



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of February 21, 2009**

DATE: February 12, 2009

SUBJECT: Adoption of a proposed amendment to Section 37 Violations and Penalties and Section 31A Historic Preservation Districts of the Arlington County Zoning Ordinance.

C. M. RECOMMENDATION:

Adopt the attached ordinance to amend, reenact and recodify Sections 31A and Section 37 of the Arlington County Zoning Ordinance to allow for the assessment of civil penalties for most zoning ordinance infractions.

ISSUES: The proposed amendment fulfills the commitment made during the adoption of the accessory dwelling zoning ordinance amendment for an additional amendment to provide for civil penalties. This amendment represents a shift in enforcement philosophy from an emphasis on criminal misdemeanors to an emphasis on civil penalties and provides the zoning administrator with more tools to successfully resolve zoning violations.

SUMMARY: The proposed amendment decriminalizes most violations of the zoning ordinance and makes them civil penalties subject to fines as allowed by the Code of Virginia. Fines range from \$200 for the initial violation to \$500 for subsequent violations up to a maximum of \$5,000 for a violation arising out of one set of facts. The amendment also proposes to make the penalty for demolition of an historic structure without a certificate of appropriateness as a civil penalty with a fine equal to twice the assessed value of the property. To facilitate this, an amendment to delete criminal sanctions in Section 31A Historic Districts, is also proposed. The proposed amendment will retain as criminal violations: signs on public property or rights-of way, land development activity and any violation that results in physical injury to a person. The proposed amendment allows prosecution of civil violations as criminal violations when the maximum civil violation of \$5,000 has been imposed and the violation has not been rectified. Finally, the proposed amendment allows the zoning administrator to seek a search warrant to determine if zoning violations have occurred.

BACKGROUND: As part of the adoption process for accessory dwellings last year, the County Board directed staff to research and prepare an advertisement to amend Section 37, Violations, of the Zoning Ordinance, and to provide for civil penalties for zoning violations. The proposed amendment decriminalizes the entire ordinance, except in those instances where the Code of Virginia mandates criminal penalties. Proposed text is included as Attachment 1.

County Manager: _____

County Attorney: _____

Staff: Melinda Artman, DCPHD, Zoning Office

PLA-5180

DISCUSSION: During the review process of the accessory dwelling amendment, the public expressed frustration with Code Enforcement's ability to achieve compliance with overcrowding issues as contained in various County ordinances. This discussion led the County Board to direct staff to decriminalize the ACZO. The current Zoning Administrator has 21 years experience with using civil penalties in Northern Virginia and finds it an important and effective enforcement tool. The burden of proof for a civil violation is less than that for a criminal violation and is a more useful tool to enforce the Zoning Ordinance. Due to this lesser burden of proof, the number of staff hours per violation is typically reduced as actual observation of the crime is not necessary. The imposition of the penalty is fairly swift and is a powerful incentive to comply with the provisions of the Zoning Ordinance. Cases which must proceed to court are handled by the County Attorney's office rather than the Commonwealth's Attorney. The County Attorney has a greater knowledge of the provisions of the ACZO than the Commonwealth's Attorney and can be a more effective advocate for the County's position. Additionally, all fines imposed, whether by ticket/summons or by the Court, accrue to the County and not the Commonwealth. A chart showing the Zoning Violation Criminal Process and the Zoning Violation Civil Process is in Attachment 2. Last year, Loudoun County, a jurisdiction with a slightly larger population than Arlington County issued \$46,500 in fines. It is estimated that in FY '10 Arlington County would see a similar amount of fines imposed.

As noted above, all the provisions of the ACZO regarding violations and penalties have been consolidated in Section 37. As a consequence, the violation provisions of Section 31A Historic Preservation Districts have been deleted and replaced by amendments in Section 37. Section 37 has also been updated to reflect the most recent enabling authority in the Code of Virginia, which permits an increase in the amount of fines, the ability to obtain and execute an administrative search warrant, the ability to impose a fine twice the value of a property within an historic district if the property owner demolishes a structure without going through the appropriate process. Recent authority also allows for criminal prosecution of a violation if the fines accrued meet the \$5,000 maximum, and keeps as criminal penalties only those violations that the Code of Virginia requires remain criminal (signs on public property, violations that cause imminent peril to life, and land development activities).

