

# CITY COUNCIL OF ALEXANDRIA, VIRGINIA

Public Hearing Meeting  
Saturday, February 21, 2004 - - 9:30 a.m.

\*\*\*\*\*

Present: Mayor William D. Euille, Vice Mayor Redella S. Pepper, Members of Council Ludwig P. Gaines, K. Rob Krupicka, Andrew H. Macdonald, Paul C. Smedberg and Joyce Woodson.

Also Present: Mr. Sunderland, City Manager; Mr. Pessoa, City Attorney; Ms. Evans, Assistant City Manager; Mr. Jinks, Assistant City Manager; Ms. Fogarty, Director of Planning and Zoning; Ms. Davis, Director of the Office of Housing; Mr. Eiffert, Deputy Director of the Office of Housing; Mr. Neckel, Director of Finance; Mr. Farner, Division Chief, Planning and Zoning; Mr. Dahlberg, Director of Code Enforcement; Ms. Baker, City Engineer; Ms. Barnett, Deputy Director, Recreation, Parks and Cultural Activities; Mr. Howard, Director of Personnel Services; Mr. Skrabak, Division Chief, Transportation and Environmental Services/Environmental Quality; Ms. Dupree, Urban Planner; Mr. Tate, Urban Planner; Ms. Durham, Urban Planner; Police Lieutenant Uzzell; Ms. Smith-Page, Director of Real Estate Assessments, Ms. Tarver, Pension Administrator; and Mr. Farid, ITS.

Recorded by: Gloria Sitton, Deputy City Clerk and Clerk of Council

## OPENING

### 1. Calling the Roll.

The meeting was called to order by Mayor Euille and the Deputy City Clerk called the roll; all members of Council were present.

**NEW BUSINESS ITEM NO. 1** Mayor Euille highlighted Resolution No. 1348 which outlines the rules for speaking before City Council during public hearing proceedings and noted that Council would be following the procedures more closely in the future.

### 2. Public Discussion Period.

(a) Mariella Posey, 915 Second Street, thanked Sandra Whitmore for her years of service with the City's Recreation, Parks and Cultural Activities Department.

(b) Tesfay Bermene, 3805 Mt. Vernon Avenue, spoke on behalf of the Alexandria United Taxi-Drivers Organization (AUTO) in response to the Schaller Report

and about the need for competition and taxicab certificate ownership.

(c) Augustine Agbenaza, 3805 Mt. Vernon Avenue, spoke on behalf of the AUTO proposal and the need for equity and change in the taxi cab industry in Alexandria.

(d) Balwinder Singh Sahi, 3805 Mt. Vernon Avenue, spoke on behalf of AUTO about the need for senior citizens and disabled citizen's ability to utilize a voucher system for cab services in Alexandria.

Mayor Euille stated that the City is working diligently with the cab companies, representatives from AUTO, and all concerned parties to reach a solution in the near future.

Vice Mayor Pepper noted that she would be recusing herself while her husband addressed the other members of Council.

(e) Dr. F.J. Pepper, 4600 Duke Street, spoke about the efforts that Council has put forth to keep the psychiatric unit of the Alexandria Hospital open and submitted that INOVA was not dealing openly with the City about the closing of the psychiatric unit.

## **REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES ACTION CONSENT CALENDAR (3-4)**

### **Planning Commission**

3. SPECIAL USE PERMIT #2003-0109  
1001 BERNARD STREET  
MADISON HOMES, INC  
Public Hearing and Consideration of a request for a special use permit for a temporary new home customer service office; zoned CSL/Commercial Service Low Zone. Applicant: Madison Homes by Greg Poulson, agent.

COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated February 3, 2004, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 3, 2/21/04, and is incorporated as part of this record by reference.)

4. SPECIAL USE PERMIT #2003-0113  
2000 JEFFERSON DAVIS HIGHWAY  
Public Hearing and Consideration of a request for a special use permit to operate an overnight and daycare facility for dogs and for a parking reduction; zoned CSL/Commercial Service Low Zone. Applicant: Paul J. Haire

COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated February 3, 2004, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 4, 2/21/04, and is incorporated as part of this record by reference.)

**END OF ACTION CONSENT CALENDAR**

**WHEREUPON**, upon motion by Councilman Gaines, seconded by Councilman Smedberg and carried unanimously, City Council approved the Action Consent Calendar. The action of City Council follows:

- 3. City Council approved the Planning Commission recommendation.
- 4. City Council approved the Planning Commission recommendation.

