



Text Amendment #2013-0006

Issue: Initiate and consider a request for a text amendment to Section 11-808(D) of the Zoning Ordinance to clarify the applicability of this provision.	Planning Commission Hearing:	March 5, 2013
	City Council Hearing:	March 16, 2013
Staff: Faroll Hamer, Director, Planning and Zoning, Farol.Hamer@alexandriava.gov Karl Moritz, Deputy Director, Neighborhood and Community Planning, P&Z, Karl.Moritz@alexandriava.gov Joanna Anderson, Acting Deputy Director, Land Use Services, P&Z, Joanna.Anderson@alexandriava.gov		

PLANNING COMMISSION ACTION, MARCH 5, 2013:

On a motion by Commissioner Wagner, seconded by Commissioner Macek, the Planning Commission voted to initiate Text Amendment #2013-0006. The motion carried on a vote of 6-0-1, with Commissioner Dunn abstaining.

On a motion by Commissioner Wagner, seconded by Commissioner Lyman, the Planning Commission voted to recommend approval of Text Amendment #2013-0006 to remove the words "text or" from 11-808(D) and directed staff to initiate further study of all of the various issues surrounding Section 11-808 within a reasonable time period and to bring specific recommendations to the Planning Commission on potential changes to section 11-808. The motion carried on a vote of 7 to 0.

Reason:

The Planning Commission agreed that the text amendment is necessary to correct the technical error in Section 11-808. However, the Commission also agreed that more discussion and study of Section 11-808 is necessary to preserve the substance of what is now considered to be the right under a map amendment. The Commission directed staff to study protections for text amendments that may affect specific properties, potential Charter amendments, how condominiums and high rises are counted for the purpose of protest petitions, how a Small Area Plan or comprehensive zoning is affected by Section 11-808 and to address some of the specific matters raised by speakers during the public testimony.

Speakers:

Bert Ely, resident of 200 S Pitt Street and co-chair of Friends of the Alexandria Waterfront, suggested that the Commission defer the text amendment stating that this is a substantive change and not a technical change. Mr. Ely said that there has not been any public debate and that the Planning Commission should conduct a comprehensive review to modernize this section of the Zoning Ordinance. He also stated that new members have not had time to understand the issue.

Andrew MacDonald, 217 N Columbus St., spoke against the text amendment and stated that the City should better work with the community so that citizens did not feel that it is necessary to file protest petitions.

Yvonne Callahan, resident of 735 S Lee St. and President of Old Town Civic Association, discussed a resolution from the Old Town Civic Association that was unanimously adopted objecting to the proposed text amendment. She stated that everything is done by text amendments. Ms. Callahan also discussed the differences between the original code section 76-288 and 11-808 and suggested alternative amendments to section 11-808.

Kathlyn Hoekstra, 1310 N. Chambliss St., requested that the Planning Commission defer consideration of the amendment given the litigation. She stated that for some people who aren't familiar with the issue, the amendment seems like retaliation for the Waterfront litigation. She stated that she is concerned that progress made with civic engagement may suffer.

Van Van Fleet, 26 Wolfe St., spoke against the amendment and stated that passing the amendment would disenfranchise every land owning citizen by taking away the ability to protest poor land use decisions. He also stated that the proposed amendment violates Section 9.13 of the City Charter and the first amendment of the constitution.

Jack Sullivan, 4300 Ivanhoe St., stated that there is no hurry to pass the proposed amendment and that the Commission should take more time to review. Mr. Sullivan suggested and discussed alternative amendments to section 11-808.

Nancy Jennings, 2115 Marlboro Dr., stated that the text amendment might be doable but needs more review by the community.

Lynn Hampton, 215 Park Rd., supports the text amendment and stated that it is clear that this is a codification error. She also stated that fixing this error will help to avoid situations, such as the litigation, that are disruptive to the community

Dennis Auld, 215 Park Rd., supports the text amendment and stated that there is a clear difference between a text amendment and map amendment with regard to filing a protest petition. He stated that should a super majority vote be required, majority rules and minority rights would be eliminated.

Frank Putzu, 1423 Juliana Place, spoke against and stated that the City is under a legally binding decision by the Board of Zoning Appeals. He also stated that the community does not know why Council felt it is necessary to go forward with the amendment now. He does not believe that the language is ambiguous.

Katy Cannady, 20 E Oak St., stated that the Federation of Civic Associations requested that the Planning Commission defer consideration of the text amendment. She stated that even after a detailed explanation by staff, more time and explanation are necessary to understand what it means for all citizens.

Margaret Wood, 711 Potomac St., requested a deferral and stated that removing citizen's rights to protest diminishes the protection for citizen's rights and welfare.

Bob Wood, 711 Potomac St., suggested that the Planning Commission defer consideration until after the litigation and stated he is concerned with the citizen's loss of property rights. Mr. Wood also stated that there other things that need to be changed in the Zoning Ordinance. He discussed other sections of the Zoning Ordinance where council can impose zoning conditions.

Sharron Annear, 1118 N Howard St., spoke against the text amendment and stated that it affects the rights of property owners and the right to petition the government for redress of grievances. She also stated that more time and more research are needed.

Karen Shack, 501 Tobacco Quay St., spoke against the text amendment and stated that citizens feel disrespected. She stated that the text amendment takes away citizen's right to protest and that there is no reason to make a decision now.

Dino Drudi, 315 N West St., spoke against and stated that the there is no hurry to consider the text amendment, which would invite more litigation. He also stated that the City should ask the attorney general for an opinion on the matter.

Poul Hertel, resident of 1217 Michigan Ct. and co-chair of Federation for Civic Associations, requested the Planning Commission defer for the broadest and most open debate. He stated that the separation between map and zoning text amendment is conceivable but not for form-based zoning.

Elizabeth Gibney, 300 S Lee St., requested that the Planning Commission defer for further study because it is too big of an issue and citizens are not aware of what this is about.

Carlyle Connie Ring, 308 Monticello Blvd., stated that the amendment affects all parts of the city and is rarely used. He also stated that there should be no hurry to act and that the Planning Commission should be careful that the words used accomplish what they want to accomplish.

