



ARLINGTON COUNTY, VIRGINIA

<p style="text-align: center;">County Board Agenda Item Meeting of December 13, 2008</p>

DATE: December 1, 2008

SUBJECT: Request to Advertise public hearings on proposed Zoning Ordinance amendments to Section 2. General Regulations and Section 35. Nonconforming Buildings and Uses to allow, upon the acquisition of a portion of a lot by the County for a public purpose, the creation of condition(s) that are not compliant with requirements of the Zoning Ordinance to be treated as a nonconforming use or building, pursuant to the nonconforming use provisions of the Zoning Ordinance.

C.M. RECOMMENDATION:

Adopt the attached resolution to advertise public hearings by the Planning Commission and the County Board at their regularly scheduled January, 2009 meetings, on the attached ordinance to amend, reenact, and recodify the provisions in Section 2. General Provisions and Section 35. Nonconforming Buildings and Uses of the Zoning Ordinance to allow by reason of acquisition by the County for a public purpose, the creation of a condition(s) that is not in compliance with requirements of the Zoning Ordinance, resulting in a nonconforming use or building, pursuant to the nonconforming use provisions of the Zoning Ordinance.

ISSUES: This is a request for authorization by the County Board to advertise amendments to the Zoning Ordinance to allow noncompliance with Zoning Ordinance requirements to be treated as legal, nonconforming uses or buildings when they result from acquisition of a portion of a property by the County for a public purpose. No issues have been identified.

SUMMARY: The Zoning Ordinance contains provisions that preclude alterations to a property that would create nonconforming conditions where a use or building is currently conforming, or that would exacerbate existing nonconforming conditions. When the County acquires a portion of a property for a public purpose (i.e. a street right-of-way), nonconforming conditions are sometimes created. This has created difficulty where property is needed for a public use. The proposed amendment would exempt a property from the aforementioned provisions if the nonconforming conditions are created as the result of acquisition by the County of a portion of the property for a public purpose. The property would then be subject to the provisions in Section 35 of the Zoning Ordinance that govern legal, nonconforming buildings and uses.

County Manager: _____

County Attorney: _____

Staff: Deborah Albert, Planning Division, DCPHD

PLA-5149

BACKGROUND: While acquisition of property for public purposes is not a new issue for the County, property transactions have become increasingly complicated. Several recently proposed public projects, which would require acquisition of private property by the County, would reduce parking and/or setbacks on affected properties. Staff would like to have a mechanism for assuring these property owners that the acquisition of a portion of their property for a public purpose will not put them in conflict with provisions in the Zoning Ordinance which preclude the creation of nonconforming conditions or additional nonconforming conditions.

These provisions in the Zoning Ordinance most commonly affect older properties that have not been redeveloped since the Zoning Ordinance was enacted, or are by-right projects under the Zoning Ordinance. In contrast, public easements and acquisitions on properties that develop through the site plan process, are typically achieved through negotiation as part of that process, where density calculations, building placement and layout are determined in concert with other transactions affecting the property. For older properties, however, public property acquisitions separated by years or decades from construction or realization of a use on a property have resulted in reduction in parcel size such that required setbacks, sideyards or lot area have been reduced below the minimum requirements of the Zoning Ordinance. In the past, the County has allowed such acquisition of property in situations where nonconforming conditions are created, however, there is no provision in the Zoning Ordinance to provide assurance to property owners that they will not subsequently be cited with a zoning violation.

DISCUSSION: The Zoning Ordinance contains provisions in Section 2.D. General Provisions, Regulations in All Districts, that preclude alterations to a property that create nonconforming conditions where a use or building is currently conforming, or that exacerbate existing nonconforming conditions. These provisions address use, area, subdivision of lots, and parking and loading areas. When the County wants to acquire property for a public purpose (i.e. a street right-of-way), and such transfer of a portion of a parcel reduces setbacks or sideyards, eliminates required parking, reduces the remaining land area of the property, or other conditions to that below required minimums in the Zoning Ordinance, the existing use on the property, or the building or structure on the lot, becomes illegal. This puts the building or use in conflict with those provisions in the Zoning Ordinance which require a conforming condition to remain conforming. In order to avoid such conflict under adopted provisions, alteration of the building or use could be necessary in order to remain in compliance, or in the extreme case, it could be necessary for the County to acquire the entire property in order to forward the public purpose. In all cases, County acquisition of such property is rendered more difficult and/or expensive.