The voting was as follows:

Gaines	"aye"	Pepper	"aye"
Smedberg	"aye"	Krupicka	"aye"
Euille	"aye"	Macdonald	"aye"
	Woodson	"aye"	

**REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER**

- 5. Public Hearing on Proposed Amendment to the City's 2004 Community Development Block Grant Program to Fund the Homeless Management Information System. **(ROLL-CALL VOTE)**

(A copy of the City Manager's memorandum dated February 11, 2004, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 5, 2/21/04, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Councilman Gaines, seconded by Councilman Smedberg and carried unanimously, City Council closed the public hearing and approved the proposed amendment to the City's 2004 Community Development Block Grant Program to fund the Homeless Management Information System. The voting was as follows:

Gaines	"aye"	Pepper	"aye"
Smedberg	"aye"	Krupicka	"aye"
Euille	"aye"	Macdonald	"aye"
	Woodson	"aye"	

**REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)**

**Planning Commission (continued)**

6. SPECIAL USE PERMIT #2004-0003  
601 HOLLAND LANE

Public Hearing and Consideration of a request for an amendment to a previously approved development plan to change the building height limit for a portion of Block O; zoned CDD/Commercial Downtown District. Applicant: Post Carlyle II LLC.

COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated February 3, 2004, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 6, 2/21/04, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Gaines and carried unanimously, the public hearing was closed. The voting was as follows:

Pepper	"aye"	Krupicka	"aye"
Gaines	"aye"	Macdonald	"aye"
Euille	"aye"	Smedberg	"aye"
	Woodson	"aye"	

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Gaines and carried unanimously, City Council approved the Planning Commission recommendation. The voting was as follows:

Pepper	"aye"	Krupicka	"aye"
Gaines	"aye"	Macdonald	"aye"
Euille	"aye"	Smedberg	"aye"
	Woodson	"aye"	

7. DEVELOPMENT SPECIAL USE PERMIT #2003-0007  
206 N. QUAKER LANE

Public Hearing and Consideration of a request for a development special use permit, with site plan, to resubdivide the property to create new lots for construction of two single family dwellings; zoned R-20/Residential. Applicant: Meushaw Development Company, Inc. by Duncan Blair, Esq., attorney

COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated February 3, 2004, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 7, 2/21/04, and is incorporated as part of this record by reference.)

Planning and Zoning staff gave a brief presentation on the proposed development.

Duncan Blair, attorney for the applicant, spoke in favor of the proposed development.

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

Mayor Euille reported that Louise and John Smucker, 108 North Quaker Lane, sent a letter stating their support for the proposed development.

Robert Calhoun, attorney for the property owners, spoke in favor of the proposed development.

Dick Hobson, 99 North Quaker Lane, spoke on behalf of Seminary Hill Association, Inc., in favor of the proposed development with the inclusion of the homeowners membership corporation.

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilwoman Woodson and carried unanimously, the public hearing was closed. The voting was as follows:

Pepper	"aye"	Gaines	"aye"
Woodson	"aye"	Krupicka	"aye"
Euille	"aye"	Macdonald	"aye"
	Smedberg	"aye"	

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilwoman Woodson and carried unanimously, City Council approve the Planning Commission recommendation. The voting was as follows:

Pepper	"aye"	Gaines	"aye"
Woodson	"aye"	Krupicka	"aye"
Euille	"aye"	Macdonald	"aye"
	Smedberg	"aye"	

8. DEVELOPMENT SPECIAL USE PERMIT #2003-0036  
3 BUZZARDS GAP  
PICKETT'S RIDGE

Public Hearing and Consideration of a request for a development special use permit amendment, with site plan and subdivision, for construction of single family dwellings; zoned R-20/Residential. Applicant: Sutton Building Corporation by Duncan W. Blair, Esq., attorney

COMMISSION ACTION: Recommend Approval 4-3

(A copy of the Planning Commission report dated February 3, 2004, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 8, 2/21/04, and is incorporated as part of this record by reference.)

Planning and Zoning staff gave a brief presentation on the proposed development.

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

Duncan Blair, attorney for the applicant, spoke on behalf of the applicant and gave a brief presentation and history of the proposed development.

Camille Margaret Sherling, 1233 North Pickett Street, spoke in opposition to the proposed development and requested a 90-day stay in granting the permit for development.

Mary Newhouse, 801 Rapidan Court, spoke in favor of the proposed development but expressed concern about the safety of a potential bicycle path or walkway.

Jane Picot, 825 Rapidan Court, spoke in favor of the proposed development without the proposed pathway.

Don Mela, 504 Slaters Lane, #722, spoke in favor of an easement for bike trails and/or pedestrian paths.

Reverend Douglas P. Cross, 4901 Polk Avenue, spoke in favor of the proposed development and spoke against the proposed bicycle pathway. Rev. Cross also noted that former Mayor Donley committed to vacate the land and to sell it to the Alexandria Free Methodist Church.

John L. Insani, 1235 North Pickett Street, spoke in opposition to the proposed development.

Bill Henderickson, 304 East Spring Street, spoke in favor of an easement for bike trails and/or pedestrian paths.

Ann Bedell Hunt, 829 Queen Street, spoke in favor of an easement for bike trails and/or pedestrian paths.

Bill Dickinson, 805 Quaker Lane, spoke in favor of an easement for bike trails and/or pedestrian paths.

Kenyon Larsen, 107 West Howell Avenue, spoke in favor of an easement for bike trails and/or pedestrian paths.

Dave Levy, 309 East Nelson Avenue, spoke in favor of an easement for bike trails and/or pedestrian paths.

Larry Grossman, 1123 Powhatan Street, spoke in favor of an easement for bike trails and/or pedestrian paths.

