DATE: March 1, 2006

SUBJECT: Amendment to Section 36. Administration and Procedures of the Arlington County Zoning Ordinance to authorize the Board of Zoning Appeals to grant special exception use permits that modify requirements contained in the Zoning Ordinance with respect to physical requirements of improvements on a lot or parcel of land, including setback and other placement requirements, coverage, and height.

C. M. RECOMMENDATION:

Defer to the May 8, 2006 Planning Commission meeting and the May 20, 2006 County Board meeting.

ISSUES: None.

SUMMARY: This Zoning Ordinance Amendment would give the Board of Zoning Appeals (BZA) the authority to approve use permits that modify placement, height and coverage requirements for by-right development, primarily involving one-family dwellings. The Code of Virginia restricts the ability of the BZA to approve variances from strict application of the Zoning Ordinance. The Code of Virginia gives the County Board the authority to authorize the BZA to grant use permits. The use permit process could be used as an alternative to the variance process that has been used by Arlington homeowners to deal with the constraints of their lots and/or existing dwellings when designing improvements.

Staff has had meetings with the Civic Federation, the Neighborhood Conservation Advisory Committee and the Zoning Ordinance Review Committee of the Planning Commission to discuss the proposed amendment. The additional time will be used to determine whether there should be limitations on modifications that may be granted and standards for approving modifications.

BACKGROUND: The following is a description of variance requests in a recent year in order to illustrate the type of variances requested and approved. In 2004 the BZA heard 185 request for variances cases with approximately 240 individual variance requests. Of these, 107 were for side yards, 29 for rear yards, 67 for street setbacks, 13 for distance between accessory structures and main buildings, 18 for building additions that are more than 50 percent of the floor area of

| County Manager: | ____________ |
| County Attorney: | ____________ |
| Staff: | Terry Russell, Zoning Administrator |
| | Tony Burnette, Deputy Zoning Administrator, Executive Secretary of the BZA |
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the existing dwelling, 4 for fences, 2 for coverage (both churches), 1 for air conditioning units, 2 for parking in required setbacks and 2 for oversized accessory structures. Nine Variances were denied in 2004. Street setback variances were the most prevalent variances prior to the Zoning Ordinance amendments in 2000. Since that time, side yard and rear yard variances are more prevalent by a large margin.

**Typical Variances:** With very few exceptions variances are requested for additions to one-family dwellings or the construction of new dwellings on lots located in "R-20", "R-10", "R-8", "R-6", and "R-5" zoning districts. In 2004, variances by zoning district were as follows:

<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Variances</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-20</td>
<td>1</td>
</tr>
<tr>
<td>R-10</td>
<td>21</td>
</tr>
<tr>
<td>R-8</td>
<td>13</td>
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<tr>
<td>R-6</td>
<td>114</td>
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<tr>
<td>R-5</td>
<td>15</td>
</tr>
<tr>
<td>R2-7</td>
<td>14</td>
</tr>
<tr>
<td>RA14-26</td>
<td>3</td>
</tr>
<tr>
<td>RA8-18</td>
<td>3</td>
</tr>
<tr>
<td>C-3</td>
<td>1</td>
</tr>
<tr>
<td>P-S</td>
<td>1</td>
</tr>
</tbody>
</table>

**Side and Rear Yards (Section 32.D.2.b):** The BZA typically does not grant variances closer than 5 feet to a side lot line or closer than 15 feet to a rear lot line. It does make exceptions, such as when the dwelling is already closer than 5 feet to a side lot line; applicants are allowed to build in line with the footprint of the house, or alternatively the wall of the structure is allowed at 5 feet and the eave is allowed to extend closer to the lot line. On corner lots, the BZA occasionally grants variances to permit accessory structures to be closer than 15 feet to the street and closer than 10 feet to the rear lot line, especially when replacing an existing accessory structure.

**Street setbacks:** (Section 32. D.1.d) Most variances granted for street setbacks are for no closer than 15 feet to the street right of way. Once again they may allow exceptions, especially on corner lots, when the dwelling is already closer than 15 feet.

**Distance between Main Structure and Accessory Structures:** (Section 32, D.2.e) Most of the variances granted for the distance between the main building and an accessory structure are for no closer than 5 feet. There are occasional exceptions. In 2004, one variance was granted to permit a 2-story accessory structure and one variance was granted to permit an accessory structure with a footprint greater than 560 square feet.

**Additions totaling more than 50 percent of the floor area:** (Section 35.A.3b) The BZA heard 18 of these variances in 2004 and granted all of them. The County Board has amended the Zoning Ordinance eliminating this restriction for one-family dwellings.

**Fences:** (Section 32.D.3.e) The BZA granted one fence variance in 2004 with the height modified to 5 feet instead of 7 feet as requested. The BZA denied two other fence variances.

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Air Conditioning Units: We usually only get 2 or 3 of these each year since the Ordinance amendment in 2000. The BZA usually grants variances for air conditioning units in the required yards a condition requiring that the unit be screened by landscaping or a fence.

Coverage: The BZA heard two coverage variances in 2004, prior to the new coverage requirements. These were for Cherrydale Baptist Church and St. John’s Baptist Church.

Height: Height variances are rare and are usually the result of a builder's mistake during construction.