Michael Hobbs, 419 Cameron St., spoke against and stated that citizens should be able to hold their government accountable and that the process is flawed. He also stated that there has not

been enough time for public awareness and consideration particularly because it relates to process.

Mark Mueller, 414 S Royal St., stated that the Planning Commission should defer and give time for more research and public consideration.

Kathryn Papp, resident, stated that this text amendment should be considered in a court of law. She also stated that as the City has become urbanized and dense, text amendments have become more useful. She relates this issue to civil rights.

This text amendment clarifies the language of the City's protest provisions in order to avoid future confusion and the delay and litigation that resulted from the adoption of the Waterfront Plan and the attempt to approve a text amendment implementing the Plan. While other potential updates to this section of the zoning ordinance have been identified, this current text amendment is for the limited purpose of clarifying the language. Any additional revisions to this section will be addressed at a later time as part of a more comprehensive zoning ordinance update.

I. BACKGROUND

The Zoning Ordinance provides a mechanism whereby landowners adjacent to a site that is the subject of a zoning map amendment may "protest" the zoning map amendment and, upon a proper petition, require that the zoning map amendment be approved only by a supermajority vote of Council— a three fourths majority (6-1) vote. Section 11-808 of the Zoning Ordinance is attached.

This provision is a protection for property owners in cases involving zoning map amendments. Where the City initiates a zoning map amendment against the wishes of the property owner of the parcel being rezoned, the owner may protest the zoning map amendment under section 11-808. If a property owner asks for a zoning map amendment but property owners who live within 300 feet of the property to be rezoned oppose it, they may protest. In either case, the zoning ordinance legislates by mathematical calculation the degree of "protest" sufficient to require a supermajority vote by the City Council.

On January 21, 2012, City Council approved the Waterfront Small Area Plan Master Plan Amendment #2011-0001 and Text Amendment #2011-0005. The text amendment was designed to implement the Waterfront Plan by changing the W-1 zone to reflect the desired uses and densities of the Waterfront Plan and to incorporate as requirements the design and amenity requirements of the Waterfront Plan for new development. Prior to the hearing, citizens who objected to the Waterfront Plan filed a petition under the protest provisions of section 11-808 and sought to invoke the supermajority vote requirement *even though the matter before Council was a text amendment, not a map amendment.*

The Director explained to the City Council that the protest provision only applies to zoning map amendments and that pursuant to the definition of map amendment and text amendment in the zoning ordinance, this matter is a text amendment. As such, the protest petition provision did not apply and therefore only a simple majority vote was required. The City Council went on to approve the text amendment with a 5-2 vote. Subsequently, the opponents appealed the Director's determination about the applicability of the protest petition provision to the Board of Zoning Appeals (BZA).

At the hearing before the BZA the Director argued several legal points including that under section 9.13 of the City Charter, the City's legal authorization is limited and allows the protest procedure to apply only in two instances: when a zoning map amendment is proposed or when a change is proposed to the text of proffered conditions (which would

have been attached to a map amendment). The City also argued that the protest was untimely because it had been filed before the second hearing on the matter rather than the first hearing. Lastly, the Director argued that the rationale behind the protest – allowing neighboring property owners to weigh in in sufficient numbers – does not apply in the case of text amendments which typically relate to large expanses of land, an entire zone or even the entire city.

Nevertheless, the BZA ruled against the City based on the specific language of section 11-808(D) because it uses the terms “text amendment” in addition to “map amendment.” Although the City’s position is that the term “text” in that provision can only relate to the text of a proffered condition, consistent with its Charter-limited scope and all of the other language of the section, the BZA disagreed and the City has been involved in litigation since that time to overturn the BZA’s decision.

II. PROPOSED TEXT CHANGE

In order to avoid any possible confusion about the meaning and application of the City’s protest procedures, this text amendment seeks to remove the word “text” from section 11-808. Thus Section 11-808 (D) will be changed as follows:

(D) *Effect of protest.* If a protest to a proposed ~~text or~~ map amendment is filed, the city council may not approve the proposed amendment except by an affirmative vote of three-fourths of its members.

This simple one word amendment will clarify that a protest and its resulting requirement of a supermajority vote to approve a zoning map amendment applies only in cases where the zoning map itself is being changed. It will not apply to a text amendment that seeks to change the language of the zoning ordinance itself.

III. STAFF RECOMMENDATION

Although the protest procedure is not used often, it is a practice that exists in other cities, both in Virginia and elsewhere, and is an important right of landowning citizens. It allows the public to participate in a zoning map amendment case to which they object and to require their legislators to approve the matter by more than the otherwise required simple majority vote.

Staff recommends that this text amendment be approved, so that the protest provisions of the zoning ordinance are clear, so that there is no confusion, and so that the public knows when it this legislative process is available to it.

Attachment: Proposed Zoning Text Changes

ATTACHMENT

PROPOSED ZONING TEXT CHANGES

11-808 - Protest of zoning map amendment by landowners.

- (A) Who may protest. A protest shall be signed by the owners of at least 20 percent of:
 - (1) The land proposed to be rezoned by the map amendment; or
 - (2) All land within 300 feet of the boundaries of the land proposed to be changed by the map amendment.
- (B) Deadline for protest. A protest must be filed with the city clerk no later than noon on the last working day before the day on which city council conducts its first public hearing on the proposed amendment.
- (C) Calculation of ownership. The director shall verify that those filing are legal property owners. Through mathematical calculation and the use of a planimeter, the department of transportation and environmental services shall verify said 20 percent area. Streets, alleys and land dedicated to public use or owned by the city, state or federal government shall not be included in computing the areas of ownership required.
- (D) Effect of protest. If a protest to a proposed ~~text or~~ map amendment is filed, the city council may not approve the proposed amendment except by an affirmative vote of three-fourths of its members.
- (E) Limitations.
 - (1) Once a protest has been filed, no changes by way of addition, substitution, amendment or withdrawal may be made to the protest after the deadline provided for the filing of a protest in section 11-808(B).
 - (2) A protest against a less restrictive change is not effective against a more restrictive change but a new protest may be filed against the more restrictive change and this paragraph does not prevent the filing of a protest against both a less and more restrictive change.
 - (3) The provisions of this section 11-808 shall not apply to city owned property or be effective in the case of a map amendment which is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

