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Arlington County Board
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SUBJECT: 2. ZONING ORDINANCE AMENDMENT: 1. Section 1. Definitions and Section 32. Bulk, Coverage and Placement Requirements of the Zoning Ordinance to add definitions of lot coverage and main building footprint coverage and to reduce maximum lot coverage for one-family dwelling lots in "R-5," "R-6," "R-8," "R-10," and "R-20" Districts. Maximum coverage for these districts is presently fifty-six (56) percent. The proposed amendment would reduce maximum coverage on a sliding scale ranging from fifty-six (56) percent for lots smaller than 5,000 square feet to thirty-five (35) percent for lots that are equal to or larger than 20,000 square feet. A new main building footprint coverage maximum would be added ranging from a coverage percentage that is determined by the buildable area for lots smaller than 5,000 square feet to twenty (20) percent for lots that are equal to or larger than 20,000 square feet. The proposal would also grandfather lots not in compliance with the new coverage provisions.

2. Section 35. Nonconforming Buildings and Uses to add a new Subsection 35.A.1. Qualification of Nonconforming Uses to permit reconstruction of existing, nonconforming one-family dwellings and associated accessory buildings to the original footprint and stories as long as the reconstruction is in compliance with the applicable provisions of the Zoning Ordinance, if those buildings are damaged by calamity not intentionally caused by the owner. A new provision that would also be added that allows one-family dwellings that is not in compliance with zoning regulations to be enlarged as long as the enlargement complies with all zoning requirements. The current provision that limits the expansion of one-family dwellings on undersized lots to fifty (50) percent of the existing floor area would be eliminated.

RECOMMENDATION: Adopt (1) the amendments to sections 1 and 32 regarding lot coverage and main building footprint coverage recommended by the Zoning Ordinance Review Committee, with modifications recommended by the Neighborhood Conservation Advisory Commission, subject to staff review of main building footprint caps to address any anomalies; and (2) amendments to section 35 regarding reconstruction and enlargement of nonconforming buildings, as recommended by the County Manager.

Dear County Board Members:

The Planning Commission heard this item at its November 7, 2005 meeting. Tom Miller made the staff presentation on the proposed Zoning Ordinance Amendments. He noted that the county has taken several steps to address infill issues by modifying regulations of building height, lot width and pipe-stem lots. The coverage issue has been the most exhaustively researched subject that the county has undertaken. Three options have been advertised: the proposal developed by the Zoning Ordinance Review Committee (ZORC), which establishes new coverage limits for additions and new construction in each single-family zoning district; the County Manager's initial proposal, which sets new limits related to lot size for new construction; and the Manager's final option, proposed in July, which sets a sliding scale for coverage based on lot area, would apply to new construction only, clarifies how coverage is calculated and grandfathers non-conforming structures. All three options share the goal of tempering the impacts of large houses, which can include losses of open space, trees, privacy and neighborhood character. Both the ZORC approach and the Manager's would prohibit the houses often mentioned as most egregious. Staff recommends approval of the Manager's final option. Susan Bell, Sakura Namioka and Justin Clarke were also present to answer any questions.

Public Speakers

Bill Braswell, representing himself, stated that the coverage issue has become very prominent in his civic association. In light of recent changes, the Tara Leeway Heights Civic Association voted unanimously to support the ZORC proposal. In his view the County Manager's proposal is a 75-year-plan that affects the next generation of residential development but will have little immediate impact. While some have stated that lower coverage limits would reduce property values, he has not seen any data to support this contention. He believes the measure will protect folks, including those living next to expanded houses, rather than hurt property values. Moreover, those hurt by coverage limits will have a route of appeal. If an addition is not imposing on the neighbors, it is likely to gain support.