Bruce Dwyer spoke in favor of an easement for bike trails and/or pedestrian paths.

**WHEREUPON**, upon motion by Councilwoman Woodson, seconded by Councilman Smedberg and carried unanimously, the public hearing was closed. The voting was as follows:

Woodson	"aye"	Pepper	"aye"
Smedberg	"aye"	Gaines	"aye"
Euille	"aye"	Krupicka	"aye"
	Macdonald	"aye"	

**WHEREUPON**, a motion was made by Vice Mayor Pepper, seconded by Councilwoman Woodson, to approve the Planning Commission recommendation and to include an extension to the tree bond protecting new and existing trees for five years.

**WHEREUPON**, a substitute motion was made by Councilman Macdonald, seconded by Councilman Gaines, to deny the Planning Commission recommendation with the willingness to consider the easement/open space issue through the property in the future, provided there would be a full and public debate at the appropriate time. The motion failed 2-5. The voting was as follows:

Macdonald	"aye"	Pepper	"no"
Gaines	"aye"	Krupicka	"no"
Euille	"no"	Smedberg	"no"
	Woodson	"no"	

**WHEREUPON**, an amendment to the motion was made by Councilman Krupicka, seconded by Councilman Smedberg and carried 4-3, to include condition #9 as originally provided by the Planning staff which states that the applicant shall provide a 15 feet public access easement on the western portion of lot 503 and lot 502. The easement shall not be used for a trail/pathway until there has been adequate public discussion and public comment. The voting was as follows:

Krupicka	"aye"	Pepper	"no"
Smedberg	"aye"	Gaines	"aye"
Euille	"no"	Macdonald	"aye"
	Woodson	"no"	

**WHEREUPON**, a motion was made by Councilman Krupicka, seconded by

Councilman Smedberg and carried 4-3, to create a new amendment to the motion that would provide a 15 feet public access easement for a pedestrian path. The easement would be a reservation with the proviso that the easement shall not be used for trail/pathway until there has been adequate public discussion and public comment. The voting was as follows:

Krupicka	"aye"	Pepper	"no"
Smedberg	"aye"	Gaines	"aye"
Euille	"no"	Macdonald	"aye"
	Woodson	"no"	

**WHEREUPON**, the vote on the main motion, as amended, failed by a vote of 2-5. The voting was as follows:

Woodson	"no"	Gaines	"no"
Pepper	"no"	Krupicka	"aye"
Euille	"no"	Macdonald	"no"
	Smedberg	"aye"	

Councilmembers Gaines and Macdonald later requested to change their vote on the previous motion. City Attorney Pessoa ruled it out of order because another motion was already on the floor.

**WHEREUPON**, a motion was made by Councilman Gaines, seconded by Councilman Macdonald, to defer docket item #8 until the Second Legislative Meeting. The motion failed 2-5. The voting was as follows:

Gaines	"aye"	Pepper	"no"
Macdonald	"no"	Krupicka	"no"
Euille	"aye"	Smedberg	"no"
	Woodson	"no"	

**WHEREUPON**, upon motion by Councilwoman Woodson, seconded by Vice Mayor Pepper, to approve the Planning Commission recommendation and to include an extension to the tree bond protecting new and existing trees for five years. The motion failed 3-4. The voting was as follows:

Woodson	"aye"	Gaines	"no"
Pepper	"aye"	Krupicka	"no"
Euille	"aye"	Macdonald	"no"
	Smedberg	"no"	

**WHEREUPON**, upon motion by Councilwoman Woodson, seconded by Councilman Macdonald and carried 4-3, Council moved to defer docket item #8 until the Second Legislative Meeting. The voting was as follows:



Woodson	"aye"	Pepper	"no"
Macdonald	"aye"	Gaines	"aye"
Euille	"aye"	Krupicka	"no"
	Smedberg	"no"	

**REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)**

None.

**ORDINANCES AND RESOLUTIONS**

9. Public Hearing, Second Reading and Final Passage of an Ordinance to Establish George Washington Middle School (in lieu of Immanuel Lutheran Church), Chinquapin Recreation Center (in lieu of Minnie Howard School), and St. Martin de Porres Senior Center (in lieu of Patrick Henry School) as Polling Places in the City of Alexandria. (#11, 2/10/04) **[ROLL-CALL VOTE]**

(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. 1 of Item No. 9, 2/21/04, 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. 2 of Item No. 9, 2/21/04, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Councilman Gaines, seconded by Councilman Macdonald and carried 5-0 by Roll Call Vote, City Council closed the public hearing and finally passed the Ordinance upon its Second Reading and Final Passage. The voting was as follows:

Gaines	"aye"	Pepper	absent
Macdonald	"aye"	Krupicka	"aye"
Euille	"aye"	Smedberg	"aye"
	Woodson	absent	

The ordinance reads as follows:

**ORDINANCE NO. 4334**

AN ORDINANCE to amend and reordain subsection (h) (IMMANUEL LUTHERAN CHURCH ELECTION DISTRICT), subsection (o) (MINNIE HOWARD SCHOOL ELECTION DISTRICT) and subsection (s) (PATRICK HENRY SCHOOL ELECTION DISTRICT), of Section 2-2-10 (ESTABLISHMENT OF ELECTION DISTRICTS AND VOTING PLACES), and to amend and reordain "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 Subsection (h) of Section 2-2-10 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

(h) The George Washington Middle School Election District shall be bounded and described by the census blocks shown on the map adopted by section 2-2-13 of this code as comprising the said district.