PlanComm

PC Docket Item #6
TA 2013-0006

From: MikeLReed@aol.com
Sent: Monday, March 04, 2013 4:31 PM
To: PlanComm
Subject: Item 6 on Tuesday's agenda

Mr. Chairman and Members of the Commission:

Because I am unable to attend tomorrow night's meeting, I take this means to urge that you defeat – or at least defer – action on Agenda Item 6. The arguments against the proposed change in the zoning ordinance are clear and, in my view, compelling. Even if this were not the case, there is no public emergency or crisis situation which warrants a rush to judgment on such an important issue. Change of the magnitude proposed in Item 6 needs thoughtful debate and careful and unhurried consideration.

Sincerely,

Michael L. Reed
36 Alexander Street
Alexandria, VA 22314

PlanComm

PC Docket Item #6
TA 2013-0006

From: Poul Hertel <poulh@erols.com>
Sent: Friday, March 01, 2013 7:34 AM
To: Rashad Young
Cc: PlanComm; Faroll Hamer; William Euille; Paul Smedberg; Del Pepper; delpepper@aol.com; jns-cwest@comcast.net; lynnboastain@yahoo.com; John Chapman; Allison Silberberg; Justin Wilson; Timothy Lovain
Subject: 11-808 Text amendment
Attachments: motion to defer Code Section 11-808 Amendment.docx

ALEXANDRIA FEDERATION OF CIVIC ASSOCIATIONS

TO: RASHAD YOUNG CITY MANAGER
FROM: LYNN BOSTAIN AND POUL HERTHEL CO-CHAIRS
SUBJECT: 11-808 TEXT AMENDMENT
DATE: 3/1/2013
CC: FAROLI HAMER, PLANNING COMMISSION, AFCA, CITY COUNCIL

DEAR MR. YOUNG

The Alexandria Federation of Civic Associations respectfully asks the City to defer bringing the proposed amendment of zoning code section 11-808(D) to the Planning Commission and the City Council on the schedule that has been announced.

The rights and responsibilities of landowners specified in the Zoning Ordinance go to the very heart of how the citizens of Alexandria may participate usefully and effectively in the conduct of the city's planning and zoning process. Alexandria's Code has long afforded landowners the opportunity to protest if they believe that a proposed zoning change would be damaging to their interest. That fundamental protection should go forward undiminished regardless of the particular means by which zoning changes are considered and adopted. The protection should be altered or amended only with the broadest and most thoughtful deliberation and unhurried consideration of how public participation in the zoning process can preserve that timeless principle while most effectively contributing to the city's planning process now and in the future.

At the February 27 meeting of the Alexandria Federation of Civic Associations, the Old Town Civic Association representatives made the following motion, which the Rosemont Civic Association representatives seconded.

"The Federation requests that the Planning Commission and the City Council defer consideration of the proposed amendment of the text of Zoning Code Section 11-808(D) on the announced schedule, and urges that such an amendment be considered only

- (1) After it is clear what the present state of the law and its applicability to Map and Text Amendments is, and
- (2) After there has been ample opportunity for full and open public discussion of the merits and effects of the proposed amendment

before it is considered by the Planning Commission and the City Council."

The representatives of the following associations carried the motion unanimously.

- Brookville-Seminary Valley Citizens Association, Inc.
- Fairlington Citizens Association, Inc.
- Holmes Run Park Committee
- NorthEast Citizens' Association, Inc.
- North Old Town Independent Citizens Association (NOTICE)
- Old Town Civic Association, Inc.
- Rosemont Civic Association
- Seminary Hill Association, Inc.
- Seminary West Civic Association, Inc.
- Taylor Run Citizens Association, Inc.
- Wakefield Tarleton Civic Association

Sincerely

Lynn Bostain Poul Hertel

PlanComm

PC Docket Item #6
TA 2013-0004

From: Rashad Young
Sent: Tuesday, March 05, 2013 1:00 PM
To: Poulh@erols.com
Cc: PlanComm; Faroll Hamer; William Euille; Paul Smedberg; Del Pepper; delpepper@aol.com; jns-cwest@comcast.net; lynnboastain@yahoo.com; John Chapman; Allison Silberberg; Justin Wilson; Timothy Lovain; Mark Jinks; James Banks
Subject: RE: 11-808 Text amendment

Dear Poul and Lynn,

Thank you for your email letter of March 1, 2013, requesting deferral of the docket item regarding a text amendment for Section 11-808 of the Zoning Ordinance, scheduled for public hearings on March 4 and March 16, 2013, before the Planning Commission and City Council, respectively.

You make a number of good points about the importance of protecting citizen rights concerning rezonings through the protest petition, which I fully support. However, because these hearings have been advertised, and because there is such heightened interest in the zoning that implements the Waterfront Plan, it would not be fair to all those who have already planned to attend the meeting to defer it now.

I look forward to working with the Federation of Civic Associations in the future.

Rashad

Rashad M. Young
City Manager, City of Alexandria

From: Poul Hertel [<mailto:poulh@erols.com>]
Sent: Friday, March 01, 2013 7:34 AM
To: Rashad Young
Cc: PlanComm; Faroll Hamer; William Euille; Paul Smedberg; Del Pepper; delpepper@aol.com; jns-cwest@comcast.net; lynnboastain@yahoo.com; John Chapman; Allison Silberberg; Justin Wilson; Timothy Lovain
Subject: 11-808 Text amendment

ALEXANDRIA FEDERATION OF CIVIC ASSOCIATIONS

TO: RASHAD YOUNG CITY MANAGER
FROM: LYNN BOSTAIN AND POUL HERTTEL CO-CHAIRS
SUBJECT: 11-808 TEXT AMENDMENT
DATE: 3/1/2013
CC: FAROLL HAMER, PLANNING COMMISSION, AFCA, CITY COUNCIL.

x 11

DEAR MR. YOUNG

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The rights and responsibilities of landowners specified in the Zoning Ordinance go to the very heart of how the citizens of Alexandria may participate usefully and effectively in the conduct of the city's planning and zoning process. Alexandria's Code has long afforded landowners the opportunity to protest if they believe that a proposed zoning change would be damaging to their interest. That fundamental protection should go forward undiminished regardless of the particular means by which zoning changes are considered and adopted. The protection should be altered or amended only with the broadest and most thoughtful deliberation and unhurried consideration of how public participation in the zoning process can preserve that timeless principle while most effectively contributing to the city's planning process now and in the future.

