

CITY COUNCIL OF ALEXANDRIA, VIRGINIA

**Public Hearing Meeting
Saturday, January 20, 2007 - - 9:30 a.m.**

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

Absent: None.

Also Present: Mr. Hartmann, City Manager; Mr. Pessoa, City Attorney, Ms. Evans, Deputy City Manager; Mr. Jinks, Deputy City Manager; Mr. Josephson, Acting Director, Planning and Zoning (P&Z); Mr. Hunt, Urban Planner, P&Z; Mr. Webb, Urban Planner, P&Z; Mr. Milone, Division Chief, P&Z; Mr. Hannigan, Communications Director, City Manager's Office; Mr. Smith, Urban Planner, P&Z; Mr. Culpepper, Deputy Director, Transportation and Environmental Services; Ms. Pennell, Acting Director, Code Enforcement; Ms. Triggs, Acting Director, Finance; Mr. Clark, Treasurer, Finance; Mr. Noelle, City Arborist, Recreation, Parks and Cultural Activities; Mr. Blakeley, Deputy Director, Recreation, Parks and Cultural Activities; Ms. Durham, Open Space Planner, Recreation, Parks and Cultural Activities; Police Lt. Uzzell; Ms. Hood, ITS; and Mr. Lloyd.

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 the members of the Council were present except for Councilman Gaines, who arrived at 9:42 a.m.

2. Public Discussion Period.

The following person participated in the public discussion period:

(a) Frank Shaforth, 410 Virginia Avenue, thanked Council for helping the ALIVE! organization with the logistics of the food distribution at Cora Kelly Recreation Center and invited the members of Council to come participate as volunteers in the

food distribution on Saturday.

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES

ACTION CONSENT CALENDAR¹ (3-4)

Planning Commission

- 3. SPECIAL USE PERMIT #2006-0107
1106 KING STREET
RESTAURANT
Public Hearing and Consideration of a request to change the hours of operation of an existing restaurant; zoned CD/Commercial Downtown. Applicant: 1106 King Street Restaurant, LLC by David Chamowitz, agent

PLANNING COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated January 4, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 3; 01/20/07, and is incorporated as part of this record by reference.)

- 4. SPECIAL USE PERMIT #2006-0108
801 and 803 KING STREET
AUSTIN GRILL, LLC
Public Hearing and Consideration of a request for an amendment to increase seating and change the hours of operation of a restaurant; zoned CD/Commercial Downtown.
Applicant: Austin Grill, LLC by Duncan Blair, attorney

PLANNING COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated January 4, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 3; 01/20/07, and is incorporated as part of this record by reference.)

END OF ACTION CONSENT CALENDAR

WHEREUPON, upon motion by Councilwoman Pepper, seconded by Vice Mayor Macdonald and carried unanimously, City Council approved the action consent calendar, with the removal of docket item #4, as follows:

- 3. City Council approved the Planning Commission recommendation.

The voting was as follows:

Pepper "aye" Gaines "aye"

Macdonald	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	"aye"
	Smedberg	"aye"	

4. SPECIAL USE PERMIT #2006-0108
 801 and 803 KING STREET
 AUSTIN GRILL, LLC
 Public Hearing and Consideration of a request for an amendment to increase seating and change the hours of operation of a restaurant; zoned CD/Commercial Downtown.
 Applicant: Austin Grill, LLC by Duncan Blair, attorney

PLANNING COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated January 4, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 4; 01/20/07, and is incorporated as part of this record by reference.)

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

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

REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER

5. Public Hearing on the Report on the Gypsy Moth Suppression Program for Spring 2007 (#16, 12/12/06)

(A copy of the City Manager's memorandum dated January 11, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 5; 01/20/07, and is incorporated as part of this record by reference.)

The following persons participated in the public hearing:

(a) Michael Fry, 1731 Connecticut Avenue, NW, Washington, D.C., noted that the application of *Bacillus turigiensis* (B.t.) will affect the food availability for migratory birds in Alexandria. Mr. Fry offered to work with the City staff on the timing of the bird migration through Alexandria and the application of the B.t. to minimize the effect on the other caterpillars which are food supply. Mr. Fry pointed out that there is a fungus preparation and a virus preparation that is specific to gypsy moths that will not adversely affect other caterpillars.

Mr. Noelle, City Arborist, stated that the program the City participated in is a program that is sponsored by the Virginia Department of Agriculture. Mr. Noelle noted that there is probably not much flexibility in choosing the type of pesticides used but he would be happy to investigate the alternatives. Mr. Noelle also stated that there was a possibility that the natural fungus would grow and deplete the moth population, but not spraying this year could put the tree canopy in the area in jeopardy.

(b) William Young, 1021 Arlington Boulevard, E330, Arlington, expressed concern about the spraying for gypsy moth suppression in the area, particularly in Monticello Park.

(c) Paula Sullivan, 4300 Ivanhoe Place, spoke in opposition to the proposed gypsy moth suppression program and requested that other suppression alternatives be investigated.

WHEREUPON, upon motion by Councilwoman Pepper, seconded by Councilman Gaines and carried unanimously, City Council closed the public hearing. The voting was as follows:

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

A motion was made by Councilwoman Pepper to approve the program as recommended by staff with the six components listed in the City Manager's memorandum dated December 7, 2006. The motion failed for lack of a second.

WHEREUPON, upon motion by Vice Mayor Macdonald, seconded by Councilman Gaines and carried unanimously, City Council requested that City staff work with interested parties and other jurisdictions to review the issues and alternatives for gypsy moth suppression and bring a new set of recommendations for Council to consider in the next few weeks, being mindful of the timing for spraying this season. The voting was as follows:

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

6. Public Hearing and Council Consideration of the Extension of the Lease for the Warwick Pool and the Landover Park Property. (#8, 1/9/07)

(A copy of the City Manager's memorandum dated January 3, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 6;

01/20/07, and is incorporated as part of this record by reference.)

The following person participated in the public hearing:

(a) Andy Duncan, 65 Kennedy Street, President of Warwick Village Citizens Association, spoke in support of the extension of the lease for the Warwick Pool and the Landover Park Property.

Mr. Blakeley, Deputy Director of Park Operations and Capital Development, noted that the lease agreement allows the City to make improvements to the park and the pool area.

WHEREUPON, upon motion by Councilwoman Pepper, seconded by Vice Mayor Macdonald and carried unanimously, City Council closed the public hearing. The voting was follows:

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

WHEREUPON, upon motion by Councilman Smedberg, seconded by Councilwoman Pepper and carried unanimously, City Council authorized the City Manager to execute all necessary documents that are required for the extension of this lease. The voting was follows:

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

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

Planning Commission (continued)

7. SPECIAL USE PERMIT #2006-0098
520 JOHN CARLYLE STREET - UNIT 150
JERRY'S SUBS AND PIZZA RESTAURANT
Public Hearing and Consideration of a request to operate a restaurant; zoned CDD #1/Coordinated Development District. Applicant: Jerry's Systems, Inc. by Jay Ryan

PLANNING COMMISSION ACTION: Recommend Approval 5-2

(A copy of the Planning Commission report dated January 4, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 7;

01/20/07, and is incorporated as part of this record by reference.)

