

EXHIBIT NO. 1

18
5-15-04

Docket Item #19
TEXT AMENDMENT #2004-0003

Planning Commission Meeting
May 4, 2004

CASE: TEXT AMENDMENT #2004-0003
SUP ENFORCEMENT

ISSUE: Consideration of amendments to Section 11-207(C)(5) and Section 11-503(F)(1) of the Zoning Ordinance to increase civil fines for repeat SUP violators and improve the administrative change of ownership process.

PLANNING COMMISSION ACTION, MAY 4, 2004: On a motion by Mr. Komoroske, seconded by Ms. Fossum, the Planning Commission voted to recommend approval of the text amendment. The motion carried on a vote of 7 to 0.

Reason: The Planning Commission agreed with staff's analysis, finding that there was sufficient protection for both citizens and small businesses.

Speakers:

Amy Slack, representing the Del Ray Citizens Association.

PLANNING COMMISSION ACTION, APRIL 6, 2004: By unanimous consent, the Planning Commission deferred the text amendment.

Reason: The Commission asked staff to address (1) the system for fines for zoning violations, and (2) the issues raised in the Del Ray Citizens Association letter of April 2 regarding the text amendment.

Speakers:

Julie Crenshaw said that she thought the increase in fines was not high enough to be effective. She suggested that the first violation be raised to \$100, the second be \$500, and the third violation should be grounds for closing a business.

STAFF RECOMMENDATION: Staff recommends that the Planning Commission recommend approval of the following text amendment:

ARTICLE XI: DEVELOPMENT APPROVALS AND PROCEDURES

[Proposed new ordinance language for increasing fines for repeat offenders]

Sec. 11-200 ENFORCEMENT AND PENALTIES

- 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, **except that in the case of a third violation of a special use permit condition within any one 12 month period, the penalty shall be \$500.**

[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]

Sec. 11-500 SPECIAL USE PERMITS

- 11-503(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) apply, the director may administratively approve such application and transfer the special use permit to the new applicant only.
1. The circumstances which are a condition to such administrative approval are as follows:
 2.
 - (a) The applicant is not requesting a change in the conditions of the special use permit.
 - (b) There have been no substantiated violations of the special use permit **which were not corrected immediately, constitute material or repeat violations or which create a direct and immediate adverse impact on the surrounding community.**
 - (c) There are no changes proposed or anticipated in the operation of the use involved.
 - (d) 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 **as may be required by the following:** to conform to such standard conditions.~~

(i) standard conditions promulgated by the director, approved by City Council and agreed to by the applicant; or

(ii) those conditions 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.

DISCUSSION

On January 27, 2004, City Council approved the City Manager's recommendation regarding a series of steps that should be taken to enhance the system for special use permit enforcement. Those include several general approaches, such as increasing outreach to the community on SUP enforcement, and reporting annually on enforcement efforts. They also include certain specific language changes to current conditions and zoning ordinance procedures. For example, the SUP cases being heard by the Commission and Council in April include new language in staff's recommended conditions regarding the one year review.

The text amendments proposed here implement the two Council recommendations which require changes to the zoning ordinance: increasing the civil penalty for repeat SUP violations from \$100 to \$500; and streamlining and making less restrictive the administrative procedure for changing ownership of a SUP. The text amendments were initiated by City Council on March 9, 2004.

Increased Fines for Repeat SUP Violators

Under the zoning ordinance, SUP condition violations are class 5 violations, punishable by either criminal prosecution or by civil fines. Staff typically proceeds with enforcement under its civil penalty authority, issuing warnings, and 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. The Director is also authorized to docket an SUP for revocation in an appropriate case.

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 vast majority of cases, staff is able to achieve compliance with SUP conditions and other zoning requirements without issuing fines or after issuing one or two tickets. Typically, when staff finds a violation, it issues a warning to the violator without a fine. In most cases, SUP permittees who are found to violate a condition of an SUP are either genuinely not aware they are in violation or are responsive and heed staff's warning. On the other hand, when staff finds a violation and issues a ticket for it, there is almost always 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, those who do not comply after warnings and initial fines.

