

EXHIBIT NO. 1

8
4-14-07

Docket Item #8
Text Amendment #2007-0001

COVERED OPEN FRONT PORCHES
OPEN COVERED LANDINGS

Planning Commission Meeting
April 3, 2007

ISSUE: Consideration of a text amendment to Section 11-1300 of the zoning ordinance allowing ground level covered open porches in required front yards by special exception; amending the zoning regulations applicable to open covered landings in all yards (Section 7-200)

STAFF: Department of Planning and Zoning

PLANNING COMMISSION ACTION, APRIL 3, 2007: On a motion by Mr. Dunn, seconded by Ms. Lyman, the Planning Commission voted to recommend approval of the request, subject to compliance with all applicable codes, ordinances and staff recommendations, and an amendment to add "single story" to Section 11-1302 (C). The motion carried on a vote of 7 to 0. The Commission also directed staff and the BZA to review the appeal process in light of all special exceptions and to bring forward a study, if warranted.

Reason: The Planning Commission agreed with staff's analysis.

Speakers:

Mr. Michael Curry, Chair, Board of Zoning Appeals and resident at 1418 Julianna Place, spoke in support and provided background to the Planning Commission regarding how and why the proposed text amendment was crafted.

Mr. Poul Hertel, resident at 1217 Michigan Court, had concerns with the subjectivity of the Board's decisions in Special Exception cases and the potential for this text amendment to change the identity of neighborhoods. He felt these cases should be ultimately appealed to an elected body, City Council.

Ms. Amy Slack, Del Ray Land Use Committee and resident at 2307 East Randolph Avenue, had concerns regarding application of the two existing Special Exception processes. She indicated that the intent of the Special Exceptions is great, but is concerned that it will harm the integrity of the neighborhoods.

Ms. Katy Cannady, 20 East Oak Street, spoke in favor of an appeal process to City Council, which would be easier and less expensive for citizens than an appeal to the Circuit Court.

TA #2007-0001
Covered Open Landings and Front Porch Regulations

Mr. David Fromm, 2307 East Randolph Avenue, asked that some of the text language be clarified. He was concerned about the amount of mass that some porches could bring towards the street and requested that it be clarified that the porches under this process could only be one-story and that "ground level" be defined. He also questioned whether this would apply to both new and old construction.

Mr. Gaver Nichols, resident at 319 East Monroe Avenue and local architect, spoke in support of the proposed text amendment. He stated the sizes and the definitions are adequate to meet the desires of his clients.

Mr. Geoffery Goodale, 493 Naylor Place, attorney and newly appointed BZA member, spoke in support of the proposed text amendment and the narrowly crafted criteria to approve a porch as a special exception. He spoke to the legality of BZA appeals and the language in the State Statute which directs BZA appeals to the Circuit Court versus City Council.

Mr. Steven Koenig, 231 East Spring Street, and former BZA member, spoke in support and provided background to the Planning Commission regarding how and why the proposed text amendment was crafted. He did not see the reason why this small percentage of cases should be appealed to City Council when all other decisions of the Board are appeal to the Circuit Court.

PLANNING COMMISSION ACTION, MARCH 6, 2007: The Planning Commission noted the deferral of the request.

Reason: Staff requested a deferral.

STAFF RECOMMENDATION: Staff recommends that the Planning Commission recommends **approval** of the proposed text amendment.

Covered Open Landings and Front Porch Regulations

DISCUSSION

The special exception process enables the Board of Zoning Appeals to provide a property owner relief from the requirements of the zoning ordinance without the necessity of meeting the rigorous hardship standards imposed by law on applicants for a variance. Instead, a special exception may be granted by the Board of Zoning Appeals if it finds that the proposal does not harm the adjacent neighbors, the neighborhood, or the public welfare; that the proposal will be compatible with and not alter the essential character of the area; and that the proposal is the only reasonable means and location for the proposed structure, given the constraints of the lot. The existing special exception rules in the zoning ordinance now apply to additions and fences on corner lots.

The current proposal is to expand the special exception rules to allow the Board of Zoning Appeals (BZA) to grant a special exception to a property owner who seeks to build an open, ground level, covered front porch beyond what is now allowed under the zoning ordinance. A property owner must now seek a variance and demonstrate hardship to build a front porch in a required front yard.

During the past few years, the BZA has been faced with the difficult task of ruling on variances filed by home owners desiring to build covered open porches built into the required front yards of their properties. The majority of the cases did not meet the criteria outlined for a variance. The BZA in many instances were able to craft reasonable recommendations in support of the variance. However, the BZA was increasingly uncomfortable approving porch requests by variance. The BZA requested staff to analyze prior porch approvals to determine what would be considered a reasonable front porch projection and if the current special exception rules could be expanded to include front porches.