Since the request to advertise, and in further consultation with the County Attorney's office, minor adjustments have been made in the proposed text with proposed paragraph D of Section 37. These changes are shown with a double strikethrough or a double underline.

COMMUNITY PROCESS: Staff met with ZOCO on November 12 and December 13 to discuss the proposed amendment. The members wanted to understand the dollar difference in criminal fines as opposed to civil fines as well as the most common types of zoning violations. They also asked for a possible scenario where civil penalties might be imposed. Copies of memoranda provided to ZOCO are included as Attachment 3.

Staff also met with the Chief Judge of General District Court and the Clerk of General District Court to discuss the proposed amendments as to seek advice on how to best work with their offices. Both officials were supportive of whatever the County Board wished to do in the matter of zoning infractions, and noted that this change could be helpful.

PLANNING COMMISSION RECOMMENDATION: At its public hearing on Monday, February 9, 2009, the Planning Commission unanimously recommends that the County Board adopt the proposed zoning ordinance amendment.

CONCLUSION: Staff recommends that the County Board adopt the attached ordinance to amend, reenact and recodify Sections 37 and 31A of the Arlington County Zoning Ordinance to allow for the assessment of civil penalties for most zoning ordinance infractions, to increase the amount of fines assessed, bring all enforcement provisions within one section, including the assessment of a civil penalty for the demolition of an historic structure, allow the zoning administrative to seek search warrants, and in order 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.

Attachments:

1. Proposed text
2. Criminal Process and Civil Process Charts
3. November 12 and December 3 Memorandums to ZOCO

AN ORDINANCE TO AMEND, REENACT AND RECODIFY SECTION 37 VIOLATIONS AND PENALTIES AND SECTION 31A HISTORIC PRESERVATION DISTRICTS OF THE ARLINGTON COUNTY ZONING ORDINANCE TO: DECRIMINALIZE MOST VIOLATIONS OF THE ZONING ORDINANCE AND MAKE THEM CIVIL VIOLATIONS SUBJECT TO FINES AS ALLOWED BY THE CODE OF VIRGINIA; CREATE A CIVIL PENALTY FOR THE DEMOLITION OF AN HISTORIC STRUCTURE WITHOUT A CERTIFICATE OF APPROPRIATENESS; ALLOW CIVIL VIOLATIONS TO BE PROSECUTED AS A CRIMINAL MISDEMEANOR WHEN MAXIMUM CIVIL FINES HAVE BEEN IMPOSED; AND TO PERMIT THE SEEKING OF A SEARCH WARRANT, IN ORDER TO ENHANCE ENFORCEMENT CAPABILITIES, 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.

Be it ordained that Section 37 Violations and Penalties and Section 31A Historic Preservation Districts of the Arlington County Zoning Ordinance and hereby amended, reenacted and recodified as follows to enhance enforcement capabilities, 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 37. VIOLATIONS AND PENALTIES

A. Any building erected or improvements constructed contrary to any of the provisions of this Ordinance and any use of any building or land which is conducted, operated or maintained in a manner that is not in compliance with any of the provisions of the Ordinance or in a manner not in compliance with any permit, detailed statement or plan approved under the provisions of this Ordinance shall be and the same is hereby declared to be unlawful.

4.B. It shall constitute a violation of this ordinance for any person, firm or corporation, either owner, agent or occupant, to do any of the things for which a permit is required by this ordinance without having first obtained the said permit; and any permit issued upon a false statement of any fact which is material to the issuance thereof shall be void. Whenever the fact of such false statement shall be established to the satisfaction of the Zoning Administrator, he shall forthwith revoke the same, by notice in writing to be delivered to the holder of the void permit upon the premises where the violation has occurred, or, if such holder be not found there, by posting the said notice of revocation in some conspicuous place upon the said premises. Any such person, firm or corporation who shall proceed thereafter with such work or use without having obtained a new permit in accordance with this ordinance shall be deemed guilty of violation thereof.

23 2 C. It shall constitute a violation of this ordinance for any person, firm or corporation,
24 either owner, agent or occupant, to disobey, neglect or refuse to comply with or
25 resist the enforcement of any of the provisions of this ordinance. Each day upon
26 which the said violation shall continue shall constitute a separate violation.