The voting place within the George Washington Middle School Election District shall be at the, George Washington Middle School located at 1005 Mount Vernon Avenue.

Section 2. That Subsection (o) of Section 2-2-10 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

(o) The Chinquapin Park Recreation Center Election District shall be bounded and described by the census blocks shown on the map adopted by section 2-2-13 of this code as comprising the said district.

The voting place within the Chinquapin Park Recreation Center Election District shall be at the Chinquapin Park Recreation Center, located at 3210 King Street.

Section 3. That Subsection (s) of Section 2-2-10 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

(s) The St. Martin de Porres Senior Center Election District shall be bounded and described by the census blocks shown on the map adopted by section 2-2-13 of this code as comprising the said district.

The voting place within the St. Martin de Porres Senior Center Election District shall be at the St. Martin de Porres Senior Center, located at 4650 Taney Avenue.

Section 4. That “The Official Map of the City of Alexandria, Virginia, Designating Election Districts and Voting Places,” adopted by Section 2-2-13 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained as shown on Exhibit 1, attached hereto and incorporated fully by reference, to reflect the designation and description of: the George Washington

Middle School Election District, in replacement of the of the Immanuel Lutheran Church Election District, the Chinquapin Park Recreation Center Election District in replacement of the Minnie Howard School Election District, and the St. Martin de Porres Senior Center Election District in replacement of the Patrick Henry School Election District.

Section 5. That the general registrar of voters be, and he hereby is, directed to record the foregoing amendments on the said map.

Section 6. 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 District names 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.

10. Public Hearing, Second Reading and Final Passage of an Ordinance to Approve an Encroachment For Light Poles into the Public Street Landscape Buffer Adjacent to 3216 Jefferson Davis Highway. (#14, 2/10/04) **[ROLL-CALL VOTE]**

(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. 1 of Item No. 10, 2/21/04, 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. 2 of Item No. 10, 2/21/04, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon a motion by Councilman Smedberg, seconded by Councilman Krupicka and carried 5-0 by Roll Call Vote, City Council closed the public hearing and finally passed the Ordinance upon its Second Reading and Final Passage. The voting was as follows:

Smedberg	"aye"	Pepper	absent
Krupicka	"aye"	Gaines	"aye"
Euille	"aye"	Macdonald	"aye"
	Woodson	absent	

The ordinance reads as follows:

**ORDINANCE NO. 4335**

AN ORDINANCE authorizing the owner of 3216 Jefferson Davis Highway to establish and maintain an encroachment for three light poles within the landscape buffer in the public right-of-way at 3216 Jefferson Davis Highway, in the City of

Alexandria, Virginia.

WHEREAS, Crown Stations, Inc. ("Owner") is the Owner of the property located at 3216 Jefferson Davis Highway, in the City of Alexandria, Virginia; and

WHEREAS, Owner desires to establish and maintain three light poles which will encroach within the landscape buffer of the public right-of-way at 3216 Jefferson Davis Highway; and

WHEREAS, the public right-of-way at that point on at 3216 Jefferson Davis Highway will not be significantly impaired by this encroachment; and

WHEREAS, this encroachment has been approved by the Planning Commission of the City of Alexandria at one of its regular meetings subject to certain conditions; and

WHEREAS, it has been determined by the Council of the City of Alexandria that this encroachment is not detrimental to the public interest; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Owner be, and the same hereby is, authorized to establish and maintain an encroachment into the landscape buffer of the public right-of-way at 3216 Jefferson Davis Highway, in the City of Alexandria, said encroachment consisting of three light poles, until the encroachment is removed or destroyed or the authorization to maintain it is terminated by the city; provided, that this authorization to establish and maintain the encroachment shall not be construed to relieve Owner of liability for any negligence on his part on account of or in connection with the encroachment and shall be subject to the provisions set forth below.

Section 2. That the authorization hereby granted to establish and maintain said encroachment shall be subject to and conditioned upon Owner maintaining, at all times and at his own expense, liability insurance, covering both bodily injury and property damage, with a company authorized to transact business in the Commonwealth of Virginia and with minimum limits as follows:

Bodily Injury:	\$1,000,000 each occurrence \$1,000,000 aggregate
Property Damage:	\$1,000,000 each occurrence \$1,000,000 aggregate

This liability insurance policy shall identify the City of Alexandria and Owner as named insureds and shall provide for the indemnification of the City of Alexandria and Owner against any and all loss occasioned by the establishment, construction, placement, existence, use or maintenance of the encroachment. Evidence of the policy and any

renewal thereof shall be filed with the city attorney's office. Any other provision herein to the contrary notwithstanding, in the event this policy of insurance lapses, is canceled, is not renewed or otherwise ceases to be in force and effect, the authorization herein granted to establish and maintain the encroachment shall, at the option of the city, forthwith and without notice or demand by the city, terminate. In that event, Owner shall, upon notice from the city, remove the encroachment from the public right-of-way, or the city, at its option, may remove the encroachment at the expense and risk of Owner. Nothing in this section shall relieve Owner of his obligations and undertakings required under this ordinance.

