

***Text Amendment #2014-0001***

Issue: Initiate and Consider a text amendment to Section 11-416 of the Zoning Ordinance regarding modifications of minimum regulations of the Zoning Ordinance.	Planning Commission Hearing:	March 4, 2014
	City Council Hearing:	March 15, 2014
Staff: Faroll Hamer, Director, Planning and Zoning, Faroll.Hamer@alexandriava.gov Karl Moritz, Deputy Director, Planning and Zoning, Karl.Moritz@alexandriava.gov Joanna Anderson, Assistant City Attorney, City Attorney's Office Joanna.Anderson@alexandriava.gov		

PLANNING COMMISSION ACTION, MARCH 4, 2014: On a motion by Commissioner Lyman, seconded by Vice Chairman Dunn, the Planning Commission voted to initiate Text Amendment #2014-0001. The motion carried on a vote of 7 to 0.

On a motion by Commissioner Lyman, seconded by Vice Chairman Dunn, the Planning Commission voted to recommend approval of #2014-0001 with an amendment to the proposed language. The motion carried on a vote of 7 to 0.

Reason: The Planning Commission agreed with the staff analysis.

Speakers: There were no speakers for this item.

This text amendment proposes to amend Section 11-416 of the Zoning Ordinance to 1) clarify that the minimum regulations of the zoning ordinance may be modified by City Council as part of a Special Use Permit; and 2) make the standard for approving modifications of the minimum landscape regulations to be the same as the standard for all other modification requests.

I. BACKGROUND

When the 1992 zoning ordinance was approved it included a variety of new restrictions, requirements and procedures for development. The ordinance also included a number of different forms of relief, typically with oversight through Planning Commission or City Council review. Section 11-416 is one example of the safety valves employed in the then new ordinance. It specifically anticipates that some development cases will require modifications to zoning rules and allows them with limitations.

By its terms, the types of zoning regulations that may be modified are limited to those stated as minimums, not maximums. Thus, rules for height, density and floor area ratio (FAR), for example, which are stated as maximums, may not be modified. The rules for yard dimensions, minimum frontage or minimum open and useable space, for example, which are stated as minimums, may be. Furthermore, where a rule is unclear as to whether it is a minimum or maximum, no modification is available. Thus, by its terms, the rule applies to those aspects of a development which may need to be relaxed in a specific context but does not allow changes which would constitute a rezoning.

The modification language also includes standards for the grant of a modification including:

1. the modification must be necessary or desirable to good site development;
2. specific and identified features of the site design make up for those impacts otherwise protected by the regulations for which modification is sought; and
3. the modification must not be detrimental to neighboring property or to the public health, safety and welfare.

If section 11-416 had not been included in the zoning ordinance, the result would have been that development cases would have had to request variances from the Board of Zoning Appeals for relatively small site design issues, even though the main part of the case, such as the size and location of buildings and site design, was decided by the Planning Commission and City Council. Including section 11-416 was a purposeful way of combining and coordinating such decisions in one procedure, so as to avoid potentially inconsistent decisions and to streamline the process for staff and applicants. Section 11-416 (C) specifically acknowledges this effort and prohibits forum shopping by applicants.

Issue 1: Application of 11-416 to SUP cases.

The existing modification rule applies to cases involving site plans only. It was drafted with the assumption that the Planning Commission would be the deciding body, since the Planning Commission grants the final approval in site plan cases. However, in practice after adoption of the ordinance, given the additional new regulations, and the variety of new special use permit (SUP) cases, two situations regularly occur with regard to application of the modification rules. First, unlike the situation prior to 1992, most development cases include not only a site plan, but also an SUP request. Such cases are commonly known as *development* special use permits (or “DSUPs”), connoting that there is both an SUP and a site plan request. Such cases often include requests for a modification under section 11-416, and each is called out in the notice language of the case, as a specific request.

