

EXHIBIT NO. 1

3 (b)  
9-25-07

## **CITY COUNCIL OF ALEXANDRIA, VIRGINIA**

**Public Hearing Meeting**  
**Saturday, September 15, 2007 - - 9:30 a.m.**

\*\*\*\*\*

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

**Absent:** None.

**Also Present:** Mr. Hartmann, City Manager; Mr. Pessoa, City Attorney; Ms. Evans, Deputy City Manager; Mr. Jinks, Deputy City Manager; Mr. Mason, Special Assistant to the City Manager; Police Captain Hassan; Police Captain Reyes; Mr. Kincannon, Director, Recreation, Parks and Cultural Activities; Mr. Baier, Director, Transportation and Environmental Services; Sheriff Lawhorne; Ms. Hamer, Director, Planning and Zoning; Mr. Richardson, Deputy Director, Planning and Zoning; Mr. Farner, Planning and Zoning; Mr. Milone, Planning and Zoning; Mr. Smith, Planning and Zoning; Mr. Bray, Planning and Zoning; Ms. Triggs, Acting Director, Finance Department; Mr. Johnson, Director, Office of Management and Budget; Fire Chief Thiel; and Mr. Lloyd.

**Recorded by:** Jacqueline M. Henderson, City Clerk and Clerk of Council

### **OPENING**

#### **1. Calling the Roll.**

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

**New Business Item #1:** Director of Recreation, Parks and Cultural Activities Kincannon made a presentation on the use of the soccer fields at Windmill Hill Park, noting that Windmill Hill Park is both an active and passive park. He said the practice area is available to the Alexandria Soccer Association, but the concern staff had is with the games themselves in relation to complaints from some members of the community. He said that because of the impacts of the Woodrow Wilson Bridge construction, and once it is completed within the next year and a half to two years, they should see some relief in getting to the fields at Lee, which are not used by ASA, although there is some use there. He said it is really a traffic issue in rush-hour, as it is almost impossible to get over there. Mr. Kincannon said they are moving forward with the synthetic turf program.

## 2. Public Discussion Period.

(a) Ernie Lehmann, 621 N. St. Asaph Street, thanked the City Council, City Attorney Pessoa and Environmental Division Chief Skrabak and other City staff members and said he wanted to let them know how much he appreciated the vast resources they have used on behalf of the citizens on the single greatest health and environmental threat on the poisons put on the citizens by the Mirant Potomac River Generating Station. Mr. Lehmann said he is speaking on behalf of his family, neighbors and friends who live in Alexandria.

(b) Kate Watters, 1186 N. Pitt Street, thanked Council for their service to the City and their leadership on the Mirant issue, especially Vice Mayor Pepper and Councilman Smedberg for their presentations Thursday at the Air Quality Board meeting. She thanked Mayor Euille, Mr. Skrabak and all members of the City administration who defended their health and well being so eloquently before the board. She said many of her friends and neighbors who were not able to be at the meeting on Thursday also thank Council. She said the money the City has spent fighting Mirant has been well spent, and she hoped they could continue to work together to ensure that Mirant cannot pollute their City.

(c) Helen Epley, 108 Prince Street, asked those in support with her on the soccer fields at Windmill Hill Park to stand, to which approximately 20 people stood. She thanked Council for its help on the issue of the soccer fields at the park.

(d) Alice Maroni, 15 Franklin Street, speaking to the soccer field at Windmill Hill Park, she said they are interested in having the decision in writing. She said she appreciated Council's efforts to keep the kids in Old Town during rush hour.

(e) Dan Baum, 203 S. Fairfax Street, speaking to soccer at Windmill Hill Park, asked Council to let them play soccer at their parks. He said he has a group of private organizations that give private lessons, but in reality, it is a matter of tax sophistication as to whether it is for-profit or non-profit, and he hoped it would not be a stumbling block.

Mr. Kincannon said in relation to the use of any of the public facilities, if there is a fee charged for the use by an organization that is not a parent or sister group with the City, there is a separate fee to use the facility, and that is by City Council adoption.