Acting Director of Planning and Zoning Josephson gave a brief presentation on the proposed special use permit (SUP).

The following person participated in the public hearing:

(a) M. Catharine Puskar, 2200 Clarendon Boulevard, Suite 1300, Arlington, attorney representing the applicant, spoke in support of the SUP and responded to questions from Council.

Ms. Landrum, Alexandria Economic Development Partnership, responded to questions from Council about the marketing of the area and space surrounding John Carlyle Square and the use of the space for quick service restaurants.

WHEREUPON, upon motion by Councilman Krupicka, seconded by Councilman Gaines and carried unanimously, City Council closed the public hearing. The voting was as follows:

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

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

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

8. SPECIAL USE PERMIT #2006-0101
340 HOOFFS RUN DRIVE
VIRGINIA CONCRETE COMPANY - REVIEW
Public Hearing and Consideration of a review of a special use permit for an existing concrete plant; zoned OCM(100)/Office Commercial Medium. Applicant: City of Alexandria, Department of Planning and Zoning

PLANNING COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated January 4, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 8; 01/20/07, and is incorporated as part of this record by reference.)

Acting Director of Planning and Zoning Josephson gave a brief presentation on the proposed SUP and responded to questions from Council.

The following person participated in the public hearing:

(a) Howard Middleton, 3110 Fairview Park Drive, Falls Church, attorney for the Virginia Concrete Company, spoke in support of the review and responded to questions from Council about the review.

WHEREUPON, upon motion by Councilwoman Pepper, seconded by Councilman Krupicka and carried unanimously, City Council closed the public hearing. The voting was as follows:

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

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

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

Board of Architectural Review

9. Public Hearing and Consideration of an Appeal of the Board of Architectural Review's decision approving a request for a new residential building at 804 Pendleton Street, zoned RB Residential. APPLICANT: Anna Maria and Michael Dechert. APPELLANT: Mary Noel McMillian on behalf of petitioners

(A copy of the Planning Department report dated January 20, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 9; 01/20/07, as well as a copy of the appeal, also marked Exhibit No. 1, and both are incorporated as part of this record by reference.)

Planning and Zoning Division Chief Milone and Acting Planning and Zoning Director Josephson gave a brief presentation of this appeal.

David Zuckerkandel, member of the Board of Architectural Review (BAR) - Parker-Gray, was available to answer questions from Council.

The following persons participated in the public hearing:

(a) Mary Noel McMillian, 530 North Columbus Street, appellant, spoke in opposition of the Board of Architectural Review's (BAR) decision and questioned the scale of the architectural drawings submitted to the BAR and the staff.

(b) Michele Moran, 802 Pendleton Street, spoke in opposition of the BAR's decision.

(c) Philip Moffat, 534 North Columbus Street, spoke in opposition of the BAR's decision and responded to questions from Council.

(d) Deborah Plunkett, 534 North Columbus Street, spoke in opposition of the BAR's decision.

(e) Jeff Franko, 519 North Alfred Street, spoke in opposition of the BAR's decision.

(f) Matthew D. McGill, 528 North Columbus Street, noted that the continued vacancy of the lot attracts criminal activity to the area and the BAR process does not encourage development.

(g) Joseph Fitzgerald, 532 North Columbus Street, spoke in opposition of the BAR's decision.

(h) Geraldine Madrid Davis, 523 North Alfred Street, spoke in support of the BAR's decision and the applicant, noting the continued vacancy of the lot attracts unlawful activity.

(i) W. Tom Thomas, 11320 Random Hills, #325, Fairfax, attorney representing Michael and Anna Maria Dechert, spoke in support of the BAR's decision and requested that Council uphold the BAR's decision.

(j) Michael Dechert, 7736 Wolford Way, Lorton, spoke in support of the BAR's decision and requested that Council uphold the BAR's decision.

Planning and Zoning staff responded to questions from Council about the scale of the architectural drawings, the possibility of a property line dispute between the property owners and appearance and activity of the vacant lot.

WHEREUPON, upon motion Councilman Smedberg, seconded by Councilman Gaines and carried unanimously, City Council closed the public hearing. The voting was as follows:

Smedberg	"aye"	Macdonald	"aye"
Gaines	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	"aye"

Pepper "aye"

WHEREUPON, a motion was made by Councilman Smedberg, seconded by Councilwoman Pepper, to remand the decision back to the Board of Architectural Review and staff to work with the applicant on the plan, with a particular focus on the height and scale of the proposed building.

Councilman Krupicka stated that it is important to give guidance to the BAR - Parker - Gray, in relation to height, suggesting that, at a minimum, five feet come off the top of the house, knowing that negotiation will happen in the design work. Councilman Krupicka also stated that Council expects the height to come down and the BAR, the applicant and the neighborhood can work through the process to reach a suitable compromise. Councilman Krupicka pointed out that he was not suggesting the building height has to come down to 20 feet, but it should be in the 23-24 feet area, at a minimum.

The voting was as follows:

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

10. Public Hearing and Consideration of an Appeal of the Board of Architectural Review's decision denying a request for after-the-fact approval of an awning at 515 N. Alfred Street, zoned RB Residential. APPLICANT AND APPELLANT: C. Casey Purpos and Shuan Shepard

(A copy of the Planning Department report dated January 20, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 10; 01/20/07, as well as a copy of the appeal, also marked Exhibit No. 1, and both are incorporated as part of this record by reference.)

WHEREUPON, upon motion by Councilwoman Pepper, seconded by Councilman Gaines and carried 6-1, City Council deferred the appeal at the request of the Applicant/Appellant. The voting was as follows:

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

11. Public Hearing and Consideration of an Appeal of the Board of Architectural Review's decision approving a request for demolition/encapsulation at 228 S. Pitt Street, zoned RM Residential. APPLICANT: St. Paul's Episcopal Church. APPELLANT: Townsend A. Van Fleet on behalf of petitioners

(A copy of the Planning Department report dated January 20, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 11 and 12; 01/20/07, as well as a copy of the appeal, also marked Exhibit No. 1, and both are incorporated as part of this record by reference.)

12. Public Hearing and Consideration of an Appeal of the Board of Architectural Review's decision approving a request for alterations at 228 S. Pitt Street, zoned RM Residential. APPLICANT: St. Paul's Episcopal Church. APPELLANT: Townsend A. Van Fleet on behalf of petitioners

(A copy of the Planning Department report dated January 20, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 11 and 12; 01/20/07, as well as a copy of the appeal, also marked Exhibit No. 1, and both are incorporated as part of this record by reference.)

Planning and Zoning Division Chief Milone gave a presentation of the Board of Architectural Review's decision.

Ms. Niehardt, member of the BAR - Old and Historic District, spoke on behalf of the BAR and explained their reasoning for making the decision. Ms. Niehardt also read a statement from Lori Arrasmith Quill, member of the BAR- Old and Historic District.