In the spring of 2005, a subcommittee of the BZA met to review prior board decisions and the accompanying porch cases granted for residentially zoned single-family, two-family and townhouse homes.

Staff analyzed cases from 1992 to the present. Of the total number of variance cases heard (776 cases) since 1992, less than 7 percent (50 cases) of the total number of variance cases heard were for open covered porches (4 cases were denied). Nearly 75 percent of the variances approved were for noncomplying structures (where the existing house currently projects into the required front setback specified by the applicable zone). Of the total cases approved, 26 percent (13 cases) were for complying structures and 74 percent (37 cases) were for noncomplying structures. The porch projection granted based upon the applicable zoning category (limited to the R-20, R-8, R-5, R-2-5 and RB zones) ranged from 6 feet to 8 feet. The average front yard variance approved was approximately 12 feet from the required setback. Attached is a summary table of the porch cases approved, denied and withdrawn, the number of porch cases organized by specific zones, approved projection, and if the existing dwelling was either a complying or noncomplying structure. (Refer to Table 1).

TA #2007-0001
Covered Open Landings and Front Porch Regulations

The majority of the open porch cases heard occurred in the R-8, single family zone. Although the average porch projection approved was approximately 6.50 feet, there was found to be no consistent pattern of porch projection approved. In other words, porch projections varied by depth, by type of structure (noncomplying or complying) and by zone.

It should be noted that a special exception does not require the applicant to demonstrate a legal hardship. Although the special exception will allow the applicant and the Board more leeway to approve proposed projects, staff and the BZA also weighed the potential negative consequences of allowing front porches to project into required front yards. Several of the major impacts discussed included the following.

- (1) Open porches can significantly alter the existing front building line, particularly as it relates to existing noncomplying structures. New building mass and floor area, although open, will be brought closer to the front property line resulting in existing building line forever altered.
- (2) Open porches can result in the loss of open front lawn which in part acts as a transition area between the public and private space. Also, loss of existing trees and landscaping could occur.

Based upon the above findings, the BZA subcommittee and staff crafted new rules regarding covered open front porches in any residential zone. The proposed expanded special exception rules allow an 8 feet wide ground level covered open porch to be built on the front of a single-family, two-family or townhouse dwelling. The location of a ground level porch is limited to the front building wall that constitutes the main architectural entrance of a house. In no instance may a new covered open porch approved under the special exception reduce the front yard to less than 15 feet to the front property line. (See attached examples.) A front porch and its roof line shall be compatible and in scale with the existing building architecture, neighboring properties and neighborhood character. No second floor balcony, deck or building enclosure is permitted above a new ground level front porch. Finally, the new porch shall remain open except for the necessary porch railings required by the building code.

The current proposal makes the special exception procedure applicable only to ground level front covered porches proposed for residentially zoned single-family, two-family and townhouse homes. In addition, staff recommends that additional definitions be added to section 2 of the zoning ordinance to more properly define porches, porticos and canopies as well as define a primary front yard and secondary front yard. The new text language slightly modifies current rules regarding the amount of projection allowed for a front canopy or awning as well as adds new language to the permitted front yard projections to include front porticos.

TA #2007-0001
Covered Open Landings and Front Porch Regulations

Staff has discussed the proposed text language with the Board of Zoning Appeals, who reviewed the proposed text favorably in December 2006 and voted unanimously to forward the new text language to the Planning Commission.

In January 2007, staff met with the Federation of Civic Associations to explain the proposed porch text amendment. Comments offered at that meeting included a request to add an appeal process to City Council. Staff drafted a new section 11-1309 of the zoning ordinance that would allow an applicant or an opponent of the Board of Zoning Appeals decision to appeal the decision on covered open porches to City Council. The appeal wording was drafted and included in the March 6, 2007, text amendment sent to the Planning Commission

Since the Board of Zoning Appeals did not review the proposed appeal language inserted by staff at the time the text amendment was forwarded to the Planning Commission, the BZA requested the text amendment be deferred to enable the BZA to discuss the appeal language. At the March 8, 2007, BZA public hearing, the BZA unanimously voted to reaffirm support of the proposed text amendment, with the recommendation to exclude new appeal language. The BZA strongly opposes a separate appeal process for this special exception since the zoning ordinance, City Charter and State Code currently authorizes the appeal process to Circuit Court.

The City Attorney has advised staff that if the Planning Commission wishes to add appeal language it can be incorporated into the proposed text amendment without a change in the City Charter.

