

CITY COUNCIL OF ALEXANDRIA, VIRGINIA

Public Hearing Meeting
Saturday, October 18, 2003 - - 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.

Absent: None.

Also Present: Mr. Sunderland, City Manager; Mr. Pessoa, City Attorney; Ms. Evans, Assistant City Manager; Mr. Jinks, Assistant City Manager; Mr. Baier, Director of Transportation and Environmental Services; Ms. Fogarty, Director of Planning and Zoning; Ms. Ross, Deputy Director of the Planning and Zoning; Mr. Eiffert, Deputy Director of the Office of Housing; Ms. Gordon, Public Information Officer; Mr. Farner, Urban Planner; Ms. Fogle, Development Division Chief, Planning and Zoning; and Police Lieutenant Reyes.

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.

2. Public Discussion Period.

(a) John Brandon, 727 Upland Place, spoke on behalf of the Friends of the Skatepark and presented a petition to Council from students from T. C. Williams High School, Bishop Ireton High School, Minnie Howard Ninth Grade Center, George Washington Middle School, and Francis Hammond Middle School requesting Council's consideration of renaming the skatepark in honor of Schulyer Jones.

(b) Pat Troy, 310 Wolfe Street, spoke about the consistent skateboarding problem in Old Town, particularly in the Market Square area and the Tavern Square area; the panhandlers and the beggars in the area; and he thanked Council for allowing free parking on the weekends and encouraging tourist activity in the area.

Mayor Euille requested that the City Manager investigate the illegal skateboarding in the downtown district and for staff to work with the business owners to

come up with ways to eradicate the panhandling situation in the downtown district.

Vice Mayor Pepper reported that she had received a citizen complaint and she had noticed skateboarding on busy streets in Alexandria, including Duke Street and Wheeler Avenue, near the new skatepark. Vice Mayor Pepper requested that a sign be posted by staff prohibiting skateboarding.

(c) Howard Woodson, 1407 Wayne Street, spoke on behalf of the Alexandria National Association for the Advancement of Colored People (NAACP) about the police investigation conducted by the City and requested that Council reconsider the possibility of starting a citizen's complaint review board and said he was troubled by the inconclusiveness over the alleged racial remarks and the comments made by the Commonwealth's Attorney.

Mayor Euille stated that Council was taking the concerns of the NAACP into consideration and the process was underway to consider ideas and options for reviewing actions of the Police Department when formal complaints were filed in the future.

(d) Sarita Schotta, 104 Prince Street, spoke about the maintenance of the property on the waterfront area and requested that Council replace the chairman of the Parks and Recreation Commission.

(e) Bill Dickinson, 805 Quaker Lane, spoke about engaging the Alexandria community in Emergency Response and starting a Citizen Corps group to deal with future emergency responses and submit recommendations on how the City can better prepare for the next emergency.

Mayor Euille said the City Manager will take the comments into consideration and get a report to Council on whether it is appropriate.

Councilman Gaines reported that he and Councilman Krupicka had met with staff, including Fire and Police, to explore the opportunities to form a task force similar to the one Mr. Dickinson had mentioned.

(f) Jim Edmundson, 501 Slaters Lane, Apt. 1201, spoke concerning the Mirant Plant and how it is affecting the quality of Alexandria's environment and the entire area by polluting the air.

Mayor Euille noted that staff is reviewing the report of the Northeast Citizens Association and Council would address the pollution matter soon.

(g) Colleen Connolly, 6814 Rosewood Street, Annadale, presented a petition to Council and spoke on behalf of students at Bishop Ireton High School requesting that Council name the Alexandria Skatepark in honor of Schulyer Jones.

Mayor Euille thanked Ms. Connolly and all the others who were speaking on the issue of renaming the skatepark in honor of Schulyer Jones. Mayor Euille noted that the request had a formal process that the City follows and Council would attempt to expedite the process in this case.

(h) Fran Schneller, 203 Cameron Street, requested that Council consider naming the Alexandria Skatepark in honor of Schulyer Jones.

(i) Amy Slack, 2301 East Randolph Avenue, thanked City staff, particularly Jeff Farner, Planning Staff, for all their help in understanding City issues and she thanked Alexandria residents, particularly her neighbors, for their help during the recent hurricane. Ms. Slack also stated that the property at the corner of Del Ray Avenue and Mount Vernon Avenue should be recognized by the Beautification Commission.