27
28 3. D. 1. Civil Penalties. Except in ~~in~~ a case of the violation of any
29 provisions of the Zoning Ordinance listed in section 37.5G below, any
30 violation of the provisions of this Ordinance shall be deemed a civil
31 violation and, upon an admission of liability or finding of liability, the
32 owner, lessee, tenant and/or agent shall be subject to a civil penalty of ~~one~~
33 two hundred dollars (~~\$100.00~~) (\$200.00) for the first violation. ~~This~~
34 penalty shall be imposed after a warning has been issued that gives the
35 owner, lessee, tenant or agent a specified time within which to comply
36 with the ordinance. Any person who continues to violate such provision of
37 this ordinance after the imposition of the first penalty, shall be subject to a
38 civil penalty of ~~not more than one~~ five hundred fifty dollars (~~\$150.00~~)
39 (\$500.00), or such lesser amount so that the total amount of fines imposed
40 will not to exceed a total of five thousand dollars (\$5,000.00) arising out
41 of the same set of facts, for each subsequent violation. No person shall be
42 cited for a violation more than once in any ten (10) day period, and no
43 person shall be fined more than a total of ~~three~~ five thousand dollars
44 (~~\$3,000.00~~) (\$5,000.00) for all violations arising out of the same set of
45 facts.

46
47 Civil penalties shall be assessed only after a written Violation Notice has
48 been issued to the owner shown in the property tax records, which
49 Violation Notice has provided a reasonable period of time to correct, or in
50 instances where corrective measures will take time to complete, to
51 commence and diligently pursue correction of the violation. Except for
52 good cause shown, a reasonable period of time shall be a minimum of ten
53 (10) days. Civil penalties shall be imposed by the issuance of a civil
54 summons/ticket by the Zoning Administrator or deputy. Any person
55 served with a summons/ticket shall be informed of his/her right to stand
56 trial and of his/her responsibility to request within 30 days, said trial in
57 General District Court. Any person may waive his/her right to trial by
58 appearing in person or by mail and executing a Waiver of Trial and
59 Admission of Liability and paying the fine ~~have thirty (30) days in which~~
60 either to pay a fine to the Treasurer of Arlington County, Virginia, ~~or~~
61 Aggrieved persons also have the right to appeal the Violation Notice to the
62 Board of Zoning Appeals within 30 days of the date of the Violation
63 Notice. An aggrieved person may elect instead, at his/her option, to appeal
64 a ticket/summons to the Board of Zoning Appeals within 30 days of
65 issuance, or within 10 days for those violations listed in Section 37.D.2
66 below. In the event a person served with a Violation Notice and/or
67 summons/ticket has, within 30 days of the date of Violation Notice and/or

68 summons/ticket, or within 10 days for those violations listed in Section
69 37.D.2, neither:

- 70
71 a) Requested a hearing date in General District Court; nor
72 b) Admitted liability and paid the fine; nor
73 c) Filed an appeal of the Violation Notice with the Board of Zoning
74 Appeals,
75 then the determination of a violation shall be final and not subject to
76 further appeal and the amount of the ticket/summons shall be a debt owed
77 to the County.

78
79 2. As provided for in the Code of Virginia the following violations shall
80 have the right to appeal a Violation Notice within ten (10) days of the date
81 of issuance:

- 82 a) Parking of commercial trucks in residential zoning districts.
83 b) Maximum occupancy limitation of a residential dwelling
84 unit.

85
86 4. E. The demolition, razing or moving of a building or structure which is located in an
87 Historic Overlay District without the prior approval of the Historical Affairs and
88 Landmark Review Board (review board) and/or the County Board as provided in
89 Section 31.A shall be punishable by civil penalty.

90
91 1. Such civil penalty shall not exceed twice the market value of the property as
92 determined by the assessed value of the property at the time of destruction
93 or removal of the building or structure, and shall include the value of any
94 structure and the value of the real property upon which any such structure
95 was located.

96
97 2. Enforcement under this Section shall be by bringing an action in the name of the
98 County in Circuit Court by the county Attorney, upon request of the
99 Zoning Administrator, and such action shall be brought against the party
100 or parties deemed responsible for such violation.

101
102 3. The remedies provided for in this Section are not exclusive and shall be in
103 addition to any other remedies provided by law.