In addition, there are also SUP applications that do not include a site plan. While infrequent, there are occasionally cases that involve new construction that is small enough so that it does not trigger the site plan requirement but does require an SUP and modifications. The most common example is a new single family home on an infill lot. In such cases, there is frequently a need for modifications to parking, side yard setbacks and open space requirements in order to accommodate a reasonably sized house. Although the express terms of section 11-416 refer to site plan cases only, staff has consistently over time interpreted the language to also refer to SUP cases even if a site plan is not included in the application. The following cases are examples of the longstanding practice and application of the zoning ordinance where zoning modifications under section 11-416 were approved by City Council as part of its consideration of an SUP:

- Demaine Funeral Home (SUP #94-0305), approved by Council 10/15/94 (SUP for carport with increased FAR and modification to zone transition setback requirement.)
- Charles and Gloria Gee (SUP 95-0155), approved by Council 12/16/95 (Parking reduction SUP with modifications for more than 50% paving of rear yard and open space reduction in conjunction with renovation of building.)
- David Jablonski, 520-522 East Windsor Ave (SUP #96-0093), approved by Council 6/15/96 (SUP for parking reduction with front and side yard setback required modifications in conjunction with the renovation of building)
- Charles Curtis, 218-228 North Payne Street (SUP #99-0143), approved by Council 1/22/2000 (SUP to allow lot area less than 1980 square feet for three new lots, with a parking reduction and modifications of open space, lot width)
- William Cromley, 424 North Alfred Street (SUP #2000-0105), approved by Council 9/16/2000 (SUP for parking reduction for single family house to provide compact spaces and to modify parking aisle width and 50% paving requirement in rear yard.)

- Robert Nichols, 412 East Windsor (SUP #2000-0137), approved by Council 1/13/2001 (Parking reduction SUP with modification of front yard setback in conjunction with construction of single family house.)
- Eric and Joan Peterson, 518 East Howell Avenue (SUP #2001-0066), approved by Council 5/18/2002 (Parking reduction with modification of side yard setback for construction of new house)
- Douglas Drabkowski, 516A East Howell Avenue (SUP #2009-0059), approved by Council 2/20/2010 (Parking reduction SUP with yard modifications for construction of new house)

2010 BZA Suggested Change

In 2010 Planning Commission and City Council considered an application for an SUP to allow lights at the athletic field at the Hammond School. This application included a request for a modification but did not include a Site Plan. Staff processed the SUP and modification request as described above and neighbors of the school appealed the director's determination to process the application in this manner to the Board of Zoning Appeals (BZA).

In November 2010, the BZA heard the case and upheld the Director's determination that an SUP case could properly include modifications even if no site plan is required or included in the application. The BZA's decision was based on its finding that the standards for approving a modification would all still apply if approved with a special use permit application, the best planning practices dictate looking at the application as a whole rather than having piece meal decisions by different boards, and special use permit application is an appropriate mechanism for considerations of modifications because it is a legislative, discretionary approval reviewed and approved by both the Planning Commission and City Council. The BZA did, however, suggest that staff amend the zoning ordinance thus providing clarity for the public and avoiding confusion. It was a good suggestion and this text amendment attempts to implement it.

Issue 2: Landscaping Requirements and Guidelines

The 1992 ordinance also included, for the first time, landscaping requirements as part of the site plan regulations. See section 11-410(CC). Prior to that time, it had been difficult to require developers to include what the City deemed appropriate landscaping for a particular development site. The new ordinance was thus an important change bringing "teeth" to the negotiation process. The requirements contained, for example, the rule that landscaping had to include at least 25% crown cover. The landscaping rules have been successful. Developer applicants typically submit applications with landscaping far beyond the minimums stated in the site plan requirements. However, because of the breakthrough nature of the then new landscaping regulations twenty years ago, the standard imposed for modifications to the landscaping rules under section 11-416(B) was made very strict and, by its terms, it is more similar to the hardship standard for a variance application at the BZA ("Strict application of the requirements will effectively

prohibit or unreasonably restrict the use of the property....”) rather than the more reasonable standard for other minimum modifications pursuant to Section 11-416.

II. PROPOSED TEXT CHANGE

The proposed text amendment changes two things in the language of the modification provisions of section 11-416.