(j) Julie Crenshaw, 816 Queen Street, spoke about the appointment process for Boards and Commissions, particularly for the Region I position on the Parks and Recreation Commission. Ms. Crenshaw also expressed concern about an appointment to the Environmental Policy Commission and noted that she would like to see appointments that reflect the sentiments of the community in the future.

(h) Judy Noritake, 605 Prince Street, spoke in favor of renaming the Alexandria Skatepark in honor of Schulyer Jones. Ms. Noritake also responded to the remarks made by Sarita Schotta, who implied she wrote something, and she said she never wrote anything.

Councilman Macdonald stated that renaming the skatepark in honor of Schulyer Jones was an excellent idea and he hoped that the process would be accelerated to meet the community's request.

(i) Judy Miller, 507 North View Terrace, spoke about the air pollution caused by the Mirant Plant and how it is affecting the health of citizens and the environment. Ms. Miller requested that the City start monitoring the pollution output from the power plant. Ms. Lillian White also spoke about the City taking action.

Vice Mayor Pepper stated that Council received a memo in July that stated the Mirant would be operating in the City for a while and Council should make sure that the plant complies with the standards and become as clean as possible. Vice Mayor Pepper pointed out that Mirant was in negotiations with the State in order to become compliant. Vice Mayor Pepper requested that the City Manager give Council a definitive statement, in the form of a memo, outlining the issues with Mirant and also a sample letter for Council to consider and to send to the Department of Environmental Quality (DEQ), the Governor and the State representatives.

City Manager Sunderland stated that he would work on the letter and the memo statement for Council. City Manager Sunderland reminded Council that there were two different issues: (1) nitrogen oxide emissions, which the plant was recently sited by

DEQ for violating a permit, and (2) particulates affecting the health of the community, particularly the residents in the northeast.

Mayor Euille requested that the City Manager provide Council with the memo and give a formal report to Council about the progress on the issue at the next legislative meeting.

(j) Cathy Puskar, 215 East Oak Street, spoke about the upcoming events focusing on Breast Cancer Awareness, particularly the Breast Cancer Walk on October 25, 2003.

(k) John Komoroske, 3106 Circle Mill Road, spoke in favor of renaming the Alexandria Skatepark in honor of Schulyer Jones.

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES

ACTION CONSENT CALENDAR (3-12)

Planning Commission

3. SPECIAL USE PERMIT #2003-0068
460-B SOUTH PICKETT STREET
AUTOMOTIVE REPAIR SERVICE
Public Hearing and Consideration of a request for a special use permit amendment to add light automobile repair service and to change the hours of operation at an existing automobile sales facility; zoned CSL/Commercial Service Low. Applicant: Shahrokh Tayebi

COMMISSION ACTION: Recommended Approval 7-0

(A copy of the Planning Commission report dated October 7, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 3; 10/18/03, and is incorporated herewith as part of this record by reference.)

4. SPECIAL USE PERMIT #2003-0080
4536-4598 EISENHOWER AVENUE
EXXON MOBIL CORPORATION
Public Hearing and Consideration of a request for a change of ownership and an extension of a special use permit; zoned OCM/Office Commercial Medium. Applicant: Exxon Mobil Corporation by William C. Thomas, Jr.

COMMISSION ACTION: Recommended Approval 7-0

(A copy of the Planning Commission report dated October 7, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 4; 10/18/03, and is incorporated herewith as part of this record by reference.)

5. SPECIAL USE PERMIT #2003-0081
1940 DUKE STREET
RESTAURANT
Public Hearing and Consideration of a request to operate a restaurant; zoned CDD-1/Coordinated Development District. Applicant: Young Kim by Eddie Yoo

COMMISSION ACTION: Recommended Approval 7-0

(A copy of the Planning Commission report dated October 7, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 5; 10/18/03, and is incorporated herewith as part of this record by reference.)