(f) Bill Campbell, 320 N. Fayette Street, spoke about volunteering and encouraged everyone to volunteer at their local public school, and also for volunteers at Jefferson Houston School, and for people to come to the school to see what they are doing and to volunteer there. Mr. Campbell also spoke about the Parent Leadership Training Institute, and he encouraged everyone to take a look at that, as they have several slots available for the second class to start at the end of the month.

(g) Jack Sullivan, 4300 Ivanhoe Street, said he is delighted to have Councilman Wilson on Council. He said he is representing the Seminary Hill Association on its task on Landmark/Van Dorn, and he said he provided a copy of the West End Principles to Council in response to the challenge of the rehabilitation and regeneration of the properties at Landmark Mall and properties under consideration on Van Dorn Street south of the shopping center. He said they are in line with the Mayor's Economic Sustainability Workgroup report, which emphasizes that development and redevelopment of non-residential areas should result in substantial economic returns to the City. He applauded Mayor Euille for his leadership in dealing with the issue of Landmark. They also support the actions of the Planning Director to seek modification of the draft Small Area Plan for Landmark/Van Dorn and stand ready to assist her and the staff and Council in moving the process forward as rapidly as possible, and they endorse her idea of a joint city/citizen/owner group to work out a viable new plan by early next year. Mr. Sullivan said the members of their task force are available to meet with Council. He said time is running out and they join with Council and staff to seek to define the future direction for this area.

(h) Kristin Dixon, 116 S. Royal Street, said she owns a small store, Why the Rooster Crows, on South Royal Street and wished to talk about the construction of the hotel around the corner at King and Royal Streets. She said the scaffolding that has been put up is affecting their businesses. She said they have learned that it is going to be later than what they were told and possibly into the holiday season. She asked if there is anything Council can do to put a sign up that says businesses are still open.

Mayor Euille said they will have staff from both the Planning Office and the Small Business Office visit with her, and they will work with her and the hotel to make sure hers and other businesses will not be impacted.

Councilman Smedberg said there needs to be signage on King Street to direct people to that area.

Ms. Dixon noted there is a problem in the morning with construction truck parking, and there are very rarely spaces available for their customers.

Mayor Euille asked the Transportation staff to look at that, as they have restricted construction parking in other areas of the City.

(i) Julie Crenshaw Van Fleet, 26 Wolfe Street, said she has a copy of the Windmill Hill Park Plan and on page 3-4, section 3.3.2, site layout and organization of passive and active spaces, it states that the area to the west contains both active uses - volleyball, basketball and playground, and anything related to other uses other than basketball and volleyball on the playground is ad-hoc. She said it is nice that parents and their children came and spoke to Council, and that Council made a decision, but there is an entire community that was not notified of the decision. She asked what would happen if she wanted to put up a croquet set, but there was a bunch of parents and kids who wanted to practice soccer, and she asked who had precedent. She said

she does because she was there to start with. If the soccer players are there hours in advance, they are staking a claim to the field. She said this is a travesty of public process and it was wrong to hear it and decide how they did. She said Council needs to speak to those who live there, and they are not crazy about having a bunch of people take over the park, which is what will happen even though they made this decision. She asked Mr. Kincannon what he has done to take care of some of the problems, and she said he did not call her husband back and did not talk to him. She said they have a problem, and it is not proper public process and Council made a decision that was wrong and they have created other problems, as she would set up a croquet game there, and then she would have a bunch of mad parents.

## **REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES**

### **ACTION CONSENT CALENDAR (3-14)**

#### **Planning Commission**

3. SPECIAL USE PERMIT #2007-0040  
4401 WEST BRADDOCK ROAD  
FT. WARD PARK - FIELD LIGHTING  
Public Hearing and Consideration of a request to install new lighting at an existing athletic field; zoned POS/Public Open Space and Community Recreation. Applicant: Department of Recreation, Parks and Cultural Activities

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 3, 9/15/07, and is incorporated as part of this record by reference.)

4. SPECIAL USE PERMIT #2007-0052  
4525 DUKE STREET (Parcel Address: 4513 Duke Street)  
MASSAGE ENVY CLINIC  
Public Hearing and Consideration of a request to operate a massage therapy establishment; zoned CG/Commercial General. Applicant: Massage Envy Clinic by Danette Mertz

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 4, 9/15/07, and is incorporated as part of this record by reference.)