The following persons participated in the public hearing for docket items 11 and 12:

(a) Townsend A. "Van" Van Fleet, 26 Wolfe Street, President of the Old Town Civic Association, spoke in opposition to allowing the demolition/encapsulation and alterations to St. Paul's Episcopal Church.

(b) Douglas Thurman, 804 Duke Street, on behalf of the Old Town Civic Association, spoke in opposition to allowing the demolition/encapsulation and alterations to St. Paul's Episcopal Church.

(c) John Johansen, 221 South Pitt Street, spoke in opposition to allowing the demolition/encapsulation and alterations to St. Paul's Episcopal Church.

(d) Charles Trozzo, 209 Duke Street, on behalf of the Alexandria Historical Restoration and Preservation Commission, spoke in opposition to allowing the demolition/encapsulation and alterations to St. Paul's Episcopal Church.

(e) Elizabeth Jones, 4906 Gardner Drive, spoke in opposition to allowing the demolition/encapsulation and alterations to St. Paul's Episcopal Church and requested that Council remand the decision back to the BAR for further investigation.

(f) Duncan Blair, 524 King Street, attorney, requested that the parishioners of

St. Paul's Episcopal Church stand in support of the BAR decision. Mr. Blair spoke in support of the demolition/encapsulation and alterations to St. Paul's Episcopal Church. Mr. Blair also responded to questions from Council about the planned alterations.

(g) Tom Kerns, 4600 North Fairfax Street, architect for St. Paul's Episcopal Church, responded to questions from Council about design and construction.

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

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

WHEREUPON, upon motion by Councilwoman Pepper, seconded by Councilman Smedberg and carried unanimously, City Council supported the decision of the BAR and approved the permit to demolish/capsulate and the Certificate of Appropriateness for the alterations to St. Paul's Episcopal Church, revising condition #1, page 5 of the staff report to read as follows: "That the applicant agree to a formal and legally binding easement **or covenant to the satisfaction of the City Attorney**, that would require any alterations to the north wall of the Latrobe sanctuary, the south wall of Norton Hall, and the east and west walls of the connector elements, to be reviewed and approved by the Board, once the garth area is enclosed." The voting was as follows:

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

ORDINANCES AND RESOLUTIONS

13. Public Hearing, Second Reading and Final Passage of an Ordinance to extend temporarily the interim residential infill development regulations adopted June 27, 2006. (#8.1, 12/16/06) **[ROLL-CALL VOTE]**

(A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 13; 01/20/07, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 13; 01/20/07, and is incorporated as part of this record by reference.)

The following persons participated in the public hearing:

(a) John McClanahan, 2 & 4 Ancell Street, spoke in support of the ordinance and the proposed amendment.

(b) Amy Slack, 2307 East Randolph Avenue, spoke in opposition of the amendment to the ordinance.

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

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

WHEREUPON, upon motion Councilwoman Pepper, seconded by Vice Mayor Macdonald and carried 6-1 by roll-call vote, City Council passed the ordinance as amended to extend temporarily the interim residential infill development regulations adopted June 27, 2006. The voting was as follows:

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

The ordinance reads as follows:

ORDINANCE NO. 4472

AN ORDINANCE to extend interim residential infill development regulations as part of Section 7-1002 (RESIDENTIAL SETBACK IN LINE WITH EXISTING DEVELOPMENT), and Subsection (B) of Section 11-1710 (SUBDIVISION REQUIREMENTS-RESUBDIVISIONS), of the City of Alexandria Zoning Ordinance (Text Amendment No. 2006-0004).

WHEREAS, the City Council finds and determines that:

1. In Text Amendment No. 2006-0003, the planning commission initiated an amendment to adopt interim residential infill development regulations, and

2. The City Council has approved the adoption of Text Amendment No. 2006-0003, and adopted such regulations on June 27, 2006, by Ordinance No. 4457, to expire December 31, 2006, and

3. The Planning Commission and City Council have approved Text Amendment No. 2006-0004, to revise and extend such interim regulation until December 31, 2007, unless sooner amended or repealed by City Council, and

4. All requirements of law precedent to the adoption of this ordinance have been complied with; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 7-1002 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended, and as so amended is reenacted and reordained, to read as follows:

Sec. 7-1002 Residential setback and front door threshold height in line with existing development.

(A) Unless a different rule is specified for average setbacks, wherever the major portion of a block is developed, and the majority of the buildings built on one side of a street between two intersecting streets or between one intersecting street and a street dead end have been built with a different minimum setback than prescribed for the zone in which such buildings are located, no residential building hereafter erected or altered shall project beyond the minimum setback line so established; provided, that no dwelling shall be required to set back a distance more than ten feet greater than the setback required by the regulations of the zone in which it is located.

(B) Whenever the major portion of a block is developed, no front door threshold of a single family, two-family or townhouse residential building erected or altered after [effective date] shall exceed the average height of the front door threshold of the residential buildings built on that block (one side of a street between two intersecting streets or one intersecting street and a street dead end) by more than 20 percent, provided, that additional front door threshold height may be permitted if a special use permit is approved pursuant to section 11-500 of this ordinance, and city council determines that the proposed construction will not detract from the value of and will be of substantially the same residential character as adjacent and nearby properties. For the purpose of this paragraph, the height of the front door threshold is defined as the vertical distance between the average existing grade along the front of the building to the top of the threshold. The front door threshold shall accurately reflect the actual location of the first floor of the building, and in all cases the front door threshold shall be measured to the top of the threshold or the top of the highest elevation of the finished first floor, whichever is greater.

(C) For the purposes of this section 7-1002, where the number of buildings on one side of a street between two intersecting streets or between one intersecting street and a street dead end is either fewer than five or where the distance between streets as specified above is less than 200 feet or where the number of buildings is greater than 15 or where the distance between streets as specified above is greater than 600 feet, the director may designate an appropriate block for purposes of calculating front door threshold height without regard to intersecting streets subject to an administrative protocol similar to that applied in substandard lot cases, and subject to city council approval as part of the special use permit, if there is one, granted pursuant to this section 7-1002.

Section 2. That Subsection (B) of Section 11-1710 of the City of Alexandria Zoning Ordinance be, and the same hereby is, reenacted and reordained to read as follows:

(B) No lot shall be resubdivided in such a manner as to detract from the value of adjacent property. Lots covered by a resubdivision shall be of substantially the same character as to suitability for residential use and structures, lot areas, orientation, street frontage, alignment to streets and restrictions as other land within the subdivision, particularly with respect to similarly situated lots within the adjoining portions of the original subdivision. In determining whether a proposed lot is of substantially the same character for purposes of complying with this provision, the Commission shall consider the established neighborhood created by the original subdivision, evidence of which may be shown by (1) subdivision plat documents, including amendments to the subdivision over time, as well as the development that has occurred within the subdivision, and (2) land in the same general location and zone as the original subdivision with the same features so as to be essentially similar to the original subdivision area.

