

Docket Item #13
TEXT AMENDMENT #2003-0006

Planning Commission Meeting
November 6, 2003

CASE: TEXT AMENDMENT #2003-0006
DAY LABOR AGENCIES

ISSUE: Consideration of an amendment to the Zoning Ordinance to permit a day labor agency only with a special use permit, to limit the zones in which a day labor agency may be allowed, and to require the abatement of existing day labor agencies.

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

ARTICLE II: DEFINITIONS

Sec.2-126 *Business and professional office.* Any room, studio, clinic, suite or building in which the primary use is the conduct of a business such as accounting, correspondence, research, editing, administration or analysis; or the conduct of a business by a salesman, sales representative or manufacturer's representative; or the conduct of a business by professionals such as engineers, architects, land surveyors, artists, musicians, lawyers, accountants, real estate brokers, insurance agents and landscape architects but not including offices for dentists, physicians or other medical practitioners, or for day labor agencies.

Sec. 2-133.1 *Day labor agency.* A place where assignments for employment are made characterized by the daily gathering of workers. A day labor agency operates a dispatch to which at least some workers physically report, apply and wait for work daily, and return to receive their paychecks daily. Day labor is labor that is occasional or irregular at which the person is assigned for not longer than the time period required to complete the work assignment. The majority of day labor workers are not assigned clerical or professional employment.

ARTICLE IV: COMMERCIAL AND INDUSTRIAL ZONES

[The following zones will be amended by adding the following language to the list of uses allowed only with a special use permit: CG, CD, CD-X, OC, OCM(50), OCM(100), OCH, and I.]

Special uses. The following uses may be allowed in the zone pursuant to a special use permit:

Day labor agency;

ARTICLE XII: NONCONFORMITIES

Sec. 12-200 Nonconforming uses.

12-215 *Abatement of day labor agencies.* Any day labor agency in existence on October 7, 2003, for which a special use permit has not been granted shall be deemed a nonconforming use and shall be discontinued on or before a date eighteen months from the date on which the use was first notified of its nonconforming status, unless it obtains a special use permit which authorizes its continuation subject to the following:

- (A) Promptly upon learning of the existence of a day labor agency that was in existence prior to October 7, 2003, the director shall notify the property owner and, if different, the property operator of the nonconforming status of the use and that it must cease operations or obtain a special use permit approval, if permitted by the zoning ordinance, prior to the expiration of eighteen months from the date of the notice.
- (B) No later than the expiration of the applicable eighteen month time period, the owner or operator of any such nonconforming day labor agency may seek from city council an extension of the date by which it must come into conformity with this section 12-215 by filing with the director a petition which sets forth in detail the reasons why a fair and reasonable return on the investment in such day labor agency made by the petitioner prior to October 7, 2003, cannot be obtained prior to the expiration of the eighteen month period.
- (C) Council shall conduct a public hearing on any such petition, prior to which the director shall provide notice in accordance with the provisions of section 11-300 of this ordinance.
- (D) Following the hearing, council may extend the eighteen month period only if it finds that a strict application of that time period will deny the petitioner the opportunity to realize a fair and reasonable return on the investment in the nonconforming day labor agency made by petitioner prior to October 7, 2003, in which case council shall extend the date to a time which it determines will provide such opportunity to the petitioner.

DISCUSSION

This text amendment proposes several changes to the zoning ordinance with respect to day labor agencies. First, the definition clarifies the definition of “day labor agency.” Second, the text amendment requires a special use permit for day labor agencies. In addition, as the Commission had previously suggested, staff has refined the list of commercial zones in which day labor agencies may be approved, and deleted the lower density zones because they are typically located adjacent to residential areas. Third, existing day labor agencies will be required to cease operations or obtain special use permit approval within eighteen months. After a discussion of the 1999 zoning ordinance amendment regarding day labor agencies and the legal challenge of City’s initiation procedure used for the 1999 amendment, the staff report discusses the specific revisions proposed to the Zoning Ordinance.

1999 Zoning Ordinance Amendment Regarding Day Labor Agencies

Responding to concerns from local residents, staff studied day labor agencies beginning in 1996 and determined that such uses pose significant negative impacts in residential areas. In 1999, staff proposed Text Amendment #99-0001, an amendment to the Zoning Ordinance.