Robert Swennes, a resident of the Leeway neighborhood and the Neighborhood Conservation representative who worked with staff on this issue, provided the Commission with the Neighborhood Conservation Advisory Committee (NCAC) position and recommended ordinance language. He reported that in its most recent review of the topic, the NCAC voted 23-4 to support the ZORC approach including the protection for undersized lots. NCAC did recommend increasing the main building caps, from 120% to 140% of the limit for a standard-sized lot, in response to the Civic Federation's research. He pointed out that the staff report included input from the Real Estate Assessment office concluding that reductions in allowable coverage would produce no widespread or significant decrease in property values. In the long run, new coverage limits will stabilize neighborhoods and increase property values. He expressed concern about the claim that the County Manager's final option would reduce the incentive for tear downs, because there is no evidence supporting this. The subdivision of lots would also not likely be impacted.

Jim Coakley, a resident of North 25th Road, supports the new County Manager's proposal. He questioned the effective date of the ordinance, which would grandfather only new construction projects for which building permits have been issued. He explained that he is developing his property under the existing rules, has submitted plans, and has already spent around \$100,000 for architectural and engineering work. If the new rules are applied, he will face major additional costs. The ordinance should grandfather those who have submitted permits to the county, not only those who have permits issued.

Bill Richardson, a resident of the Donaldson Run area, speaking for himself, noted that his civic association voted overwhelming to do something about the coverage problem. He supports the ZORC/NCAC proposal to deal with undersized and oversized lots. He noted that the County Manager's proposal would allow a larger coverage percentage on R-6 lots. The most fundamental disagreement centers on additions. There is a concern about precluding modest additions that might push homes over a new limit. He favors larger caps on the ZORC option in order to accommodate perhaps 3% more properties. In his view there is room for reasonable growth while trying to restrain the outlying cases.

Jim Hurysz, a resident of Fairlington Villages, noted that Congress is acting to restrict localities' ability to use eminent domain. He supports the Arlington County Civic Federation's position. There is too much regulation and local government intrusion into personal lives. While he does believe in revitalization and redevelopment, he is concerned about micro-management with such mediocre results. He believes that citizens are treated like it is Savannah and developers are treated like it is Houston.

Rebecca Mead, representing Arlington Re-leaf, whose purpose is to preserve the green character of Arlington, supports any proposal to reduce coverage. Construction causes losses of mature trees, and houses with larger footprints do not leave room for replanting large canopy trees. Coming into Arlington from the west, the mature trees provide a great line of demarcation. Larger trees also retain the monetary value of the county.

Martha Moore, speaking on behalf of the Arlington County Civic Federation, noted that the Civic Federation has formally taken up lot coverage three times in the last four years and does not support any of the three proposals currently advertised. She reviewed the history of the federation's discussions and analysis of coverage issues. In three surveys of the Federation's membership, 40% favored no new restrictions. The remaining 60% represent both "no" and "yes" votes for any specific proposal, with the "yes" vote being in the minority.

Summarizing the Federation's work on the issue, Ms. Moore said that in April the Federation sponsored a public forum on coverage after an extensive analysis of 26,561 properties that would be impacted by the ZORC proposal and the County Manager's initial proposal. The analysis revealed that "R" zoning districts formed a flawed basis for coverage restrictions because 19% of these lots did not have the minimum size required for their district and 41% met the new definition of oversized. The group then passed a resolution that said "no" to ZORC and "no" to the County Manager's alternative, and asked staff to try again. A Federation committee worked with staff on the latest proposal, which is based on actual lot size and is superior to other alternatives. However, the proposal does not take into account additional

aspects of infill, such as height, nor does it address differences among neighborhoods. In a final vote in October, 68% of the membership did not support the measure. The Civic Federation does support changes allowing rebuilding of destroyed homes and removing the current size limit on additions on undersized lots.

Mavis Stanfield spoke in support of the proposal, which would promote neighborhood compatibility. Stormwater runoff affecting neighboring properties is a big issue that is made worse by greater coverage. The purpose of setbacks and other zoning restrictions is to establish an area within which a house can be located, with some flexibility for addressing topography and soil constraints, rather than to establish the maximum sized house that can be built. She believes that new coverage limits will still allow large homes to be built.