5. SPECIAL USE PERMIT #2007-0053  
1755 DUKE STREET (Parcel Address: 1904 Diagonal Road)  
CITY DOCK CAFE

Public Hearing and Consideration of a request to operate a restaurant; zoned OCH/Office Commercial High. Applicant: City Dock Cafe-King IV, LLC by Duncan Blair, attorney

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 5, 9/15/07, and is incorporated as part of this record by reference.)

6. SPECIAL USE PERMIT #2007-0054  
4926-A EISENHOWER AVENUE  
BELLA VISTA GRILL  
Public Hearing and Consideration of a request to operate a restaurant; zoned OCM (100)/Office Commercial Medium. Applicant: Mercedes Garcia and Jesus Martinez

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 6, 9/15/07, and is incorporated as part of this record by reference.)

7. SPECIAL USE PERMIT #2007-0056  
2461 EISENHOWER AVENUE (Unit Address: 240 Swamp Fox Road)  
CALIFORNIA TORTILLA  
Public Hearing and Consideration of a request to operate a restaurant; zoned CDD#2/Coordinated Development District. Applicant: Caltor-Hoffman d/b/a California Tortilla

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 7, 9/15/07, and is incorporated as part of this record by reference.)

8. SPECIAL USE PERMIT #2007-0058  
300 & 312 MONTGOMERY STREET, 805, 807, 809, 815 N ROYAL STREET,  
806 & 816 N FAIRFAX STREET  
UMBRELLA SUP AMENDMENT  
Public Hearing and Consideration of a request for an amendment to an umbrella SUP to increase the allowable square footage for retail and commercial school in exchange for a reduction in the allowable square footage for office and personal services; zoned CRMU-X/Commercial Residential Mixed Use. Applicant: Bruce Machanic

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 8, 9/15/07, and is incorporated as part of this record by reference.)

9. SPECIAL USE PERMIT #2007-0061  
1705 CENTRE PLAZA - UNIT 2  
3 BEANS COFFEE HOUSE AND CAFE  
Public Hearing and Consideration of a request to operate a restaurant; zoned CG/Commercial General. Applicant: Jeremy Barber & Brandon Silver

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 9, 9/15/07, and is incorporated as part of this record by reference.)

10. SPECIAL USE PERMIT #2007-0067  
3050 DUKE STREET  
DUNKIN DONUTS/BASKIN ROBBINS  
Public Hearing and Consideration of a request for an amendment to allow outdoor seating at a restaurant; zoned CG/Commercial General. Applicant: JBAR, INC., by Jerome Johnson

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 10, 9/15/07, and is incorporated as part of this record by reference.)

11. SPECIAL USE PERMIT #2007-0070  
4940 B EISENHOWER AVENUE (Parcel Address: 4928 Eisenhower Avenue)  
CATERING OPERATION  
Public Hearing and Consideration of a request to operate a catering business; zoned OCM-100/Office Commercial Medium. Applicant: Barrett, Ltd., by Duncan Blair, attorney

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 11, 9/15/07, and is incorporated as part of this record by reference.)

12. DEVELOPMENT SPECIAL USE PERMIT #2007-0021  
3737 SEMINARY ROAD

**VIRGINIA THEOLOGICAL SEMINARY**

Public Hearing and Consideration of a request for a time extension of a previously approved development special use permit, with site plan to construct faculty housing; zoned R-20/Residential. Applicant: The Protestant Episcopal Theological Seminary in Virginia, Inc., by Duncan Blair, attorney

**PLANNING COMMISSION ACTION:** Recommend Approval 6-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 12, 9/15/07, and is incorporated as part of this record by reference.)

13. **SPECIAL USE PERMIT #2007-0062**  
**525 NORTH FAYETTE STREET**  
**STARBUCKS COFFEE**

Public Hearing and Consideration of a request to operate a restaurant; zoned CRMU-H/Commercial Residential Mixed Use High. Applicant: Diamond Commercial, LLC by Harry P. Hart, attorney

**PLANNING COMMISSION ACTION:** Recommend Approval 7-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 13, 9/15/07, and is incorporated as part of this record by reference.)