At the February 27 meeting of the Alexandria Federation of Civic Associations, the Old Town Civic Association representatives made the following motion, which the Rosemont Civic Association representatives seconded.

"The Federation requests that the Planning Commission and the City Council defer consideration of the proposed amendment of the text of Zoning Code Section 11-808(D) on the announced schedule, and urges that such an amendment be considered only

- (1) After it is clear what the present state of the law and its applicability to Map and Text Amendments is, and
- (2) After there has been ample opportunity for full and open public discussion of the merits and effects of the proposed amendment

before it is considered by the Planning Commission and the City Council."

The representatives of the following associations carried the motion unanimously.

- Brookville-Seminary Valley Citizens Association, Inc.
- Fairlington Citizens Association, Inc.
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- North Old Town Independent Citizens Association (NOTICE)
- Old Town Civic Association, Inc.
- Rosemont Civic Association
- Seminary Hill Association, Inc.
- Seminary West Civic Association, Inc.
- Taylor Run Citizens Association, Inc.
- Wakefield Tarleton Civic Association

Sincerely

Lynn Bostain Poul Hertel

PlanComm

Docket Item # 6
TA 2013-0006

From: algissuzanne@verizon.net
Sent: Monday, March 04, 2013 10:09 PM
To: PlanComm
Subject: Proposed Zoning Ordinance Changes

Mr. Chairman and Members of the Commission:

I urge that you defeat, or at least defer, action on Agenda Item 6. The arguments against the proposed change in the zoning ordinance are clear and, in my view, compelling. Even if this were not the case, there is no public emergency or crisis situation which warrants a rush to judgment on such an important issue.

Change of the magnitude proposed in Item 6 needs thoughtful debate and careful and unhurried consideration. This is not a trivial matter.

Sincerely,

Algis Kalvaitis
17 Franklin St.
Alexandria, VA 22314

PlanComm

PC Docket Item # 6
TA 2013-0006

From: Shirley Downs <shirleydowns@verizon.net>
Sent: Tuesday, March 05, 2013 1:08 PM
To: PlanComm; PlanComm
Subject: Changes in Item #6,

Dear Planning Commission Members,

I am writing to protest any consideration of eliminating the words "text or" from section 11-808(D) of the Zoning Ordinance. Doing so will have a profound impact on the rights of local residents to influence the kind of development they want in their neighborhoods. What can occur or not occur within a zoning area impacts the residents of that community and those adjacent to it. Eliminating text amendments would wipe out the ability of property owners to protest changes in the text of any zoning ordinances.

City Staff are proposing to simply eliminate the rights and ability of local residents to comment on or in any way control what is proposed for their neighborhood. This will impact our quality of life and our property values.

At a time when the City is attempting to improve citizen input this is an insult and a travesty.

Shirley Downs
1007 North Vail Street
Alexandria, VA 22304

PlanComm

PC Docket Item #6

From: Jim and Carey <jimandcarey48@comcast.net>
Sent: Tuesday, March 05, 2013 1:11 PM
To: PlanComm
Cc: jimandcarey48@comcast.net
Subject: Text Amendment #2013-0006

Mr. Chairman and Members of the Commission,

I respectfully request that you vote NO on the Text Amendment in tonight's Docket item #6 (removal of the words "text or," from Section 11-808(D) of the Zoning Ordinance). Zoning has evolved in recent times and as you are undoubtedly aware, text changes are today commonly used for both major and minor zoning policy changes. Request that you respect the rights of Alexandrians to help shape out great City and, preserve the right to offer a protest petition for either or both text or map changes. I can think of no reason to make the proposed change, except for retaliation for the most recent use of the protest provision. Many of the us had no role in the recent use of the protest petition, but we strongly request that you preserve our right to use it, should the need arise in the future.

Thanks so much.
Jim Durham
622 Fort Williams Pkwy
Alexandria, VA 22304
703-519-0762

PlanComm

PC Docket Item #6
TA 2013-0006

From: Carey <Carey48@comcast.net>
Sent: Tuesday, March 05, 2013 1:50 PM
To: PlanComm
Cc: Durham, Carey
Subject: Tonight's vote on Text Amendment #2013-0006

Mr. Chairman and Members of the Commission,

Just say NO to the Text Amendment in tonight's Docket #6.

Please respect our rights to help shape our great City and, preserve our right to offer a protest petition for either or both text or map changes.

Respectfully,

Carey Durham

622 Fort Williams Pkwy

Alexandria, VA 22304



The Cameron Station Civic Association
c/o 389 Livermore Lane, Alexandria, VA 22304

Donald N. Buch
President

Mindy Lyle
First Vice President

Dak Hardwick
Second Vice President

PC Docket Items
5 + 6
TA 2013-0005
TA 2013-0006

March 4, 2013

The Planning Commission
City of Alexandria, Virginia

Re: Proposed Text Amendments #2013-0005 and #2013-0006

Commissioners:

I write you on behalf of the Cameron Station Civic Association to express our strong feelings relating to the above matters which will come before you at your March 5, 2013 meeting.