Section 3. That the authorization hereby granted to establish and maintain said encroachment shall in addition be subject to and conditioned upon the following terms:

- (a) Neither the City of Alexandria nor any public utility company shall be responsible for damage to Owner's property encroaching into the public right-of-way during repair, maintenance or replacement of the public right-of-way or any public facilities or utilities in the area of encroachment.
- (b) Installation of the lighting shall be coordinated with final development plan (DSUP NO. 2003 - 0038) lighting and landscape design and to the satisfaction of the Directors of Transportation and Environmental Services and Planning and Zoning. The lighting fixture design shall be coordinated with the Potomac Yard Guidelines for street lighting to the satisfaction of the Director of Planning and Zoning.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, Owner shall be deemed to have promised and agreed to save harmless the City of Alexandria from any and all liability (including attorneys' fees and litigation expenses) arising by reason of the establishment, construction, placement, existence, use or maintenance of the encroachment.

Section 5. That the authorization herein granted to establish and maintain the encroachment shall be subject to Owner's maintaining the area of the encroachment at all times unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

Section 6. That nothing in this ordinance is intended to constitute, or shall be deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any of its officers or employees.

Section 7. That the authorization herein granted to establish and maintain the encroachment shall be terminated whenever the City of Alexandria desires to use the affected public right-of-way for any purpose whatsoever and, by written notification, demands from Owner the removal of the encroachment. Said removal shall be

completed by the date specified in the notice and shall be accomplished by Owner without cost to the city. If Owner cannot be found, or shall fail or neglect to remove the encroachment within the time specified, the city shall have the right to remove the encroachment, at the expense of Owner, and shall not be liable to Owner for any loss or damage to the structure of the encroachment caused by the removal.

Section 8. That this ordinance shall be effective upon the date and at the time of its final passage.

11. Public Hearing, Second Reading and Final Passage of an Ordinance to Provide a Defined Benefit Plan, Including Disability Benefits, For Firefighters and Police Officers Employed by the City of Alexandria, To Be Known as the "City of Alexandria Firefighters and Police Officers Pension Plan." (#24, 2/10/04)  
**[ROLL-CALL VOTE]**

(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. 1 of Item No. 11, 2/21/04, 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. 2 of Item No. 11, 2/21/04, and is incorporated as part of this record by reference.)

Assistant City Manager for Fiscal and Financial Affairs Jinks gave a brief overview of the proposed defined benefit plan for firefighters and police officers. Staff and Mr. Rick Johnson from Segal participated in a discussion with Council concerning the proposed plan.

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

David L. Estes, 2003 Mill Road, spoke in favor of the defined benefit plan.

Barry Schiftic, 131 Hancock Avenue, spoke on behalf of the Alexandria Police Association in favor of the defined benefit plan and recognized those officers who were in support of the plan.

John Vollmer, 4600 Duke Street, #429, spoke on behalf of the Alexandria Firefighters Local 2141 in favor of the defined benefit plan.

Joseph Seskey spoke on behalf of the Alexandria Police Association in favor of the defined benefit plan.

James K. Smith, 211 East Nelson Avenue, spoke in favor of the defined benefit plan.

John H. Morehead, Jr, 2804 Woodhollow Place, Ft. Washington, MD, spoke on behalf of the Black Fire Service Professionals of Alexandria, Virginia in favor of the defined benefit plan.

Shirl Mammarella, 2003 Mill Road, spoke in favor of the defined benefit plan.

Lt. Daniel Harden, 3006 Lambeth Hill Drive, Waldorf, MD, spoke against the defined benefit plan.

Jason M. Bell, 2003 Mill Road, spoke on behalf of employees against changes to the current Police/Fire Retirement Income Plan.

Michael Criniti, 2003 Mill Road, spoke against the defined benefit plan.

Walter R. Conquest, 2003 Mill Road, spoke against the defined benefit plan.

Patrick Gittelsohn, 5866 Kara Place, Burke, spoke against the defined benefit plan.

Tony Brown, 461 North Armistead Street, #12, spoke against the defined benefit plan.

Michael May, 150 Century Drive, spoke against the defined benefit plan.

Dana Lawhorne, 107 West Alexandria Avenue, spoke for the defined benefit plan.

James Bartlett, 6011 Ricketts Walk, spoke against the defined benefit plan.

Patrick McGee, Jr., 4885-A 28th Street South, spoke against the defined benefit plan.

Stephen E. Parker, 2003 Mill Road, spoke against the defined benefit plan.

Sgt. Joe Watson, 34084 Richard's Ferry Road, Richardsonville, spoke in favor of the plan with some modifications.

Robert Hickman, 2003 Mill Road, spoke on behalf of the Alexandria Committee of Police, Local 5, in favor of the defined benefit plan.