14. **SPECIAL USE PERMIT #2007-0069**  
**3901 MOUNT VERNON AVENUE**  
**RESTAURANT AMENDMENT**

Public Hearing and Consideration of a request for an amendment to extend the hours of operation at a restaurant; zoned NR/Neighborhood Retail. Applicant: OAVAR's Inc., by Oswaldo A. Salinas

**PLANNING COMMISSION ACTION:** Recommend Approval 7-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 14, 9/15/07, and is incorporated as part of this record by reference.)

**END OF ACTION CONSENT CALENDAR**

**WHEREUPON**, upon motion by Councilman Gaines, seconded by Vice Mayor Pepper and carried unanimously, City Council adopted the consent calendar, with the removal of items #4, 7 and 14, and noted the withdrawal of item #6, as follows:

3. City Council approved the Planning Commission recommendation.

5. City Council approved the Planning Commission recommendation.
6. This item was withdrawn by the applicant.
8. City Council approved the Planning Commission recommendation.
9. City Council approved the Planning Commission recommendation.
10. City Council approved the Planning Commission recommendation.
11. City Council approved the Planning Commission recommendation.
12. City Council approved the Planning Commission recommendation.
13. City Council approved the Planning Commission recommendation.

The voting was as follows:

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

4. SPECIAL USE PERMIT #2007-0052  
4525 DUKE STREET (Parcel Address: 4513 Duke Street)  
MESSAGE ENVY CLINIC  
Public Hearing and Consideration of a request to operate a massage therapy establishment; zoned CG/Commercial General. Applicant: Massage Envy Clinic by Danette Mertz

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 4, 9/15/07, and is incorporated as part of this record by reference.)

Questions were asked by Council concerning the use of massage clinics, which was answered by Deputy Director of Planning and Zoning Josephson and City Attorney Pessoa.

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

Smedberg	"aye"	Gaines	"aye"
Pepper	"aye"	Krupicka	"aye"



Euille	"aye"	Lovain	"aye"
	Wilson	"aye"	

7. SPECIAL USE PERMIT #2007-0056  
2461 EISENHOWER AVENUE (Unit Address: 240 Swamp Fox Road)  
CALIFORNIA TORTILLA  
Public Hearing and Consideration of a request to operate a restaurant; zoned CDD#2/Coordinated Development District. Applicant: Caltor-Hoffman d/b/a California Tortilla

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 7, 9/15/07, and is incorporated as part of this record by reference.)

Questions were asked by Council about the hours of operations for the business and those of surrounding businesses, which was answered by Mr. Josephson.

**WHEREUPON**, upon motion by Councilman Krupicka, seconded by Councilman Smedberg and carried unanimously, City Council approved the Planning Commission recommendation, with an amendment to change condition #2 so the latest closing hour is 1:30 a.m., to make it consistent with the other businesses in the area. The voting was as follows:

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

14. SPECIAL USE PERMIT #2007-0069  
3901 MOUNT VERNON AVENUE  
RESTAURANT AMENDMENT  
Public Hearing and Consideration of a request for an amendment to extend the hours of operation at a restaurant; zoned NR/Neighborhood Retail. Applicant: OAVAR's Inc., by Oswaldo A. Salinas

PLANNING COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 14, 9/15/07, and is incorporated as part of this record by reference.)

Questions were asked by Council regarding extension of the hours, the six month review, and history of the site and security concerns, which were answered by Mr. Josephson and Police Captain Reyes.

**WHEREUPON**, upon motion by Councilman Smedberg, seconded by Vice Mayor Pepper and carried unanimously, City Council approved the Planning Commission recommendation, with an amendment to conditions #5 and 25, an amendment that the Police Department and Planning Director be given, after a one year review, the opportunity to extend the hours to bring them in line with the other retail in the area, provided that both the Police and Planning Director are comfortable with that decision, with an additional condition that prior to any administrative action, the applicant shall schedule meetings with the surrounding residential neighborhoods once every two months for the first six months of operations and then regularly as needed and/or requested by the neighborhood or applicant thereafter to identify and address any neighborhood impact issues added by Planning and Zoning. The voting was as follows:

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

#### **REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER**

15. Public Hearing to Consider the Recommendation of the Naming Committee to Name the City Baseball Field at Four Mile Run Park in Honor of the Late Former Mayor Frank E. Mann. (#28, 6/26/07)

(A copy of the City Manager's memorandum dated June 22, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 15; 9/15/07, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Wilson and carried unanimously, City Council closed the public hearing and approved the naming of the City baseball field at Four Mile Run Park in honor of the late former Mayor Frank E. Mann. The voting was as follows:

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

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

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

16. SPECIAL USE PERMIT #2007-0055  
480 KING STREET  
HOTEL MONACO - VALET PARKING

Public Hearing and Consideration of a request to operate valet parking for a hotel; zoned CD/Commercial Downtown. Applicant: CLPF King Street Venture, LP by M. Catherine Puskar, attorney.

PLANNING COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 16, 9/15/07, and is incorporated as part of this record by reference.)

Mr. Josephson made a presentation of the staff report.

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

(a) M. Catharine Puskar, 2200 Clarendon Blvd., Suite 1300, Arlington, Walsh Colucci, attorney representing the applicant, spoke in favor of the request.

(b) Van Van Fleet, 26 Wolfe Street, president, Old Town Civic Association, speaking for the board of directors, spoke in opposition to the request for valet parking. If granted, the civic association recommends that the City allow valet parking spaces in the old and historic district to hotels only.

(c) Nick Gregory, 480 King Street, property manager, Hotel Monaco, spoke in favor of the request.

(d) Cathal Armstrong, 110 S. Pitt Street, spoke in favor of the request.

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

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

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

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

Ms. Puskar noted that Kimpton would like to work with the Old Town Civic

Association and said they would like to have a point of contact with the Association or if the Association would like a representative to appear at their meetings to discuss the valet, they would like that, as it would be beneficial to everyone.

17. SPECIAL USE PERMIT #2007-0063

105, 107 & 109 KING STREET

FISH MARKET RESTAURANT - AMENDMENT

Public Hearing and Consideration of request for an amendment to increase the seating at a restaurant; zoned CD/Commercial Downtown. Applicant: Old Town Food Service Corporation by Glenda Giovannoni

PLANNING COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 17, 9/15/07, and is incorporated as part of this record by reference.)

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

Pepper	"aye"	Gaines	absent
Krupicka	"aye"	Lovain	absent
Euille	"aye"	Smedberg	"aye"
	Wilson	"aye"	

18. DEVELOPMENT SPECIAL USE PERMIT #2007-0023

2300, 2301, 2600, 2601 MAIN STREET

POTOMAC YARD

Public Hearing and Consideration of a request for an amendment to allow information and sales trailers and a request for an amendment to permit additional roof decks and garage decks in Landbay H and partial Landbay I, and to revise condition #1e regarding pedestrian crossings; zoned CDD-10/Coordinated Development District. Applicant: Potomac Yard Development, LLC by M. Catharine Puskar

PLANNING COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 18, 9/15/07, and is incorporated as part of this record by reference.)

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

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

19. ENCROACHMENT #2007-0005  
923 KING STREET

Public Hearing and Consideration of a request for an encroachment into the public right-of-way for the installation of a brick veneer wall; zoned KR/King Street Retail Overlay. Applicant: Allan Ramazon by Ray Lewis

PLANNING COMMISSION ACTION: Recommend Approval 7-0

(A copy of the Planning Commission report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 19, 9/15/07, and is incorporated as part of this record by reference.)

Mr. Josephson made a presentation of the staff report and he, along with Zoning Department staff liaison to the BAR Smith, responded to questions of Council.

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

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

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

### Board of Architectural Review

20. Public Hearing and Consideration of an Appeal of the Board of Architectural Review's decision denying a request for approval of demolition/encapsulation for Case BAR2007-0085, at 210 King Street, zoned KR Retail. APPLICANT AND APPELLANT: Michael W. Zarlenga

(A copy of the Planning Department report dated September 6, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 20, 9/15/07, and is incorporated as part of this record by reference.)

Zoning Division Chief Milone gave a presentation of the staff report and he, along with Planning and Zoning Department staff liaison to the BAR Smith, responded to questions of Council.

