



ARLINGTON COUNTY, VIRGINIA

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

DATE: November 25, 2008

SUBJECT: Request to Advertise public hearings on proposed Zoning Ordinance amendments to Section 37 Violations and Penalties and Section 31A Historic Preservation Districts.

C.M. RECOMMENDATION:

Authorize advertisement of public hearings by the Planning Commission and the County Board for their regularly scheduled February 2009 meetings, on the attached ordinance to amend, reenact, and recodify the Zoning Ordinance provisions in Sections 37 and 31A of the Arlington County Zoning Ordinance to allow for the assessment of civil penalties for most zoning ordinance infractions.

ISSUES: This proposed amendment fulfills the commitment made during the adoption of the accessory dwelling zoning ordinance amendment to have staff draft a further zoning ordinance amendment to provide for civil penalties by the end of the year.

SUMMARY: The proposed amendment places all references to enforcement and penalties within Section 37 of the Arlington County Zoning Ordinance (ACZO), consequently provisions within Historic Preservation Districts in Section 31A have been struck and placed with Section 37, and updated consistent with the provisions of the Code of Virginia. The proposed amendment permits all violations of the ACZO to be treated as a civil penalty with the exception of a very few which the Code of Virginia requires to be criminal penalties. Fines have been increased to the maximum amount allowed by law. The proposed amendment authorizes the Zoning Administrator to apply to the magistrate or Court for an administrative search warrant, and spells out the relief an aggrieved person may use through the appeals process in General District Court and the Board of Zoning Appeals.

BACKGROUND: As part of the adoption process for accessory dwellings earlier this year, the County Board directed staff to research and prepare an advertisement to amend Section 37, Violations, of the Zoning Ordinance, to provide for civil penalties for zoning violations prior to the end of the calendar year. It was originally thought that the decriminalization of the ACZO would be a two step process, first decriminalizing violations related to overcrowding and then the entire ACZO. It is a simpler and more straightforward matter, however, to accomplish this task via one amendment. The proposed amendment decriminalizes the entire ordinance, except

County Manager: _____

County Attorney: _____

Staff: Melinda M. Artman, Zoning Administrator, Planning Division, DCPHD
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PLA-5150

in those instances where the Code of Virginia mandates criminal penalties.

DISCUSSION: During the review process of the accessory dwelling amendment, the public expressed frustration with Code Enforcement's ability to achieve compliance with overcrowding issues as contained in various County ordinances. This discussion led the County Board to direct staff to decriminalize the ACZO. The current Zoning Administrator has 21 years experience with using civil penalties in Northern Virginia and finds it an important and effective enforcement tool. The burden of proof for a civil violation is less than that for a criminal violation and is a more useful tool to enforce the Zoning Ordinance. Due to this lesser burden of proof, the number of staff hours per violation is typically reduced as actual observation of the crime is not necessary. The imposition of the penalty is fairly swift and is a powerful incentive to comply with the provisions of the Zoning Ordinance. Cases which must proceed to court are handled by the County Attorney's office rather than the Commonwealth's Attorney. The County Attorney has a greater knowledge of the provisions of the ACZO than the Commonwealth's Attorney and can be a more effective advocate for the County's position. Additionally, all fines imposed, whether by ticket/summons or by the Court, accrue to the County and not the Commonwealth. Last year, Loudoun County, a jurisdiction with a slightly larger population than Arlington County issued \$46,500 in fines. It is estimated that in FY '10 Arlington County would see a similar amount of fines imposed.

As noted above, all the provisions of the ACZO regarding violations and penalties have been consolidated in Section 37. As a consequence, the violation provisions of Section 31A Historic Preservation Districts have been deleted. Section 37 has also been updated to reflect the most recent enabling authority in the Code of Virginia, to include an increase in the amount of fines, the ability to execute an administrative search warrant, the ability to impose a fine twice the value of a property within an historic district if the property owner demolishes a structure without going through the appropriate process, it allows for criminal prosecution of a violation if the fines accrued meet the \$5,000 maximum, and keeps as criminal penalties only those violations the Code of Virginia requires remain criminal (signs on public property, violations that cause imminent peril to life, and land disturbance without appropriate permits).

