



City of Alexandria, Virginia

DEPARTMENT OF PLANNING AND ZONING
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MEMORANDUM

November 15, 2006

TO: Hunting Creek Stakeholders Group Members
FROM: P. Patrick Mann, AICP, Urban Planner
SUBJECT: Noncomplying Structures

The two structures known as Hunting Towers are noncomplying structures under the City's Zoning Ordinance, Article XII.

The structures are noncomplying with respect to their height, since their height exceeds the 50-foot height limit that currently applies to their location. On the assumption that the property will be sold as a single combined lot created as a remainder of the properties purchased by VDOT for construction of the Woodrow Wilson Bridge, they appear to be in compliance with respect to density (maximum 54.45 units per acre) and floor area ratio (maximum 1.25) for the RC zone based on a total lot area of 10.0 acres for the two structures estimated in the Hunting Creek Area Plan. Precise determination of compliance with FAR and density could require a survey to determine the area of each lot higher than 3 feet elevation, the elevation that defines the extent of a lot for FAR calculation.

Under the City's Zoning Ordinance, Section 12-102 (A), noncomplying structures may not be enlarged or expanded unless the enlargement or expansion complies with the regulations for the zone.

Under section 12-102 (B) of the Zoning Ordinance, if noncomplying structures such as the towers are destroyed, demolished, or otherwise removed, they may be reconstructed provided that there is no increase in the floor area ratio, density, height, or degree of non-compliance which existed prior to such destruction. The Zoning Ordinance makes no distinction in the reconstruction of noncomplying structures between buildings that are destroyed or demolished through fire or accident and those that are demolished by the owner for the purpose of reconstruction.

Thus under the Zoning Ordinance, the towers could be reconstructed if the height, density and floor area were not increased, and if no noncompliance of the structure with the zoning ordinance (such as setback or open space) was increased as a result of the reconstruction.

“Reconstruction” is not separately defined in the Zoning Ordinance. Reconstruction in general is interpreted to mean rebuilding using substantially the same plan and elevations as the structure to be reconstructed, not just construction of some different new building of similar floor area. If the building footprint were changed or other aspects of the site plan or structure were changed substantially as a result of the reconstruction, the changes would be subject to interpretation regarding both whether the project fell outside the definition of “reconstruction,” and whether the degree of noncompliance with the current provisions of the zoning ordinance applicable to structures was increased. At minimum, these rules mean that the noncomplying height could be reconstructed within the existing building footprints only. If the project is not categorized as “reconstruction,” the project would be subject to review as any new development or redevelopment with respect to any changes in the site plan and other aspects of the project not involving the structures.

Compliance with the provisions of the Zoning Ordinance does not mean that all requirements for reconstruction of an existing structure are met. Reconstruction would also require compliance with the Building Code as it applies to reconstruction of existing structures. When buildings are completely demolished for the purpose of reconstruction, the current Building Code applies to the reconstruction. To the extent that reconstruction in compliance with the provisions of the Building Code requires changes that result in increases in the degree of noncompliance with the zoning ordinance, then the structure may no longer comply with the requirements of zoning for reconstruction of a noncomplying structure.

If building renovations on a building exceed 33 1/3% of the assessed value of building improvements, parking requirements for the structure will be calculated at the current rate regardless of its status as a noncomplying structure. The Hunting Towers buildings now provide parking for 507 automobiles, less than one space per unit. This is substantially less parking than required by the City’s current parking standards.

If a building is demolished and reconstruction does not begin for a period of two years after demolition, the building will no longer qualify for reconstruction as a noncomplying structure.

The demolition and reconstruction would also be subject to provisions of the Zoning Ordinance applicable to the Old and Historic Alexandria District as those regulations apply to existing structures. A Permit to Demolish from the Old and Historic Alexandria Board of Architectural Review would be required for demolition of the existing structures. The proposed new structure would be subject to BAR review and the requirement for a Certificate of Appropriateness following granting of a Permit to Demolish. The BAR’s decision on a Permit to Demolish or Certificate of Appropriateness is appealable to the City Council.

The section of the Zoning Ordinance dealing with noncomplying structures is provided on the following pages. For further information, refer to the full text of the Zoning Ordinance, which is linked to the City’s web site at the following location:

<http://alexandriava.gov/city/city-government/charcodezone.html>

If you have questions or need further information about noncomplying structures as they apply to the Hunting Terrace and Hunting Towers sites, please contact Pat Mann at (703) 838-4666 x 303.

City of Alexandria Zoning Ordinance
ARTICLE XII. NONCOMPLIANCE AND NONCONFORMITY

Sec. 12-100 Noncomplying structures.

Sec. 12-200 Nonconforming uses.

Sec. 12-300 Noncomplying uses.

Sec. 12-400 Substandard residential lots.

Sec. 12-500 Uses or structures grandfathered under prior law.

Sec. 12-600 Community unit plan, planned unit development, cluster special use permit, transitional special use permit and CO planned residential/commercial development.

Sec. 12-700 Application of article to lands received in exchange with Arlington County; residential buildings in areas designated for residential use in the master plan map.

Sec. 12-800 Registration of nonconforming uses and noncomplying uses and structures.

Sec. 12-100 Noncomplying structures.

12-101. Terms defined.

(A) Noncomplying structure means any building or structure that existed prior to the effective date of any change in the zoning regulations or restrictions, but which thereafter, by reason of such change, is not in compliance with the zoning regulations or restrictions then in effect.

(B) The term noncomplying structure does not include a structure that was grandfathered under prior law.

(C) In the event a nonconforming use is located in a noncomplying structure, the provisions of sections, 12-204, 12-205, 12-207, 12-208, and 12-209 shall apply.

(D) A structure located on a parcel that is reduced in size by virtue of the exercise of eminent domain shall be considered a noncomplying structure if the reduction in parcel size is the cause of such noncompliance and the structure preexisted the reduction in size.

12-102 Noncomplying structures. Noncomplying structures shall be permitted to continue indefinitely and shall be considered legal structures, but subject to the following restrictions:

(A) *Expansion.* No noncomplying structure may be physically enlarged or expanded unless such enlargement or expansion complies with the regulations for the zone in which it is located.

(B) *Reconstruction.* If a noncomplying structure is destroyed, demolished or otherwise removed, it may be reconstructed provided that there is no

increase in the floor area ratio, density, height or degree of noncompliance which existed prior to such destruction.

(C) *Repairs and maintenance.* A noncomplying building may be remodeled, renovated, maintained, repaired and altered so long as such work complies with section 12-102.

(D) *Residential reuse.* A building which faces the unit through 1500 block of King Street, and which is a noncomplying structure because it exceeds the floor area ratio of the CD zone, may be converted from nonresidential to residential use, notwithstanding any requirement of the CD zone applicable to residential uses, provided that a special use permit is approved to allow such conversion.

(Ord. No. 4273, § 1, 10-19-02)