



ARLINGTON COUNTY, VIRGINIA

<p>County Board Agenda Item Meeting of June 9, 2007</p>
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DATE: May 23, 2007

SUBJECT: Zoning Ordinance Amendment to Section 1. and Section 32. of the Arlington County Zoning Ordinance to amend, reenact, and recodify the Zoning Ordinance to clarify the definition of *street* as including any public interest in land, e.g., fee or easement, for street purposes, to clarify that the side line of a road, easement, or other right of way is the street right of way line, and to clarify the distance structures must be set back from street right of way lines.

C. M. RECOMMENDATION:

Adopt the attached ordinance to amend Section 1. and Section 32. of the Arlington County Zoning Ordinance to amend, reenact, and recodify the Zoning Ordinance to clarify the definition of *street* as including any public interest in land, e.g., fee or easement, for street purposes, to clarify that the side line of a road, easement, or other right of way is the street right of way line, and to clarify the distance structures must be set back from street right of way lines; 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.

ISSUES: None.

SUMMARY: The proposed Zoning Ordinance amendment would clarify that the definition of *street* includes any public interest in land, e.g., fee or easement, for street purposes; clarify that setbacks are measured from street right of way lines; and clarify that the setback is 25 feet from all street right of way lines for one- and two-family dwellings and their accessory structures.

BACKGROUND: The Board of Zoning Appeals (BZA), at its meeting on October 11, 2006, overturned the Zoning Administrator's determination that a new dwelling proposed for 3723 North Vernon Street must be set back from the easement for street purposes along the front of the lot. Requiring that structures be set back from easements for street purposes had been the interpretation and policy of Arlington County Zoning Administrators since the late 1980's. The BZA said that the Zoning Ordinance does not require a setback to be measured from an easement for street purposes. The County Board appealed the BZA ruling to the Circuit Court.

<p>County Manager: _____</p>

<p>County Attorney: _____</p>

<p>Staff: Terry Russell, Zoning Administrator</p>

<p>PLA-4685</p>

Subsequently the owner of the property received approval of a building permit using a setback that complies with the Zoning Ordinance and constructed the dwelling. The County Board non-suited the case because the issues presented by it were moot.

DISCUSSION: County streets are generally owned by Arlington County either in fee simple or through easements for public street purposes. In the late 1980's Arlington County Zoning Administrators began to reject all building permit applications that did not set back structures from easements for streets. Building permits were consistently approved where setbacks were measured from easements. In 2006 the Zoning Administrator rejected a building permit for a new one-family dwelling on the lot at 3723 North Vernon Street because the developer did not provide the required setback from the easement for street purposes at the front of the lot. The developer appealed the rejection of the building permit to the BZA. Notwithstanding the long standing interpretation by the Zoning Administrator the BZA overturned the Zoning Administrator. The BZA apparently believed the language of the Zoning Ordinance does not make it clear that setbacks must be measured from easements for street purposes. The County Board appealed the BZA decision to the Circuit Court. Recently, however, the County Board non-suited the appeal as moot because the developer obtained a building permit by providing a setback in compliance with the Zoning Ordinance.

It is important that setbacks be measured from easements because the County routinely uses easements for street purposes in the same way it uses fee simple right of way for streets. Easements may be used for vehicular travel lanes, bikeways, sidewalks, and public utilities including water and sewer lines and fire hydrants. Easements are treated virtually the same as fee simple rights of way for all purposes. Therefore, structures should be setback from all of this right of way whether owned by the County in fee or easement in order to provide an adequate setback from the public right of way and a uniform alignment of the structures, in this case dwellings, along the neighborhood street. The proposed Zoning Ordinance amendment would more clearly codify the longstanding interpretation of how setbacks are calculated under the Zoning Ordinance.

FISCAL IMPACT: None

CONCLUSION: It is recommended that the County Board adopt the attached ordinance to amend the Zoning Ordinance to clarify the definition of *street* as including any public interest in land, e.g., fee or easement, for street purposes, to clarify that the side line of a road, easement, or other right of way is the street right of way line, and to clarify the distance structures must be set back from street right of way lines. This amendment reflects the long term practice of the County in its treatment of street right of way and in the review and approval of building permits, and should help avoid confusion in the future by clarifying the text of the Zoning Ordinance.

ORDINANCE TO AMEND, REENACT, AND RECODIFY Section 1. and Section 32. of the Arlington County Zoning Ordinance to clarify the definition of *street* as including any public interest in land, e.g., fee or easement, for street purposes, to clarify that the side line of a road, easement, or other right of way is the street right of way line, and to clarify the distance structures must be set back from street right of way lines.

BE IT ORDAINED, by the County Board of Arlington that Section 1 and Section 32. 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 1. DEFINITIONS.

* * *

Street. A public thoroughfare, thirty (30) feet or more wide, including any public interest in land (e.g., fee or easement) for street purposes. ~~Where title to land extends to the center of a road, easement or right of way, †~~The side lines of such road, easement, or other right-of-way shall be considered as the side line of a street street right-of-way line. This shall be the case even where fee title to land adjacent to a street extends to the center of into the road, street easement, or other street right of way.

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SECTION 32. BULK, COVERAGE AND PLACEMENT REQUIREMENTS

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D. Placement.

The following regulations shall govern the placement on a lot of any building or structure, or addition thereto, hereafter erected, except as may be allowed by site plan approval:

1. *Setbacks:* No structure shall be located closer to the centerline of any street, officially designated street right-of-way (as defined in this ordinance) than fifty (50) percent of the height of the building. For the purpose of determining setbacks, a limited access highway shall be considered as an abutting lot and not as a street or street right-of-way. Structures shall be set back from streets no less than as follows:
 - a. For all "C" and "M" Districts excepting "C-1," "C-1-O," "C-O," "C-H" and "C-S-C": Forty (40) feet from said centerline except for properties located within the "Clarendon Revitalization District" on the General Land Use Plan and zoned "C-3".
 - b. For all "RA4.8" and "C-O" Districts: Fifty (50) feet from said centerline.
 - c. For all properties that are: (1) located in the "Clarendon Revitalization District" on the General Land Use Plan; and (2) zoned "C-3": 50 feet from the centerline of Fairfax Drive or any street containing more than five

lanes, including travel lanes and on-street parking lanes, and 40 feet from the centerline in all other cases.

d. For all residential structures and all structures in all other districts except for one- and two-family dwellings and their accessory structures regulated by subsection 32.D.1.~~e~~.: Fifty (50) feet from said centerline but in no case less than twenty-five (25) feet from any street right-of-way line.

e. For all one- and two-family dwellings and their accessory structures:

(1) No structure shall be located less than twenty-five (25) feet from any ~~lot frontage~~ street right-of-way line, except that the distance between any street or officially designated street right-of-way line and the front wall of a structure, with the exception of stoops and covered or uncovered but unenclosed porches, may be reduced as follows:

- (a) The distance shall be at least the average of the distances between the ~~lot frontage~~ street right-of-way line, and the edges of the front walls of existing structures located on the frontage where the structure is proposed to be located;
- (b) The distance shall be at least fifteen (15) feet, provided, however, that no parking garage shall be located closer than eighteen (18) feet to the street right-of-way line; and
- (c) No structure located within twenty-five (25) feet of a street right-of-way line shall exceed two and one-half (2 1/2) stories.

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