Staff recommends that the Planning Commission recommend **approval** of the proposed text amendment.

STAFF: Richard Josephson, Deputy Director, Planning and Zoning; Stephen Milone, Chief; Peter Leiberg, Zoning Manager; Mary Christensen, Urban Planner.

BZA: Michael Curry (Chair), Mark Allen (Vice Chair), Jennifer Lewis, David Lantzy, and Stephen Hubbard. Newly appointed members Geoffrey Goodale and Eric Zander. Mary Lyman (appointed to Planning Commission) and Stephen Koenig (retired).

PROPOSED TEXT CHANGES:

The following changes are proposed to permit ground level covered open front porches to be built by special exception approval into required front yards for residentially zoned single-family, two-family and townhouse homes provided that the porch proposed is architecturally compatible and in scale with the existing building.

Sec. 7-202(A) (2)(a) Awnings and canopies provided they do not project more than ~~four~~ five feet in depth from the existing building facade.

Sec.7-202(A)(2)(b) Portico is permitted to project not more than 6.00 feet from the main building wall by 9.00 feet in length which includes the roof overhang and must remain open.

Sec.7-202(D) In any residential zone a ground level covered open front porch is permitted on a single-family, semi-detached, duplex and townhouse dwelling and may project a maximum of eight feet from the front building wall into the required primary front yard with the approval of a special exception as outlined under section 11-1302 of the zoning regulations.

Sec. 11-1302 Covered Front Porch

(C) A ground level, single story covered front porch is limited to the main architectural entrance of a dwelling facing a primary front yard with the following requirements:

(1) Yard and setback requirements applicable:

(a) A maximum projection of eight feet for the porch deck is permitted from the front building wall.

(b) The front building wall is the main building wall which extends for more than 50 percent of the length of the building containing such wall.

(c) The primary front yard shall not be reduced to less than fifteen feet from the front property line.

(2) A ground level covered front porch shall be compatible with the existing building architecture, neighboring properties and neighborhood character and comply with the following

Covered Open Landings and Front Porch Regulations
requirements:

- (a) No portion of the porch shall extend beyond the side walls of the front building facade except where the lot has a complying side or front yard.
- (b) A porch roof line shall be in scale with the existing building architecture.
- (c) No second floor balcony, deck or enclosed construction is permitted above the front porch.
- (d) A ground level covered front porch shall remain open and cannot be enclosed with building walls, glass or screens except with railings which are a minimum of 50 percent open.

Definitions

- Sec.2-119(a) **Awning and Canopy.** A small roof projection without columns made of fabric or solid material usually suspended or cantilevered from the building wall entrance(s) and/or windows.
- Sec. 2-148.1 **Front Porch.** A covered landing attached to the exterior of a residential building and generally extends along a portion of or the entire length of the front building wall.
- Sec.2-183.2 **Portico.** A small roof projection with or without columns or brackets above an open landing attached to the exterior of the primary front entrance of a residential building.
- Sec. 2-205.1 **Yard, front primary.** The front yard of a corner lot which contains a building's main architectural entrance and identified by its address number.
- Yard, front secondary.** The other front yard of a corner lot facing a street shall be considered the secondary front yard and may include an entrance but not a building's main architectural entrance.

Note: New text is underlined; deleted text is shown with a ~~strikethrough~~.

Covered Open Landings and Front Porch Regulations

TABLE 1

**BOARD OF ZONING APPEALS WORKSHOP FEBRUARY 10, 2005
SUMMARY OF FRONT YARD VARIANCES APPROVED TO ALLOW OPEN
COVERED PORCHES *
1992 TO THE PRESENT**

<u>Zone</u>	<u># of Cases</u>	<u>Houses</u>		<u>Avg Porch Proj</u>	<u>Avg Var. App</u>	<u>Req Setbk</u>	<u>Avg Front Setback</u>
		<u>#Comply</u>	<u># Noncom</u>				
R-2-5	9	1	8	6.59 ft	15.10 ft	25 ft	19.31 ft
R-5	11	7	4	6.10 ft	7.80 ft	25 ft	17.47 ft
R-8	26	3	23	6.69 ft	9.60 ft	30 ft	20.69 ft
R-20	2	2	0	7.75 ft	11.00 ft	40 ft	29.00 ft
RB	<u>2</u>	<u>0</u>	<u>2</u>	<u>5.75 ft</u>	<u>16.45 ft</u>	<u>20 ft *</u>	<u>3.55 ft</u>
Total	50	13	37	6.50 ft	12.22 ft		

