



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting of December 9, 2006

SUPPLEMENTAL REPORT

REVISED ORDINANCE

DATE: December 6, 2006

SUBJECT: Amendment to Section 36. Administration and Procedures of the Arlington County Zoning Ordinance to authorize the Board of Zoning Appeals to grant special exception use permits that modify requirements contained in the Zoning Ordinance with respect to physical requirements of improvements on a lot or parcel of land, including setback and other placement requirements, coverage, and height.

DISCUSSION: Several questions have been raised regarding the history of variance approvals and the applicability of the proposed use permit process to building types, zoning districts and uses. The following information has been prepared to answer these questions.

Under what circumstances would the BZA grant modifications for height through the use permit process?

It is recommended by the NCAC and the Planning Commission, as well as the County Manager that height be excluded from the list of modifications that the BZA may approve through a use permit process. Variance requests for height have been denied by the BZA in recent years. Height variance requests are rare and are usually the result of construction error. The BZA has denied them and roofs have been reconstructed to bring buildings into compliance with the Zoning Ordinance.

How will the community be compensated for the value of the use permit in cases where the use permit is for uses other than one-family dwellings?

There is no compensation for the granting of a special exception regardless of the use. A use permit would be approved when the BZA finds that the proposal meets the criteria set forth in the Zoning Ordinance.

County Manager: _____

County Attorney: _____

Staff: Terry Russell, Zoning Administrator

Tony Burnette, Deputy Zoning Administrator, Executive Secretary of the BZA

PLA-4563S

Is this use permit process necessary since the BZA has continued to approve variances since the Cochran, et al v. Board of Zoning Appeals ruling by the Virginia Supreme Court?

Due to the ruling by the Supreme Court in cases outside Arlington County the staff began to recommend to the BZA that it should not grant the variances being requested because they do not meet the strict standards found in the Code of Virginia. There has been a long history in Arlington County of relief for homeowners, and in a few cases multi-family residences and commercial properties, from the strict application of the Zoning Ordinance through the variance process. The County Board has the authority to create a use permit process that could be used to continue such relief in the absence of the variance process. Therefore, in January of 2006 the County initiated consideration of this special exception use permit process to be administered by the BZA.

In what Zoning districts could the new use permit process be used?

A property owner could request the approval of a use permit in any zoning district. This is for by-right proposals only. If there is a provision in the zoning district that permits the County Board to modify placement requirements by a use permit or site plan special exception process, a use permit cannot be requested from the Board of Zoning Appeals (BZA). In the discussion that follows below it is recommended that the use permit provision be limited to one- and two-family dwellings in “R” district and a revised ordinance is proposed.

Should the new use permit process be limited to one and two-family dwellings only?

The Planning Commission recommended that the use permit process be limited to one-family dwellings. Variances are often requested for two-family dwellings in “R2-7” districts. These are two dwelling units attached at on one side with individual lots for each unit. They are owned also owned separately. There were 22 cases requesting variances for a two-family dwelling in “R2-7” districts in 2005 and 2006. Therefore, it is recommended that the use permit process be approved for “R-20,” “R-10,” “R-8,” “R-6,” “R-5,” and “R2-7” districts.

Concerns have been raised that multi-family dwellings and commercial development should be excluded from the use permit process. Few variances for multi-family dwellings and commercial development have been requested or approved in the last two years. The following is a list of these cases.

V-9938-05-1: The requested variance was for the height of 5 units in a 21 unit town house development in Nauck. The property is zoned “RA14-26.” The variance was denied.

V-9866-05-3: The requested variance was for a deck on the side of a condo building in Rosslyn. The zoning is “RA6-15.” The variance was approved.

V-9700-05-1: The requested variances were for placement to permit a four unit town house project in Nauck. The zoning is “R2-7.” The request was withdrawn.

V-9952-05-3: The requested variance was for a rear deck a town house in Rosslyn. The zoning is “RA6-15.” The variance was approved.

V-9887-05-1: The requested variance was for a rear deck on a condo building on Washington Blvd. near East Fall Church. The zoning is “RA8-18.” The variance was denied.

It is recommended that the County Board exclude these uses and limit the use permit process to the “R” districts listed above.

CONCLUSION: Variance cases have largely involved one or two family dwellings in “R” zoning districts. Very few requests have been made for multi-family and commercial properties. Therefore, it is recommended that the County Board adopt the attached revised ordinance to give the BZA the authority to approve use permits that modify placement requirements for by-right development but limit the use permit process to one- and two-family dwellings in “R-20,” “R-10,” “R-8,” “R-6,” “R-5,” and “R2-7” districts.