6. SPECIAL USE PERMIT #2003-0083
3125 DUKE STREET
ALEXANDRIA COMMONS
Public Hearing and Consideration of a request for a special use permit to construct additional freestanding signs with a setback modification; zoned CG/Commercial General. Applicant: JB Rosenthal Retail by Jonathan Rak, attorney

COMMISSION ACTION: Recommended Approval 7-0

(A copy of the Planning Commission report dated October 7, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 6; 10/18/03, and is incorporated herewith as part of the record by reference.)

7. SPECIAL USE PERMIT #2003-0087
3105 DUKE STREET - ALEXANDRIA COMMONS SHOPPING CENTER
NOODLES AND COMPANY
Public Hearing and Consideration of a request for a special use permit to operate a restaurant; zoned CG/Commercial General. Applicant: David Gladston by Jonathan Rak, attorney

COMMISSION ACTION: Recommended Approval 7-0

(A copy of the Planning Commission report dated October 7, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 7; 10/18/03, and is incorporated herewith as part of the record by reference.)

8. SPECIAL USE PERMIT #2003-0085
25 SOUTH QUAKER LANE
SAMUEL FORD INC. T/A ROCKLANDS
Public Hearing and Consideration of a request to increase the hours of operation of a restaurant and catering facility; zoned CSL/Commercial Service Low. Applicant: John Snedden and David Gwathney

COMMISSION ACTION: Recommended Approval 7-0

(A copy of the Planning Commission report dated October 7, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No.1 of Item No. 8; 10/18/03, and is incorporated herewith as part of the record by reference.)

9. SPECIAL USE PERMIT #2003-0088
3817 MT. VERNON AVENUE
WING ZONE

Public Hearing and Consideration of a request for a special use permit to operate a restaurant; zoned CDD-6/Coordinated Development District. Applicant: Dahlia Kamel

COMMISSION ACTION: Recommended Approval 7-0

(A copy of the Planning Commission report dated October 7, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 9; 10/18/03, and is incorporated herewith as part of the record by reference.)

10. SPECIAL USE PERMIT #2003-0044
3020-3030 DUKE STREET
NATION AUTO GROUP, INC.

Public Hearing and Consideration of a review of a special use permit and to change the ownership of an automobile dealership; zoned CG/Commercial General. Applicant: Nation Auto Group, Inc. by Duncan Blair, attorney

COMMISSION ACTION: Recommended Approval 7-0

(A copy of the Planning Commission report dated October 7, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 10; 10/18/03, and is incorporated herewith as part of the record by reference.)

11. SPECIAL USE PERMIT # 2003-0074
6 WEST MASONIC VIEW AVENUE
CHILD CARE CENTER

Public Hearing and Consideration of a request for a special use permit to expand the playground and to increase the number of children at a child care center; zoned R-5/Single family. Applicant: Abracadabra Child Care and Development Center of Baptist Temple Church.

COMMISSION ACTION: Recommended Approval 7-0

(A copy of the Planning Commission report dated October 7, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 11; 10/18/03, and is incorporated herewith as part of the record by reference.)

12. ENCROACHMENT #2003-0005
122/124 NORTH FAYETTE STREET
Public Hearing and Consideration of a request for an encroachment into the public right-of-way to install two bay windows east of the building facade; zoned CD/Commercial Downtown. Applicant: David S. Cammack

COMMISSION ACTION: Recommended Approval 7-0

(A copy of the Planning Commission report dated October 7, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 12; 10/18/03, and is incorporated herewith as part of the record by reference.)

END OF ACTION CONSENT CALENDAR

WHEREUPON, upon motion by Vice Mayor Pepper, seconded by Councilman Gaines and carried unanimously, City Council approved the Action Consent Calendar as presented. The action of City Council follows:

3. City Council approved the Planning Commission recommendation.
4. City Council approved the Planning Commission recommendation.
5. City Council approved the Planning Commission recommendation.
6. City Council approved the Planning Commission recommendation.
7. City Council approved the Planning Commission recommendation.
8. City Council approved the Planning Commission recommendation.
9. City Council approved the Planning Commission recommendation.
10. City Council approved the Planning Commission recommendation.
11. City Council approved the Planning Commission recommendation.
12. 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"	

REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER

13. Public Hearing and Consideration of the Proposed Renewal Grant Application for the Law Enforcement Block Grant Program for FY 2004. (#13, 10/14/03)

(A copy of the City Manager's memorandum dated September 26, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No.1 of Item No. 13; 10/18/03, and is incorporated herewith as part of this record by reference.)