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. This increased fine is designed specifically to address those permittees who chose to ignore city requirements, and distinguishes itself from the penalties for less serious violations. A graduated approach to enforcement, being able

to distinguish among the type and degree of violations, especially with regard to repeat offenders, has been specifically suggested by the Federation of Civic Associations in the past.

Elimination of Hearing Requirement for Some Change of Ownership Cases. Most SUPs, and all recent ones, include a requirement that the owner/applicant of the SUP stay the same as the one before Council when it was approved. The zoning ordinance provides a procedure for changing the ownership and allows it to be done administratively in many cases. On the other hand, the change of ownership request must be docketed for public hearing in two circumstances that have proven to be unwarranted in some cases.

1. Violation of SUP conditions. The zoning ordinance requires a public hearing for change of ownership cases if there has been any violation of the SUP conditions. Under the current ordinance provisions even minor violations now lead to a requirement for hearings before the Planning Commission and City Council. The business community has complained about this hardship in the past, and staff and some community representatives agree that a hearing is more than is required if the violation is a minor one or is corrected satisfactorily and immediately.

For example, as has occurred in more than one case, if the original applicant has not provided a trash can on the right-of-way as required by the original permit and, at the point of the one year review, staff reminds the applicant of the condition and he immediately orders the trash can, staff believes that compliance has been adequately achieved and that the punishment of requiring two public hearings for the infraction does not fit the seriousness of the violation. Moreover, in change of ownership cases, it is not the violator who is punished but the prospective new owner.

Because the existing zoning ordinance language is absolute even for such cases, staff is recommending that it be changed in a fashion similar to the new one year review condition, indicating that where a violation is not material, is corrected in a timely way, and is not repeated, then a hearing for the new owner is not required. On the other hand, the new language allows staff to require a hearing where an SUP has a history of repeat violations or even only one very serious violation in terms of impact on the community.

2. Agreement to new conditions. An applicant for a change of ownership is bound by the conditions in the original permit and, under the ordinance, those conditions may not be changed without a hearing, even if staff and the applicant are in agreement regarding new or changed conditions, and even if they are not directly material to the approval. The only exception in the current law is for those Standard Conditions previously approved by City Council. See attached current Standard Conditions.

Again, the requirement of a hearing, especially given the time and expense involved, may be unwarranted in such cases and overly difficult for a new business. As a common example, where staff finds that additional landscaping or the reduction of signage is important to upgrade the appearance of a site, and the applicant is eager to open and willing to make the improvements, there is really little reason for requiring a hearing for what amount to additional conditions.

Staff is therefore recommending that language be added to the change of ownership procedures in Section 11-503(F) to allow staff to proceed administratively even if there are changes to conditions, as long as the applicant agrees to the new language, the changes do not materially change the approval, and the director finds the condition changes to be required for the benefit of the public.

Staff believes that there are sufficient protections in the ordinance for this administrative procedure for both applicants and the public. As to an applicant, his approval is required to change the conditions. Furthermore, an applicant can always request a hearing if he believes that staff's recommendations are unreasonable. As to the public, administratively approved change of ownership cases will continue to be advertised in the newspaper. That has been part of the zoning ordinance requirement since the inception of the administrative approval procedures. As in the past, if staff receives a request as a result of the ad to docket the matter for hearing, it is obligated to do so. In addition, staff will continue to notify the Planning Commission and the public of those cases that have been approved administratively by including a list of approved cases on each month's docket. Publicity about administrative approvals provides accountability for staff, applicants and the public regarding administrative actions on SUPs.

These changes collectively assist businesses by allowing minor violations and changes in the life of a business to be addressed administratively, but requiring substantive, serious, or repeated violators or major changes to be docketed for hearing before the Planning Commission and City Council.

