



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of February 25, 2006

DATE: January 26, 2006

SUBJECT: Adoption of proposed amendment to Section 36.H. of the Zoning Ordinance to permit Transfer of Development Rights (TDRs).

C. M. RECOMMENDATION:

Adopt the attached ordinance to amend, reenact, and recodify Sections 36.H. of the Arlington County Zoning Ordinance to allow for the transfer of development rights, in order to facilitate the creation of a convenient, attractive and harmonious community; to protect against destruction of or encroachment upon historic areas; to preserve and facilitate open space; and to encourage the creation and retention of affordable housing. The amendment is proposed in order to encourage orderly and efficient land use development; and for other reasons required by the public necessity, convenience and general welfare and good zoning practice.

ISSUE: None.

SUMMARY: On March 26, 2005, the General Assembly of Virginia enacted 15.2-750, which authorizes County Boards under the county manager plan of government to provide for the dedication of density and other development rights in its Zoning Ordinance. Based on this legislation, staff proposes that the Zoning Ordinance be amended to establish a TDR program as part of the site plan process. In general, the proposed TDR program would allow a site (sending site) to send density and/or other development rights for the purposes of, but not limited to, the preservation or facilitation of open space, historic preservation, affordable housing, community facilities, or community recreation. The TDRs would be transferred to another location (receiving site) through site plan approval where more density is deemed appropriate by the County. While staff recommends adoption of the proposed amendment in order to enable TDRs, additional work is needed to fully develop all the details on how the program would work. The primary reason to adopt the Ordinance now is to adopt it before alternative bills are approved by the General Assembly. Therefore, it is recommended that the County Board adopt the proposed Zoning Ordinance Amendment establishing transfer of development rights.

County Manager: _____

County Attorney: _____

Staff: Colleen Connor, Planning Division, DCPHD

PLA-4241

BACKGROUND: On March 26, 2005, the General Assembly of Virginia enacted 15.2-750, enabling Zoning Ordinance provisions for transfer of development rights under the county manager plan of government. The legislation, with a contingent expiration date of July 1, 2008, states the following:

15.2-750

- 1. Board may accept dedication of rights to develop real property. – The board, in addition to any other zoning powers granted by general or special law, may include a provision for the dedication of density or other rights to develop real property, as defined by the locality, from one or more parcels of property that are not the subject of a development application and are located in the locality to one or more parcels of property that the subject of a development application and are located elsewhere in the locality. Such dedication shall be subject to such terms as may be provided by zoning regulations, the conditions of a special use permit or special exception, or the proffered conditions of a rezoning application, including that the terms are binding on the owners of such property and on their successors and assigns.*
- 2. That the provisions of this act shall expire on July 1, 2008, if no county with the county manager plan of government has enacted an ordinance pursuant to this act.*

This legislation allows Arlington County to enact a TDR program in the Zoning Ordinance. Based on this legislation, staff proposes that the Zoning Ordinance be amended to establish this program.

DISCUSSION: It is proposed that the TDR program in the Zoning Ordinance be located under “Section 36. Administration and Procedures” for site plan approvals. The TDR program language in the Zoning Ordinance will allow the County Board, in accepting a site plan subject to such conditions as the County Board may approve, to permit the dedication of density or other rights to develop from one or more parcels that are not the subject of a site plan application to one or more parcels of property that are the subject of a site plan application. The County Board would take into consideration the appropriateness of the transferred density or other dedicated development rights at the proposed location, and whether action taken under this amendment is consistent with the Zoning Ordinance, approved land use policies and plans, and the public health, safety and welfare generally.

A request for TDRs would be advertised on the County Board’s own motion and then would be reviewed through the site plan process. This proposed TDR program would allow a site (sending site) to send density and other development rights -- for the purposes of, among others, open space, historic preservation, affordable housing, community facilities, or community recreation -- to other locations (receiving sites). The TDRs would be transferred to a receiving site where additional density is deemed appropriate by the County Board in accordance with Section 36.H.3. of the Zoning Ordinance. The additional density would be approved by site plan and

would go through the full community process. The additional density would be evaluated on a case by case basis against existing plans, the site's ability to accommodate additional density and its impact on adjacent properties and uses. The owners of both the sending site and the receiving site would record deeds as a condition of dedication. Restrictions on the use or development of the sending site shall run with the land and shall be specifically enforceable by Arlington County. The exchange of development rights between the sites which occurs through the use of TDRs should be in perpetuity.

While staff is recommending that the County Board adopt the TDR program amendment in order to enable TDRs, there is additional work needed to develop the details of the program. Staff will be developing program guidelines and bringing those to the County Board within the next few months. Staff will develop draft guidelines and review them with the Planning Commission. These will then be shared with other commissions for their review and comments. In addition, staff will post the guidelines on the web and will meet with community groups at their request prior to the final adoption by the County Board.

Staff met with the Zoning Committee of the Planning Commission on January 31, 2006. A summary of the Committee's questions and staff responses are attached.

CONCLUSION: The proposed Zoning Ordinance amendment would promote an attractive and harmonious community; and is recommended for other reasons required by public necessity, convenience and general welfare and good zoning practice. Therefore, staff recommends that the County Board adopt the proposed amendment to Sections 36. H. of the Zoning Ordinance to permit Transfer of Development Rights.

**ORDINANCE TO AMEND, REEACT, RECODIFY SECTION 36.
ADMINISTRATION AND PROCEDURES, SUBSECTION H. SITE PLAN APPROVAL,
SUB-SUBSECTION 5. f. OF THE ARLINGTON COUNTY ZONING ORDINANCE TO
PERMIT THE TRANSFER OF DEVELOPMENT RIGHTS.**

BE IT ORDAINED, by the County Board of Arlington County, that Section 36. Administration and Procedures of the Zoning Ordinance, Subsection H. Site Plan Approval, Sub-subsection f. is amended, reenacted and recodified as follows to permit Transfer of Development Rights in order to encourage orderly and efficient development of public facilities; 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

* * *

H. Site Plan Approval

5. *Uses and Regulations Modified.* The County Board may, in appropriate cases, modify the uses permitted and use regulations in harmony with the general purpose and intent of the districts as follow:

* * *

- f. Transfer of Development Rights: In approving and accepting a site plan, the County Board may, subject to such conditions as the Board may approve, permit the dedication of density or other rights to develop, as determined by the Board, from one or more parcels that are not the subject of a particular site plan application to one or more parcels of property that are the subject of that same site plan application for purposes of, among others, open space, historic preservation, affordable housing, community recreation, and/or community facilities. In considering the approval of such dedication, the County Board shall consider the appropriateness of the dedicated density or other development rights at the proposed location, and whether the dedication is consistent with the Zoning Ordinance, approved land use policies and plans, and the public health, safety and welfare generally.