WHEREUPON, upon motion by Councilman Smedberg, seconded by Vice Mayor Pepper and carried unanimously, City Council approved the submission of the City's on-line grant application, in the amount of \$77,842, of which 90 percent, or \$70,058, will be federal funds, and 10 percent, or \$7,784, will be provided from the FY 2004 Police Department operating budget for the local match. The voting was as follows:

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

14. SPECIAL USE PERMIT #2003-0071
818 FRANKLIN STREET
MASSAGE THERAPY

Public Hearing and Consideration of a request to operate a massage therapy establishment and for a parking reduction; zoned CL/Commercial Low.
Applicant: Calvin Boothe

COMMISSION ACTION: Recommended Approval 7-0

(A copy of the Planning Commission report dated October 7, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item 14; 10/18/2003, and is incorporated herewith as part of this record by reference.)

Cynthia Bens, 912 Franklin Street, expressed concern about the parking impact and traffic congestion that would come from the customers the business would bring to the area, particularly how it will effect the neighborhood private parking.

Mayor Euille pointed out the Planning Commission had already reviewed the request and that the employees will be required to use off street parking under the special use permit.

Vice Mayor Pepper inquired whether the private parking was located behind the homes and suggested that a sign be posted at Alfred Street designating the parking private.

WHEREUPON, upon motion by Vice Mayor Pepper, seconded by Councilman Gaines and carried unanimously, Council approved the Planning Commission recommendation with the advisement to investigate posting a sign designating private parking for the residents in the area. The voting was as follows:

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

(Items 15, 16, and 17 were heard together.)

15. MASTER PLAN AMENDMENT #2003-0008
A PARCEL OF LAND BOUNDED BY WEST GLEBE ROAD ON THE NORTH, MARTHA CUSTIS DRIVE ON THE WEST AND MULTI-FAMILY AND SINGLE-FAMILY RESIDENTIAL ON THE SOUTH AND EAST. THIS PARCEL OF LAND IS CURRENTLY BEING USED AS A PARKING LOT BY VIRGINIA ELECTRIC AND POWER.

WEST GLEBE ROAD TOWNHOUSES

Public Hearing and Consideration of a request for an amendment to the North Ridge/Rosemont Small Area Plan chapter of the City's Master Plan to change the land use designation of the subject property from UT/Utility and Transportation and RM/Residential Medium to RB/Residential Townhouse and to increase the recommended height limitations. Applicant: WPCE, LLC by M. Catharine Puskar, attorney

COMMISSION ACTION: Approved 7-0

16. REZONING #2003-0004
A PARCEL OF LAND BOUNDED BY WEST GLEBE ROAD ON THE NORTH, MARTHA CUSTIS DRIVE ON THE WEST AND MULTI-FAMILY AND SINGLE-FAMILY RESIDENTIAL ON THE SOUTH AND EAST. THIS PARCEL OF LAND IS CURRENTLY BEING USED AS A PARKING LOT BY VIRGINIA ELECTRIC AND POWER.

WEST GLEBE ROAD TOWNHOUSES

Public Hearing and Consideration of a request to change the zoning of the subject property from UT/Utilities and Transportation to RB/Townhouse zone with proffers; zoned UT/Utilities and Transportation. Applicant: WPCE, LLC by M. Catherine Puskar, attorney

COMMISSION ACTION: Recommended Approval 7-0

(A copy of the Planning Commission report dated October 7, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item 15 and 16; 10/18/2003, and is incorporated herewith as part of this record by reference.)

17. DEVELOPMENT SPECIAL USE PERMIT #2003-0013

A PARCEL OF LAND BOUNDED BY WEST GLEBE ROAD ON THE NORTH, MARTHA CUSTIS DRIVE ON THE WEST AND MULTI-FAMILY AND SINGLE-FAMILY RESIDENTIAL ON THE SOUTH AND EAST. THIS PARCEL OF LAND IS CURRENTLY BEING USED AS A PARKING LOT BY VIRGINIA ELECTRIC AND POWER.