*outside the historic districts

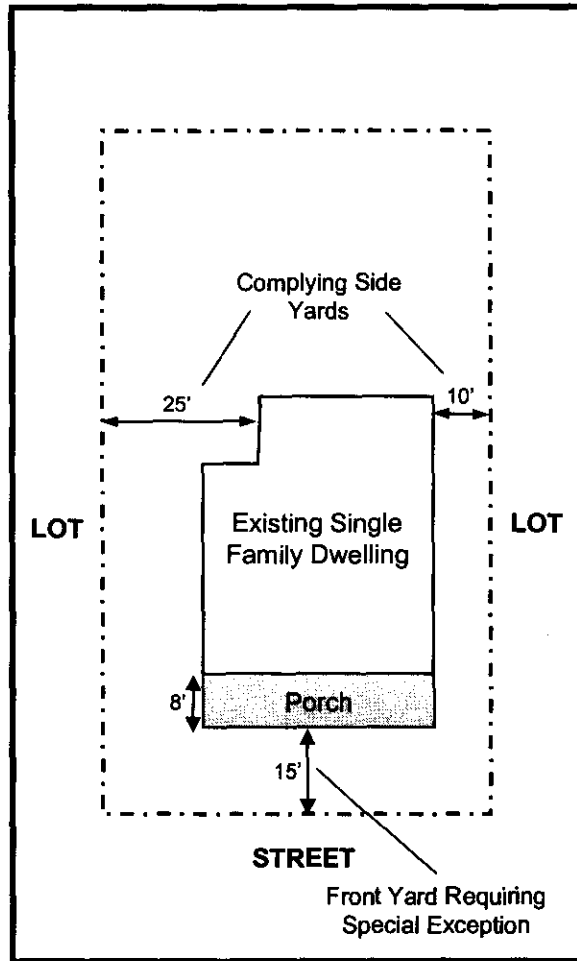
ZONING ANALYSIS OF APPROVED OPEN COVERED PORCHES

- (1) There were 776 variance cases heard by the BZA from 1992 to the present. Porch variances constituted 6.4 % of the total number of cases heard.
- (2) A total of 50 porch cases were approved by the BZA from 1992 to the present.
- (3) A total of 4 cases were denied by the BZA.
- (4) Of the total cases approved 26 percent (13 cases) were for complying structures.
- (5) Of the total cases approved 74 percent (37 cases) were for noncomplying structures where the houses currently project into the required front yard.
- (6) The average porch projection is 6.50 feet. Porch projection based upon the applicable zoning category ranged from 6 feet to 8 feet.

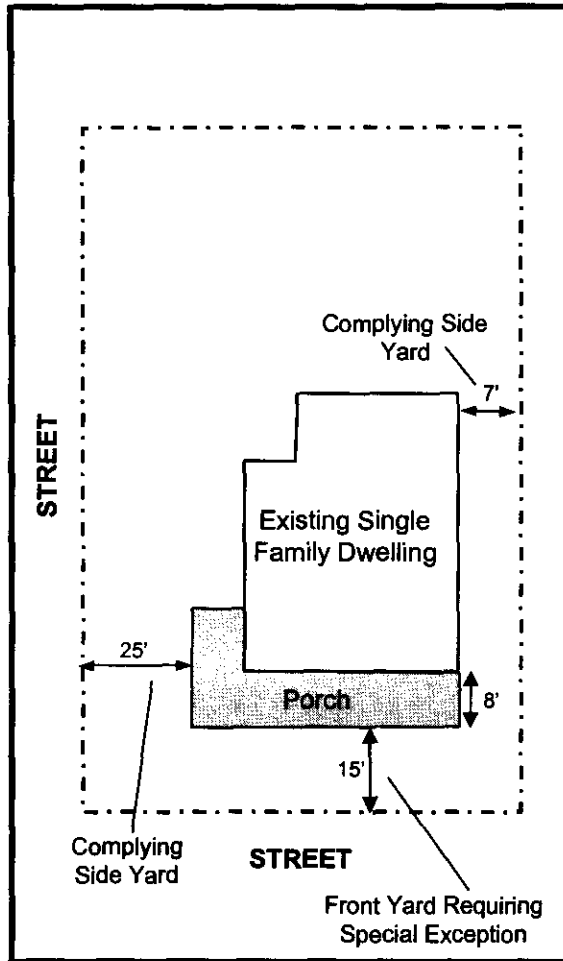
The average front yard variance approved was approximately 12 feet. The variance approved based upon the applicable zoning category ranged from 8 feet to 17 feet.