ORDINANCE TO AMEND, REENACT, AND RECODIFY SECTION 36. ADMINISTRATION AND PROCEDURES OF THE ARLINGTON COUNTY ZONING ORDINANCE TO AUTHORIZE THE BOARD OF ZONING APPEALS TO GRANT SPECIAL EXCEPTION USE PERMITS THAT MODIFY REQUIREMENTS CONTAINED IN THE ZONING ORDINANCE WITH RESPECT TO PHYSICAL REQUIREMENTS OF IMPROVEMENTS ON A LOT OR PARCEL OF LAND, INCLUDING SETBACK AND OTHER PLACEMENT REQUIREMENTS.

BE IT ORDAINED, by the County Board of Arlington that Section 36 of the Arlington County Zoning Ordinance is amended 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.

SECTION 36. ADMINISTRATION AND PROCEDURES

* * *

E. Board of Zoning Appeals; Variances and Appeals.

1. There shall be a Board of Zoning Appeals as provided for and having the powers, functions and responsibilities as described in the Code of the Commonwealth of Virginia.
2. Every appeal from a determination of the Zoning Administrator and every application for a variance shall be filed in writing with the Zoning Administrator. The time of the public hearing is determined by the Board of Zoning Appeals. The filing fee shall be as follows:
 - a. Appeals from a determination of the zoning administrator--Three hundred forty dollars (\$340.00).
 - b. Variances or Use Permits for existing single-family residential--Two hundred eighty-five dollars (\$285.00) for the first subsection of the zoning ordinance being modified. Each additional subsection to be modified will be an additional fee of twenty percent [20%] of the base fee.
 - c. Variances or Use Permits for single-family new construction/resubdivision for new construction--Two thousand two hundred sixty dollars (\$2,260.00) for the first subsection of the zoning ordinance being modified. Each additional subsection to be modified will be an additional fee of twenty [20] percent of the base fee.
 - d. Variance or Use Permit applications from nonprofit organizations and for nonprofit institutional uses--Two hundred thirty-five dollars (\$235.00).
 - e. Variances or Use Permits for a building location error, defined as a request for an "as-built" variance when a new structure is not built in accordance with the approved plans—Three thousand four hundred dollars (\$3,400.00).
 - f. Variances or Use Permits for all other uses—Two thousand eight hundred twenty dollars (\$2,820.00) for the first subsection of the zoning ordinance being modified. Each additional subsection to be modified will be an additional fee of twenty [20] percent of the base fee.
3. In addition to the above, the board shall have authority to grant, upon such conditions and safeguards as it may determine, such variances from the ordinance as may be in harmony with its general purpose and intent, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done, as follows:
 - a. Permit the continuance of a nonconforming use in a conforming building for periods of three (3) years beyond the three-year limitation contained in Section 35, subsection B.2, if the board finds that: (a) said nonconforming use is not detrimental to, and does not affect adversely, adjacent property by reason of the nature of the use, generation of traffic, parking, lighting, noise and similar factors; (b) no commercial display, lighting, advertising and

wholesale or retail merchandising is carried on in connection with the conduct of said nonconforming use; (c) such discontinuance shall work practical difficulty and undue hardship upon the owner of said building.

4. If any variance or use permit granted by the board of zoning appeals is not acted upon and put into effect within one (1) year after the date of such grant, then the variance or use permit shall be null and void and of no force and effect.
5. Every applicant for a variance or use permit shall file with his application a complete disclosure of the equitable ownership of the real estate to be affected including in the case of corporate ownership, the names of stockholders, officers and directors and in any case the names and addresses of all of the parties in interest; provided that the requirement of listing names of stockholders, officers and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than five hundred (500) stockholders.
6. The Board of Zoning Appeals may approve use permits that allow modifications of placement, coverage and/or height requirements for structures on lots in “R-20,” “R-10,” “R-8,” “R-6,” “R-5,” and “R2-7” districts where there is no option in the Zoning Ordinance to allow modification of requirements by the County Board, such as special exception use permits described in Section 36.G. or site plans described in Section 36.H. The Board of Zoning Appeals may impose conditions on the use permit that it deems necessary in the public interest, including limiting the duration of the use permit. The BZA shall approve a use permit when it finds:
 - a. That the proposal will not affect adversely the health or safety of persons residing in the neighborhood.
 - b. That the proposal will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood.
 - c. That the proposal will not be in conflict with the purposes of the master plans of the County.

In determining whether the proposal will be detrimental to the public welfare, injurious to property or improvements in the neighborhood or will adversely affect the health or safety of persons residing in the neighborhood, the BZA shall consider whether the modification will promote compatibility of development with the surrounding neighborhood because the structure’s overall footprint size and placement are similar to the structures on the properties surrounding the lot in question; and whether the modification will help preserve natural land form, historical features and/or significant trees and foliage.

- ~~d. That the modification will promote compatibility of development with the surrounding neighborhood.~~
- ~~e. That the modification will help preserve natural land form, historical features and/or significant trees and foliage.~~