COMMUNITY PROCESS: Staff presented the proposed amendment to the Zoning Ordinance Review Committee (ZOCO) on November 12, 2008 where it was generally well received. ZOCO expressed some concern regarding the scope of the amendment saying that their impression was civil penalties were to be limited to accessory dwellings. They also wished staff to return to their December meeting for further discussion on how the citation process for an alleged violation works and asked for a table showing civil fines versus criminal fines.

CONCLUSION: Staff recommends that the County Board authorize advertisement of public hearing by the Planning Commission and the County Board for their regularly scheduled February 2009 meetings, on the attached ordinance to amend, reenact, and recodify the Zoning Ordinance provisions in Sections 37 and 31A of the Arlington County Zoning Ordinance to permit civil penalties 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 37 AND 31A. “VIOLATIONS AND PENALTIES” AND “HISTORIC PRESERVATION DISTRICTS”, AT THE REGULARLY SCHEDULED PLANNING COMMISSION AND COUNTY BOARD MEETINGS IN FEBRUARY 2009 TO PERMIT THE IMPOSITION OF CIVIL PENALTIES.

The County Board of Arlington County hereby resolves to advertise the following amendment to Section 37 “Enforcement and Penalties” and Section 31A “Historic Preservation Districts” for public hearings at the Planning Commission and the County Board meetings in February 2009. This amendment would amend, reenact and recodify the proposed Zoning provisions in order to allow the imposition of civil penalties and other enforcement tools 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:

* * *

1 **SECTION 37. VIOLATIONS AND PENALTIES**

2
3 A. Any building erected or improvements constructed contrary to any of the
4 provisions of this Ordinance and any use of any building or land which is
5 conducted, operated or maintained in a manner that is not in compliance with any
6 of the provisions of the Ordinance or in a manner not in compliance with any
7 permit, detailed statement or plan approved under the provisions of this Ordinance
8 shall be and the same is hereby declared to be unlawful.

9
10 1.B. It shall constitute a violation of this ordinance for any person, firm or corporation,
11 either owner, agent or occupant, to do any of the things for which a permit is
12 required by this ordinance without having first obtained the said permit; and any
13 permit issued upon a false statement of any fact which is material to the issuance
14 thereof shall be void. Whenever the fact of such false statement shall be
15 established to the satisfaction of the Zoning Administrator, he shall forthwith
16 revoke the same, by notice in writing to be delivered to the holder of the void
17 permit upon the premises where the violation has occurred, or, if such holder be
18 not found there, by posting the said notice of revocation in some conspicuous
19 place upon the said premises. Any such person, firm or corporation who shall
20 proceed thereafter with such work or use without having obtained a new permit in
21 accordance with this ordinance shall be deemed guilty of violation thereof.

22
23 2 C. It shall constitute a violation of this ordinance for any person, firm or corporation,
24 either owner, agent or occupant, to disobey, neglect or refuse to comply with or
25 resist the enforcement of any of the provisions of this ordinance. Each day upon
26 which the said violation shall continue shall constitute a separate violation.

27
28 3. D. 1. Civil Penalties. Except in ~~in~~ case of the violation of any
29 provisions of the Zoning Ordinance listed in section 37.5G below, any
30 violation of the provisions of this Ordinance shall be deemed a civil
31 violation and, upon an admission of liability or finding of liability, the
32 owner, lessee, tenant and/or agent shall be subject to a civil penalty of ~~one~~
33 two hundred dollars (~~\$100.00~~) (\$200.00) for the first violation. This
34 penalty shall be imposed after a warning has been issued that gives the
35 owner, lessee, tenant or agent a specified time within which to comply
36 with the ordinance. Any person who continues to violate such provision of
37 this ordinance after the imposition of the first penalty, shall be subject to a
38 civil penalty of not more than one five hundred fifty dollars (~~\$150.00~~)
39 (\$500.00), or such lesser amount so that the total amount of fines imposed
40 will not exceed a total of five thousand dollars (\$5,000.00), for each
41 subsequent violation. No person shall be cited for a violation more than
42 once in any ten (10) day period, and no person shall be fined more than a
43 total of ~~three~~ five thousand dollars (~~\$3,000.00~~) (\$5,000.00) for all

44 violations arising out of the same set of facts.