1. The central issues relate to our waterfront; the City's waterfront; a waterfront "owned" by all the property owners and residents of Alexandria. The extent of control over the future of our waterfront should not be based upon one's proximity to it. It needs to be developed in a manner which recognizes the interests of all Alexandrians.
2. While understanding that clarification of the Zoning Ordinance's protest provisions is currently being litigated, we wish to record our support for the City's interpretation of the intent of Section 11-808(D).
3. Our recent City Council elections were very much a referendum on the current waterfront plan and the conclusions are abundantly clear. The voters have spoken – more than 65,000 of them. Their votes clearly indicate that there is an overwhelming desire to see the current plan move forward. We trust that you will see your way clear to facilitating the expeditious advancement and implementation of the widely supported plan.

Thank you for your time and consideration and for your dedication to the best interests of our City.

Yours truly,

Donald N. Buch

Donald N. Buch
President

An Amendment to Protect the Rights of Alexandria
Property Owners:

To Section 11:808 of the Zoning Ordinance add the
following subsection:

**Subsection (F): For the purposes of this provision,
any text amendment that is specific to a property
or parcel within a zone shall be considered to be a
map amendment.**

Statement of Michael E. Hobbs
for the Planning Commission
March 5, 2013

Text Amendment #2013-0006

Thank you, Chairman Komoroske and members of the Commission. I am Michael Hobbs, residing at 419 Cameron Street.

For as long as anyone remembers, the Alexandria Zoning Ordinance has provided an opportunity for landowners who feel that they would be harmed by a proposed zoning change to protest against that change. The question now before you is what the proper scope for such protests should be.

According to your staff report, the protest provision in the ordinance creates confusion “because it uses the term ‘text amendment’ in addition to ‘map amendment’.” Staff recommends that you resolve that confusion by the simple expedient of removing the reference to “text amendment” from the ordinance.

Objections have been raised both to the substance of this proposed amendment, and to the process by which it is brought to you for consideration.

In substance, it is not at all clear, at least to many in the community, what the intent and what the effect of the proposed amendment would be. Does the present ordinance apply only to zoning changes that have been classified as “Map Amendments”, and never to amendments that change the text of the Zoning Ordinance in any way? The staff report says so—but that begs the question. That argument was made to the expert land use attorneys and other members of the Board of Zoning Appeals, but the BZA determined that the ordinance applies to Text Amendments as well as Map Amendments, and the City’s appeal of that decision is to be heard in the Alexandria Circuit Court just over a month from now.

Regardless of what the meaning of the present ordinance is, however, the more important question perhaps is what it should mean? The staff report acknowledges that the protest procedure “is an important right of landowning citizens.” If a landowner believes that a proposed zoning change will be damaging to his interest, he should have the right to protest it—and if enough other landowners share his concern, to hold their government to a stricter standard of scrutiny before adopting it. They do not have the power to prevent its adoption, or even to delay it—but they do have the right to require that it not be adopted if only a bare majority of the Council agree that the public benefit outweighs the private interest.

The question essentially is how best to balance the landowner’s right to protect his interest, and the city’s ability to conduct its planning and zoning business in a way that best serves the citizens and landowners of the city as a whole.

In striving to strike that proper balance, you should consider, first, what the present public policy reflected in the ordinance is; second, what the policy should be; and third, if those are in conflict, how the proper balance can best be crafted in an amended ordinance.

The proposal before you asserts that it is self evident that the present ordinance applies only to Map Amendments. But if that is so abundantly clear, we can presumably rely on the Circuit Court to say so, a few weeks hence. The staff says, further, that the ordinance should apply only to Map Amendments, and never to Text Amendments. Why? Either kind of zoning change can have a major impact on my legitimate interest. To use the classic example, if it were proposed to amend the text of the Zoning Ordinance to permit the construction of a rendering plant across the street from my home on Cameron Street, what difference does it or should it make whether that was to be accomplished by a Map or a Text Amendment? What public purpose is served by limiting my right of protest to one case but not the other?

But even if one assumes for sake of argument that this amendment might strike a proper balance, the process by which it is brought to you is deeply flawed. The intention to seek this change was first publicly announced just over two weeks ago, and the proposed change was published just eleven days ago. That is far from adequate to allow the sort of public awareness, thoughtful deliberation about the proper policy balance, reasoned consideration of reasonable alternatives, and full, fair and open opportunity for public comment, which the Planning Commission should require for its own benefit, and should insist precede any amendment of the Zoning Ordinance—especially where, as here, the amendment goes, not to a particular application, but to the very process by which you consider all applications.

It should be clear that this is not a “waterfront” zoning text amendment. This section of the ordinance says nothing about the Waterfront Zone. The change would apply to all zones, everywhere in the city; and whether you adopt it or not neither delays nor accelerates implementation of the Waterfront Plan.

It is said that this amendment is necessary to “allow other pending text amendments that have been stalled [due to the waterfront litigation] to move forward.” But there is nothing in the present language of this section that has prevented the city from moving forward with any and all other

text amendments. I believe, in fact, that you have indeed considered and acted on any number of other text amendments—some of them the subject of spirited debate—since the waterfront litigation began. Neither the BZA nor the courts have enjoined the city from considering and acting on any text amendments, and they would probably not have the power to do so. Indeed, as the companion measure you have just considered tonight makes plain, you have the power to move forward on the Waterfront Plan Text Amendment itself, notwithstanding the litigation.

If the city has observed a moratorium on consideration and enactment of Text Amendments, it has been self-imposed; it has been unnecessary; and amendment of this section of the ordinance is not required in order to remove it.

A full, open and deliberate consideration of the proposal before you might well conclude that it has merit. But if so, we should have confidence that it would well withstand the test of such

public scrutiny. The Planning Commission should be the last body which would agree to so abbreviate the public process that it undermines any possibility of public understanding and support of the result; and the Planning Commission should never allow its independent function, or its responsibility for the Zoning Ordinance, to be subverted by or be seen as subordinate to tactical considerations in litigation on a particular matter, whether intentionally or not.

There has apparently not been such urgency as to require immediate action on this proposed amendment of the Zoning Ordinance in the thirteen months since the Waterfront Small Area Plan was adopted. There is no such urgency now that requires you to adopt it just eleven days after it is published.

Thank you for your consideration.