WEST GLEBE ROAD TOWNHOUSES

Public Hearing and Consideration of a request for a development special use permit, with site plan to develop 24 townhouses within the RB/Townhouse zone as a cluster development; zoned UT/Utilities and Transportation. Applicant: WPCE, LLC by M. Catharine Puskar, attorney

COMMISSION ACTION: Recommended Approval 7-0

(A copy of the Planning Commission report dated October 7, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item 17; 10/18/2003, and is incorporated herewith as part of this record by reference.)

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

Cathy Puskar, attorney for the applicant, spoke in favor of the request. Ms. Puskar noted that a number of changes were made to the proposal, including reducing the number of units, the height of the units and modifying the buffer surrounding the development.

Dave Brown, 503 Woodland Terrace, said the North Ridge Citizens Association is in favor of the proposed development and referred to a letter issued by the association president outlining their position.

Planning and Zoning Director Fogarty, Transportation and Environmental Services Director Baier, Deputy Director of Housing Eiffert and Ms. Puskar responded to questions and participated in the discussion with Council regarding the Affordable Housing Trust Fund/affordable housing, parking and underground wiring for the development.

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

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

18. REZONING #2002-0004
 11-21 NORTH QUAKER LANE
 QUAKER VIEW

Public Hearing and Consideration of a request to rezone the property to amend a proffer prohibiting residential use; zoned CL/Commercial Low. Applicant: Jade Development Company, by Duncan Blair, attorney.

COMMISSION ACTION: Recommended Denial 6-1

19. DEVELOPMENT SITE PLAN #2002-0032
 11-21 NORTH QUAKER LANE
 QUAKER VIEW

Public Hearing and Consideration of an appeal to a decision of the Planning Commission, on June 3, 2003, for a development site plan to develop eight townhouse-style condominiums with modifications; zoned CL/Commercial Low. Applicant: Jade Development Company, by Duncan Blair, attorney.

(A copy of the Planning Commission report dated October 7, 2003, is on file in the office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Items 18 and 19; 10/18/2003, and is incorporated herewith as part of this record by reference.)

Duncan Blair, attorney for the applicant, explained to Council that there was a protest of the rezoning issue that changes the procedures of the request. Mr. Blair noted that the protest was essentially against the traffic flow surrounding the proposed development site.

City Attorney Pessoa explained how the protest submitted by Richard R. G. Hobson on behalf of the Seminary Hills Association, Inc., and other affected entities, has essential required Council to have a super majority vote in its decisionmaking. City Attorney Pessoa noted that Council could still refer the matter back to the Planning Commission for further consideration and to vacate the site plan and refer it back also.

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

Richard R. G. Hobson, 99 North Quaker Lane, spoke on behalf of the Seminary Hills Association, Inc., and submitted the petition opposing the development. Mr. Hobson requested that Council vote to uphold the Planning Commission's denial. Mr. Hobson submitted a letter from Tom Parry for the record.

Jack Sullivan, 4300 Ivanhoe Place, stated his opposition to the proposed development.

Howard Miller, 7639 Kingsbury Road, spoke on behalf of New Apostolic Church and explained their position for opposing the development.

Richard Kain, 12 Arell Court, gave a brief powerpoint presentation and spoke on behalf of the Quaker Village Homeowner's Association and explained their opposition to the proposed development.

Diane Kain, 12 Arell Court, spoke in opposition to the proposed development on North Quaker Lane.

Following a brief presentation by Planning and Zoning Director Fogarty, Transportation and Environmental Services Director Baier, Deputy Director of Housing Eiffert and Police Lieutenant Reyes responded to questions and participated in a discussion with Council regarding zoning designations, traffic safety and traffic impact on Duke Street of the proposed project. Planning Commissioner Komoroske also participated in the discussion with Council.

WHEREUPON, upon motion by Councilman Krupicka, seconded by Councilman Smedberg and carried 5-2, Council referred item 18 back to the Planning Commission and vacated item 19 and referred it back to the Planning Commission to evaluate the following: pedestrian safety; traffic safety; methods to mitigate or eliminate the median strips' impact on the neighboring church and residents; to work with neighboring properties to evaluate alternative access points from the property to Duke Street; and to evaluate the appropriateness of examining this site in context of the upcoming Duke Street Corridor Study. The voting was as follows:

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

Mayor Euille requested that City Attorney Pessoa provide Council with a memorandum outlining the requirements of the time limitations and voting majority of the Council predicated by the submission of the petition.