Reduction of parking below minimum requirements, as compared to other requirements described above, could be viewed as having a more serious impact on the existing use of the property, as well as to neighboring properties. While many jurisdictions have provisions for uses or lots rendered nonconforming as a result of a reduction in land area or setbacks for a public purpose, few have provisions for loss of parking as a result of an acquisition or taking for a public purpose. Several mechanisms are employed in those jurisdictions that address the issue of public acquisition of property:

- Exemption from prohibition against reduction in lot size resulting in the lot area, side yards, open space, buildable area or width being reduced below the required minimums, when a portion of a lot is acquired for a public purpose.
- Lots rendered non-conforming as a result of a taking for a public purpose are treated as conforming parcels, provided they continue to contain at least a percentage (60-75%) of the required land area, width and buildable area.
- When area or setbacks are reduced below the required minimums due to conveyance for a public purpose, the parcel is deemed to be in compliance with the minimum lot size and setback standards without any need for variance.

Zoning ordinance provisions related to nonconforming conditions created as a result of acquisition of property by the County would provide a standardized and legal mechanism for a conforming lot to become nonconforming in order to further a public purpose. The proposed provisions also state that the use, the lot or the building rendered noncompliant by the acquisition, will be treated as a nonconforming use or building subject to the provisions of Section 35 of the Zoning Ordinance. In addition to providing a property owner with a legal mechanism with which to enter into the transaction, defining the Zoning Ordinance provisions to which the altered property would subsequently be subject, would afford the property owner knowledge of the impact of the acquisition on future use of the property, and contribute to an assessment of the fair market value of the property to be acquired.

Because nonconforming conditions resulting from property acquisition could impact neighboring properties, and in order to ensure that the County Board finds the acquisition to be appropriate in light of the resulting nonconformities, staff recommends that such transactions be permitted when the County Board finds that the acquisition of the property is in the public interest and the nonconforming conditions caused by the acquisition will not unduly impact adjacent properties. In order to inform the County Board's decision, staff would include additional land use and zoning analysis in conjunction with an acquisition request coming before the County Board, that would address the anticipated impacts of the nonconforming conditions created from a proposed acquisition. The proposed provisions would also allow the County Board to impose conditions on the property as part of approval of the acquisition, in order to address impacts to neighboring properties.

Community Process: The proposed amendment was discussed at the September 17, 2008, and November 19, 2008, Zoning Committee of the Planning Commission (ZOCO) meetings. ZOCO members were generally supportive of the proposed amendment, recognizing that it would codify current practice. ZOCO members raised some procedural questions regarding the scope of the conditions the County Board could impose as part of the approval of the acquisition; how properties made nonconforming under the proposed provisions would be tracked by the County; and how properties historically affected by public acquisition of property would be affected by the proposed provisions. Staff will continue to examine these questions and clarify issues pertaining to process.

CONCLUSION: Staff recommends that the County Board adopt the attached resolution to advertise public hearings by the Planning Commission and the County Board at their regularly scheduled January, 2009 meetings, on Zoning Ordinance amendments to Section 2. General Provisions and Section 35. Nonconforming Buildings and Uses of the Arlington County Zoning Ordinance to allow for the reduction of a lot below certain minimum standards in the Zoning Ordinance and to become nonconforming as a result of acquisition of a portion of a property by the County for a public purpose and in order to facilitate the creation of a convenient, attractive and harmonious community and for other reasons required by the public necessity, convenience and general welfare and good zoning practice.