104
105 5. F. Criminal Penalties. It shall be unlawful and constitute a misdemeanor for any
106 person to violate any of the provisions of this ordinance, referenced in subsection
107 37.G below. Any person who is convicted of a violation of any of the provisions
108 of this ordinance shall be punished by a fine of not less than ten dollars (\$10.00)
109 nor more than one thousand dollars (\$1,000.00). If the violation is uncorrected at
110 the time of conviction, the court shall order the violator to abate or remedy the
111 violation in compliance with the Zoning Ordinance within a time period
112 established by the court. Failure to remove or abate a zoning violation within the
113 specified time period shall constitute a separate misdemeanor offense punishable

114 by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars
115 (\$1,000.00), and any such failure during any succeeding ~~thirty~~ 10-day period shall
116 constitute a separate misdemeanor offense for each ~~thirty~~ 10-day period
117 punishable by a fine of not less than ~~ten~~ one hundred dollars (\$100.00) nor more
118 than one thousand five hundred dollars (\$1,500).

119
120 5. G. The following violations ~~that will~~ shall be treated as a ~~civil~~ criminal ~~penalties:~~
121 are:

- 122 1 a. Any sign posted on public property or in public rights-of-way in
123 contravention of this Ordinance; on private property erected,
124 altered, refaced or enlarged without a permit;
- 125 b. ~~Erection of any prohibited sign on private property;~~
- 126 c. ~~Parking a commercial vehicle in an "R" or "RA" District (includes~~
127 ~~the type of vehicle, the number of commercial vehicles, the weight,~~
128 ~~and where they are parked on the lot);~~
- 129 d. ~~Commercial auto repair in a residential zone;~~
- 130 e. ~~Business establishments that have merchandise in the setback or on~~
131 ~~display outside.~~
- 132 f. ~~The placing on private property of any inoperative, or any unlicensed~~
133 ~~and/or uninspected vehicle, except as permitted by subsection~~
134 ~~5.A.8.c. of the Zoning Ordinance.~~
- 135 2. Any land development activity without applicable permit;
- 136 3. Any violation of the provisions of the Ordinance that results in
137 physical harm or injury to any person.

138
139 When civil penalties total \$5,000 or more, the violation may be prosecuted as a
140 criminal misdemeanor, as provided within the Code of Virginia. Treatment as
141 criminal penalties shall not preclude the Zoning Administrator from pursuing
142 injunctive action.

143
144
145 H. The Zoning Administrator or his/her agent shall have all necessary authority to
146 present sworn testimony to a magistrate or court of competent jurisdiction and if
147 such sworn testimony establishes probable cause that a zoning ordinance
148 violation has occurred, request that the magistrate or court grant the Zoning
149 Administrator or his/her agent an inspection warrant to enable the Zoning
150 Administrator or his /her agent to enter the a property and/or building for the
151 purpose of determining whether violations of the zoning ordinance exist. The
152 Zoning Administrator or his/her agent shall make a reasonable effort to obtain
153 consent from the owner or tenant of the property and/or building prior to pursuing
154 the issuance of an inspection warrant.