Tom Kornis noted that the measure has come a long way. He was a member of ZORC when it took up the issue and recalls going through the “book of horrors”, the examples of large infill houses. Most of the problems involved “in your face” front-loaded garages, second-level entry foyers, and long straight facades. Since the discussion started, there have been a number of teardowns on his long block of North Stafford Street between 15th and Old Lee Highway. Most neighbors appreciate the economic upscaling, though opinions vary about the bulk and scale of the new homes. He supports the staff recommendation, though protecting the tree canopy is an important concern. His own home, built in 1892, is on an oversized “R-6” lot. Under the ZORC proposal, the house was close to the cap when it was first built. While he is not planning any expansion, he does support a sliding scale to accommodate large lots.

Alan Tober, representing himself, said that until recently he lived next to a large infill house under construction on North Pershing Drive. The house was built by right on a very large lot. Such houses cause real problems for their neighbors. He supports the ZORC proposal.

Planning Commission Discussion

Vice Chair Savela, presiding, stated that a large number of meetings have occurred over the past several years on the coverage issue. She was Vice Chair of ZORC in 2002 and served on the lot coverage working group, which included Planning Commissioners, representatives of NCAC and the Civic Federation, developers, land use attorneys, and citizens. The group debated ways to avoid encouraging tear-downs and to protect homeowners who need to renovate or expand their homes. The group also focused on environmental concerns such as protecting the tree canopy and managing storm water runoff. Some options that increase impervious surfaces were found desirable. Specifically, the group did not want to provide any disincentives for front porches or for locating garages in the rear. There was also much discussion of how to address substandard-sized lots, and what caps to impose on building footprints on oversized lots. The final recommendation was the result of much study and much angst and is in no way perfect.

To gauge where Planning Commissioners thought discussion should be focused, Commissioner Savela suggested a straw poll to see how many Commissioners were leaning toward recommending no change in coverage rules, recommending change for new construction only, and recommending change for all properties. The straw poll found two Commissioners for no

change, three Commissioners for new requirements on new construction only, and six Commissioners for new coverage requirements for all properties.

Commissioner Savela suggested discussion focus on six subjects: (1) whether new coverage requirements should apply only to new construction or to all properties; (2) should coverage limits be applied by zoning district or lot size; (3) what set of caps are appropriate; (4) should some additional coverage be allowed for garages and porches; (5) can staff administer new requirements, and (6) whether the proposed changes regarding damaged properties and additions on undersized lots are appropriate.

Discussion began with questions addressed to staff.

Commissioner Malis asked when the draft County Manager's report was made available and whether any groups support that recommendation. Tom Miller responded that the draft report was distributed to Commission members on Friday, with copies generally available on Monday. He was not aware of any groups supporting the draft recommendation. He said that the proposal was intended to strike a balance among options.

Commissioner Johnson suggested that it would be helpful to have a chart comparing the ZORC options and the Manager's proposed limits as applied to properties of various sizes in various zoning districts.

Regarding the proposed definition of "new construction," relating to retention of less than 50% of the linear feet of outer walls of a building, Commissioner Johnson asked for an explanation of the chart and definition of "outside building wall line segments" (sec. 32.C.1 of the Manager's proposal). She asked whether the existing walls would be measured along their actual length, including bays and indentations, or along straight "segment" lines. Staff explained that it was proposed to measure segments in order to make calculations easier. Commissioner Johnson suggested that the language and chart be revised to provide a clearer explanation of how this key factor would be determined, especially for houses whose footprint is not a neat rectangle.

Commissioner Savela asked about the relevance of wall height. Susan Bell responded that an existing exterior wall would be measured from where the wall and roof meet. She further noted that the determination of what constitutes new construction would be very complicated to administer.

Commissioner Dobson asked for a definition of what is counted as coverage and what does not count.

Commissioner Malis asked what the base line would be for determining what is new construction and what the mechanism would be for measuring the walls of the existing structure. Susan Bell stated that this determination can not be made easily or expeditiously at the zoning counter. Documentation such as details of the existing building footprint will be needed from the property owner. Staff will have to determine whether that information is consistent with information on file, for instance from past building permit applications. Some

alterations in the past, such as porch enclosures, did require significant research. In some cases, the determination might come down to a judgment call. It will certainly add time to the process of reviewing a plan.

