Planning Commission for public hearing and consideration in the manner provided by law.

ADOPTED:

WILLIAM D. EUILLE MAYOR

ATTACHMENT 2-1

ATTEST:

JACQUELINE M. HENDERSON, CMC, CITY CLERK

RESOLUTION NO. 2099

WHEREAS, the Alexandria City Council may initiate the amendment of the Alexandria Zoning Ordinance whenever it determines that public necessity, convenience, general welfare or good zoning practice requires an amendment; and

WHEREAS, the current provisions of the Zoning Ordinance which establish civil penalties for the violation of special use permit conditions provide an insufficient deterrent to repeat violations; and

WHEREAS, providing adequate deterrence of repeat violations of special use permit conditions represents good zoning practice that is important to the public necessity and convenience and the general welfare; and

WHEREAS, the current provisions of the Zoning Ordinance for the administrative approval of changes in the ownership of uses subject to special use permit regulation are unnecessarily restrictive; and

WHEREAS, providing procedures for the administrative approval of changes in the ownership of uses subject to special use permit regulation, which properly balance the public interest in maintaining the protections of the special use permit process, while minimizing unnecessary burdens on business subject to such regulation, represents good zoning practice that is important to the public necessity and convenience and the general welfare;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Alexandria:

Section 1. That the public necessity, convenience, general welfare or good zoning practice requires consideration of a Text Amendment to increase the civil penalties for repeat violations of special use permit conditions, and to streamline the process for administrative approval of changes in ownership of uses subject to special use permit regulation.

Section 2. That the City council does hereby initiate such Text Amendment, and refer the same to the Planning Commission for public hearing and consideration in the manner provided by law.

ADOPTED: March 9, 2004


WILLIAM D. EULLE MAYOR

ATTEST:


JACQUELINE M. HENDERSON, CMC CITY CLERK