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

(a) Lynn Neihardt, 611 S. Fairfax Street, member, Old and Historic District Board of Architectural Review, spoke in support of the decision of the BAR.

(b) Duncan Blair, 524 King Street, attorney representing the applicant, spoke in favor of the appeal.

(c) Mike Zarlenga, 314 Princess Street, the owner/applicant, spoke in favor of the appeal.

(d) Morgan Delaney, 202-204 King Street, spoke against the appeal.

(e) Harold Metcalf, 8301 Wagon Wheel Road, representing George Washington Chapter, Trout Unlimited, spoke in favor of the appeal.

(f) John Hynan, 405 South Fairfax Street, member of the Historic Alexandria Foundation, spoke against the appeal.

(g) Charles Trozzo, 209 Duke Street, spoke against the appeal.

(h) Ellen Pickering, 103 Roberts Lane, spoke against the appeal.

(i) Poul Hertel, 1217 Michigan Court, representing himself and his wife, Connie Graham, spoke against the appeal.

(j) Katy Cannady, 20 East Oak Street, spoke against the appeal.

(k) Boyd Walker, 220 E. Bellefonte Avenue, spoke against the appeal.

Mr. Blair, speaking in rebuttal, spoke of preservation and the proposed restoration and enlargement of the building and he responded to questions of City Council.

**WHEREUPON**, upon motion by Vice Mayor Pepper, and seconded by Councilman Gaines, City Council closed the public hearing and upheld the decision of the Board of Architectural Review.

After discussion, comments and questions by City Council, the voting on the motion carried 6-1 and was as follows:

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

## ORDINANCES AND RESOLUTIONS

21. Public Hearing, Second Reading and Final Passage of an Ordinance to Provide That the City Give Certain Notices to Taxpayers By Certified Mail, Rather Than By Registered Mail. (#21, 9/11/07) **[ROLL-CALL VOTE]**

(A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 21; 9/15/07, 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. 21; 9/15/07, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Councilman Krupicka, seconded by Councilman Gaines and carried unanimously, City Council closed the public hearing and passed the ordinance to provide that the City give certain notices to taxpayers by certified mail, rather than by registered mail. The voting was as follows:

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

The ordinance reads as follows:

### ORDINANCE NO. 4497

AN ORDINANCE to amend and reordain Section 3-2-110 of Article I (TAX ON SALE OF CIGARETTES), Section 3-2-147 of Article K (TRANSIENT LODGING TAX), and Section 3-2-249 of Article N (TAX ON MEALS SOLD BY RESTAURANTS) 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 Section 3-2-110, to read as follows:

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 certified 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.

Section 2. That Article K (Transient Lodging Tax) 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 Section 3-2-147, to read as follows:

Sec. 3-2-147 Failure to collect, report or remit tax; action by the director of finance.



If any person shall fail or refuse to collect in whole or in part or properly to report or remit such tax within the time required by this article, the director shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the director has procured such facts and information, he shall make his estimate of the tax due and proceed to determine and assess against such person such estimated tax due together with the penalties and interest provided for by this article. He shall notify such person by certified mail sent to his last known address of the total amount of the tax, interest and penalties and the total amount thereof shall be payable within 10 days from the date of such notice; provided, however, that before any determination and assessment is made by the director that any person is liable for any tax, penalty and interest under this section, he shall give such person notice and an opportunity to be heard concerning such possible determination and assessment.

Section 3. That Article N (Tax on Meals Sold by Restaurants) 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 Section 3-2-249, to read as follows:

Sec. 3-2-249 Procedure upon failure or refusal to collect, etc., taxes.

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article or to make within the time provided in this article the reports and remittances required by this article, the director shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due. As soon as the director procures such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any person, who has failed or refused to collect such tax or to make such a report and remittance, he shall proceed to determine and assess against such person such tax and penalty and interest provided for in this article and shall notify the person by certified mail at his last known place of address of the amount of such tax and interest and penalty and the total amount thereof shall be payable within 10 days from the date of the notice.

Section 4. That this ordinance shall become effective upon the date and at the time of its final passage.