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

- Attachments: 1. Memorandum of March 3, 2004, from City Attorney to City Council, with excerpts from January 22, 2004 City Manager memorandum to City Council.
2. Standard SUP Conditions

Attachment 1 29
3-9-04

MEMORANDUM

TO: THE HONORABLE MAYOR AND
MEMBERS OF CITY COUNCIL

FROM: IGNACIO B. PESSOA
CITY ATTORNEY *I B P*

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
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,

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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

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Amendment 2-1

ATTEST:

JACQUELINE M. HENDERSON, CMC, CITY CLERK

STANDARD SPECIAL USE PERMIT CONDITIONS

GENERAL — ALL USES

1. The applicant shall contact the Crime Prevention Unit of the Alexandria Police Department for a security survey and robbery awareness program for employees.
2. 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. The applicant shall conduct employee training sessions on a ongoing basis, including as part of any employee orientation, to discuss all SUP provisions and requirements.

RESTAURANTS

1. No live entertainment shall be provided at the restaurant. (where applicable)
2. No alcohol service shall be permitted. (where applicable)
3. On site alcohol service is permitted; no off-premise alcohol sales are permitted. (where applicable)
4. The applicant shall post the hours of operation at the entrance to the restaurant. (P&Z)
5. No food, beverages, or other material shall be stored outside. (P&Z)
6. Litter on the site and on public rights-of-way and spaces adjacent to or within 75 feet of the premises shall be picked up at least twice a day and at the close of business, and more often if necessary, to prevent an unsightly or unsanitary accumulation, on each day that the business is open to the public. (P&Z)
7. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers. (T&ES)
8. No amplified sound shall be audible at the property line. (P&Z)
9. The applicant shall require its employees who drive to work to use off-street parking.
10. The applicant shall direct patrons to the availability of parking at nearby public garages

and shall participate in the Park Alexandria program (if East of Washington Street) or an equivalent parking subsidy program by which the regular parking price is discounted by at least \$1. (in Old Town only)

11. Trash and garbage shall be placed in sealed containers which do not allow odors to escape and shall be stored inside or in a closed containers which does not allow invasion by animals. No trash and debris shall be allowed to accumulate on site outside of those containers.
12. The applicant shall control cooking odors and smoke from the property to prevent them from becoming a nuisance to neighboring properties, as determined by the Department of Health.
13. Meals ordered before the closing hour may be served, but no new patrons may be admitted, and no alcohol may be served, and all patrons must leave by one hour after the closing hour.

OFF PREMISE ALCOHOL SALES (restaurants and convenience retail)

1. Beer or wine coolers may be sold only in 4-packs, 6-packs or bottles of 40 fluid ounces or more. Wine may be sold only in bottles of at least 750 ml or 25.4 ounces. Fortified wine (wine with an alcohol content of 14% or more by volume) may not be sold.

SERVICE STATIONS/ AUTOMOBILE REPAIR/ AUTOMOBILE SALES OR RENTAL

1. No repair work shall be done outside.
2. No vehicles shall be displayed, parked, or stored on a public right-of-way.
3. No vehicle parts, tires, or other materials shall be permitted to accumulate outside except in a dumpster or other suitable trash receptacle or enclosure.
4. No junked, abandoned, or stripped vehicles shall be displayed, parked, or stored outside.
5. No banners, streamers, flags, or similar advertising devices shall be displayed on the premises, but signs advertising the general business conducted on the premises may be displayed in accordance with Article IX, Section 9-100 of the zoning ordinance of the City of Alexandria, Virginia.
6. All vehicles on the lot shall be stored in a neat and orderly manner.
7. Loading and unloading of vehicles, if any, shall take place on-site and during hours of operation.
8. No amplified sound shall be heard at the property line.
9. All waste products, including but not limited to organic compounds (solvents), motor oils,

and antifreeze shall be disposed of in accordance with all local, state and federal ordinances or regulations and shall not be discharged into the sanitary or storm sewers.