PlanComm

From: Cynthia Evans <cynthiaevans52@gmail.com>
Sent: Tuesday, March 05, 2013 3:31 PM
To: PlanComm
Subject: Docket Item #6

Mr. Chairman and Members of the Commission,

I hereby request that you vote NO on the Text Amendment in tonight's Docket item #6 (removal of the words "text or," from Section 11-808(D) of the Zoning Ordinance). Zoning has evolved in recent times and as you are undoubtedly aware, text changes are today commonly used for both major and minor zoning policy changes. I request that you respect the rights of Alexandrians to have a say in how the city is developed and preserve the right to offer a protest petition for text and/or map changes. The right to petition our government is constitutionally protected. The right to lawful protest has a long history dating from the first days of our nation. As a citizen and a resident of Alexandria City, I resent this end run around my rights.

Very truly yours,
Cynthia B. Evans
1211 Saint Stephens Road
Alexandria, VA 22304

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PlanComm

From: Marianne and Buck <m-b-coates@comcast.net>
Sent: Tuesday, March 05, 2013 3:15 PM
To: PlanComm
Subject: Text Amendment #2013-0006

MR. CHAIRMAN AND MEMBERS OF THE COMMISSION,

AS A CITIZEN OF THIS LOVELY CITY OF ALEXANDRIA, I RESPECTFULLY REQUEST THAT YOU VOTE **NO** ON THE TEXT AMENDMENT TO BE DISCUSSED DURING TONIGHT'S COMMISSION HEARING.

THE ISSUE IS DOCKET ITEM #6 (REMOVAL OF THE WORDS "TEXT OR," FROM SECTION 11-808(D) OF THE ZONING ORDINANCE). CLEARLY ZONING HAS EVOLVED IN RECENT TIMES AND AS YOU KNOW WELL, TEXT CHANGES ARE USED FOR BOTH MAJOR AND MINOR ZONING POLICY CHANGES. PLEASE RECOGNIZE AND RESPECT THE RIGHTS OF ALEXANDRIA'S CITIZENS TO HELP SHAPE OUR HISTORIC CITY AS WE CONTINUE TO GROW AND CHANGE. I ASK THAT YOU PRESERVE A CITIZEN'S RIGHT TO OFFER A PROTEST PETITION FOR EITHER OR BOTH TEXT OR MAP CHANGES SHOULD THE NEED ARISE.

THANK YOU FOR YOUR ATTENTION AND THOUGHTFUL CONSIDERATION OF THIS REQUEST.

MARIANNE COATES
3801 GRIFFITH PLACE
ALEXANDRIA, VA 22304

x 24

PlanComm

From: Boyd Walker <boydwalker2012@gmail.com>
Sent: Tuesday, March 05, 2013 5:31 PM
To: PlanComm
Cc: John.Komoroske@nasd.com; Hsdunn@isbtax.com; Hyra.home1@verizon.net; Mslyman@verizon.net; Nathan Macek; Eric Wagner; Maria Wasowski

Mr. Chairman and Members of the Commission.

I know tonight you are faced with a difficult task, and I hope it is difficult. Yes, we have been planning and making decisions about our waterfront for at least 30 years, but the decision you make tonight could set in motion irreversible changes, so I hope you consider them carefully. As a former candidate for office, I am well aware that elections have consequences, which seems to be often quotes these days, and that not only does the City Council have a super majority that supports this plan, but they appointed the recent new members of this commission. Unfortunately, avoiding a court case seems to be the primary reason for taking a revote of this decision now. But it also stems from litigation by the Robinson Terminal Corporation that has been held in abeyance pending the passage of a plan that has been tailor made to meet the demands of that suit. I urge you to, especially with new members, not to rush this decision, but to defer any action till after the already scheduled case is heard in the Virginia Supreme Court. It is not that opponents of the plan wanted there to be a supermajority, it is that we are opponents of the plan, period. And now we want our day in court, which we have paid dearly for in terms of our own resources, and because taxpayers are paying for the city to litigate this as well. To rush to judgement so the case will not be heard in court, is to prejudice the case, and to say that the election was the same as the decision on the waterfront. I do not think that the waterfront was the only issue of the last election.

This plan is about one thing, development. We may not all agree on where a bandstand should be, or whether King and Union should be a pedestrian plaza or have "Beatley Bumps", but the vote to "Re-Zone" the W=1 zone, pertains to three development parcels as it says in your docket: "As to development, the Plan focuses on three private Development Sites and recommends zoning changes in order to carry out the vision of the Plan." The "vision" of this plan is that by leveraging the maximum development politically and legally possible we can pay for all the improvements along the waterfront. The City Manager said it himself at the press conference announcing this vote, that we are "leveraging" development to pay for improvements. I pity that this premise is now used all over the city, in that if you want something, you have to figure out where you can shoehorn in some development to pay for it. But this plan did not start with anybody clamoring for anything. And that is not to say that we want it to stay as it is, or that we prefer residential to commercial. Once again we see the implied threat that if we don't upzone, then more townhouses will be built, even though townhouses are left as an accepted use:

"However, under the current W-1 Zone, the particular type and design of development that is most conducive to coexistence with public parks, activity and access ways along the waterfront is not clearly defined. If the W-1 Zone is not changed, those sites are likely to develop as private townhouses."

What we prefer is that there is a real dialog about the impact and appropriateness of what is being proposed. No, the number of meetings, or the fact that we had a work group, does not mean that there

x 25

was any real discussion of alternatives. The work group also could not agree on what was appropriate on the three sites or whether to support the rezoning.