Examples

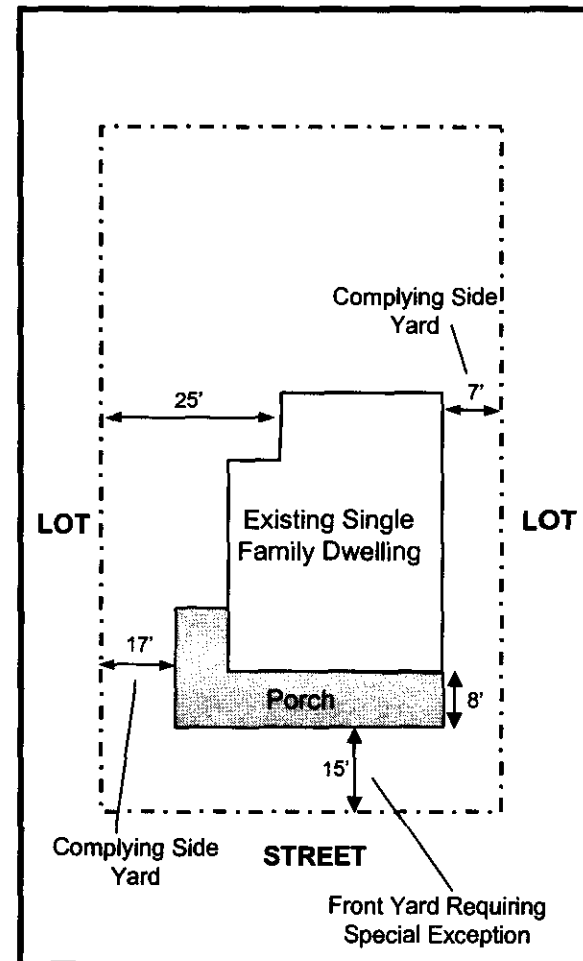
Covered Open Porches Eligible for a Special Exception



Interior Lot with covered front porch requiring Special Exception, in compliance with required side yards.



Corner lot with covered front porch requiring Special Exception, in compliance with required side and secondary front yard.



Interior lot with covered front porch requiring Special Exception, in compliance with required side yards.

TEXT AMENDMENT # 2007-0001

ISSUE DESCRIPTION: Consideration of a text amendment to Section 11-1300 of the zoning ordinance allowing ground level covered open porches in required front yards by special exception; amending the zoning regulations applicable to open covered landings in all yards (Section 7-200)

ZONING ORDINANCE SECTION: Section 11-1300

CITY DEPARTMENT: Planning and Zoning

PLANNING COMMISSION ACTION _____

CITY COUNCIL ACTION _____

TEXT AMENDMENT # 2007-0001

ISSUE DESCRIPTION: Consideration of a text amendment to Section 11-1300 of the zoning ordinance allowing ground level covered open porches in required front yards by special exception; amending the zoning regulations applicable to open covered landings in all yards (Section 7-200)

ZONING ORDINANCE SECTION: Section 11-1300

CITY DEPARTMENT: Planning and Zoning

PLANNING COMMISSION ACTION RECOMMENDED APPROVAL w/ amendments

7-0 4/3/07

CITY COUNCIL ACTION 4/14/07 - City Council approved the Planning
Commission recommendation 7-0 (see attachment)

the vacation, what would be necessary for the applicant to put an easement on this portion of the land to ensure it never has the opportunity to be developed .

Vice Mayor Macdonald withdrew his original motion .

The voting was as follows :

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

8. TEXT AMENDMENT #2007-0001

COVERED OPEN PORCHES /LANDINGS

Public Hearing and Consideration of a request to amend Section 11-1300 of the Zoning Ordinance allowing covered open porches in required front yards by special exception, and Section 7-200 amending the zoning regulations applicable to open covered landings in all yards . Staff: Department of Planning and Zoning

PLANNING COMMISSION ACTION : Recommend Approval w/amendments 7-0

(A copy of the Planning Commission report dated April 3, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item. No. 8, 4/14/07, and is incorporated as part of this record by reference .)

Mr. Milone made a presentation of the staff report and responded to questions of Council.

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

(a) Stephen Koenig, 2231 East Spring Street, spoke in favor of the text amendment. He said on the appeal, he asked if a change in the appeal process was necessary, what would be the nature of the appeal process, and what is the impact on the process and the nature of the BZA 's work.

(b) David Fromm, 2307 E. Randolph Avenue, spoke in favor of the text amendment, asking for clarification on the intent of the special exception criteria, asking what the definition of "ground level" is, does the text amendment apply to new construction, and does the text amendment allow a house to be remodeled by absorbing a complying porch into the house and then using the exception to add a porch into the setback.