Section 3. That this ordinance shall become effective on the date and at the time of its final passage, and shall apply, *nunc pro tunc*, to all applications for land use, land development or subdivision approval provided for under the City of Alexandria Zoning Ordinance which are on January 1, 2007, pending before any city department, agency or board, or before city council, shall apply to all such applications which may be filed after such date, and shall apply to all other facts and circumstances subject to the provisions of the City of Alexandria Zoning Ordinance, except as may be provided in Article XII of the Zoning Ordinance; provided, however, that Section 1 of this ordinance shall not apply to an undeveloped lot located in a Community Unit Plan development, for which a plot plan was approved on or about July 18, 2006; and provided further that this ordinance shall expire on December 31, 2007.

14. Public Hearing, Second Reading and Final Passage of an Ordinance to Conform the City's Cigarette Tax Regulations to Recent Amendments by the Northern

Virginia Cigarette Tax Board. (#9, 01/09/07) **[ROLL-CALL VOTE]**

(A copy of the City Manager's memorandum dated January 3, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 14; 01/20/07, and is incorporated as part of this record by reference.

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. 2 of Item No. 14; 01/20/07, 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. 3 of Item No. 14; 01/20/07, and is incorporated as part of this record by reference.)

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

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

WHEREUPON, upon motion by Councilwoman Pepper, seconded by Councilman Smedberg and carried unanimously by roll-call vote, City Council passed the ordinance to conform the City's cigarette tax regulations to recent amendments by the Northern Virginia Cigarette Tax Board. The voting was as follows:

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

The ordinance reads as follows:

ORDINANCE NO. 4473

AN ORDINANCE to amend and reordain Sections 3-2-101 to 3-2-110 and 3-2-113 to 3-2-115 and to enact new Section 3-2-116, in Article I (TAX ON SALE OF CIGARETTES) of Chapter 2 (TAXATION) of Title 3 (FINANCE, TAXATION AND PROCUREMENT) of the Code of the City of Alexandria, Virginia, 1981, as amended

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article I (Tax on Sale of Cigarettes) of Chapter 2 (Taxation) of

Title 3 (Finance, Taxation and Procurement) of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by enacting amended Sections 3-2-101 to 3-2-110 and 3-2-113 to 3-2-115 and new Section 3-2-116, to read as follows:

Sec. 3-2-101 Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, except in those instances where the context clearly indicates a different meaning:

- (1) *Board* or *NVCTB* means the Northern Virginia Cigarette Tax Board.
- (2) *Carton* means any container, regardless of material used in its construction, in which packages of cigarettes are placed.
- (3) *Cigarette* means and includes any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece, made wholly or partly of cut, shredded or crimped tobacco or other plant or substitute for tobacco, whether the same is flavored, adulterated or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.
- (4) *Cigarette Machine Operator* means any individual, partnership or corporation engaged in the sale of packages of cigarettes from vending machines.
- (5) *City* means the City of Alexandria, Virginia.
- (6) *Dealer* means and includes every manufacturer's representative, self-wholesaler, wholesaler, or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the city, but does not include any person transporting cigarettes through the city, without stopping other than in the ordinary course of transportation, to a destination outside the city, provided that such cigarettes are accompanied by a receipt/bill of lading or other document indicating:
 - a. a consignee or purchaser in another state or the District of Columbia who is authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by the other jurisdiction have not been paid, unless the tax of the jurisdiction of destination has been paid and said cigarettes bear the tax stamps of that jurisdiction; or
 - b. a consignee or purchaser in the Commonwealth of Virginia, but outside the taxing jurisdiction, who possesses a Virginia Sales and Use Tax Certificate and, where applicable, any required licenses issued by the Commonwealth of Virginia or local jurisdiction of destination.

(7) *Package* means and includes any container, regardless of the material used in its construction in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which individual cigarettes are ordinarily taken when they are consumed by their ultimate user. Ordinarily a package contains 20 cigarettes, however, "package" includes those containers in which fewer or more than 20 cigarettes are placed.

(8) *Person* means and includes any individual, firm, unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership or conservator. The word "person" as applied to a partnership, unincorporated association or other joint venture means the partners or members thereof, and as applied to a corporation, shall include all the officers and directors thereof.

(9) *Place of business* means and includes any place where cigarettes are sold, placed, stored, offered for sale or displayed for sale or where cigarettes are brought or kept for the purpose of sale, consumption or distribution, including vending machines, by a dealer within the city.

(10) *Registered agent* means and includes every dealer and other person who shall be required to report and collect the tax on cigarettes under the provisions of this article.

(11) *Retail dealer* means and includes every person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale within the city to the ultimate consumer; or any person who, in the usual course of business, owns, leases, or otherwise operates within his own place of business, one or more cigarette vending machines for the purpose of sale within the city of cigarettes to the ultimate consumer; or any person who, in any manner, buys, sells, stores, transfers or deals in cigarettes for the purpose of sale within the city to the ultimate consumer, who is not licensed as a wholesaler or vending machine operator.

(12) *Sale or sell* means and includes every act or transaction, irrespective of method or means employed, including barter, exchange, or the use of vending machines or other mechanical devices or a criminal or tortious act whereby ownership or possession, or both, of any cigarettes shall be transferred within the city from a dealer, as herein defined, to any person for a consideration.

(13) *Stamp* means a small gummed piece of paper or decal used to evidence provision for payment of the tax as authorized by the Northern Virginia Cigarette Tax Board, required to be affixed to every package of cigarettes sold, distributed, or used within the city.

(14) *Store or storage* means and includes the keeping or retention of cigarettes in this city for any purpose except sale in the regular course of business.

(15) *Use* means and includes the exercise of any right or power over any cigarettes or packages of cigarettes incident to the ownership or possession of those cigarettes or packages of cigarettes including any transaction where possession is given or received or otherwise transferred, other than a sale.

(16) *User* means any person who exercises any right or power over any cigarettes or packages of cigarettes subject to the provisions of this article incident to the ownership or possession of those cigarettes or packages of cigarettes or any transaction where possession is given or received or otherwise transferred, other than a sale.

(17) *Wholesaler Dealers* means any individual, partnership or corporation engaged in the sale of cigarettes for resale into or within the city.

Sec. 3-2-102 Levy and rate.

(a) In addition to all other taxes of every kind now or hereinafter imposed by law, there is hereby levied and imposed by the city, upon every person who sells or uses cigarettes within the city, from and after the effective date of this article an excise tax equivalent to \$0.70 for each package of cigarettes sold or used within the city. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided, that the tax payable for each cigarette or cigarette package sold or used within the city shall be paid but once.

Sec. 3-2-103 Method of collection.

