

Proposed Third Option for Revising Rezoning Protest Ordinance, Town Code §18-248

Preface

The Town's control over zoning within its boundaries is one of its most important powers. Zoning (and rezoning) influences the character, appearance, and appeal of the Town. Rezoning is infrequent so zoning designations are typically long-term. Zoning directly affects the value of land and, through the exercise of the Town's power to tax, revenue to the Town.

Despite the significance of zoning decisions, an unopposed rezoning requires only a simple majority vote of the Town Council. In contrast, setting the tax rate requires a two-thirds majority (Va. Code §15.2-1427G), which with our seven member Town Council means at least five affirmative votes. Under the Town Charter and Code, the only other Town Council actions that require a super-majority are: the sale of Town property, three-quarters vote (Charter §8-A.6); enacting emergency ordinances, two-thirds vote (Code §2.56); and, of course, the protest ordinance we are reviewing.

So far the Planning Commission's discussions have been framed by two options: revising the existing protest ordinance or eliminating it altogether.

Proposal

Rather than try to re-write the protest ordinance, the Planning Commission could consider recommending to the Town Council that the protest ordinance be eliminated and that a new ordinance be adopted requiring all rezoning decisions to be approved by a two-thirds vote of the entire Town Council.

Rationale

As the Planning Commission's discussions to date have revealed, there are some thorny issues in contemporary application of the protest ordinance—and even thornier ones in trying to revise it. Eliminating the protest ordinance and replacing it with a higher threshold for all rezoning decisions avoids these issues and has other advantages as well.

Predictability Testimony before the Commission has asserted that the "last-minute" nature of challenges under the current protest ordinance is unfair and potentially very costly to applicants seeking rezoning. The proposed change would set the standard clearly from the start: any party asking the Council to rezone property must get two-thirds approval to succeed. Conversely, residents objecting to a given rezoning can block its approval by getting support from just three Council members.

Ease of Application Witnesses at the public hearing and Commissioners have spent a considerable amount of time wrestling with the questions of how to

apply the protest ordinance: Who is entitled to protest? Who counts as an “owner” in complex ownership situations like condominiums, townhouses, and land trusts? What percentage of eligible owners is appropriate to mount a protest? Should all nearby owners have equal weight in calculating this percentage? And on, and on.

By eliminating the protest ordinance all these difficulties are also eliminated. It also removes the burden of identifying the legal owners of adjacent, abutting, or nearby properties and getting their signatures on a protest petition.

Propriety Requiring a two-thirds majority for approval of any rezoning appropriately puts it on par with the exercise of the Town’s taxation power. Residents have the protection of the super-majority requirement before such a significant, long-lasting change is made.

Caveat

We would need confirmation from the Town Attorney that changing the voting requirement from a simple majority to two-thirds could be done by an ordinance change, and that it would not require a change to the Town Charter (which requires the approval of the Virginia legislature).