At the time of the proposed amendment in 1999, staff knew that two day labor agencies operated in the City. Several city agencies had received numerous complaints from residential neighbors about negative impacts of such a use, including complaints regarding litter, loitering, excessive noise (beginning as early as 4:30 a.m.), and disruptive, unsanitary behavior. Staff determined that laborers gathered and waited for work assignments very early in the morning, and arrived as a group at the end of the day. Staff determined that the laborers often congregated outside on the sidewalk both in the morning and evening. Staff also determined that laborers stayed in the neighborhood to drink alcohol and subsequently litter the nearby homes. In both cases, the neighborhoods asked staff to consider the negative impacts of the use and reassess its zoning status.

Following the Planning Commission’s recommendation, the City Council amended the City’s zoning ordinance and enacted Ordinance No. 4049, deeming any day labor agency in existence on February 2, 1999, to be a nonconforming use and requiring it to cease operations within 18 months. Alternatively, the business could apply for a special use permit to continue to operate for a longer period of time. Under the special use process, the City would be able to review the appropriateness of day labor agency locations and their impacts on the neighborhood on a case by case basis and then approve it, deny it, or approve it with conditions designed to prevent negative impacts.

Both then existing day labor agencies – All Star Temporaries and Ace Temporaries, Inc. – submitted special use permit applications. Staff supported the relocation of All Star Temporaries from a location behind a Washington Street building to an industrial area on Eisenhower

Avenue. In support of the application, staff analyzed the new site and noted that it was on a major road, in an industrial area in a mixed use warehouse building, and at a distance from residential uses. Subsequently, the City Council approved All Star Temporaries' request.

After a similar review process, Ace Temporaries' special use permit application for 717 Pendleton Street was denied. First, after completing a full review, staff recommended denial of Ace Temporaries' application because its operation created significant and intensive negative impacts for the nearby neighborhood. Staff cited to numerous police calls and complaints from local residents regarding littering, loitering, excessive noise, excessive human traffic flow, insufficient accommodation for workers' pick-up and drop-off activities, and limited availability of on-street parking. After a public hearing, the Planning Commission agreed with staff's analysis and voted to recommend denial. Finally, the City Council agreed with the Planning Commission's recommendation to deny the special use permit and provided 90 days for Ace Temporaries to relocate.

Legal Challenge to 1999 Zoning Ordinance Amendment Regarding Day Labor Agencies

Rather than pursue its administrative remedies before the Board of Zoning Appeals (BZA), Ace challenged the ordinance amendment and its application in Circuit Court. On the eve of trial, the parties agreed to a six-month stay in litigation to pursue settlement. Despite good faith efforts by the City to find a compatible new location for Ace Temporaries, Ace Temporaries refiled its suit in May 2002. In July 2002, Ace Temporaries finally agreed that its administrative challenge of the Director's determination was in the wrong forum and agreed to continue to stay all litigation pending resolution of a BZA appeal.

In October 2002, following a full hearing including citizen and applicant testimony, the BZA rejected Ace Temporaries' appeal and upheld the Director's determination that Ace Temporaries is a day labor agency under the Zoning Ordinance. *See* Exhibit A, BZA Docket Materials. A challenge to the BZA decision, among other claims, was then brought by Ace Temporaries against the City in Circuit Court. In June 2003, the court ruled on a procedural issue, holding that the 1999 text amendment was not properly initiated as called for in the state statute. In particular, the court held that there "was never a resolution nor a motion to initiate the amendment; only a 'motion' before the Planning Commission to adopt the changes." *See* Exhibit B, Letter from Judge Alfred D. Swersky, Circuit Court of Alexandria, granting complainant's motion for summary judgment.

Text Amendment #2003-0006 Clarifies the Definition of Day Labor Agency

The existing Zoning Ordinance definition sets forth characteristics that describe the operation of a “day labor agency” as a general matter.

Day labor agency. A place where arrangements for short term employment are made, characterized by the gathering of employees who are hired typically for a one day period. Employers often transport the employees to the work site and return them to the day labor agency.

The key zoning characteristic captured by the definition is that a day labor agency use attracts a significant number of people at regular intervals in both the early morning and in the afternoon. Building on this characteristic, Text Amendment #2003-0006 revises the definition of day labor agency. It defines a day labor agency as:

A place where assignments for employment are made characterized by the daily gathering of workers. A day labor agency operates a dispatch to which at least some workers physically report, apply and wait for work daily, and return to receive their paychecks daily. Day labor is labor that is occasional or irregular at which the person is assigned for not longer than the time period required to complete the work assignment. The majority of day labor workers are not assigned clerical or professional employment.