(a) The tax imposed by this article shall be evidenced by the use of a tax stamp and shall be paid by each dealer or other person liable for the tax under a reporting method deemed by the board to carry out the provisions of this article. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam. Each dealer or other person liable for the tax is hereby required, and it shall be his duty to collect and pay the tax and report all packages of cigarettes on forms prescribed for this purpose by the board:

(1) the quantity of Northern Virginia Cigarette Tax Board-stamped cigarettes sold or delivered to:

a. each registered agent appointed by the board for which no tax was collected;

b. each manufacturer's representative; and

c. each separate person and place of business within the city during the preceding calendar month; and

(2) the quantity of Northern Virginia Cigarette Tax Board stamps on hand,

both affixed and unaffixed on the first day and the last day of the preceding calendar month and the quantity of Northern Virginia Cigarette Tax Board stamps or Northern Virginia Cigarette Tax Board-stamped cigarettes received during the preceding calendar month;

(3) the quantity of cigarettes on hand to which the Northern Virginia Cigarette Tax Board stamp had not been affixed on the first and last day of the preceding calendar month and the quantity of cigarettes received during the preceding calendar month to which the Northern Virginia Cigarette Tax Board stamp had not been affixed; and

(4) any further information as the administrator for the board may require for the proper administration and enforcement of this article for the determination of the exact number of cigarettes in the possession of each dealer or user.

(b) Each dealer or other person liable for the tax shall file such reports with the board and pay the tax due to the board prior to the due date and shall furnish copies of any cigarette tax reports submitted to the Virginia Department of Taxation.

(c) When, upon examination and audit of any invoices, records, books, cancelled checks or other memoranda touching on the purchase, sale, receipt, storage or possession of tobacco products taxed herein, any dealer or other person liable for the tax is unable to furnish evidence to the board of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased or possessed by him, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by him without the proper tax having been paid. The board, shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due and impose a penalty of 10 percent and may impose interest of three-quarters percent per month of the gross tax due.

(d) When any dealer or other person liable for the tax files a false or fraudulent report or fails to file a report or fails to perform any act or performs any act to evade payment of the tax, the board shall administratively assess the tax due and impose a penalty not to exceed 50 percent of the tax due and interest of three-quarter percent per month of the gross tax due.

(e) The dealer or other person liable for the tax shall be notified by certified mail of the deficiency and such tax, penalty and interest assessed shall be due and payable within 10 days after notice of the deficiency has been issued. Every dealer or other person liable for the tax shall examine each package of cigarettes to ensure that the Northern Virginia Cigarette Tax Board stamp has been affixed thereto prior to offering them for sale.

(f) Any dealer or other person liable for the tax who shall receive cigarettes not bearing the Northern Virginia Cigarette Tax Board stamp shall, within one hour of

receipt of such cigarettes, commence and with all reasonable diligence continue to affix the Northern Virginia Cigarette Tax Board stamp on each and every package of cigarettes until all unstamped packages of cigarettes have been stamped and before offering the cigarettes for sale. Any dealer or other person liable for the tax who has notified the board that he is engaged in interstate or intrastate business shall be permitted to set aside any part of his stock as may be legally kept for the conduct of such interstate or intrastate business (that is, cigarettes held for sale outside the jurisdiction of the board) without affixing the stamps required by this article. Any interstate or intrastate stock shall be kept entirely separate and apart from the Northern Virginia Cigarette Tax Board stamped stock, in such a manner as to prevent the commingling of the interstate or intrastate stock with the Northern Virginia Cigarette Tax Board stock. Any dealer or other person liable for the tax found to have had untaxed cigarettes which have been lost whether by negligence, theft or any other unaccountable loss shall be liable for and shall pay the tax due thereon.

(g) It shall also be the duty of each dealer, or other person liable for the tax and he is hereby required, to maintain and to keep for a period of three years, not including the current calendar year, any records of cigarettes received, sold, stored, possessed, transferred or handled by him in any manner whatsoever, whether the same were stamped or unstamped, to make all of such records available for audit, inspection and examination and to make available at all reasonable times, the means, facilities and opportunity for making an audit, inspection or examination upon demand of the board.

Sec. 3-2-104 Registered agents.

(a) Any dealer or other person liable for the tax who shall sell, use, store, possess, distribute or transport cigarettes within or into the city shall first make application to the board to qualify as a registered agent. The application blank, which shall be supplied upon request, shall require such information relative to the nature of the business engaged in by the applicant as the board deems necessary for the administration and enforcement of this article. There is a yearly Registration Fee for all Wholesale Dealers and for all Cigarette Machine Operators. The applicant shall provide a surety bond to the board of 150 percent of the average monthly tax liability of the applicant, with a surety company authorized to do business in the Commonwealth of Virginia. The bond shall be so written that, on timely payment of the premium thereon, it shall continue in force from year to year. Any applicant whose place of business is outside the city shall automatically, by filing his application, submit himself to the board's legal jurisdiction and appoint the administrator for the board as his agent for any service of lawful process.

(b) Upon receipt of the properly completed application forms, and the required surety bond executed, the board shall determine whether the said applicant qualifies to be a registered agent. The Board will issue to said qualified applicant a yearly registered agent permit to purchase, sell, use, store, possess, distribute or transport Northern Virginia Cigarette Tax Board-stamped cigarettes within or into the

city.

(c) Registered agents shall agree to the reporting and payment requirements placed upon them by this article and the rules and regulations as from time to time may be promulgated by the board. When any registered agent's monthly report and payment of the tax is not received within the dates prescribed, the board shall impose a late reporting penalty of 10 percent of the gross tax due or \$10, whichever is greater, but in no event more than \$1,000. The board may also require the registered agent to provide proof that he has complied with all applicable laws of the Commonwealth of Virginia to legally conduct his business and to file financial statements showing all assets and liabilities. The board may revoke or suspend any registered agent's permit due to failure to file tax reports in a timely manner, non-payment of taxes due or if his cigarette tax surety bond should become impaired for any reason.

(d) All money collected as cigarette taxes under this ordinance shall be deemed to be held in trust by the dealer collecting the same until remitted to the board.

(e) Registered agents must account for all Northern Virginia Cigarette Tax Board authorized tax stamps purchased. Periodic audits may be conducted to determine any unaccounted variance between the number of stamps purchased and the number of stamps reported and an assessment will be made for all unaccounted for stamps. Any assessment of registered agents located outside the jurisdictions of the board will be based upon the average sales of packages of cigarettes by jurisdiction during the audit period. For registered agents located within the jurisdictions of the board, any assessment will be based upon the tax rate of the jurisdiction in which they are located. In addition, there will be a penalty for non-reporting of ten per cent of the gross tax due.

Sec. 3-2-105 Notice of intention by retail dealers.

(a) Retail dealers, who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes for the purpose of sale within the city shall purchase cigarettes only from registered agents giving or supplying the business trade name and business address of the location where the cigarettes will be placed for sale to the public. Cigarettes purchased for personal use cannot be brought into a business for resale. Only properly registered and licensed retail stores may sell cigarettes to the public. To be properly registered and licensed, a retail store must first have a valid Virginia state sales and use tax certificate and valid retail business license. Cigarettes must be purchased and stored separately for each business location. All copies of cigarette purchase invoices/ receipts must be retained by the retailer for a period of three years and shall be made available to Agents of the NVCTB upon request for use in conducting audits and investigations. All copies of cigarette purchase invoices/receipts must be stored at the business retail location for a period of one year from date of purchase. Failure to provide cigarette invoices/receipts may result in confiscation of cigarettes until receipts can be reviewed by the Board to verify the proper tax has been paid. It is the responsibility of each retail location to insure that all

cigarettes placed for sale or stored at that location be properly taxed and stamped. Cigarettes found without the NVCTB stamp or the proper jurisdictional tax paid will be seized by the Agents of the Board.