Hotels are short term thinking, a trend, and we have them in abundance, and we are raising the hotel tax in the proposed budget. But they are not "public", but they are the preferred alternative that the city staff has designed. "To the extent a developer prefers the existing zoning, with its permitted uses and densities, the ability to develop in accord with those rules continues. The additional use and density provisions act as incentives to achieve the particular development and design the Plan has outlined as most desirable. First, a central part of the Plan is to encourage hotels as opposed to private residential uses, especially townhouses because residential essentially makes the land closest to the river private. The design guidelines do provide some flexibility for residential uses, already allowed in the W-1 zone, but they are best on the blocks away from the river. However, residential development could still be allowed along the river if there is a showing that it can coexist with the planned public activity, provide a welcoming presence to visitors, and preferably not include permanent owner-occupied units." Hotels are private as well. Is there no consideration of what is the best for the "public"? This is not a community vision at all, but a plan for development, designed by staff and in reaction to lawsuits. Staff recommendation to pass their own plan therefore rings a little hollow.

I do appreciate that changes were made, and the number of hotel rooms reduced: "Its approval of the Plan changed the text to permit only two hotels, not the three originally proposed. Section 4(b)(ii) of the Hotel/Restaurant policy, p. 85, states clearly, "The Waterfront Small Area Plan allows the addition of up to two hotels in the W-1 zone, with a total limit of 300 rooms." I am aware that statistics show that the best economic return is on hotels, but, again, I do not hear any great outcry from the citizens of Alexandria that we need more hotels on the waterfront. I may have differed from some of the other opponents of this plan, in that I would like more Waterfront restaurants. I supported the preservation of the Beachcomber at 0 Prince St. because it would make a great restaurant, and I think with a closed food court, and new warehouses being renovated on Union, and even the little Alexandria Marine Building, there are many opportunities for new commerce along the Waterfront, and new hotels are not entirely necessary to achieve this.

I think there are some other myths in the staff report that must be challenged. I think this next paragraph is the tacit acknowledgement that we are agreeing to the 1983 Settlement agreement even though the current zoning has been in place since the early 1990's and was not challenged for almost 20 years. "The current densities allowed in the W-1 zone are lower than the maximum permitted under the 1983 Robinson Terminal Settlement Agreement between the Federal Government and City, and lower than what will permit a quality development with underground parking to be built. Therefore, the proposed zoning allows an FAR up to the maximums provided in the 1983 Robinson Terminal Settlement Agreement, and consistent with the amounts shown in the chart on p. 103 of the Plan." In other words, we have been asked to go back to an earlier agreement, and abrogate a later agreement. I also think major questions have been raised about the viability of underground parking, and whether development that depends on it along the waterfront is wise, in light of rising sea levels, and number of storms along the east coast. Each garage would have to have automatic flood doors. It is also rather ironic, to require development that requires underground parking to pay for flood mitigation that only prevents nuisance flooding, but not the more serious flooding that might cause property damage or loss of business, like the flooding that happened along the Georgetown Waterfront a few years ago.

It also seems like since there has been a proposal for Carr Hospitality to put a hotel on the Cummings Turner sight, and a possible contract on the property for 2 to 3 years, that this has also been the cart pushing the horse. In fact, the planning commission recently approved the Prince St. Hotel for Carr Hospitality near the King St. Metro where visitors can hop on the trolley to get to the

Waterfront. Now that makes sense. But here is another myth : “For the Cummings-Turner block, the proposed zoning increases the FAR from 2.0 to 3.0, but the increase is necessary to achieve a cohesive development of the block’s separate parcels, as well as retention of the historic buildings.” Well, the historic buildings are already being wonderfully renovated and the Carr Hospitality Proposal does not include the whole block, and there is no rule of thumb that says there must be x FAR in order to have cohesive development. I give this statement 3 Pinochios. It is simply not true.

I do realize that the plan has also not remained entirely static and that there has been language added that would seem to encourage other uses. “Uses that foster art, history and cultural awareness through increased understanding and training, such as museums, schools, and cultural institutions.” This is certainly good, because my first fear was that there was no accommodation for the Alexandria Seaport Foundation, The Art League, expanding Alexandria Archeology, or a Maritime Museum. “The Waterfront Plan’s focus on history and art, the City’s signature Torpedo Factory, and its historic desire to retain the Art League in the Waterfront area and its hopes for a future maritime museum all point to the need to identify these uses accurately and to allow them as zoning uses.” Well, the Art League has already relocated, and I think the focus has never been on art or cultural institutions. Planning staff focused on the development sights, and brick and mortar improvements along the waterfront. Creating a cultural and arts districts that would actually encourage non-profits was never considered. I think, but we might never know, that there would be significant philanthropic and grant opportunities for open space and arts along the waterfront, especially in an already designated historic area. There is a state law allowing the creation of an arts and cultural district. The Washington Post, which already leases to the Seaport Foundation, would be a perfect partner to develop this idea. But all this is just language, as real cultural anchors require far more than the 5,000 square feet allowed under this plan: “When City Council considered the text amendment on January 21, 2012, it discussed this addition and its motion to approve the text amendment included this language. Its discussion suggested that small uses, less than 5,000 square feet be listed as permitted uses, and that larger institutions be required to obtain SUP approval. That distinction is included in the proposed text amendment.” The Torpedo Factory is 70,000 Square feet. You may not be able to measure the contribution that the Arts bring to the Economy, but a recent presentation by ACVA is trying to do just that. You might also want to pull out Marion Van Landingham’s book about the Torpedo Factory, and read how the Torpedo Factory helped revitalize Old Town, so much so that the city decided to redevelop all the properties within 5 years, with a new Torpedo Factory as its Cultural Anchor. We will miss the opportunity for other cultural anchors under this plan, which is a rush to develop the waterfront for maximum financial return.

Is the proposed development compatible with Old Town? I believe this is another myth. The proposed density will be 3 times the current density, and will carry with it an equivalent impact. “Staff recommends that the Planning Commission recommend approval of these zoning text changes because they allow reasonable development, compatible uses, and a design and scale of development particularly suitable on the City’s waterfront.” I don’t think the “suitability” of the proposed development has ever fully been vetted. There is a scale model, but some elements, which were on the public amenity side, have already been eliminated. The Docks protruding into the Potomac are gone, and the building in Waterfront Park is gone. Recently Charleston, SC, has been put on the most Threatened list of the National Trust for Historic Preservation because of the proliferation of cruise ships. Yet, I see a cruise ship parked at Robinson Terminal North in the model. Will there also be cruise ships at other nodes. I prefer the waterfront model of Chestertown Md. Which has many annual events centered around tall ships, not cruise ships. They have several public docks, of which the end is reserved for a tall ship, like the Sultana, which is based there. To truly have a plan that honors Alexandria’s history, we need to consider how the public will interact with the Waterfront, and what will attract people to the waterfront. Hotels are not an activity, and having more hotels rooms between Mt. Vernon and DC because they have the best return, should not be the goal.