45
46 Civil penalties shall be assessed only after a written Violation Notice has
47 been issued to the owner shown in the property tax records, which
48 Violation Notice has provided a reasonable period of time to correct, or in
49 instances where corrective measures will take time to complete, to
50 commence and diligently pursue correction of the violation. Except for
51 good cause shown, a reasonable period of time shall be a minimum of ten
52 (10) days. Civil penalties shall be imposed by the issuance of a civil
53 summons/ticket by the Zoning Administrator or deputy. Any person
54 served with a summons/ticket shall be informed of his/her right to stand
55 trial and of his/her responsibility to request within 30 days, said trial in
56 General District Court. Any person may waive his/her right to trial by
57 appearing in person or by mail and executing a Waiver of Trial and
58 Admission of Liability and paying the fine ~~have thirty (30) days in which~~
59 ~~either to pay a fine to the Treasurer of Arlington County, Virginia, or~~
60 Aggrieved persons also have the right to appeal the Violation Notice to the
61 Board of Zoning Appeals within 30 days of the date of the Violation
62 Notice. An aggrieved person may elect instead, at his/her option, to appeal
63 a ticket/summons to the Board of Zoning Appeals within 30 days of
64 issuance, or within 10 days for those violations listed in Section 37.D.2
65 below. In the event a person served with a Violation Notice and/or
66 summons/ticket has, within 30 days of the date of Violation Notice and/or
67 summons/ticket, or within 10 days for those violations listed in Section
68 37.D.2, neither:

- 69
70 a) Requested a hearing date in General District Court; nor
71 b) Admitted liability and paid the fine; nor
72 c) Filed an appeal of the Violation Notice with the Board of
73 Zoning Appeals,

74 then the determination of a violation shall be final and not subject to
75 further appeal and the amount of the ticket/summons shall be a debt owed
76 to the County.

77
78 2. As provided for in the Code of Virginia the following violations shall
79 have the right to appeal a Violation Notice within ten (10) days of the date
80 of issuance:

- 81 a) Parking of commercial trucks in residential zoning districts.
82 b) Maximum occupancy limitation of a residential dwelling
83 unit.

- 84
85 4. E. The demolition, razing or moving of a building or structure which is located in an
86 Historic Overlay District without the prior approval of the Historical Affairs and

87 Landmark Review Board (review board) and/or the County Board as provided in
88 Section 31.A shall be punishable by civil penalty.

89
90 1. Such civil penalty shall not exceed twice the market value of the property
91 as determined by the assessed value of the property at the time of
92 destruction or removal of the building or structure, and shall include the
93 value of any structure and the value of the real property upon which any
94 such structure was located.

95
96 2. Enforcement under this Section shall be by bringing an action in the name
97 of the County in Circuit Court by the county Attorney, upon request of the
98 Zoning Administrator, and such action shall be brought against the party
99 or parties deemed responsible for such violation.

100
101 3. The remedies provided for in this Section are not exclusive and shall be in
102 addition to any other remedies provided by law.

103
104 5. F. *Criminal Penalties.* It shall be unlawful and constitute a misdemeanor for any
105 person to violate any of the provisions of this ordinance, referenced in subsection
106 37.G below. Any person who is convicted of a violation of any of the provisions
107 of this ordinance shall be punished by a fine of not less than ten dollars (\$10.00)
108 nor more than one thousand dollars (\$1,000.00). If the violation is uncorrected at
109 the time of conviction, the court shall order the violator to abate or remedy the
110 violation in compliance with the Zoning Ordinance within a time period
111 established by the court. Failure to remove or abate a zoning violation within the
112 specified time period shall constitute a separate misdemeanor offense punishable
113 by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars
114 (\$1,000.00), and any such failure during any succeeding ~~thirty~~ 10-day period shall
115 constitute a separate misdemeanor offense for each ~~thirty~~ 10-day period
116 punishable by a fine of not less than ~~ten~~ one hundred dollars (\$100.00) nor more
117 than one thousand five hundred dollars (\$1,5000).
118