RESOLUTION TO AUTHORIZE THE ADVERTISEMENT OF PUBLIC HEARINGS TO CONSIDER THE PROPOSED AMENDMENTS TO SECTION 2. GENERAL PROVISIONS AND SECTION 35. NONCONFORMING BUILDINGS AND USES OF THE ARLINGTON COUNTY ZONING ORDINANCE, AT THE PLANNING COMMISSION'S AND THE COUNTY BOARD'S REGULARLY SCHEDULED JANUARY, 2009 MEETINGS, TO ALLOW NONCOMPLIANCE WITH ZONING ORDINANCE PROVISIONS TO BE TREATED AS NONCONFORMING CONDITIONS, WHERE SUCH CONDITIONS RESULT FROM ACQUISITION OF A PORTION OF A PROPERTY BY THE COUNTY FOR A PUBLIC PURPOSE, IN ORDER TO FACILITATE THE CREATION OF A CONVENIENT, ATTRACTIVE AND HARMONIOUS COMMUNITY AND FOR OTHER REASONS REQUIRED BY THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE AND GOOD ZONING PRACTICE.

The County Board of Arlington County hereby resolves to advertise the following amendments to Section 2 and Section 35 of the Arlington County Zoning Ordinance for public hearings at the regularly scheduled January, 2009 meetings of the Planning Commission and the County Board. This amendment would amend, reenact and recodify the proposed zoning ordinance provisions in order to reduce or prevent congestion in the streets, to facilitate the creation of a convenient, attractive and harmonious community; and for other reasons required by the public necessity, convenience and general welfare and good zoning practice:

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SECTION 2. GENERAL REGULATIONS

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D. Regulations in All Districts.

1. *Use.* No building or structure shall be erected, reconstructed, structurally altered, enlarged or moved, and no land or building shall be used or designed to be used for any purpose other than is hereinafter permitted except as may be permitted by Subsection 35.E.
2. *Height.* No building or structure shall be erected, reconstructed, structurally altered, enlarged or moved to exceed in height the limit hereinafter designated.
3. *Area.* No building or structure shall be erected, reconstructed, structurally altered, enlarged or moved, no open space surrounding any building shall be encroached upon or reduced in any manner, no lot shall be reduced in area, except in conformity with all area and building location, bulk, placement and coverage regulations hereinafter designated except as may be permitted by Subsection 35.E. No yard or other space provided about any building shall be considered as providing a yard or open space for the building on any other lot.
4. *Subdividing, Resubdividing, Parcels of Land.*
 - a. No parcel of land held under separate ownership, with or without buildings, at the time this ordinance became effective, shall be subdivided,

22 resubdivided, or reduced in any manner below the minimum lot width and
23 lot area required by this ordinance except as may be permitted by
24 Subsection 35.E.

25 b. In addition, every lot must meet the required minimum lot width for the
26 applicable zoning district at the midpoint of the depth of the portion of the
27 lot used for the calculation of the minimum lot width except as may be
28 permitted by Subsection 35.E. The midpoint lot width shall be measured at
29 right angles to the lot depth line at its midpoint.

30 5. *Parking, Standing or Loading Areas.* No parking area, parking space, standing
31 space or loading space which existed at the time this ordinance became effective
32 or which subsequent thereto is provided shall thereafter be relinquished or reduced
33 in any manner below the requirements established in this ordinance except as may
34 be permitted by Subsection 35.E.

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38 **SECTION 35. NONCONFORMING BUILDINGS AND USES**

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42 **E. Nonconforming Due to Public Acquisition of Land.**

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44 When, due to acquisition by the County of a portion of a lot for public purposes, either:
45 (a) the use of the land, the lot, or a building or structure no longer complies with the
46 requirements of the Zoning Ordinance; or (b) an existing nonconforming use or building
47 becomes further noncompliant with the requirements of the Zoning Ordinance; then, upon a
48 finding by the County Board that the acquisition of the property will be in the public interest and
49 that the noncompliant conditions caused by the acquisition will not be of substantial detriment to
50 adjacent property and the character of the zoning district will not be changed, then, subject to
51 such conditions as the County Board may approve, the provisions of Subsections 2.D.3, 2.D.4,
52 and 2.D.5 shall not apply to the acquisition and the use or the building or structure rendered
53 noncompliant by the acquisition shall be treated as a nonconforming use or nonconforming
54 building pursuant to the provisions of this Section 35. The foregoing provisions shall apply only
55 to the noncompliant conditions caused by acquisition by the County, and in no event shall the
56 foregoing provisions be construed to confer nonconforming status on any condition that was not
57 created or furthered by acquisition by the County.