The Citizens from Archeology who wrote the history plan were not even allowed to consider the three development sights. They were prohibited from doing so. Now there is a committee at work to combine the history and Art plans. But the planning largely ignored history. Arts and history were afterthoughts brought forth by citizens, not the basis of the plan, or even a major component. Can you say why West Point and Point Lumley reached a settlement in 1983 with the Federal Government? Because those points of land date back to Alexandria's earliest days. That also means that they contain much of Alexandria's early history. Pont Lumley was a boatbuilding center. West Point was where the oldest structure in Alexandria was built, the Tobacco Taxing ware house. It was probably where the first wharf was built, maybe to welcome Braddock's Troops before the French and Indian War. It is the ideal place to tell Alexandria's story. And if you have read Michael Lee Pope's book on Alexandria, DC, than you know that George Washington wanted Alexandria to be Part of the Capital City, and we are connected to that story. We are an essential link to the last 200 years, and we are proposing changes that might last for the next 200 years, so to let outside forces, and the push to develop, make us rush to judgement now, is unfortunate. I also believe that the Planning Commission exists to uphold one of the principles of our democracy, which is checks and balances, and I urge you for those reasons to defer your decision, so that another principle of our democracy can play out, and that is the right to be heard. Allow the numerous opponents of this plan to have their day in court, and then come back and render your judgement.

Sincerely,

Boyd Walker

PlanComm

From: a fish <afsuper2000@yahoo.com>
Sent: Tuesday, March 05, 2013 5:04 PM
To: PlanComm
Cc: afsuper2000@yahoo.com
Subject: Planning Commission mtg tonite/docket items 5 & 6

Dear Chairman Komoroske and Members of the Planning Commission:

Since I am unable to attend tonight's meeting, I am emailing you all to address docket item #5 & 6 regarding the the text amendment for Section 11-808. As you all know, one the basic components and fundamental criteria for planning is to protect the Health, Welfare and Safety for all citizens. This is a universal criteria for planning/planners no matter where citizens reside. Docket Item #5, the readoption of change in zoning perameters impacts all of the current and future developments in Alexandria. And for Docket Item #6, eliminating the two (2) words, "text or" will impact not only landowners, but businesses and citizens property rights, thus not allowing citizens to protest via a rezoning Petition.

I understand the need to want to push the Waterfront Plan ahead as quickly as possible by members of the council and Mayor Euille. However, waiting for clear clarification and State law and its applicability to map and text amendments is crucial if Alexandria is going to really want to continue with transparency and openness as it moves along with all development plans now and in the future so that planning is down well and not piece meal. I see no rush for all members of the Planning Commission to have to make this decision at tonight's meeting and encourage you to DEFER this matter until the clarification of State law has been decided.

Should you all decide not to defer this matter, I believe it will have major negative consequences for other developments in Alexandria, i.e, Beauregard Small Area Plan; Potomac Yard, proposed Metro at Potomac Yard and the Del Ray neighborhood.

I thank you for reading my comments and again, request that you defer these two docket items. Nothing will be lost by doing so with the proposed Waterfront development and making sure citizens know that you are indeed not only listening to our concerns and suggestions, but representing us as well. We do all want to work with city staff, planning commission, mayor/council in order that Alexandria makes sound and reasonable planning decisions.

Thank You,

Annabelle Fisher
Southern Towers resident.

PlanComm

From: JLepanto <jlepanto@seminaryhillassn.org>
Sent: Tuesday, March 05, 2013 6:00 PM
To: PlanComm
Subject: 3/5/2013 Planning Commission Docket Items 5 and 6

Dear Planning Commissioners,

I am writing on my own behalf to urge you to vote AGAINST proposed Text Amendment #2013-0005 (Docket item 5), and to vote AGAINST proposed Text Amendment #2013-0006 (Docket item 6) at tonight's Planning Commission Public Hearing. Thank you for your consideration.

Sincerely,
Joanne Lepanto
4009 North Garland Street
Alexandria, VA 22304

March 6, 2013

ALEXANDRIA PLANNING COMMISSION MEETING

I appreciate your being here to listen to the citizens and that I am allowed to speak.

My name is Nina Randolph and I am a property owner in Old Town. I am for the Waterfront being PRESERVED for Alexandrians to enjoy.

My point tonight is about GREEN SPACE in our beautiful and historic city. The City Council has allowed – even encouraged – HIGH DENSITY construction. There are apartments and condos being built, multiple stories high with the exterior boundaries reaching the sidewalk and the developments are without any significant open green space for the residents. A few examples of this high density, extreme building can be found at 1. two corners of Fayette and Pendleton 2. the former location of the Carpenters' Shelter 3. the huge development in the Potomac Yard area. With all of these people that the you have invited to live in our historic city, there is not additional green space for them to enjoy, to relax in and to refresh and renew.

GREEN OPEN spaces are necessary for a city. I see all ethnic groups and ages enjoying Founders Park. It is a godsend for families that do not have a yard or running area for themselves and their children. On the 4th of July, the park is full of families with their multigenerational relatives. They picnic. They play ball. They stroll. They sit in the grass. The park becomes crowded with folks who see it as their green space. With all the residential density the city has added, we will need more parks. I support having an open space along the waterfront rather than elite hotels. Great cities have great parks and great parks have great cities. Alexandria needs to be in that list of great cities with great parks.

In closing I would like to read a quote:

“PARKS ARE THE BREATHING LUNGS AND BEATING HEARTS OF ALL GREAT CITIES.”
Former Seattle Mayor James Ronald in 1892.

Nina Randolph