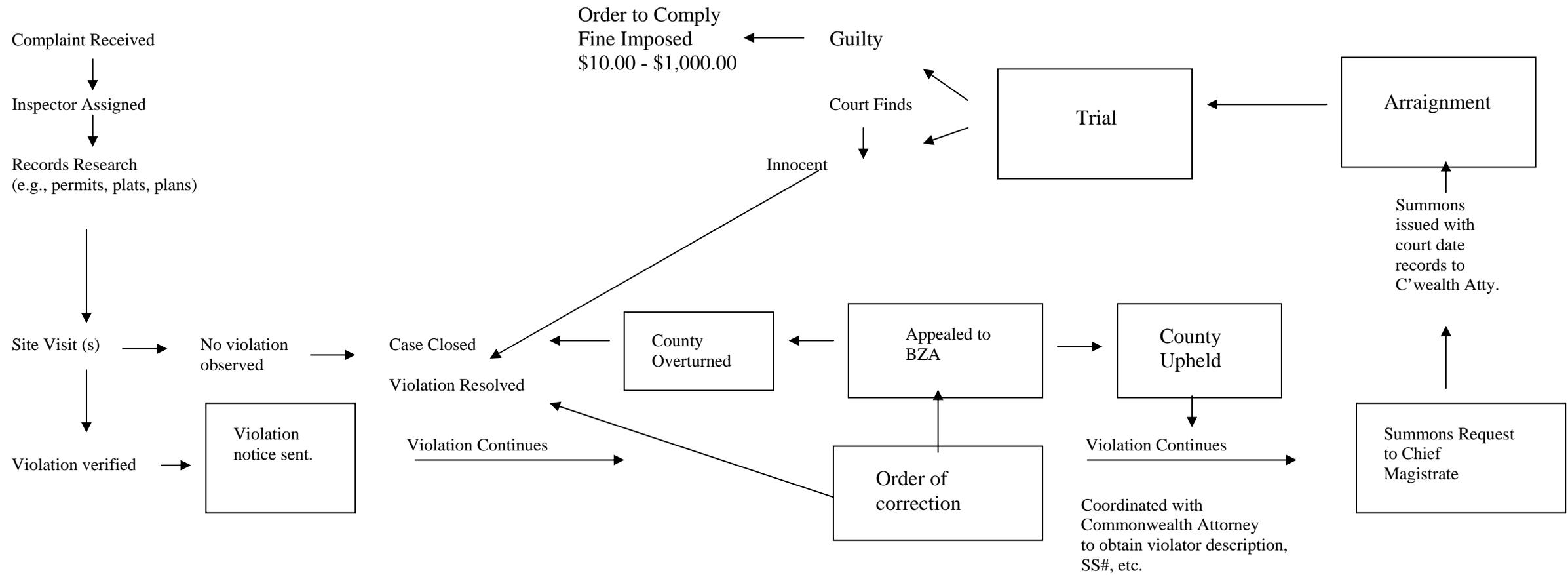
155
156 (Ord. No. 97-16, 7-19-97; Ord. No. 98-12, 4-18-98; Ord. No. 99-23, 11-13-99, _____)

157
158 FROM SECTION 31A

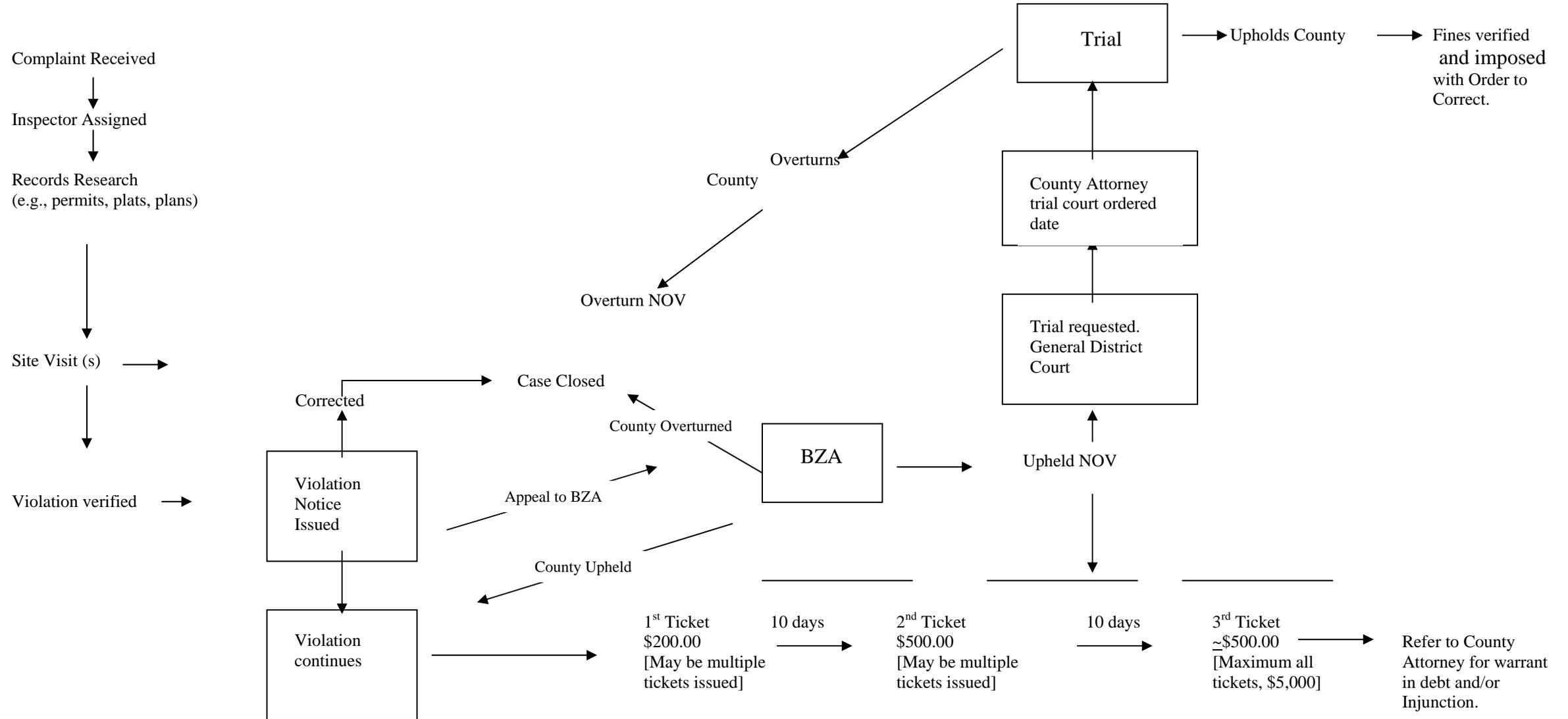
160 **N. Penalties.** Penalties shall be as provided in Section 37.