Mike Keegan, 2003 Mill Road, spoke in favor of the defined benefit plan.

J. H. Williams, 2003 Mill Road, spoke in favor of the defined benefit plan.

Aubrey Shultz, 8106 Bellingham Court, Fairfax Station, spoke in favor of the defined benefit plan.

Dwayne Bonnette, 8411 Thornberry Drive, East Upper Marlboro, Maryland, spoke in favor of the defined benefit plan.

Anthony Harper, 2003 Mill Road, spoke in favor of the defined benefit plan.

Gene Stovall, 2003 Mill Road, spoke on behalf of the Alexandria Police Association in favor of the defined benefit plan.

William P. Johnson, 9616 Shipwright Drive, Burke, spoke against the defined benefit plan.

Russell E. Peverell, 2003 Mill Road, spoke in favor of the defined benefit plan.

Robert Pettey, 13427 Greenacre Drive, spoke in favor of the defined benefit plan.

George Burnham, 2003 Mill Road, spoke in favor of the defined benefit plan.

Cleveland Spruill, 2003 Mill Road, requested that Council delay the implementation of the plan until employees have had a chance to give more input on the proposed benefit plan.

**WHEREUPON**, upon motion by Councilman Smedberg, seconded by Councilman Gaines and carried unanimously by Roll Call Vote, City Council closed the public hearing and finally passed the Ordinance upon its Second Reading and Final Passage. The voting was as follows:

Smedberg	"aye"	Pepper	"aye"
Gaines	"aye"	Krupicka	"aye"
Euille	"aye"	Macdonald	"aye"
	Woodson	"aye"	

The ordinance reads as follows:

#### ORDINANCE NO. 4336

AN ORDINANCE to amend and reordain Section 2-5-51 (RETIREMENT PLAN – ADOPTED FOR POLICE, FIRE DEPARTMENT AND SHERIFF PERSONNEL; EFFECTIVE DATE; SIGNING OF CONTRACTS, ETC.), and Section 2-2-65 (ALTERATION, AMENDMENT OR REPEAL OF PLANS), of Article D (RETIREMENT AND INSURANCE), Chapter 5 (OFFICERS AND EMPLOYEES), 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 Section 2-5-51 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same is, amended and reordained to read as follows:

Sec. 2-5-51 Retirement plan--adopted for police, fire department and sheriff personnel; effective date; signing of contracts, etc.

- (a) The "defined benefit" retirement and disability income plan known as the "City of Alexandria Pension Plan for Firefighters and Police Officers," as the same may be adopted and amended from time to time by resolution of the city council, is hereby adopted for the personnel of the police and fire departments of the city covered by such plan and first employed before February 13, 1979, unless prior to May 30, 1979, an employee covered under such plan has elected to convert to a "defined contribution" plan as provided for such employees prior to January 1, 2004.
- (b) The "defined contribution" retirement plan known as the "City of Alexandria Retirement Income Plan for Firefighters and Police Officers," as the same may be adopted and amended from time to time by resolution of the city council, for the personnel of the police and fire departments of the city first employed on and after February 13, 1979, and covered by such plan, is hereby converted from a defined contribution plan to a combined defined contribution plan and defined benefit plan effective January 1, 2004, subject to the provisions of Section 2-5-65 of this code, and shall be known as the "City of Alexandria Firefighters and Police Officers Pension Plan." On and after February 21, 2004, all benefits shall accrue under the defined benefit portion of such plan.
- (c) The "defined contribution" retirement plan known as the "City of Alexandria Retirement Income Plan for Deputy Sheriffs and Emergency Rescue Technicians," as the same may be adopted and amended from time to time by resolution of the city council, is hereby adopted for the personnel of the fire department and sheriff covered by such plan.
- (d) The "defined benefit" disability income plan known as the "City of Alexandria Firefighters and Police Officers Disability Income Plan," as the same may have been adopted and amended from time to time by resolution of the city council, for personnel of the police and fire departments of the city first employed on and after February 13, 1979, and covered by such plan, is hereby merged into and made part of the "City of Alexandria Firefighters and Police Officers Pension Plan," effective February 21, 2004, subject to the provisions of Section 2-5-65 of this code.
- (e) The plans designated in this section shall be administered by the city manager or his designee, or by a board comprised of representatives of the city and the plan participants and appointed by the city council, as provided

in the plan documents adopted and from time to time amended by resolution of the city council.

- (f) The city manager, and such other person or persons as may be provided in the plan documents, are authorized to sign all contracts and papers for and on behalf of the city in connection with the plans designated in this section.

Section 2. That Section 2-5-65 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same is, amended and reordained to read as follows:

Sec. 2-5-65 Alteration, amendment or repeal of plans.