10. The applicant shall comply with the City of Alexandria Best Management Practices manual for automotive related industries.

Del Ray Citizens Association

PO Box 2233

ALEXANDRIA VA 22301

ESTABLISHED 1954

To: Members of Alexandria Planning Commission
Eileen Fogarty, Director, Office of Planning and Zoning

From: Amy Slack, Land Use Committee Co-Chair
Sarah Haut, Land Use Committee Co-Chair
Justin Wilson, President

Date: April 2, 2004

Subject: Text Amendment #2004-003, Consideration of a text amendment to Sections 11-207(C)(5) and 11-503 (A) of the Zoning Ordinance to increase the fines for repeat special use permit violators and to change the special use permit ownership requirements.
Applicant: Department of Planning and Zoning

TA 2004-0003
PC Docket Item #16

The committee discussed the proposed text amendment at their meeting of March 18, 2004. The item was announced in the Association newsletter and at the March general membership meeting.

The committee recommended and the Executive Board voted to support staff recommendations for changes to the ordinance.

Increased Fines for Repeat SUP Violations.

We agree with the recommendation to allow the Director greater discretion in applying a graduated approach to enforcement and to assess fines based on the magnitude of the transgression or frequency of reoccurrence.

Elimination of Hearing Requirements for Some Change of Ownership Cases.

We believe that the formal hearing process is not a cost effective use of staff resources and the process is time consuming for both the Planning Commission and City Council when:

1. the previous owners' violations were minor, no-repeat violations, and that the violations were quickly rectified.
2. the applicant accepts the current SUP conditions, the changes do not materially change the approval, and the director finds the condition changes to be required for the benefit of the public.

But, we have three concerns with the proposed changes.

First is the matter of public notice. The ordinance provision relies on a sole source forum of public notice that unfairly restricts the citizen's access to the notice and handicaps their opportunity to request a public hearing prior to an administrative approval. Currently the item is published in a daily newspaper, specifically The Journal - Northern Virginia edition. This publication is no longer available by subscription and procuring said publication places a daily burden on interested, civic minded persons. We ask; Couldn't information about administrative approvals under consideration be

included on the City web site? Could Emails be sent to an appointed agent of a registered civic association?

Second, cases in which the community negotiated the original SUP based on the outstanding, good character of the applicant, there may be cause for the community to request changes to SUP conditions upon a change of ownership. Under the proposed text amendment, when would the community have an opportunity to make that request? When will the community be offered an equal opportunity to request condition changes "required for the benefit of the public?"

Third, staff has in the past expressed frustration with how applicants fail to understand the significance of the permit and the need to adhere to SUP conditions. How might this problem be addressed successfully?

We ask that a more easily accessible forum to be used to announce administrative changes prior to approval and that staff develop and implement an education plan to better impress applicants of the importance of the SUP and adherence to its conditions.

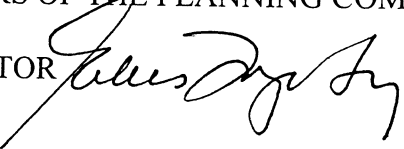
We request your support for this position and welcome your questions and comments. Please feel free to contact Co-chairs Amy Slack at 703-549-3412 or Sarah Haut at 703-838-9060 and President Justin Wilson at 703-299 1576.

City of Alexandria, Virginia

MEMORANDUM

DATE: APRIL 20, 2004

TO: CHAIRMAN AND MEMBERS OF THE PLANNING COMMISSION

FROM: EILEEN FOGARTY, DIRECTOR
 PLANNING AND ZONING 

SUBJECT: SUP ENFORCEMENT
 TEXT AMENDMENT 2004-0003

At the Commission's March hearing, it considered the attached text amendment previously endorsed by City Council, and asked for more explanation from staff on two points. Staff addresses each of them below:

1. Zoning Fines

The proposed text change would increase the amount of the fine for a violation of a special use permit condition when there have been three violations within any 12 month period.