First, it recognizes, as the BZA did, that the site plan is no longer the typical development case, and that the same modification rules should apply in SUP cases as in site plan cases. Thus, the proposed new language at section 11-416 provides that a modification may be approved by City Council in the case of a special use permit application, whether or not a site plan is required or included in the application. There is no change to limits on the type of zoning rule that may be modified under the rule or to the standards that apply in the case of a modification.

Second, the text amendment restates the standard for a modification to the landscaping rules, so that it is similar to the one for modifying other zoning rules, and removes the hardship-like language from this context.

III. STAFF RECOMMENDATION

Staff recommends approval of the proposed text changes. The first change simply codifies the long held interpretation that SUP cases may include a request for a modification, even if no site plan is required as part of the application. It is helpful in that it memorializes the City’s practice and clarifies the rules.

The landscaping change appears to be more significant, but is also appropriate in that it brings the requests for modifications of the landscape regulations in line with the other minimum modification requests which are similar to the landscape regulations. In practice, there is no justification for a higher standard for the landscape modifications as opposed for example to the open and usable space modifications. The current standards should be the same for all modifications and it is sound practice to work with a specific site and development in order to make it work well in all its unique aspects.

The amendments do not change the heart of the rule: any change to a zoning rule must not harm others; must further the health, safety and welfare; and there must be features of the development plan that make up for whatever zoning rule is modified.

Attachments:

Attachment 1: Proposed Zoning Text Changes

ATTACHMENT #1
PROPOSED ZONING TEXT CHANGES

11-400 Site Plan

11-416 Modifications.

(A) *Modification of zoning regulations.*

(1) In approving a site plan under the provisions of this section 11-400, the planning commission may modify the minimum frontage, yard, open and usable space, zone transition setback or other minimum requirements imposed by this ordinance for the zone or zones applicable to the land depicted in the site plan, or the requirements of Section 11-410(CC), if the planning commission determines that such modification is necessary or desirable to good site development, that specific and identified features of the site design make up for those impacts otherwise protected by the regulations for which modification is sought and that such modification will not be detrimental to neighboring property or to the public health, safety and welfare. For modifications of the requirements of Section 11-410(CC) the planning commission must also determine that the modification will not violate the intention of section 11-410 (CC) to require a reasonable amount of landscaping.

(2) Nothing in this section 11-416 shall be deemed to authorize the planning commission to approve a site plan under the provisions of this section 11-400 when the building or structure would exceed the maximum floor area ratio, maximum density or maximum height regulations of the zone or zones in which such development is located, or the maximum floor area ratio, density or height regulations otherwise provided in this ordinance. Rather, it is the intent of this section 11-416 to allow regulations expressed as minimums such as yard dimensions to be relaxed in the proper case but not to allow regulations expressed as maximums such as density to be increased. Where the distinction between minimum and maximum is unclear, such as in the case of density expressed in terms of both minimum lot area and maximum floor area ratio or units per acre, then no modification shall be allowed.

~~(B) *Modification of minimum landscaping provisions.* Upon application filed simultaneously with a site plan, modifications from the requirements of section 11-410 (CC) may be granted by the planning commission if it finds that strict application of the requirements will effectively prohibit or unreasonably restrict the use of the property, that a modification of those requirements will not be of substantial detriment to adjacent property, and that the modification will not violate the intention of section 11-410 (CC) to require a reasonable amount of landscaping~~

~~(CB) *Exclusive remedy.* Relief from the zoning ordinance available from the planning commission under this section 11-416 may not be the subject of an application for a variance~~

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from the board of zoning appeals with regard to development or construction that is, or is required to be, the subject of an approved site plan or that is a condition of a site plan approval.

AMENDED BY PLANNING COMMISSION:

(DC) *Applicability to SUP applications.* ~~Notwithstanding the above provisions~~ **In addition to the above provisions,** a modification under this section 11-416 may be approved in the case of a special use permit application under section 11-500, whether or not a site plan is required or included in the application. In such case, all restrictions and requirements for site plan modifications in sections **11-406(C)(16)** and 11-416 (A) (1) and (2) apply, but final action will be by the city council and not the planning commission.