- 161
- 162 1. ~~Any person who violates any provision of this Section 31A shall be guilty of a~~
- 163 ~~misdemeanor and shall be punished by a fine of not more than one thousand~~
- 164 ~~dollars (\$1,000.00) and not less than one hundred dollars (\$100.00).~~
- 165 2. ~~For the purpose of this Section 31A, each day during which there exists any violation of~~
- 166 ~~any provision herein shall constitute a separate violation of such provision.~~
- 167 3. ~~In addition to any other penalties allowed by law, there is hereby established, pursuant to~~
- 168 ~~Section 15.1-687.22 of the Code of Virginia, a civil penalty for the wrongful~~
- 169 ~~demolition, razing, or moving of part or all of a building or structure when such~~
- 170 ~~building or structure has been designated as an historic structure or landmark or is~~
- 171 ~~part of an historic district. This civil penalty shall be imposed on the party deemed~~
- 172 ~~by the circuit court to be responsible for the violation and shall not exceed the fair~~
- 173 ~~market value of the property as determined by the County real estate tax~~
- 174 ~~assessment at the time of the demolition, razing, or moving.~~
- 175 ~~— An action seeking the imposition of such a penalty shall be instituted by petition filed by~~
- 176 ~~the County in Circuit Court, which shall be tried in the same manner as any action~~
- 177 ~~at law. It shall be the burden of the County to show the liability of the violator by~~
- 178 ~~a preponderance of the evidence. An admission of liability or finding of liability~~
- 179 ~~shall not be a criminal conviction for any purpose. The filing of any action~~
- 180 ~~pursuant to this section shall preclude a criminal prosecution for the same offense.~~
- 181 ~~— The defendant, within twenty one (21) days after the filing of the petition, shall file an~~
- 182 ~~answer and may, without admitting liability, agree to restore the building or~~
- 183

ZONING VIOLATION CRIMINAL PROCESS



ZONING VIOLATION CIVIL PROCESS



ARLINGTON COUNTY, VIRGINIA

MEMORANDUM

DATE: November 12, 2008

TO: Zoning Ordinance Committee Members, Planning Commission

FROM: Melinda M. Artman, Zoning Administrator

RE: Proposed zoning ordinance amendment

SUBJECT: Civil and Criminal Penalties, Sections 37 and 31A

As part of the adoption of the amendment expanding family/caregiver suites and establishing accessory dwellings, the County Board directed staff to research and prepare an advertisement to amend Section 37, Violations, of the Zoning Ordinance, to provide for civil penalties for zoning violations prior to the end of the calendar year. Attached please find a draft of the proposed amendment.

The proposed amendment attempts to achieve the following:

- Decriminalizes violations of the zoning ordinance, to include accessory dwelling violations, and provides for civil penalties;
- Establish fines in accordance with The Code of Virginia;
- Specifies criminal violations mandated by The Code of Virginia;
- Brings all provisions regarding violations into one section (hence the inclusion of Section 31A in this amendment);
- Provides the zoning administrator with an additional enforcement tool: inspection warrants;
- Provides appropriate safeguards in providing for appeals.

