

# City of Alexandria, Virginia

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## MEMORANDUM

**DATE:** JUNE 13, 2011

**TO:** THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

**FROM:** FAROLL HAMER, DIRECTOR, PLANNING AND ZONING *JH*  
JAMES L. BANKS, JR., CITY ATTORNEY *by CPB*

**SUBJECT:** WATERFRONT ZONING

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This memo responds to Council's request for information regarding adopting the Waterfront Plan with the proposed zoning adopted at a later date when considering individual development applications.

While the best planning practice would be to adopt a Plan and rezoning together, Council, if it chooses, may legally act to adopt the Waterfront Plan without also approving the zoning of specific parcels to those uses and densities anticipated by the Plan. However, there are conceptual issues to consider before taking this approach including: (1) whether the benefits of such an approach outweigh the negative consequences that result; and (2) the zoning mechanics to achieve separate zoning.

### *Tradeoffs from Delaying the Waterfront Zoning for the Development Sites*

There are several reasons that the concept of delaying the zoning has appeal:

1. As expressed by Council, there are concerns about the Waterfront Plan's proposal for zoning to allow hotels and increased density. With more time and discussion about implementation, concerns may be allayed.
2. Two out of three development opportunities on the Waterfront are for Robinson Terminal, and likely not to be developed soon, thereby making zoning action unnecessary now. There is currently interest in the redevelopment of the Cummings/Turner block, but that could change.
3. Part of the reason for citizen concern is the fact that there are no specific development plans before the City now. It would be easier to support a development concept when there is an actual application and proposal to view.

4. Assuming an implementation group is established with subgroups to work on specific elements of the Waterfront Plan, such as history, parking, and flood mitigation, there would be a ready venue for citizen review of zoning concept when a developer is ready to proceed.
5. There is the potential to achieve more from a developer in a rezoning process, for example through proffers, than through the SUP process.
6. If rezoning does not take place and a property owner seeks development approval under current zoning, staff will apply the Development Guidelines in the Plan to the extent it is able to do so. For example, there is discretion in the SUP arena to apply such guidelines, although it would be limited to those that are not inconsistent with current zoning.

There are also potential negative consequences:

1. The prospect of a rezoning, in addition to the long list of development approvals required of a developer, could deter it from proceeding with what the City deems the most desirable use and development (such as including a boutique hotel which is now not permitted in the W-1 zone). Without the zoning outlined by the Plan, a landowner may opt for the easier route of developing under current zoning with the end result of a 100% residential project.
2. A rezoning action includes additional potential restrictions and procedures for both the applicant and for the Planning Commission and Council, such as a protest petition and super majority vote requirements.
3. The owner of the two Robinson Terminal sites has indicated that it will reinstitute the previous litigation it filed against the City to enforce what it believes to be its vested right to the development maximums listed in the 1983 Settlement Agreement and Deed between the Federal Government, the City, and the Robinson Terminal Warehouse Corporation. If the Court finds that Robinson Terminal Warehouse Corporation is indeed vested in the development as outlined in the settlement agreement, that could potentially mean (depending on the court's ruling) that the owner does not have to go through a rezoning or special use permit process to achieve the higher density and the City and community would have much less input. Robinson Terminal has indicated that if the zoning changes are approved along with the Waterfront Plan as currently proposed, it is willing to go through the City's special use permit process and not litigate the issues of the 1983 Settlement Agreement.
4. The Plan without zoning attached sets expectations about public improvements (such as parks) on the Waterfront but does not provide a way to pay for them with Waterfront Plan generated revenues.

5. The Plan, with zoning included, clarifies and provides definite and predictable outcomes, especially as to development on the three sites. Without the zoning in place, there is less certainty as to what a future Council will do.

### **Historical Practice**

Although there are valid arguments in favor of each approach, the best planning practice is to adopt both the Plan and the zoning together. Historically, Alexandria has typically rezoned land as part of a Master Plan adoption or amendment. Especially where the new zoning is tied closely with the rights and expectations of land development within the Plan area, it has been a successful approach for the community. The recently adopted Landmark/Van Dorn Plan is one exception. There, because of the size and degree of uncertainty about large, unconsolidated parcels, the City did not adopt new zoning with the Plan. Rather, the Plan sets a vision that will guide rezoning decisions in the future.

### **Zoning Mechanics**

In order to rezone each of the development parcels one at a time rather than changing the zoning for all of them at the same time, a new zone that each site could eventually be rezoned to must be established. The simplest method for achieving this new zone would be to wait until one of the sites is ready to move forward with a development concept and, at that time, staff could propose a new zone consistent with what the Waterfront Plan anticipates (hotel use and increased density limits outlined in the plan) be added to the Zoning Ordinance. The applicant, in addition to needing to apply for an SUP for hotel, SUP for the increased density, SUP for increased height above 30' and BAR approval, would have to also apply for a rezoning to the newly created zone. The Planning Commission and Council will be asked to consider (1) the new zone with hotel use/increased density as well as (2) the landowner/developer's application for a rezoning to that zone at the time that the applicant also seeks the SUPs approval.

Under this scheme, the new zone would be mapped on a parcel by parcel basis and only in response to individual rezoning applications. This zoning mechanism is known as a "floating zone" because it is not mapped. It "floats" as a hypothetical and potential zone and is not tied to specific property except through the specific action of a rezoning application. The Alexandria zoning ordinance already includes some unmapped or floating zones. The CDD zone is one example, although it is a highly specialized one which by its terms allows for different rules and restrictions each time it is applied to a different site. More traditional is the RT and RS townhouse zones, developed over two decades ago to allow two versions of a luxury style, large footprint townhouse. See sections 3-1200 and 3-1300. Rarely used, these zones are nevertheless part of the zoning ordinance and available for mapping.

In the case of the new floating Waterfront zone, the text of the floating zone would be similar to what is proposed now to be achieved by text amendment: it would apply only to the three

Development Sites identified in the Waterfront Plan, it would allow hotels and increased density, and would require that the Development Guidelines of the Plan be met. After being applied to the first Development Site, it would not apply to any other until a successful rezoning application is filed and approved. Each property would have to apply for a rezoning in order to have the right to build under the new zone. Although changing the existing W-1 zone, as staff proposed, is a simpler, more straight-forward and more commonly used zoning mechanism, the floating zone approach is an acceptable zoning approach.

There is no legal impediment to adopting a change to the comprehensive plan that is not intended to be implemented until a future date through a floating zone method. The comprehensive plan essentially sets the goals of the City Council and gives context to the consideration of the future rezoning of the property. While it is important to have the comprehensive plan in place before rezoning property in order to defend against the contention that the future rezoning decision is arbitrary, there is no legal requirement regarding how soon before the rezoning the comprehensive plan should be adopted.

Thus, Council could proceed, if it so decides, with the adoption of the Waterfront Plan, which outlines what is anticipated in concept for the Development Sites, but without applying the development ideas through zoning to any particular parcel at this time. The application of the rights for the anticipated type and level of development (hotel with increased density) would await a specific development plan, rezoning application and applicant.

***Recommendation:***

Because best planning practice is to adopt both the Plan and the zoning together and recognizing the potential for litigation as described herein, we recommend adopting the Plan and the zoning at the same time as previously recommended by Staff.

**Staff:**

Mark Jinks, Deputy City Manager

Barbara Ross, Deputy Director, Planning and Zoning

Joanna Anderson, Assistant City Attorney