

AN ORDINANCE to amend and reordain Section 42-75 of Article XI of Chapter 42 of The Code of the City of Alexandria, Virginia, 1963, as amended; to amend Article XV of Chapter 42 of said Code by adding thereto a new section numbered 42-100.1 and to amend Section 42-103 of Article XV of Chapter 42 of said Code by adding a new paragraph thereto; which Chapter 42 relates to ZONING, which Article XI relates to BOARD OF ZONING APPEALS; which Article XV relates to AMENDMENTS, ETC.; which Section 42-75 relates to POWERS OF BOARD OF ZONING APPEALS; which new Section 42-100.1 relates to PARTIES TO APPLICATIONS AND MOTIONS FOR AMENDMENT, SUPPLEMENT OR REPEAL OF REGULATIONS AND RESTRICTIONS AND DETERMINATION OF BOUNDARIES; which Section 42-103 relates to RECOMMENDATION OF PLANNING COMMISSION; ACTION BY COUNCIL; REFERENCE TO PLANNING COMMISSION FOR FURTHER STUDY; and which new paragraph relates to REGULATIONS ON ADOPTING MORE RESTRICTIVE ZONES.

WHEREAS, pursuant to due and timely notice of the time and place of hearing published in a daily paper of general circulation published in the City of Alexandria, Virginia, a public hearing was held in relation to the matters hereinafter set forth, at which public hearing parties in interest and citizens had an opportunity to be heard.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 42-75 of Article XI of Chapter 42 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended and reordained to read as follows:

Sec. 42-75. Powers.

The board of zoning appeals shall have the following powers and it shall be its duty:

(a) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination by the director of planning and regional affairs in the administration and enforcement of the provisions of this chapter.

(b) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:

* When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of the exceptional topographical condition or other extraordinary * situation, or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of property or where the board is satisfied,

upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided * that all variances * shall be in harmony with the intended spirit and purpose of this chapter and the ordinance.

No such variance shall be authorized by the board unless it finds:

(1) That the strict application of the ordinance would produce undue hardship.

(2) That such hardship is not shared generally by other properties in the same zone and the same vicinity and is not created by the owner of such property.

(3) That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the zone will not be changed by the granting of the variance.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance the board may impose such reasonable conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the interest of public health, safety or welfare and to assure that the variance authorized shall be in harmony with the intended spirit and purpose of this chapter and the ordinance.

(c) To permit, when reasonably necessary in the public interest, the use of land, or the construction or use of buildings or structures, in any zone in which they are prohibited by the ordinance, by any agency of the city, state, or the United States, provided such construction or use shall adequately safeguard the health, safety and welfare of the occupants of the adjoining and surrounding property, shall not unreasonably impair an adequate supply of light and air to adjacent property, shall not increase congestion in streets and shall not increase public danger from fire or otherwise affect public safety.

(d) To permit the following exceptions to the zone regulations and restrictions, provided such exceptions shall by their design, construction and operation adequately safeguard the health, safety and welfare of the occupants of the adjoining and surrounding property, shall not unreasonably impair an adequate supply of light and air to adjacent property, shall not increase public danger from fire or otherwise unreasonably affect public safety, and shall not diminish or impair the established property values in surrounding areas:

*

(1) Extension of a zone where the boundary line of a zone divides a lot in single ownership as shown of record at the time of the effective date of the ordinance *

(2) Reconstruction of buildings or structures that do not conform to the comprehensive zoning plan and regulations and restrictions prescribed for the district in which they are located, which have been damaged by explosion, fire, act of God or the public enemy, to the extent of more than sixty per cent of their fair market value as established by the opinion of three disinterested appraisers to be appointed by the city council, when the board finds some compelling public necessity for a continuance of the use and such continuance is not primarily to continue a monopoly, provided that nothing herein shall relieve the owner of any such building or structure from obtaining the approval of such reconstruction by the council ^{or} of any department or officer of the city when such approval is required by any law or ordinance.

Section 2. That Article XV of Chapter 42 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended by adding thereto a new section numbered 42-100.1 to read as follows:

Sec. 42-100.1. Parties to applications and motions for amendment, supplement or repeal of regulations and restrictions and determination of boundaries.

Applications or motions for changes in zone boundaries shall be accepted only from parties having a legal interest in the property, from the duly authorized representative of any such party or from persons exhibiting the consent of parties having a legal interest in the property. The planning commission may initiate on its own motion the amendment, supplement or repeal of any regulation, restriction or determination of boundaries of zones through comprehensive plan zoning. The council may initiate on its own motion the amendment, supplement or repeal of any regulation, restriction or determination of boundaries of zones. All such applications and motions shall be subject to the procedures of this Code.

Section 3. That Section 42-103 of Article XV of Chapter 42 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended by adding thereto a new paragraph to read as follows:

The council in adopting an ordinance to determine the boundaries of zones may adopt an ordinance for a zone change to a more restrictive zone than that originally applied for or moved, provided; (1) that the planning commission recommends in favor of such more restrictive zone change at its first public hearing required by sections 42-101 or 42-102 of this Code; (2) that the applicant agrees to the more restrictive zone change at or before the said planning commission hearing in cases where the zone change procedure is initiated by other than the planning commission through comprehensive plan zoning or the council on its own motion; and (3) that at least ten days notice of the more restrictive zone change and of the time and place of the public hearing before council required by sections 42-101 or 42-102 of this Code shall be given by publication thereof in a daily newspaper of general circulation published

in the city. In the event of an emergency whereby there is no newspaper of general circulation published in the city, then such notice may be published in a newspaper of general circulation in the city. A protest under section 42-104 of this Code against a less restrictive zone change shall not be effective against a more restrictive change. This shall not, however, preclude the filing of an effective new protest against a more restrictive zone change under section 42-104 of this Code nor shall it preclude the effectiveness of a protest filed against both a less restrictive and a more restrictive zone change.

Section 4. That this ordinance shall be published in a newspaper of general circulation in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The clerk of the council shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.

CHARLES E. BEATLEY, JR.
Mayor

FINAL PASSAGE: DECEMBER 10, 1968

NB. Asterisks and underlining are not part of the ordinance but merely denote deletions or changed or new matter.