There are a number of enforcement benefits to decriminalizing the zoning ordinance and establishing civil penalties to compel compliance with the provisions of the ordinance. Many alleged violators object to being charged with a crime for an action that typically occurred out of ignorance of the law. The placement of a shed in the wrong location, for example, does not seem to be crime, especially in the context of burglary, larceny, check kiting and the like. Civil penalties can achieve the following:

- Removes the stigma of being convicted of a crime;
- Compliance in a relatively short period of time, without the time and expense of a trial;
- Allows a lesser standard of proof should a trial become necessary [preponderance of evidence];
- Allows the County Attorney's office to represent the Zoning Administrator rather than the Commonwealth Attorney's office;
- Allows the fines to accrue to the County Treasurer rather than the Commonwealth;

The Zoning Administrator retains other tools in the enforcement of the provisions of the zoning ordinance. The Zoning Administrator can still request injunctive relief and, should the maximum fine amount be levied, convert the violation to a criminal penalty if that option is more preferable.

ARLINGTON COUNTY, VIRGINIA

MEMORANDUM

DATE: December 3, 2008

TO: Zoning Ordinance Committee Members, Planning Commission

FROM: Melinda M. Artman, Zoning Administrator

RE: Proposed zoning ordinance amendment

SUBJECT: Civil and Criminal Penalties, Sections 37 and 31A

At the November meeting, I heard the Committee ask for some additional information and express a concern that the proposed amendment may have exceeded the scope of the County Board's expectations. With regard to the scope, the request to advertise will be heard by the County Board this month and the scope will be clarified by the Board's direction. The committee asked to see a table (showing civil versus criminal fines) which is produced below:

Type of Violation	Civil fine	Criminal fine
Amount assessed 1 st time	\$200	\$10 - \$1,000*
Amount assessed 2 nd + time	\$500	\$100- \$1,500*
Max amount of total fines	\$5,000**	No maximum

*The amount of fine imposed is at the Court's discretion.

** Once this amount is reached, the civil penalty can convert to a criminal penalty, making the alleged violator subject to additional fines. The County may also proceed directly to requesting injunctive relief from the Court at any time.

The most common infractions of the zoning ordinance include the following:

- Signs
- Auto repair
- Inoperable vehicle (includes unlicensed vehicles)
- Commercial vehicles in R and RA districts
- Setbacks
- Business not permitted
- "Overcrowding" (violation of the definition of family or more than one dwelling on a lot)
- Failure to have a required permit
- Lot Coverage
- Landscaping

Of these violations, signs, auto repair, inoperable vehicles, and commercial vehicles are already civil penalties. Merchants who place merchandise in a setback are also subject to civil penalties.

With regard to how civil penalties might be imposed, there is seldom just one violation of the zoning ordinance occurring with an infraction. Here is a possible scenario:

A building contractor operating as a home occupation has become very successful and no longer meets the conditions of being a home occupation. He has a small bobcat on the premises and a “popsicle stick” sign with his business name on it in the front yard. The violator would be charged with at least the following violations:

- Section 2.D.1 “No land or building shall be used for any purpose other than is hereinafter permitted”.
- Section 31.A.12.a.3.a “Not more than one commercial vehicle”
- Section 31.A.12.a.3.b “No storage of contractor’s equipment”
- Section 31.A.12.c.3 “No signs”
- Section 31.A.12.4 “No outside storage”

These are five separate offences at \$200 each for a total of \$1,000. If none of the violations are resolved within 10 days the next fine is \$500 each for a total of \$2,500 (grand total of \$3,500). If they are still not resolved, in the following 10 days the next set of fines would be \$1,500 because the maximum cumulative fine for the same set of operative facts is \$5,000. If the violator has still not been persuaded to become compliant, the county can choose to pursue the violations criminally OR seek an injunction from the Court. Criminal sanctions subject the violator to more fines.

Attached is the most recent version of the amendment included in the draft Board Report. The notable change is that the appeal period time for violations of maximum occupancy provisions for a dwelling unit and parking of commercial vehicles is 10 days (rather than 30 days).

I will attend your next meeting to answer any additional questions you may have and receive any suggestions you may have to improve the amendment.

ATTACHMENT: A/S