(b) Retail dealers must make their place of business available for inspection by Tobacco Revenue Agents to insure that all cigarettes are properly stamped and all cigarettes taxes are properly paid.

Sec. 3-2-106 Presumption of illegality; seizure of contraband goods, sealing/seizing of machines.

(a) If any cigarette machine operator or other person liable for the tax imposed by this article is found to possess any cigarettes without the jurisdictional tax-paid or the proper tax stamp affixed, there shall arise a rebuttable presumption that any such operator or other person shall be in possession of untaxed cigarettes in violation of this article.

(b) Any cigarettes placed in any vending machine within the city shall be presumed for sale within the city. Any vending machine located within the city containing cigarettes upon which the Northern Virginia Cigarette Tax Board tax stamp has not been affixed or on which the jurisdictional tax has not been paid or containing cigarettes placed so as not to allow visual inspection of the Northern Virginia Cigarette Tax Board tax stamp through the viewing areas as provided for by the vending machine manufacturer shall be presumed to contain untaxed cigarettes in violation of this article.

(c) Any cigarettes, vending machines, cigarette tax stamps, or other property found in violation of this article shall be declared contraband goods and may be seized by the board. In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes or tax stamps shall be subject to civil and criminal penalties herein provided.

(d) In lieu of seizure, the board may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of the seal from a vending machine by any unauthorized person shall be in violation of this article. Nothing in this article shall prevent the seizure of any vending machine at any time after it is sealed.

(e) All cigarette vending machines shall be plainly marked with the name, address and telephone number of owner of the machine.

Sec. 3-2-107 Illegal acts.

It shall be unlawful and a violation of this article for any dealer or other person liable for the tax:

(1) to perform any act or fail to perform any act for the purpose of evading the

payment of any tax imposed by this article or of any part thereof, or to fail or refuse to perform any of the duties imposed upon him under the provisions of this article or to fail or refuse to obey any lawful order which may be issued under this article; or

(2) to falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently forge, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any stamp, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps; or

(3) to sell, offer for sale, or distribute in the city any cigarettes upon which the Northern Virginia Cigarette Tax Board tax stamp has not been affixed or upon which the jurisdictional tax has not been paid; or

(4) to possess, store, use, authorize or approve the possession, storage or use in the city of any cigarette packages upon which the Northern Virginia Cigarette Tax Board tax stamp has not been affixed or upon which the jurisdictional tax has not been paid, except as provided in section 3-2-103(f); or

(5) to transport, authorize or approve the transportation of any cigarette packages in quantities of more than 60 packages into or within the city upon which the Northern Virginia Cigarette Tax Board tax stamp has not been affixed or upon which the jurisdictional tax has not been paid, if they are:

a. not accompanied by a receipt/bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or

b. accompanied by a receipt/bill of lading or other document which is false or fraudulent in whole or part; or

c. accompanied by a receipt/bill of lading or other document indicating:

1. a consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by the other jurisdiction have not been paid, unless the tax of the jurisdiction of destination has been paid and said cigarettes bear the tax stamps of that jurisdiction; or

2. a consignee or purchaser in the Commonwealth of Virginia, but outside the taxing jurisdiction, who does not possess a Virginia Sales and Use Tax Certificate and, where applicable, any required licenses issued by the Commonwealth of Virginia or local jurisdiction of destination;

(6) to reuse or refill with cigarettes any package from which cigarettes have been removed, for which the tax imposed has been therefore paid; or

(7) to remove from any package any stamp with intent to use or cause the same to be used after same has already been used, or to buy, sell, or offer for sale or give away any used, removed, altered or restored stamps to any person or to reuse any stamp which had theretofore been used for evidence of the payment of any tax prescribed by this article, or to sell, or offer to sell, any stamp provided for herein; or

(8) to sell, offer for sale or distribute any loose or single cigarettes; or

(9) to perform any act that violates the resolutions promulgated by the Board.

(10) except as provided in section 3-2-103(f), to transport, possess, store, use, authorize or approve the possession, storage or use of any cigarettes in quantities of more than sixty packages upon which the Northern Virginia Cigarette Tax Board tax stamp has not been affixed or upon which the jurisdictional tax has not been paid.

Sec. 3-2-108 Powers of the Northern Virginia Cigarette Tax Board.

(a) The board may delegate any of its powers to its administrator or employees and may adopt regulations regarding the administration and enforcement of the provisions of this article. The board shall be granted the following powers:

(1) to assess, collect and disburse the cigarette tax for each participating jurisdiction;

(2) to audit dealer sales of cigarettes for each participating jurisdiction;

(3) to provide information to commonwealth's attorneys, county, city or town attorneys for each participating jurisdictions;

(4) to designate an administrator;

(5) to manage the Northern Virginia Cigarette Tax Funds;

(6) to retain a certified public accountant to audit its books;

(7) to designate a depository bank or banks;

(8) to contract with member jurisdictions for administrative services;

(9) to hold and convey real and personal property;

(10) to enter into contracts;

(11) to hire, supervise and discharge its own employees;

(12) to sue and be sued in its own name;

(13) to prescribe the design of a stamp(s) and to issue and sell said stamps to authorized dealers;

(14) to establish different classes of taxpayers;

(15) to promulgate resolutions for the assessment and collection of cigarette taxes and the enforcement of this ordinance; and

(16) To conduct inspections of any place of business in order to enforce the provisions of this ordinance and all Resolutions of the Board.

(b) The board may employ legal counsel, bring appropriate court actions in its own name to enforce payment of the cigarette tax or penalties owed, and file tax liens against property of taxpayers hereunder.

(c) The board is authorized to enter into an agreement with the Virginia Department of Taxation under which a registered agent with the NVCTB who is also qualified to purchase Virginia revenue stamps, may qualify to purchase dual Virginia-NVCTB stamps from the Virginia Department of Taxation. Authority to purchase dual Virginia-NVCTB stamps is granted solely by the board and may be revoked or suspended for violations of this ordinance or resolutions adopted by the board.

(d) The board may appoint certain employees as tobacco revenue agents, who shall be required to carry proper identification while performing their duties. Tobacco Revenue Agents are further authorized to conduct inspections of any place of business and shall have the power to seize or seal any vending machines, seize any cigarettes, counterfeit stamps or other property found in violation of this article and shall have the power of arrest upon reasonable and probable cause that a violation of this article has been committed. The board is authorized to provide its tobacco revenue agents with (i) firearms for their protection, (ii) emergency-equipped vehicles while on duty, and (iii) other equipment deemed necessary and proper.