ORDINANCES AND RESOLUTIONS

20. Public hearing, Second Reading and Final Passage of an Ordinance to Approve an Encroachment into the Public Sidewalk Right-Of-Way at 105 South Fairfax Street. (#26, 10/14/03) **(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. 20; 10/18/03, 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. 20; 10/18/03 and is incorporated as part of this record by reference.)

WHEREUPON, upon motion by Vice Mayor Pepper, seconded by Councilwoman Woodson and carried unanimously, City Council finally passed the ordinance upon second reading and final passage. The voting was as follows:

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

The Ordinance reads as follows:

ORDINANCE NO. 4317

AN ORDINANCE authorizing the Stabler Leadbeater Apothecary Museum to establish and maintain an encroachment for bay windows into the public sidewalk right-of-way at 105 South Fairfax Street, in the City of Alexandria, Virginia.

WHEREAS, the Stabler Leadbeater Apothecary Museum ("Owner") is the Owner of the museum property located at 105 South Fairfax Street, in the City of Alexandria, Virginia; and

WHEREAS, Owner desires to establish and maintain a stoop and ADA lift which will encroach into the public sidewalk right-of-way at 105 South Fairfax Street; and

WHEREAS, the public right-of-way at that point on 105 South Fairfax Street 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 public sidewalk right-of-way at 105 South Fairfax Street, in the City of Alexandria, said encroachment consisting of a stoop and ADA lift, as generally shown on the Encroachment Plan attached hereto, 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) Owner shall call Alexandria Archaeology (703-838-4399) two weeks prior to any ground disturbing activity (such as coring, grading, filling, vegetation removal, undergrounding utilities, pile driving, landscaping and other excavations as defined in Section 2-151 of the City of Alexandria Zoning Ordinance) on the Owner's property and adjacent right-of-way. City archaeologists will provide on-site inspections to record significant finds. This statement must appear in the General Notes of the site plan, so that on-site contractors are aware of the requirement.
- (c) Owner shall call Alexandria Archaeology (703-838-4399) immediately if any buried structural remains (wall foundations, wells, privies, cisterns, etc.) or concentrations of artifacts are discovered during construction or renovation on the property or in the adjacent right-of-way. Work must cease in the area of the discovery until a City archaeologist comes to the site and records the finds. This statement must appear in the General Notes of the site plan, so that on-site contractors are aware of the requirement.

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.

21. Public Hearing, Second Reading and Final Passage of an Ordinance to Approve an Encroachment into the Public Sidewalk Right-Of-Way at 1104 King Street. (#27, 10/14/03) **(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. 21; 10/18/03, 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. 21;10/18/03, and is incorporated as part of this record by reference.)

WHEREUPON, upon motion by Vice Mayor Pepper, seconded by Councilwoman Woodson and carried unanimously, City Council finally passed the ordinance upon second reading and final passage. The voting was as follows:

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

The Ordinance reads as follows:

ORDINANCE NO. 4318

AN ORDINANCE authorizing MEL & OUD, LC to establish and maintain an encroachment for bay windows into the public sidewalk right-of-way at 1104 King Street, in the City of Alexandria, Virginia.

WHEREAS, MEL & OUD, LC ("Owner") is the Owner of the commercial property located at 1104 King Street, in the City of Alexandria, Virginia; and

WHEREAS, Owner desires to establish and maintain bay windows which will encroach into the public sidewalk right-of-way at 1104 King Street; and

WHEREAS, the public right-of-way at that point on 1104 King Street 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 public sidewalk right-of-way at 1104 King Street, in the City of Alexandria, said encroachment consisting of bay windows, as generally shown on the Encroachment Plan attached hereto, 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) Owner shall place green safety fencing around the existing tree well to protect the tree during construction or renovation on the Owner's property and in the public right-of-way. No entry onto or disturbance of the ground, and no storage of construction supplies, equipment or material, of any type shall be allowed within the tree protection area.

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 Owner shall timely pay to the City of Alexandria for the encroachment authorized herein the annual charge established in § 3-2-85 of The Code of the City of Alexandria, Virginia, 1981, as amended.

Section 8. 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 9. That this ordinance shall be effective upon the date and at the time of its final passage.