119 5. G. The following violations ~~that will~~ shall be treated as a ~~civil~~ criminal penaltyies:
120 are:

- 121 1 a. Any sign posted on public property or in public rights-of-way in
122 contravention of this Ordinance; ~~on private property erected,~~
123 ~~altered, refaced or enlarged without a permit;~~
- 124 b. ~~Erection of any prohibited sign on private property;~~
- 125 c. ~~Parking a commercial vehicle in an "R" or "RA" District (includes~~
126 the type of vehicle, the number of commercial vehicles, the weight,
127 and where they are parked on the lot);
- 128 d. ~~Commercial auto repair in a residential zone;~~
- 129 e. ~~Business establishments that have merchandise in the setback or on~~

- 130 display outside.
131 f. ~~The placing on private property of any inoperative, or any~~
132 ~~unlicensed and/or uninspected vehicle, except as permitted by~~
133 ~~subsection 5.A.8.e. of the Zoning Ordinance.~~
134 2. Any land development activity without applicable permit;
135 3. Any violation of the provisions of the Ordinance that
136 results in physical harm or injury to any person.
137

138 When civil penalties total \$5,000 or more, the violation may be prosecuted as a
139 criminal misdemeanor, as provided within the Code of Virginia. Treatment as
140 criminal penalties shall not preclude the Zoning Administrator from pursuing
141 injunctive action.
142

143
144 H. The Zoning Administrator or his/her agent shall have all necessary authority to
145 present sworn testimony to a magistrate or court of competent jurisdiction and if
146 such sworn testimony establishes probable cause that a zoning ordinance
147 violation has occurred, request that the magistrate or court grant the Zoning
148 Administrator or his/her agent an inspection warrant to enable the Zoning
149 Administrator or his /her agent to enter the a property and/or building for the
150 purpose of determining whether violations of the zoning ordinance exist. The
151 Zoning Administrator or his/her agent shall make a reasonable effort to obtain
152 consent from the owner or tenant of the property and/or building prior to
153 pursuing the issuance of an inspection warrant.
154

155 (Ord. No. 97-16, 7-19-97; Ord. No. 98-12, 4-18-98; Ord. No. 99-23, 11-13-99, _____)

156
157 FROM SECTION 31A

158
159 **N. Penalties.** Penalties shall be as provided in Section 37.
160

- 161 1. ~~Any person who violates any provision of this Section 31A shall be guilty of a~~
162 ~~misdemeanor and shall be punished by a fine of not more than one thousand~~
163 ~~dollars (\$1,000.00) and not less than one hundred dollars (\$100.00).~~
164 ~~2. For the purpose of this Section 31A, each day during which there exists any~~
165 ~~violation of any provision herein shall constitute a separate violation of such~~
166 ~~provision.~~
167 ~~3. In addition to any other penalties allowed by law, there is hereby established,~~
168 ~~pursuant to Section 15.1-687.22 of the Code of Virginia, a civil penalty for the~~
169 ~~wrongful demolition, razing, or moving of part or all of a building or structure~~
170 ~~when such building or structure has been designated as an historic structure or~~
171 ~~landmark or is part of an historic district. This civil penalty shall be imposed on~~
172 ~~the party deemed by the circuit court to be responsible for the violation and shall~~

173 not exceed the fair market value of the property as determined by the County real
174 estate tax assessment at the time of the demolition, razing, or moving.

175 ~~————— An action seeking the imposition of such a penalty shall be instituted by petition~~
176 ~~filed by the County in Circuit Court, which shall be tried in the same manner as~~
177 ~~any action at law. It shall be the burden of the County to show the liability of the~~
178 ~~violation by a preponderance of the evidence. An admission of liability or finding~~
179 ~~of liability shall not be a criminal conviction for any purpose. The filing of any~~
180 ~~action pursuant to this section shall preclude a criminal prosecution for the same~~
181 ~~offense.~~

182 ~~————— The defendant, within twenty one (21) days after the filing of the petition, shall~~
183 ~~file an answer and may, without admitting liability, agree to restore the building or~~