Commissioner Savela asked whether someone could incrementally expand a house, for instance by adding a partial second floor, then making other changes, without ever triggering the limits applied to new construction. Susan Bell stated that any addition to a building or its coverage would be analyzed. Staff might ask for photographs to document existing conditions and changes. The permitting system also has records, although plans are not retained forever. The base line would be the structure as it existed on the effective date of the zoning change.

Commissioner Fallon noted that his house occupies only 19% of his lot, according to County records, because a portion of the lot is a very steep grade. He asked why building wall measurements would matter if the proposed building is within or under the coverage requirements. Susan Bell agreed that the amount of documentation required could vary with the scope of work proposed. Commissioner Fallon also asked about the chart on outside building walls and noted that moving one segment, such as the rear wall, would also affect the length of the adjoining segments.

Commissioner Fallon also asked whether applicants would be able to appeal staff determinations to the Board of Zoning Appeals (BZA). Susan Bell replied that there would be a right of appeal to BZA for a variance. However, under the recent Cochrane decision, variances are not supposed to be granted unless the owner would be left with no beneficial use of the property. In the wake of that decision, staff is working on a new proposal for special exceptions to be heard by the BZA which would have a separate set of standards. That proposal will be ready for review early in 2006.

Commissioner Chávez asked whether an existing wall could be lengthened and still count as having been retained. Susan Bell said that the original segment of the wall would count. The question would be whether overall 50% of the outside walls were old or new.

Commissioner Malis asked how measurement of existing walls by segments would be affected by changes such as widening a bumped-out area. Staff replied that each situation would have to be examined to determine whether the threshold for new construction had been crossed.

Commissioner Fallon expressed frustration about the lack of clear explanations as to how measurements would be made. If the details have not been fully developed, he was not sure how the system could be explained or managed for 26,000 homeowners. He suggested that the issue has been over-thought and the administrative elements under-thought.

Commissioner Weihe stated that this gets to the basic premise of the Manager's option, which is based on a distinction between new construction and additions. The ZORC/NCAC approach avoids that threshold by applying the same rules to all. There are some concerns in the community that those limits would prevent major additions. The work of several years shows that this concern is not well founded

Commissioner Savela stated that if the new curbs are to be limited to new construction that needs to be clearly defined and comprehensible to staff, commissioners and citizens.

Commissioner Dobson said that given the difficulties of defining new construction, and the greater difficulties of measuring the perimeter of every house, it makes sense to focus on truly new construction.

Commissioner Monfort said that new limits should apply to all properties. He asked how wall height would be relevant. Susan Bell replied that a wall would have to be retained for its full height, not just as a few courses of bricks above the foundation.

Commissioner Pebley stated that the discussion illustrates why he feels pushed in the direction of no change. Trying to simplify the definition just makes it more complex. Susan Bell replied that staff is trying to avoid big loopholes and block property owners from trying to game the measurement.

Commissioner Savela stated her preference for applying the new limits to all construction. She agreed that renovators and builders can be very creative in finding ways to circumvent limits.

Commissioner Johnson said that one rule should apply to all walls. She cited a recent staff report on single-family home construction showing that since the discussion about coverage started in 2001, some construction has occurred on nearly 10% of the residential lots in Arlington. As a result, one bizarre effect of the manager's proposal would be to grandfather more of the big houses that people don't like, and let them get even larger in the future.

Commissioner Hubbard said he does not see there is enough understanding to go forward with a change at this time. There is too much room for inequities and disparate results. He agrees something should be done, but thinks the county is not now in a position to do it properly.

Regarding the second discussion topic, whether limits should be applied by zoning district or lot size, Commissioner Dobson said that using zoning districts would be a great idea if all the lots were similar. If rules are applied to all lots, then they have to relate to the size of the lots.

Commissioner Chávez agreed with Commissioner Dobson that using lot size and percentages is easy conceptually, but not in implementation. In fact the County Manager's proposal is not simple, as shown by the differing interpretations given to similar questions posed by Planning Commissioners.