(c) Michael Curry, 1418 Julianna Place, a member of the Board of Zoning Appeals, spoke about why the BZA has to meet a level of hardship. A way to allow citizens to have more use of their homes and be connected to their neighbors is to allow them to have a front porch and noted why the BZA can deny a special exception,

even if one meets the criteria for it.

(d) Poul Hertel, 1217 Michigan Court, said one of the fundamental issues is just how fundamentally important porches are to the look and appearance of different areas. He said what they are dealing with is hardship, but the legal appeal is one of process only. He said because they are changing the ordinance, that means the appeal process has to change commensurate with it. He said the elected body, the City Council, must be the place for a community to appeal the decisions, and he urged the appeal process be incorporated.

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 by Councilwoman Pepper, seconded by Councilman Krupicka and carried unanimously, City Council approved the Planning Commission recommendation, with an amendment to page 6, section 11-1302(c)(2), first line, to read: "The application for ground level covered front porch shall demonstrate by clear and convincing evidence that the proposed porch is compatible with the existing building architecture, neighboring properties and neighborhood character, and will comply with the following requirements." The voting was as follows:

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

9. **DEVELOPMENT SPECIAL USE PERMIT #2006-0036**
1600 KING STREET

DSF/LONG KING STREET - RESIDENTIAL TO HOTEL CONVERSION

Public Hearing and Consideration of a request for approval of an amendment to DSUP #2002-0041, with site plan, to convert a residential building with ground floor retail to a 107 room hotel, with two restaurants, a day spa with massage, a reduction of loading spaces, and valet parking; zoned KR/King Street Retail Strategy. Applicants: DSF/Long King Street, LLC and Kimpton Hotel and Restaurant Group, LLC by M. Catharine Puskar, attorney

PLANNING COMMISSION ACTION : Recommend Approval w/amendments 7-0

(A copy of the Planning Commission report dated April 3, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item. No. 9,

#8

TA#2007-0001

14 April 2007

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4-14-07

Mayor Euille and members of City Council,

Zoning established or codified the amount of density, the size of setbacks, proportion of open space, and many other factors that determine the feel of our neighborhoods and our city as a whole.

The ability to get a variance recognized that since the zoning was imposed on existing lots and construction, that there might be reasons with sufficient merit to extend into the setback, to fill in the open space, to seek relief from some aspect of the zoning. A variance should not impose on your neighbor or violate the feel of the neighborhood, and the hope is that when the approved design is executed the new construction seems like it had always been there.

For this reason there is a high standard to be met when a variance is granted – the applicant must prove hardship. I was once told by a member of the BZA that although the need to prove hardship did seem a bit much for some cases, the benefit was that generally the applicant worked very hard on developing a good design.

Front porches have once again become fashionable, desirable and recognized as contributing important qualities to the neighborhood. I think that most would agree that the benefits of a well-designed front porch are worth the gentle bending of the zoning code.

This is the third special exception modification to come before you, and in many respects, I believe it is the best constructed. But special exceptions by their very nature lower the threshold for a variance. They establish criteria that, if met, make it easier to justify the bending of the zoning code.

This brings me to my first point: The criteria in the special exception should not be considered the new point at which the applicant then tries to argue for what they really want. In other words, meet the criteria for the special exception or prove hardship for a full variance. I would ask Council to clarify this as the intent of the special exception.

My other points relate to language that I feel is missing from the text amendment before you that would help prevent the special exception from being abused.

1) What is the definition of "ground level", that is, how high? Some houses have the main entrances almost an entire story above grade. I would think that at some height a porch stops being a porch and is more like a large covered balcony with enough space underneath to be enclosed and used.

2) Does this text amendment apply to new construction? If so, then it is a de facto resetting of the of the actual zoning setback requirements.

3) Does this text amendment allow a house to be remodeled by absorbing a complying porch into the house and then use this exception to add a porch into the setback?

Sincerely,
David Fromm
2307 E Randolph Ave
703-549 3412
alsdmf@earthlink.net

8
4-14-07

Amendment offered by Councilwoman Del Pepper:

Page 6, Sec. 11-1302 (C)(2):

(2) **The applicant for a** A ground level covered front porch **shall demonstrate by clear and convincing evidence that the proposed porch is** ~~shall be~~ compatible with the existing building architecture, neighboring properties and neighborhood character, and **will** comply with the following requirements:

[Amendments shown in bold type.]