The city council reserves the right to alter, amend or repeal any provision of the plans adopted and established by this article; provided, however, that the amount of benefits which at the time of such alteration, amendment or repeal shall have accrued for participants or beneficiaries shall not be affected thereby; and provided, further, that to the extent an altered, amended or replacement plan permits, a plan participant may elect to transfer, exchange or forego all or part of such participant's previously accrued benefit for participation in, or benefits under, such altered, amended or replacement plan . If the city council repeals a plan, it shall, except to the extent an election has been made pursuant to this section, continue to be administered as to the amount of benefits which shall have accrued prior to the repeal in accordance with its terms and provisions and those of the aforesaid sections of this code for the sole benefit of the then participants, any beneficiaries then receiving retirement allowances or benefits and any future persons entitled to receive benefits in accordance therewith who are so designated by any of the said participants.

Section 3. That upon the date and at the time of its final passage this ordinance shall become effective as of January 1, 2004, *nunc pro tunc*.

- 12. Consideration of a Resolution to adopt the City of Alexandria Firefighters and Police Officers Pension Plan, dated January 1, 2004, as the defined benefit plan, including disability benefits, for firefighters and police officers employed by the City of Alexandria. **[ROLL-CALL VOTE]**

(A copy of the City Manager's memorandum dated February 13, 2004, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 12, 2/21/04, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Councilman Smedberg, seconded by Councilman Gaines and carried unanimously by Roll Call Vote, City Council adopted the resolution pertaining to the City of Alexandria Firefighters and Police Officers Pension Plan, dated January 1, 2004, as the defined benefit plan, including disability benefits, for firefighters and police officers employed by the City of Alexandria. The voting was as follows:

Smedberg	"aye"	Pepper	"aye"
Gaines	"aye"	Krupicka	"aye"
Euille	"aye"	Macdonald	"aye"
	Woodson	"aye"	

The resolution reads as follows:

RESOLUTION NO. 2097

**WHEREAS**, the City of Alexandria, Virginia, has heretofore maintained the defined contribution retirement plan known as the "City of Alexandria Retirement Income Plan for Firefighters and Police Officers" and the defined benefit disability income plan known as the "City of Alexandria Firefighters and Police Officers Disability Income Plan;" and

**WHEREAS**, the City of Alexandria, Virginia, now desires to convert from the "City of Alexandria Retirement Income Plan for Firefighters and Police Officers" to a combined defined contribution plan and defined benefit plan, effective January 1, 2004, known as the "City of Alexandria Firefighters and Police Officers Pension Plan;" and

**WHEREAS**, the City of Alexandria, Virginia, further desires to merge the "City of Alexandria Firefighters and Police Officers Disability Income Plan," into and make same a part of the "City of Alexandria Firefighters and Police Officers Pension Plan," effective February 21, 2004; and

**WHEREAS**, the "City of Alexandria Firefighters and Police Officers Pension Plan" is intended to maintain and meet requirements for qualification under Section 401(a) of the Internal Revenue Code of 1986, as amended;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALEXANDRIA, VIRGINIA:**

1. That the "City of Alexandria Firefighters and Police Officers Pension Plan," a copy of which is attached to this Resolution and incorporated fully herein by reference, be, and hereby is, recognized, adopted and approved.

2. That the City Manager be, and hereby is, authorized and directed to make on behalf of the City of Alexandria any changes to the "City of Alexandria Firefighters and Police Officers Pension Plan," as may be requested by the Internal Revenue Service, or, based on advice of counsel, as are necessary or desirable for the said Plan to maintain and meet the requirements for qualification under Section 401(a) of the Internal Revenue Code of 1986, as amended; and

3. That the City Manager be, and hereby is, authorized and directed to take such additional actions as may be necessary to fully implement the "City of Alexandria

Firefighters and Police Officers Pension Plan;" and

4. That this Resolution shall be effective immediately; provided, however, that the provisions of the "City of Alexandria Firefighters and Police Officers Pension Plan" shall be effective as stated in the said Plan.

13. Public Hearing, Second Reading and Final Passage of an Ordinance to Reduce the Abatement Period for Nonconforming Day Labor Agencies from 18 to 12 months. (#15, 2/10/04) **[ROLL-CALL VOTE]**

(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. 1 of Item No. 13, 2/21/04, 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. 2 of Item No. 13, 2/21/04, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon a motion by Vice Mayor Pepper, seconded by Councilman Krupicka and carried unanimously by Roll Call Vote, City Council closed the public hearing and finally passed the Ordinance upon its Second Reading and Final Passage. The voting was as follows:

Pepper	"aye"	Gaines	"aye"
Krupicka	"aye"	Macdonald	"aye"
Euille	"aye"	Smedberg	"aye"
	Woodson	"aye"	

The ordinance reads as follows:

**ORDINANCE NO. 4337**

AN ORDINANCE to amend and reordain Section 12-215 (ABATEMENT OF DAY LABOR AGENCIES) under Section 12-200 (NONCONFORMING USES), of Article XII (NONCOMPLIANCE AND NONCONFORMITY) of the City of Alexandria Zoning Ordinance (TA No. 2003-0006).

**THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:**

Section 1. That Section 12-215 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended to read as follows:

12-215 Abatement of day labor agencies.