Commissioner Johnson noted that there the proposed percentage limits in the ZORC proposal and the Manager's plan would be similar for some lot sizes in some zones, and very different in other cases. She again suggested that staff prepare a chart comparing the two.

Commissioner Fallon expressed a preference for applying percentages to lot size. His own home, for example, is zoned "R-8" but has about 14,000 square feet with a steep slope in back. His lot price and taxes are based on that lot size. Although he can't imagine building to the coverage limits, he can envision how severe limits might encourage owners of some similar

properties to tear down an existing house, subdivide the lot and build two new houses. The coverage rules should not incentivize tear downs.

Commissioner Savela said that in her view the Manager's proposal does not disincentivize subdivisions. Moreover, in some instances that outcome might not be worst. She lives near the huge house on Pershing Drive. Some might prefer subdividing that lot and building two houses which would be smaller and have setbacks that would provide room for more canopy trees and let in more light and air.

Commissioner Weihe said that every small developer in Arlington is looking for opportunities to resubdivide lots. There is a whole industry trying to game the system. Neither change would affect that because the economics are the driving force. The ZORC approach, using zoning districts, was intended to respect the general bulk and scale of each district, even though those districts may have been established after many lots were recorded in some neighborhoods. The NCAC amendments are improvements.

Regarding the third topic, the proposed caps on building footprints, Commissioner Fallon asked how those numbers were arrived at. Commissioner Savela explained that ZORC was trying to balance several objectives: keeping lots buildable; recognizing that smaller lots will have greater coverage; trying to set limits that accommodated 90% or even 95% of all properties in each group; and harmonizing the figures for different categories to avoid odd results. The NCAC amendments, for example, clarify that a home on an undersized lot may be as large, in square feet of footprint, as a home on a standard-size lot in the same zoning district. Regarding oversized lots, ZORC had proposed limiting main buildings to the square footage that the formula would generate on a lot 120% of the standard size. NCAC would raise that to 140%.

Regarding the fourth discussion topic, incentives for front porches and detached garages, Commissioner Dobson expressed concern about what we encourage or discourage. For instance, swimming pools are bad for the environment, causing loss of trees and land that doesn't perk. Yet pools are not counted in coverage. Why not disincentivize pools? The same applies to backyard tennis courts.

Commissioner Hunt said she sees no reason to encourage rear garages with larger asphalt driveways. It would make more sense to limit the size and number of curb cuts. She also would support coverage definitions that minimized water runoff and encouraged permeability of lots. .

Commissioner Savela noted that the proposed additional percentage allowed for a detached garage would not always cover the actual additional driveway square footage. It is intended to avoid discouraging rear garages in neighborhoods where they are the norm.

Commissioner Pebley said that his garage is 80 feet back from street. He wondered whether he should demolish the garage and move it forward, or alternatively, take out the driveway, build out his house, and figure out how to put a driveway back in. The point is that we are raising environmental issues at the same time as large-house issues, and it's hard to figure out which problem we are trying to solve first.

Commissioner Malis said that the garage and front-porch incentives are intended to encourage some architectural integration in older neighborhoods. She supports that approach.

Commissioner Dobson said that his driveway is large enough to accommodate seven cars. He is considering building a green garage that would have grass on its roof.

Regarding the fifth topic, how the new rules would be administered and how exceptions would be handled, Commissioner Savela noted that Susan Bell had described the new exceptions process now being developed.

Commissioner Fallon asked whether, if the Board approved new rules on November 15, all home construction would come to a halt until the new exceptions process was in place. Susan Bell said that the changes for those seeking exceptions would be minimal, because it's so hard to get a variance now. She also noted that the BZA does not meet in January, and by February the new exceptions process will be farther along.

Commissioner Dobson asked about applying the new rules to those who have submitted permit applications that have not been approved. Susan Bell said that since nobody has the right to build without an approved permit, the approval date should determine what rules apply. Mr. Dobson asked how the rules would apply to subdivisions. Ms. Bell explained that subdivisions deal with lots, not buildings. Staff now looks at whether a lot is unencumbered. That would not change.