(e) The board may exchange information relative to the sale, use, transportation or shipment of cigarettes with an official of any other jurisdiction entrusted with the enforcement of the cigarette tax laws of said other jurisdiction.

Sec. 3-2-109 Jeopardy assessment.

If the administrator for the board determines that the collection of any tax or any amount of tax required to be collected and paid under this article will be jeopardized by delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of the assessment to the taxpayer together with a

demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy, including penalties and interest. In the case of a current period, for which the tax is in jeopardy, the administrator may declare the taxable period of the taxpayer immediately terminated and shall cause notice of this finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and the tax shall be immediately due and payable, whether or not the terms otherwise allowed by this article for filing a return and paying the tax has expired.

Sec. 3-2-110 Erroneous assessment; notices and hearing in the event of sealing of vending machines or seizure of contraband property.

(a) Any person assessed by the board with a cigarette tax, penalties and interest or any person whose cigarettes, vending machines and other property have been sealed or seized under processes of this article, who has been aggrieved by such assessment, seizure, or sealing, may file a request for a hearing before the administrator for the board for a correction of such assessment and the return of such property seized or sealed. Where holders of property interest in cigarettes, vending machines or other property are known at the time of seizure and sealing, notice of the seizure or sealing shall be sent to them by certified mail within 24 hours. Where such holders of property interest are unknown at time of seizure or sealing, it shall be sufficient notice to such unknown interest holders to post such notice to a door or wall of the room or building which contains the seized or sealed property. Any such notice of seizure or sealing shall include procedures for an administrative hearing for a return of such property seized or sealed as well as affirmative defenses set forth in this section which may be asserted.

(b) The hearing shall be requested within 10 days of the notice of such assessment, seizure or sealing and shall set forth the reasons why the tax, penalties and interest and cigarettes, vending machines or other property should be returned or released. Within five days after receipt of the hearing request the administrator shall notify the petitioner by certified mail of a date and time for the informal presentation of evidence at a hearing to be held within 15 days of the date notification is mailed. Any such request for hearing shall be denied if the assessed tax, penalties and interest have not been paid as required or if the request is received more than 10 days from first notice to the petitioner of such seizure or sealing. Within five days after the hearing, the administrator shall notify the petitioner, by registered mail, whether his request for a correction has been granted or refused.

(c) Appropriate relief shall be given by the administrator if he is convinced by the preponderance of the evidence that said seized cigarettes were in the possession of a person other than the petitioner without the petitioner's consent at the time said cigarettes, vending machines or other property were seized or sealed or that petitioner was authorized to possess such untaxed cigarettes. If the administrator is satisfied that the tax was erroneously assessed, he shall refund the amount erroneously assessed together with any interest and penalties paid thereon and shall return any cigarettes,

vending machines or other property seized or sealed to the petitioner. Any petitioner who is unsatisfied with the written decision of the board may, within 30 days of the date of such decision, appeal the decision of the appropriate court in the jurisdiction where the seizure or sealing occurred.

Sec. 3-2-113 Extensions.

The administrator, upon a finding of good cause, may grant an extension of time to file a tax report upon written application for a period not exceeding 30 days. Except as hereinafter provided, no interest or penalty shall be charged, assessed or collected by reason of the granting of an extension.

Sec. 3-2-114 Penalty for violation of article.

Any person violating any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$2,500.00 or imprisonment for not more than 12 months or by both fine and imprisonment. Any fine and/or imprisonment shall not relieve any person from the payment of any tax, penalty or interest imposed by this article.

Sec. 3-2-115 Each violation a separate offense.

The sale of any quantity or the use, possession, storage or transportation of more than 60 packages of cigarettes upon which the Northern Virginia Cigarette Tax Board tax stamp has not been affixed or the proper jurisdictional tax has not been paid shall be deemed to constitute a separate violation. Each continuing day of violation shall be deemed to constitute a separate offense.

Sec. 3-2-116 Severability.

If any section, phrase or part of this article should for any reason be held invalid by a court of competent jurisdiction, such decision shall not affect the remainder of the article; and every remaining section, clause, phrase or part thereof shall continue in full force and effect.

Section 2. That this ordinance shall become effective upon the date and at the time of its final passage.

15. Public Hearing, Second Reading and Final Passage of an Ordinance to Increase Certain Parking Ticket Fines. (#10, 01/09/07) **[ROLL-CALL VOTE]**

(A copy of the City Manager's memorandum dated January 4, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 15; 01/20/07, and is incorporated as part of this record by reference.

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. 2 of Item No. 15; 01/20/07, 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. 3 of Item No. 15; 01/20/07, and is incorporated as part of this record by reference.)

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

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

Deputy City Manager Jinks recommended that the parking fines for the 72-hour parking violation remain at \$25.

WHEREUPON, upon motion by Vice Mayor Macdonald, seconded by Councilwoman Pepper and carried unanimously by roll-call vote, City Council passed the ordinance as amended to increase certain parking ticket fines. The voting was as follows:

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

The ordinance reads as follows:

ORDINANCE NO. 4474

AN ORDINANCE to amend and reordain Section 3-2-354 of Article S (PAYMENT, CONTEST AND ENFORCEMENT OF PARKING CITATIONS) of Chapter 2 (TAXATION) of Title 3 (FINANCE, TAXATION AND PROCUREMENT) of the Code of the City of Alexandria, Virginia, 1981, as amended

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article S (Payment, Contest and Enforcement of Parking Citations) of Chapter 2 (Taxation) of Title 3 (Finance, Taxation and Procurement) of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by enacting an amended Section 3-2-354, to read as follows:

Sec. 3-2-354 Penalties for uncontested citations.

Any other provisions of this code to the contrary notwithstanding, the penalty for any of the following violations of this code shall, when the citation which was issued for the violation is uncontested, be as follows:

(a) If a payment is tendered to the director of finance within 30 calendar days from the date the citation was issued:

- (1) \$40 for a violation of section 10-4-1, "Stopping contrary to directions of police officers;"
- (2) \$40 for a violation of section 10-4-2, "Permitting vehicle to remain parked contrary to the directions of an official sign;"
- (3) \$40 for a violation of section 10-4-3, "Right to parking space;"
- (4) \$40 for a violation of section 10-4-4, "Stopping so as to obstruct traffic or on crossing;"
- (5) \$40 for a violation of section 10-4-5, "Double parking;"
- (6) \$40 for a violation of section 10-4-6, "Parking trucks or commercial vehicles in residential districts;"
- (7) \$40 for a violation of section 10-4-7, "Parking of vehicles by businesses on streets;"
- (8) \$25 for a violation of section 10-4-8, "Parking for more than 72 continuous hours;"
- (9) \$40 for a violation of section 10-4-9, "Parking trailers or recreational vehicles in residential districts;"
- (10) \$40 for a violation of section 10-4-10, "Parking on sidewalk;"
- (11) \$40 for a violation of section 10-4-11, "Parking in alleys or courts;"
- (12) \$40 for a violation of section 10-4-12, "Parking of vehicles on private property;"
- (13) \$40 for a violation of section 10-4-13, "Stopping for purpose of sale, repairs, etc.;"
- (14) \$40 for a violation of section 10-4-14, "Use of bus stops;"
- (15) \$40 for a violation of section 10-4-15, "Stopping for loading or unloading passengers or cargo generally;"
- (16) \$40 for a violation for section 10-4-16, "Permit for parking truck beside railroad car on public right-of-way;"
- (17) \$40 for a violation of section 10-4-17, "Angle parking for loading and unloading;"
- (18) \$40 for a violation of section 10-4-18, "Use of loading zones;"
- (19) The amount set by order of the Supreme Court of Virginia, pursuant to section 16.1-69.40:1 of the Code of Virginia, as amended, for a violation of subsection (a) of section 10-3-1242, "Parking in spaces reserved for persons with a disability;"
- (20) \$25 for a violation of section 10-4-22, "How meter and space to be used;"
- (21) \$25 for a violation of section 10-4-23, "Overtime parking;"
- (22) \$25 for a violation of section 10-4-24, "Depositing coin in meter for purpose of extending time;"
- (23) \$25 for a violation of section 10-4-25, "Permitting vehicle to remain parked at meter after expiration of time limit;"

- (24) \$40 for a violation of section 10-4-28, "Parking across lines designated parking space;"
- (25) \$40 for a violation of section 10-4-30, "Interfering with enforcement of chapter;"
- (26) \$40 for a violation of section 10-4-33, "Use of metered parking lots by vehicles other than private passenger automobiles;"
- (27) \$40 for a violation of section 10-4-34, "Parking illegally in permit parking districts;"
- (28) \$40 for a violation of section 5-8-114, "Designation of parking spaces; parking across lines;"
- (29) \$40 for a violation of section 10-4-40, "Location of parked vehicles;"
- (30) \$40 for a violation of section 10-4-37, "Failure to procure and display city license plate, windshield tag or decal;"
- (30A) \$40 for a violation of section 10-4-37.1, "Enforcement of the Northern Virginia Local Motor Vehicle License Compact;"
- (31) \$40 for a violation of section 10-4-38, "Parking without display of current state inspection sticker or current state license plate;"
- (32) \$40 for a violation of section 10-4-39, "Temporary parking prohibited;"
- (33) \$40 for a violation of section 9-12-162, "Use of locations other than designated parking spaces by sight-seeing buses;"
- (34) \$40 for a violation of section 9-12-163, "Use of parking spaces designated for use by sight-seeing buses by other vehicles;"
- (35) \$40 for a violation of section 9-12-164, "Use of designated spaces by sight-seeing buses;"
- (36) The amount set by order of the Supreme Court of Virginia, pursuant to section 16.1-69.40:1 of the Code of Virginia, as amended, for a violation of section 10-4-41, "Parking prohibited at certain locations;"
- (37) The amount set by order of the Supreme Court of Virginia, pursuant to section 16.1-69.40:1 of the Code of Virginia, as amended, for a violation of section 10-4-42, "Parking prohibited near fire hydrant, etc.;"
- (38) \$40 for a violation of section 10-4-35, "Parking in two-hour parking zones in the central business district;"
- (39) \$40 for a violation of section 10-4-36, "Removal of chalk marks placed for enforcement purposes;"
- (40) \$40 for a violation of section 3-2-336, "Offenses relating to city license plate, windshield and decal."

(b) If payment is not tendered to the director of finance with 30 calendar days of the date the citation is issued, a penalty of \$25 in addition to the penalty imposed by subsection (a) for the violation for which the citation was issued; provided, that, in the event the 30th calendar day from the date the citation is issued is a Saturday, Sunday or legal holiday, such additional penalty shall not be imposed if payment is tendered in the amount required by subsection (a) on the next succeeding business day; provided further, that if payment is remitted to the director of finance in a sealed envelope bearing a postmark on or before midnight of the 30th calendar day from the date the citation is issued, no such additional penalty shall be imposed; and provided further, that the director of finance may waive such additional penalty, even though payment

has not been tendered or mailed within 30 calendar days of the date the citation was issued, whenever the owner of the vehicle identified in the citation establishes any of the following to the satisfaction of the director:

- (i) that the owner did not find the citation at the time of its issuance on the owner's vehicle and only learned of the citation after the day on which it was issued, and has tendered the required payment with 30 days of first learning of the citation;
- (ii) that, within 30 days after the issuance of the citation or, if later, after first learning of the citation, the owner has made a written request to the director for information concerning the citation, and has tendered the required payment within 30 days of the director's response; or
- (iii) that the owner was medically incapable of making the required payment within 30 calendar days of the date the citation was issued.

Section 2. That this ordinance shall become effective on February 1, 2007.

OTHER

- 16. Deferred from the January 9, 2007 and December 16, 2006, City Council Meetings:
Special Use Permit #2006-0096, 917 Princess Street, Child Care Center. Consideration of a request to operate a child care center within a church; zoned RB/Residential. Applicant: Maria Bustinza. Planning Commission Action: Recommend Approval 5-0 (#3, 12/16/06, #21, 1/9/07) (This item is not a public hearing.)

(A copy of the Planning Department report dated January 18, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 16; 01/20/07, and is incorporated as part of this record by reference.)

Acting Planning and Zoning Director Josephson gave Council an update on the meetings with the applicant and surrounding community concerning the proposed SUP and recommended that Council approve the proposal.

WHEREUPON, upon motion by Councilman Krupicka, seconded by Councilman Smedberg and carried unanimously, City Council approve the Planning Commission recommendation. The voting was as follows:

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

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

DEFERRAL/WITHDRAWAL CONSENT CALENDAR (17-18)

Planning Commission (continued)

17. SPECIAL USE PERMIT #2006-0109
1901 BALLENGER AVENUE (Parcel Address: 1900 Jamieson Avenue)
STARBUCKS COFFEE
Public Hearing and Consideration of a request to operate a coffeehouse (restaurant); zoned CDD-1. Applicant: Starbucks Coffee by Jonathan Dandois

PLANNING COMMISSION ACTION: Deferred

18. SPECIAL USE PERMIT #2006-0112
4653 DUKE STREET (Parcel Address: 4513 Duke Street)
CARIBOU COFFEE
Public Hearing and Consideration of a request to operate a coffeehouse (restaurant); zoned CG/Commercial General. Applicant: Caribou Coffee by Michael Zwiefel

PLANNING COMMISSION ACTION: Deferred

END OF DEFERRAL/WITHDRAWAL CONSENT CALENDAR

City Council noted the deferrals.

THERE BEING NO FURTHER BUSINESS TO BE CONSIDERED, upon motion by Councilwoman Pepper, seconded by Councilman Macdonald and carried unanimously, City Council adjourned the public hearing meeting of January 20, 2007, at 2:03 p.m. The voting was as follows:

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

APPROVED BY:

WILLIAM D. EUILLE

MAYOR

ATTEST:

Gloria A. Sitton, CMC

Deputy City Clerk