Any day labor agency in existence on October 7, 2003, in a zone in which such use

is neither a permitted or special use permit use, or in a zone in which such use is a special use permit use but for which a special use permit has not been granted, shall be deemed a nonconforming use and shall be discontinued on or before a date 12 months from the date on which the use was first notified of its nonconforming status, unless it obtains a special use permit which authorizes its continuation subject to the following:

- (A) Promptly upon learning of the existence of a day labor agency categorized as a nonconforming use under this section, the director shall notify the property owner and, if different, the owner or operator of the nonconforming status of the use and that the use must cease operations, or if permitted by the applicable regulations of this ordinance, obtain a special use permit approval prior to the expiration of 12 months from the date of the notice.
- (B) No later than the expiration of the applicable 12 month time period, the property owner or owner or operator of any such nonconforming day labor agency may seek from city council an extension of the date by which it must come into conformity with this section 12-215 by filing with the director a petition which sets forth in detail the reasons why a fair and reasonable return on the investment in such day labor agency made by the petitioner prior to October 7, 2003, cannot be obtained prior to the expiration of the 12 month period.
- (C) Council shall conduct a public hearing on any such petition, prior to which the director shall provide notice in accordance with the provisions of section 11-300 of this ordinance.
- (D) Following the hearing, council may extend the 12 month period only if it finds that a strict application of that time period will deny the petitioner the opportunity to realize a fair and reasonable return on the investment in the nonconforming day labor agency made by petitioner prior to October 7, 2003, in which case council shall extend the date to a time which it determines will provide such opportunity to the petitioner.

Section 2. That Section 12-215 of the City of Alexandria Zoning Ordinance, as amended by this ordinance, be, and the same hereby is, reordained as part of the City of Alexandria Zoning Ordinance, and that the amendments made by this ordinance be, and same here by are, declared to be severable, such that in the event this ordinance is determined to be invalid by a court of competent jurisdiction, Section 12-215, prior to amendment, shall remain in force and effect.

Section 3. That this ordinance shall become effective upon the date and at the time of its final passage, and shall apply to all applications for land use or land development approval provided for under the City of Alexandria Zoning Ordinance which are filed on and after February 21, 2004, and are pending on and after the effective date before any city department, agency or board, or before city council or on

judicial review, and shall apply to all other facts and circumstances subject to the provisions of the City of Alexandria Zoning Ordinance, except as may be provided in Article XII of said Ordinance.

## **REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)**

### **DEFERRAL/WITHDRAWAL CONSENT CALENDAR (14-18)**

#### **Planning Commission (continued)**

14. SPECIAL USE PERMIT #2003-0112  
4949 SEMINARY ROAD  
7-ELEVEN CONVENIENCE STORE  
Public Hearing and Consideration of a request for a special use permit for continuance of a nonconforming convenience store use; zoned RC/High Density. Applicant: 7-Eleven Inc. by Maynard Sipe, attorney  
  
COMMISSION ACTION: Deferred
15. SPECIAL USE PERMIT #2003-0116  
4610 KENMORE AVENUE  
7-ELEVEN CONVENIENCE STORE  
Public Hearing and Consideration of a request for a special use permit for continuance of a nonconforming convenience store use; zoned CG/Commercial General Zone. Applicant: 7-Eleven Inc. by Maynard Sipe, attorney  
  
COMMISSION ACTION: Deferred
16. TEXT AMENDMENT #2004-0001  
POTOMAC YARD DESIGN ADVISORY COMMITTEE  
Public Hearing and Consideration of an amendment to the zoning ordinance to change the required composition of the Potomac Yard Design Advisory Committee. Applicant: Department of Planning and Zoning  
  
COMMISSION ACTION: Deferred
17. SPECIAL USE PERMIT #2003-0111  
815 1/2 KING STREET  
OLD TOWN THEATER  
Public Hearing and Consideration of a request for a special use permit amendment to allow an intensification of theater uses, and for the reduction of required parking; zoned CD/Commercial Downtown Zone. Applicant: Old Town Theater, Inc. by Duncan W. Blair, Esq., attorney  
  
COMMISSION ACTION: Deferred

18. SPECIAL USE PERMIT #2003-0114  
1512 KING STREET  
SUBWAY

Public Hearing and Consideration of a request for a special use permit to operate a restaurant; zoned OCH/Office Commercial High Zone. Applicant: Christopher Decre

COMMISSION ACTION: Deferred (Applicant's Request)

**END OF DEFERRAL/WITHDRAWAL CONSENT CALENDAR**

Without objection, City Council noted the deferrals.

**THERE BEING NO FURTHER BUSINESS TO BE CONSIDERED**, upon motion by Vice Mayor Pepper, seconded by Councilman Smedberg and carried unanimously, at 3:21 p.m., the Public Hearing Meeting of Saturday, February 21, 2004, was adjourned. The voting was as follows:

Pepper	"aye"	Gaines	"aye"
Smedberg	"aye"	Krupicka	"aye"
Euille	"aye"	Macdonald	"aye"
	Woodson	"aye"	

\*\*\*\*\*

**APPROVED BY:**

**WILLIAM D. EUILLE      MAYOR**

ATTEST:

\_\_\_\_\_  
Gloria A. Sitton      Deputy City Clerk