Regarding the enforceability of the new rules, Commissioner Hunt said that some aspects of the current zoning ordinance are already a joke. The more complex it is, the more it will be observed in the breach. The ability of staff to explain the proposed new system is suspect.

Commissioner Weihe said that enforcement has always relied in part on neighborhood watchdogs that have made developers make changes.

Commissioner Monfort stated that in six years on the Historic Affairs and Landmarks Review Board, he has seen staff do a good job administering very complex regulations. The key question is the political will to enforce the rules.

Commissioner Savela confirmed commissioners' support for the provisions allowing for reconstruction of damaged nonconforming homes and for allowing larger additions to nonconforming properties as long as the additions comply with the zoning code.

Commissioner Malis moved that the Commission recommends that the County Board adopt (1) the amendments to sections 1 and 32 regarding lot coverage and main building footprint coverage recommended by the Zoning Ordinance Review Committee, with modifications recommended by the Neighborhood Conservation Advisory Commission, subject to staff review of main building footprint caps to address any anomalies; and (2) amendments to section 35 regarding reconstruction and enlargement of nonconforming buildings, as recommended by the County Manager. The motion was seconded by Commissioner Savela.

Commissioner Savela said that the motion does include the increase in limits for “R-20” properties suggested by the Manager in his first proposal last spring. She asked staff to review the proposed caps and percentage limits to avoid inequities where lot sizes in various zoning districts may overlap, and suggested that adjustments if any should be on the generous side.

Commissioner Dobson noted that the Manager’s approach to main building limits provided for a percentage or a square foot limit, whichever is larger, where the ZORC approach applies whichever is smaller. Under the ZORC plan, a house on a 10,000 square foot lot could be larger if the lot is zoned “R-6” than if it is zoned “R-5”. He would favor permitting the larger house on a larger lot.

Commissioner Savela said that in some cases, subdividing the lot and building smaller houses might be preferable. She hopes that a special exception process would address real problems.

Commissioner Weihe said that this has been a long odyssey. ZORC was a creation of this commission and has led an exhaustive review in an open process. If the Commission is going to ask citizens to spend several years on an issue, it has some obligation to support that effort and its results. By forwarding the ZORC proposal, with the input of NCAC, which is as representative of Arlington neighborhoods as any institution he knows, the Commission is giving the County Board a choice among alternatives. We should put this forward and let the Board grapple with the Manager’s assumption that what troubles people is new construction.

Commissioner Pebley said he had come in conflicted on several levels on this issue. He does not like oversized houses with garages in front, simulated stone foundations, garden gnomes and other design features, but does not want to regulate everything. The Manager’s proposal looked more reasonable and enforceable, but also has problems. If the choice is between the ZORC plan and no change, he will vote for no change.

Commissioner Dobson said that the Manager’s recommendation looks good at this time.

Commissioner Savela summed up her support for the motion. She noted the irony that a number of McMansions and other egregious infill projects have been advertised for sale as enhanced by the neighborhood ambience and wonderful tree canopy. The county has made a commitment to higher-density, transit-oriented development on seven percent of its land in exchange for protecting single-family neighborhoods. Now those neighborhoods are being jeopardized.

Commissioner Johnson agreed that the county should look beyond the impact on individual properties to the challenge of preserving neighborhood character. Arlington has several National Register neighborhoods that could lose that distinction through incompatible infill. In an email, a realtors’ association expressed concern about a possible lack of demand for smaller homes. No evidence can be found to support this. In this small county, if we want to maintain tree coverage, open yards, and at least some semblance of economic diversity, it is essential to maintain older properties and smaller homes as best we can. The ZORC plan, although not perfect, goes in the right direction.

The Planning Commission voted 6-5 to support the motion. Commissioners Chávez, Johnson, Malis, Monfort, Savela and Weihe supported the motion. Commissioners Dobson, Fallon, Hubbard, Hunt and Pebley opposed the motion.

Respectfully Submitted
Arlington County Planning Commission,

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Planning Commission Coordinator