Amount of fines. One issue raised at the Commission hearing was whether the proposed fines are sufficiently high to deter violations. Based on its experience with zoning and SUP violators, staff believes that the proposed fines are sufficient: \$50 for a first violation; \$100 for a second and subsequent violation; and \$500 for the third violation of an SUP condition within one 12 month period. Staff's experience is that the serious, repeat violator is not common. In addition to fines, staff can proceed in court for injunctive relief to stop a violation; it can order a business to close; or it can recommend revocation of a SUP to the Commission and Council.

Application of fines. The Commission also asked staff to explain the application of the successive fine system. Under the (existing and) proposed fine approach, staff is authorized to impose a fine of \$50 for each individual zoning violation, including a violation of an SUP condition. Thus, if on a single day, or on different days, a SUP permittee is found to violate three different conditions of its permit, \$150 (\$50 X 3) can be imposed. For the purpose of imposing a \$100 fine, a subsequent violation is one which is either (1) the same violation as the one for which a \$50 fine was given and it continues to a second, third, etc. day; or (2) a new violation of the same requirement arising from the same set of operative facts. As an example, if an SUP for auto repair prohibits the parking of business cars on the right-of-way and, on Monday, the zoning inspector finds a customer's Ford

parked on the right-of-way, a ticket could be issued with a \$50 fine for the violation of a condition of the SUP. If on Tuesday the inspector finds that a customer's Honda is parked on the right-of-way outside the business, a \$100 ticket can be issued because it is a new violation but based on the same set of facts necessary to show a violation of the same condition as was violated on Monday. A violation of a different condition on Tuesday, such as washing equipment in the street, would receive a \$50 fine as a first violation.

The proposed \$500 fine is recommended in order to address the unusual but difficult problem of a repeat offender of SUP conditions. While under the scenario above, staff can continue to issue \$100 tickets for third, fourth, and later instances of the same violation, and it could issue one \$100 ticket every day the violation continues, staff can never issue a ticket with a greater fine. Therefore, staff suggests increasing the fine amount for the situation that occurs when a SUP violator refuses to stop the violation in order to better attract his attention. Under the recommended language, the \$500 ticket is allowed when there is a repeated violation of the *same* SUP condition. If the Commission wishes to allow a \$500 fine for the third violation of the same SUP, even if each violation were of a different condition, then the language would need to be changed as follows:

except that in the case of a ~~third~~ violation which constitutes the third or subsequent violation within any 12 month period of any condition of the same of a special use permit condition within any one 12 month period, the penalty shall be \$500.

2. Del Ray Citizens Association Letter - Change of Ownership Cases

In its April 2 letter, DRCA supports the main proposition in the proposed text amendment: that applicants who seek to change the ownership of a SUP be able to proceed administratively even if there have been minor, nonmaterial violations of the permit in the past and even if there are new conditions proposed by staff to which the applicant agrees. DRCA raises two issues however of concern.

First, DRCA believes that the methods the city currently uses for informing the public about pending administrative ownership change applications are insufficient. The zoning ordinance now requires that the application be advertised in the newspaper, and provides that any member of the public can require that the matter be docketed for public hearing. In addition, staff has historically sent a nonrequired letter to the affected civic associations advising that the application is pending. DRCA suggests that staff can post pending applications on the Web, giving citizens earlier and broader notice of applications for change of ownerships. Staff has already spoken to the City Web staff, so that this good idea can be implemented as soon as possible.

Second, DRCA is concerned about its and other neighborhoods' ability to work with applicants about changes in conditions. That ability will still exist under the proposed scheme. Neighborhood representatives who have issues with a pending application should contact staff to relay whatever relevant information and suggestions they have so that they can become part of whatever discussion

staff has with the applicant. In addition, if any member of the public has any problem with the administrative process, he can require that the application be docketed for public hearing. These steps should afford citizens the protections they need. Staff believes that the additional flexibility will also benefit citizens by making it easier for desirable types of neighborhood-serving small businesses to prosper.