By revising the definition of day labor agency, Text Amendment #2003-0006 arguably provides greater clarity to the potentially regulated community. An employer’s possible use of a transportation service is no longer a component of the definition, although it remains a characteristic of day labor agencies of which staff is aware. The revised definition also makes a clear distinction between day labor agencies and temporary employment agencies.

Staff examined temporary employment agencies and found that they typically provide clerical or professional employment. In terms of operations, temporary employment agencies typically operate as follows: they require applicants to submit an application via fax or mail; applicants do not arrive at its offices every day for an assignment. If the applicant is properly qualified, the applicant is invited to the temporary employment agency for an interview. At an interview, the applicant’s skills are tested and all necessary paperwork is completed at that time. Unlike a day labor agency, assignments generally are provided by telephone. If an applicant receives an assignment, that individual is unlikely to return to the temporary employment agency. Also, contrary to day labor agency, paychecks are mailed to the employee’s home address.

Day Labor Agencies Should Not be a Permitted Use in the City and Should Not Be Allowed At
All in the Lower Density Zones

Staff is aware of two day labor agencies now operating in the City, and it is possible that there are others. One is Ace Temporaries which has remained at 717 Pendleton Street, at the corner of Pendleton and North Columbus Streets. The second is at 4926 Eisenhower Avenue, and is the continuation of the All Stars Temporaries agency, for which an SUP was approved.

Staff has reexamined the use and operations of day labor agencies and has determined that they still require special treatment. Day labor operations attract significant human traffic flow and create too intense an activity to be located in or adjacent to a residential neighborhood. Negative impacts of day labor operations result in litter, loitering, noise, and excessive human traffic flow. Staff continues to believe that the best location for these uses is in an area with good access to public transportation but that is physically removed from residences so that impacts are not borne by residential uses.

The proposed text amendment results from staff's analysis. Staff continues to recommend that day labor agencies only be allowed after special use permit review. Therefore, the zoning ordinance will provide, in most commercial zones, that a day labor agency use requires a special use permit. Second, staff has refined the list of commercial zones in which day labor agencies may be approved. Staff proposes that day labor agencies be prohibited in CL/Commercial Low Zones, CC/Community Commercial and CSL/Commercial Service Low Zones because those zones were specifically designed to be mapped adjacent to residential zones and uses in the city. Similarly, staff has not proposed that day labor agencies be allowed in the mixed use zones, even with a SUP; those zones specifically seek to achieve both commercial and residential activities on the same site. Thus, any proposed day labor agency in the CL, CC, CSL or the mixed use zones will be adjacent to residential areas, and not appropriate because of day labor agencies' inherent negative impacts for residential uses.

Eighteen Month Abatement Period is a Reasonable Time for Day Labor Agencies
to Recoup its Investment

As to the existing day labor agencies in the City, they will be required to cease operations or obtain a special use permit within eighteen months of the effective date of the zoning ordinance amendment. The eighteen month abatement period, also known as an amortization period, refers to the termination of a nonconforming use after a specified period of time and is intended to give nonconforming day labor agencies an opportunity to amortize investment in the use. The City's authority to require amortization of nonconforming uses is provided in the City Charter.

Given the modest operations of a day labor agency, eighteen months appears to be a reasonable time in which a day labor agency could recoup its costs. Staff examined day labor agencies' investment and potential loss and determined that a eighteen month period should not pose an economic hardship. Recently, staff observed day labor operations at two different addresses and noted little, if any, investment in the property. For example, at Ace Temporaries, staff found no

evidence of significant investment in the building and little equipment in the office. The premises amount to a large room with several tables, chairs, a countertop, and a restroom. Furthermore, Ace Temporaries' investment in its building could be recouped upon sale or rental to another use. The Zoning Ordinance lists numerous permitted uses, such as commercial space or a retail store, which could occupy a current day labor agency office location.

In addition, the procedures included in the text amendment would allow Council to expand the eighteen month period if the owner can show that it needs additional time to recoup its investment.

The two day labor agencies of which staff is aware have been notified of the proposal and of the schedule for the public hearings.

Recommendation

Staff recommends that the Commission adopt Text Amendment #2003-0006 clarifying the definition of day labor agency, prohibiting day labor agencies in lower density zones, and requiring day labor agencies cease operations or obtain a special use permit approval within eighteen months of the effective date of the zoning ordinance amendment.

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