22. Public Hearing, Second Reading and Final Passage of an Ordinance to Repeal the Sunset Provision For the Affordable Homeownership Preservation Program. (#22, 9/11/07) **[ROLL-CALL VOTE]**

(A copy of the City Manager's memorandum dated September 5, 2007, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 22; 9/15/07, 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. 22;

9/15/07, 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. 22; 9/15/07, and is incorporated as part of this record by reference.)

City Attorney Pessoa noted the substitute ordinance that was given to City Council.

**WHEREUPON**, upon motion by Councilman Wilson, seconded by Vice Mayor Pepper and carried unanimously, City Council passed the amended ordinance to repeal the sunset provision for the affordable homeownership preservation program. The voting was as follows:

Wilson	"aye"	Gaines	"aye"
Pepper	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	"aye"
	Smedberg	abstain	

(Later in the meeting, Councilman Smedberg stated for the record that the reason he abstained on this item was because he did not have a chance to read the memo.)

The ordinance reads as follows:

#### ORDINANCE NO. 4498

AN ORDINANCE to amend Section 3-2-179 of Division 2 (AFFORDABLE HOMEOWNERSHIP PRESERVATION PROGRAM) of Article L (REAL ESTATE TAX RELIEF) 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 Section 3-2-179 of Division 2 (Affordable Homeownership Preservation Program) of Article L (Real Estate Tax Relief) 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 to read as follows:

Sec. 3-2-179 Sunset date.

No grant pursuant to section 3-2-172 shall be permitted in any taxable year which commences after December 31, 2007.

Section 2. That this ordinance, adopted September 15, 2007, shall become effective January 1, 2007, *nunc pro tunc* .

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

### **DEFERRAL/WITHDRAWAL CONSENT CALENDAR**

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

None.

### **END OF DEFERRAL/WITHDRAWAL CONSENT CALENDAR**

#### **New Business Item No. 2: Executive Session.**

**WHEREUPON**, upon motion by Councilmember Lovain, seconded by Councilman Smedberg and carried unanimously, at 1:30 p.m., City Council convened in Executive Session, pursuant to Section 2.2-3711(A)(3) and (A)(29) of the *Code of Virginia*, for the purpose of discussing the acquisition and disposition of property for public housing and other purposes, and the award of a public contract for the development of public housing. The voting was as follows:

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

**WHEREUPON**, upon motion by Councilmember Lovain, seconded by Councilman Smedberg and carried unanimously, at 2:56 p.m., City Council reconvened the meeting. The voting was as follows:

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

**WHEREUPON**, upon motion by Councilmember Lovain, seconded by Councilman Smedberg and carried unanimously, City Council moved to authorize the City Manager and City Attorney to proceed with respect to the public housing project and public contract as discussed with the City Council. The voting was as follows:

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

**WHEREUPON**, upon motion by Councilmember Lovain, seconded by Councilman Smedberg and carried 6-0 by roll-call vote, City Council adopted the resolution pertaining to the Executive Session. The voting was as follows:

Lovain	"aye"	Gaines	"aye"
Smedberg	"aye"	Krupicka	"aye"
Euille	"aye"	Pepper	absent
	Wilson	"aye"	

The resolution reads as follows:

**RESOLUTION NO. 2244**

WHEREAS, the Alexandria City Council has this 15th day of September 2007, recessed into executive session pursuant to a motion made and adopted in accordance with the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the city council that such executive session was conducted in accordance with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the city council does hereby certify that, to the best of each member's knowledge, only public business matters that were identified in the motion by which the executive session was convened, and that are lawfully exempted by the Freedom of Information Act from the Act's open meeting requirements, were heard, discussed or considered by council during the executive session.

\* \* \* \* \*

**THERE BEING NO FURTHER BUSINESS TO BE CONSIDERED**, upon motion by Councilmember Lovain, seconded by Councilman Smedberg and carried unanimously, the City Council public hearing meeting of September 15, 2007, was adjourned at 2:57 p.m. The voting was as follows:

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

APPROVED BY:

\_\_\_\_\_  
WILLIAM D. EUILLE    MAYOR

ATTEST:

\_\_\_\_\_  
Jacqueline M. Henderson, CMC, City Clerk