"Goodale, Geoffrey M."
<geoffrey.goodale@pillsburylaw.com>

04/12/2007 10:43 PM

To <alexvamayor@aol.com>, <macdonaldcouncil@msn.com>, <council@krupicka.com>, <paulcsmedberg@aol.com>, <delpepper@aol.com>, <councilmangaines@aol.com>, cc <jackie.henderson@alexandriava.gov>, <mcurry@NGS.ORG>, <Peter.Leiberg@alexandriava.gov>, <Mary.Christesen@alexandriava.gov>, bcc

Subject Comments Regarding Text Amendment #2007-0001 (Docket Item #8)

Dear Mayor Euille and Members of City Council:

Attached please find comments for your consideration regarding Text Amendment #2007-0001 (the "Text Amendment"), which is scheduled to be heard as Docket Item No. 8 at the public meeting on April 14, 2007. As discussed in my comments, I urge you to approve the Text Amendment, in its current form, and to refrain from creating any new, unprecedented appeal process involving the City Council until the Board of Zoning Appeals ("BZA") and staff can review this issue, as requested by the Planning Commission.

Thank you for your consideration of my comments. I respectfully request that this e-mail and the attached letter be included in the record relating to this proceeding, and accordingly, I am including the City Clerk as a "cc" recipient on this e-mail. If you have any questions regarding my comments, please do not hesitate to contact me.

Respectfully submitted,

Geoffrey M. Goodale

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GEOFFREY M. GOODALE

493 Naylor Place
Alexandria, VA 22304
(703) 618-6640

April 12, 2007

VIA E-MAIL (PDF)

Mayor William Euille and Members of City Council
City Hall
301 King Street
Alexandria, VA 22314

Re: Text Amendment #2007-0001 (Docket Item #8)

Dear Mayor Euille and Members of City Council:

I am writing to recommend that the City Council (the "Council") vote to approve Text Amendment #2007-0001 (the "Text Amendment") at its public meeting on April 14, 2007. The Text Amendment would expand the special exception rules to allow the Alexandria Board of Zoning Appeals ("BZA") to grant a special exception to a property owner who seeks to build an open, ground level covered front porch meeting certain criteria beyond what is now allowed under the City's Zoning Ordinance. As a member of the BZA, I believe that the Text Amendment, in the form recommended by the Planning Commission, would be highly beneficial, and I urge the City Council to refrain from amending the proposed language of the Text Amendment to create any new, unprecedented appeal process involving the Council until the BZA and staff can review this issue, as the Planning Commission has requested.¹

Currently, a citizen must seek a variance from the BZA if the proposed open, ground level covered front porch would exceed what is now allowed under the Zoning Ordinance. In order to obtain a variance, a citizen must show hardship. It is extremely difficult to demonstrate hardship pursuant to legal precedent established by Virginia courts.

In recent years, the BZA began to receive increasing numbers of requests relating to front porches. While the BZA approved many of these requests relating to modest-sized front porches, it was difficult in a number of cases to provide a rationale to explain how the hardship requirement was satisfied. In 2005, a subcommittee of the BZA was formed to study this issue, and consequently, the proposed Text Amendment was drafted.

If adopted, the Text Amendment would allow the BZA to review requests for open, ground level covered front porches meeting certain criteria under the special exception process rather than the variance process. Under the special exception process, it is not necessary for an applicant to demonstrate hardship.

¹ On February 27, 2007, I was appointed by the Council to serve on the BZA, and I am extremely honored and grateful for this appointment. At this time, I wish to note that I am submitting these comments in my own individual capacity and not on behalf of the BZA.

However, it should be noted that, under the Text Amendment, requests for front porches meeting the specified criteria would not automatically be granted approval by the BZA. In order to grant a special exception, the BZA would have to conclude that, among other things:

- (1) the proposal does not harm the adjacent neighbors, the neighborhood, or the public welfare;
- (2) the proposal will be compatible with and not alter the essential character of the area; and
- (3) the proposal is the only reasonable means and location for the proposed structure, given the constraints of the lot.

In addition, there are certain other factors that the BZA must consider. See Section 11-1304 of the Zoning Ordinance.

The Text Amendment, as recommended by the Planning Commission, would not change the right of citizens to challenge decisions of the BZA in any way. Pursuant to Section 11-1007 of the Zoning Ordinance, "all final decisions of the Board [of Zoning Appeals] shall be subject to judicial review." As such, in accordance with this provision of the Zoning Ordinance, BZA decisions relating to front porches could be appealed to the Circuit Court of Alexandria.