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

DEFERRAL/WITHDRAWAL CONSENT CALENDAR (22- 29)

Planning Commission (continued)

22. SPECIAL USE PERMIT #2003-0077
5355 TRUMAN AVENUE
CHILD CARE HOME
Public Hearing and Consideration of a request for a special use permit to operate a child care home; zoned R-5/Residential. Applicant: Nana Serwaa Bempah

COMMISSION ACTION: Deferred
23. SPECIAL USE PERMIT #2003-0082
330 JOHN CARLYLE STREET
TEMPERATURE DAY SPA AND SALON, INC.
Public Hearing and Consideration of a special use permit to operate a massage establishment in a day spa and beauty salon; zoned CDD-1/Coordinated Development District. Applicant: Nadine Moore

COMMISSION ACTION: Deferred
24. ENCROACHMENT #2003-0006
1203 KING STREET
ART UNDERFOOT
Public Hearing and Consideration of a request for an encroachment into the public right-of-way for a store front window; zoned CD/Commercial Downtown. Applicant: Nabi Nasserri

COMMISSION ACTION: Withdrawn
25. VACATION #2003-0003
801-833 SOUTH WASHINGTON STREET, 806-828 SOUTH COLUMBUS STREET AND 712 JEFFERSON STREET
Public Hearing and Consideration of a request to vacate the 20 foot wide public alley adjacent to 801-833 South Washington Street; zoned CRMU-L/Commercial Residential Mixed Use-Low. Applicant: WRIT by M. Catharine Puskar, attorney

COMMISSION ACTION: Deferred

26. DEVELOPMENT SPECIAL USE PERMIT #2003-0020
801-833 SOUTH WASHINGTON STREET, 806-828 SOUTH COLUMBUS STREET AND 712 JEFFERSON STREET
Public Hearing and Consideration of a request for a development special use permit, with site plan to increase the allowable floor area ratio from 1.0 to 1.5 for development of a 75 unit multi-family residential building with underground parking, ground floor retail and retention of existing retail along S. Washington Street; zoned CRMU-L/Commercial Residential Mixed Use-Low. Applicant: WRIT by M. Catharine Puskar, attorney

COMMISSION ACTION: Deferred

27. MASTER PLAN AMENDMENT
3517-3551 DUKE STREET
QUAKER RIDGE
Public Hearing and Consideration of a request for an amendment to the Seminary Hill/Strawberry Hill Small Area Plan chapter of the City's Master Plan to change the land use designation from RL/Residential Low to RM/Residential Medium and to increase the recommended height limitations. Applicant: Carr Homes by J. Howard Middleton, Jr., attorney

COMMISSION ACTION: Deferred

28. REZONING #2003-0005
3517-3551 DUKE STREET
QUAKER RIDGE
Public Hearing and Consideration of a request to rezone the subject property from the R-8/Single-family zone to RB/Townhouse zone with proffers; zoned R-8/Residential. Applicant: Carr Homes by J. Howard Middleton, Jr., attorney

COMMISSION ACTION: Deferred

29. DEVELOPMENT SPECIAL USE PERMIT #2002-0048
3517-3551 DUKE STREET
QUAKER RIDGE
Public Hearing and Consideration of a request for a development special use permit, with site plan to construct a 28 unit townhouse cluster development with tandem parking and modifications; zoned R-8/Residential. Applicant: Carr Homes by J. Howard Middleton, Jr., attorney

COMMISSION ACTION: Deferred

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 Councilwoman Woodson and carried unanimously, at 12:55 p.m., the Public Hearing Meeting of Saturday, October 18, 2003, was adjourned. The voting was as follows:

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

The meeting adjourned at 12:55 p.m.

APPROVED BY:

WILLIAM D. EUILLE MAYOR

ATTEST:

Gloria A. Sitton Deputy City Clerk

This docket is subject to change.

Full-text copies of ordinances, resolutions, and agenda items are available in the Office of the City Clerk and Clerk of the Council.

Individuals with disabilities who require assistance or special arrangements to participate in the City Council meeting may call the City Clerk and Clerk of Council's Office at 838-4500 (TTY/TDD 838-5056). We request that you provide a 48-hour notice so that the proper arrangements may be made.