Other Variances:

- A variance was granted for rear yard and street setback for a 20-unit townhouse development at Wilson Blvd and N. Abingdon St.
- A variance for parking in the required setback was granted for a 3-unit townhouse development on S. Four Mile Run Dr. and for Cherrydale Baptist Church.
- Condominium Conversions: Variances for parking in a required setback, drive aisle widths, size of parking spaces and street setbacks were granted for the Broyhilton Condo conversion.

Frequently Asked Questions: During discussions with the community, several questions have been raised. Answers to these questions are posted on the web.

CONCLUSION: Defer to the May 8, 2006 Planning Commission meeting and the May 20, 2006 County Board meeting.
RESOLUTION TO DEFER CONSIDERATION OF THE PROPOSED AMENDMENTS TO SECTION 36. ADMINISTRATION AND PROCEDURES OF THE ARLINGTON COUNTY ZONING ORDINANCE TO THE MAY 8, 2006 PLANNING COMMISSION MEETING AND THE MAY 20, 2006 COUNTY BOARD MEETING TO AMEND, REENACT, AND RECODIFY THE ZONING PROVISIONS TO AUTHORIZE THE BOARD OF ZONING APPEALS TO GRANT SPECIAL EXCEPTION USE PERMITS THAT MODIFY REQUIREMENTS CONTAINED IN THE ZONING ORDINANCE WITH RESPECT TO PHYSICAL REQUIREMENTS OF IMPROVEMENTS ON A LOT OR PARCEL OF LAND, INCLUDING SETBACK AND OTHER PLACEMENT REQUIREMENTS, COVERAGE, AND HEIGHT.

The County Board of Arlington County hereby resolves to defer consideration of the following amendments to Section 36, of the Zoning Ordinance to add Subsection M. to the May 8, 2006 Planning Commission meeting and the May 20, 2006 County Board meeting, to authorize the Board of Zoning Appeals to grant special exception use permits that modify requirements contained in the Zoning Ordinance with respect to physical requirements of improvements on a lot or parcel of land, including setback and other placement requirements, coverage, and height, 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 36. ADMINISTRATION AND PROCEDURES

* * *

E. Board of Zoning Appeals; Variances and Appeals.

1. There shall be a Board of Zoning Appeals as provided for and having the powers, functions and responsibilities as described in the Code of the Commonwealth of Virginia.

2. Every appeal from a determination of the Zoning Administrator and every application for a variance shall be filed in writing with the Zoning Administrator. The time of the public hearing is determined by the Board of Zoning Appeals. The filing fee shall be as follows:
   a. Appeals from a determination of the zoning administrator--Three hundred forty dollars ($340.00).
   b. Variances or Use Permits for existing single-family residential--Two hundred eighty-five dollars ($285.00) for the first subsection of the zoning ordinance being modified. Each additional subsection to be modified will be an additional fee of twenty percent [20%] of the base fee.
   c. Variances or Use Permits for single-family new construction/resubdivision for new construction--Two thousand two hundred sixty dollars ($2,260.00) for the first subsection of the zoning ordinance being modified. Each additional subsection to be modified will be an additional fee of twenty [20] percent of the base fee.
   d. Variance or Use Permit applications from nonprofit organizations and for nonprofit institutional uses--Two hundred thirty-five dollars ($235.00).
e. Variances or Use Permits for a building location error, defined as a request for an "as-built" variance when a new structure is not built in accordance with the approved plans—Three thousand four hundred dollars ($3,400.00).

f. Variances or Use Permits for all other uses—Two thousand eight hundred twenty dollars ($2,820.00) for the first subsection of the zoning ordinance being modified. Each additional subsection to be modified will be an additional fee of twenty (20) percent of the base fee.

3. In addition to the above, the board shall have authority to grant, upon such conditions and safeguards as it may determine, such variances from the ordinance as may be in harmony with its general purpose and intent, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done, as follows:

a. Permit the continuance of a nonconforming use in a conforming building for periods of three (3) years beyond the three-year limitation contained in Section 35, subsection B.2, if the board finds that: (a) said nonconforming use is not detrimental to, and does not affect adversely, adjacent property by reason of the nature of the use, generation of traffic, parking, lighting, noise and similar factors; (b) no commercial display, lighting, advertising and wholesale or retail merchandising is carried on in connection with the conduct of said nonconforming use; (c) such discontinuance shall work practical difficulty and undue hardship upon the owner of said building.

4. If any variance or use permit granted by the board of zoning appeals is not acted upon and put into effect within one (1) year after the date of such grant, then the variance or use permit shall be null and void and of no force and effect.

5. Every applicant for a variance or use permit shall file with his application a complete disclosure of the equitable ownership of the real estate to be affected including in the case of corporate ownership, the names of stockholders, officers and directors and in any case the names and addresses of all of the parties in interest; provided that the requirement of listing names of stockholders, officers and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than five hundred (500) stockholders.

6. The Board of Zoning Appeals may approve use permits that allow modifications of placement, coverage and/or height requirements for structures on lots where there is no option in the Zoning Ordinance to allow modification of requirements by the County Board, such as special exception use permit described in Section 36.G. or site plans described in Section 36.H. The Board of Zoning Appeals may impose conditions on the use permit that it deems necessary in the public interest, including limiting the duration of the use permit. The BZA shall approve a use permit when it finds:

a. That the proposal will not affect adversely the health or safety of persons residing in the neighborhood.

b. That the proposal will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood.

c. That the proposal will not be in conflict with the purposes of the master plans of the County.

d. That the modification will promote compatibility of development with the surrounding neighborhood.
e. That the modification will help preserve natural land form, historical features and/or significant trees and foliage.