At the Planning Commission's hearing on April 3, 2007, it was suggested by two citizens that it may be beneficial for citizens to be able to appeal BZA decisions relating to front porches to the Council rather than to the Circuit Court of Alexandria. In response to these suggestions, I stated when I spoke during the hearing that it was not clear that Virginia law would permit appeals of BZA decisions to be made to the Council. In support of this view, I explained that Section 15.2-2314 of the Code of Virginia explicitly directs that an appeal of a decision of a board of zoning appeals be made to the circuit court of the county or city in which the board is located. I also cited a recent decision issued by the Virginia Supreme Court in which it ruled that a municipal government had standing to challenge a BZA decision in circuit court and reversed the BZA decision, which suggests that challenges of BZA decisions should be made to the circuit court and not directly to the municipal government. See Board of Supervisors of Fairfax County v. Board of Zoning Appeals of Fairfax County, 268 Va. 441 (Va. 2004). In addition, I noted that it would be inconsistent to allow BZA decisions relating to front porches to be appealed to the Council and to require all other BZA decisions to be appealed to the Circuit Court of Alexandria, as is currently mandated by Section 11-1007 of the Zoning Ordinance, and that such inconsistency may not withstand judicial scrutiny.

After the public comment portion of the hearing was concluded, the Planning Commission voted unanimously to recommend that the Council approve the Text Amendment without any language that would create a new appeal process involving the Council. In addition, the Planning Commission directed the BZA and staff to review the appeal process issue and to bring forward a study, if warranted. In my view, such a review of the appeal process is necessary before the Council should consider creating a new, unprecedented appeal mechanism that may be contrary to Virginia law.

Mayor William Euille and Members of City Council
April 12, 2007
Page 3

For the reasons discussed above, I urge the Council to vote to approve the Text Amendment, in the form recommended by the Planning Commission, and to refrain from amending the proposed language of the Text Amendment to create any new, unprecedented appeal process involving the Council until the BZA and staff can review this issue, as requested by the Planning Commission. If you have any questions regarding these comments, please do not hesitate to contact me by telephone at (703) 618-6640 or by e-mail at geoff.goodale@gmail.com.

Respectfully submitted,

A handwritten signature in black ink that reads "Geoffrey M. Goodale". The signature is written in a cursive, flowing style.

Geoffrey M. Goodale



<curryeiffert@verizon.net>

04/12/2007 01:36 PM

Please respond to
<curryeiffert@verizon.net>

To <alexvamayor@aol.com>, <macdonaldcouncil@msn.com>,
<timothylovain@aol.com>, <councilmangaines@aol.com>,
<council@krupicka.com>, <delpepper@aol.com>,

cc

bcc

Subject COA Contact Us: Speical Exception for front porches

8
4-14-07

Time: [Thu Apr 12, 2007 13:36:18] IP Address: [206.136.32.231]

Response requested: []

First Name: Michael

Last Name: Curry

Street Address: 1418 Juliana Place

City: Alexandria

State: VA

Zip: 20036

Phone: 202-379-8355

Email Address: curryeiffert@verizon.net

Subject: Speical Exception for front porches

Dear Mayor, Vice Mayor and Honorable Council Members

I am writing to encourage you to support the proposed text amendment as developed and unanimously approved by the Board of Zoning Appeals (BZA) and unanimously approved by the Planning Commission, with a minor amendment.

The BZA worked with P&Z staff to create the special exception for front porches consistent with the open process used to create the other two existing special exceptions (for additions and fences). The BZA received an increasing number of requests for variances for front porches. Most applicants stated that their request was based on providing a covered entry so they and their guest could be protected from the elements, a desire to have a sense of community by having a place to share time with their neighbors.

In most cases, the need for a variance is required as a result of overlaying the current zoning on already developed sites. When the current zoning was enacted, a large number of the City's existing homes became non-compliant.

Comments:

Meeting the absolute definition of a hardship for a front porch is difficult, if not impossible. By creating the special exception for front porches, citizens can have a modest improvement that provides the desired results without forcing the BZA to base the decision on something less than the true description of a hardship. It also encourages the applicant to keep their requested improvement to a minimum size.

All special exceptions must be approved by the BZA, even if they meet the criteria and staff recommends approval. If the request is so far out of line with the character of neighborhood, the board most likely will deny the request.

The issue of the appeals process came about when P&Z staff presented the proposed text amendment before the Federation of Civic Associations. During that meeting, there was a request by a few people present that the decision of the BZA concerning porches should be appealed to City Council. This action would set up a dual appeal process that is unnecessary.

I will attend the City Council meeting on Saturday should you have any questions. I can also be reached at one of the following; Home – 703-212-7116 / Office 202-7756579 / Black Berry – 202-379-8355 / Cell 703-582-9274 or by email at curryeiffert@verizon.net or mcurry@ngs.org.

Thank you for your consideration in this matter.
Michael Curry
Chair, Board of Zoning Appeals