



CITY OF VIRGINIA BEACH

June 22, 2010

AMENDED APZ-1/CLEAR ZONE USE AND ACQUISITION PLAN

Overview

The APZ-1 Ordinance (adopted December 20, 2005 and revised to include Clear Zones) amended the City Zoning Ordinance to prohibit all uses in APZ-1 and Clear Zones that are incompatible with OPNAV Instruction 11010.36B (December 19, 2002) (the “OPNAV Instruction”). The APZ-1 Ordinance renders existing uses non-conforming but not incompatible, and requires all new development or redevelopment to be consistent with the OPNAV Instruction. As an exception, the Ordinance allows incompatible uses or structures as a replacement of the same use or structure if the replacement use or structure is of equal or lesser density or intensity than the original use or structure. Where application of the APZ-1 Ordinance leaves property without a reasonable use, this APZ-1/Clear Zone Use and Acquisition Plan is intended to direct reuse, rezoning, or purchase of those properties.

The Plan

The Use and Acquisition Plan is illustrated in the following chart entitled “**APZ-1/Clear Zone Use and Acquisition Plan.**”

APZ-1/Clear Zone Use and Acquisition Plan

Tools Property Type	Develop with compatible use	Rezone or grant conditional use permit (“CUP”) for compatible use	Voluntary acquisition	Eminent domain
NONRESIDENTIAL				
Developed	Owner’s choice. Already developed use is “ <u>not incompatible</u> ” and can remain, or owner can redevelop with a different compatible use.	Owner’s choice. Owner can initiate application for new compatible use. City will not initiate rezoning because owner has existing use and other allowable, compatible reasonable uses.	Yes. Owner has development options for reasonable use, so City need not acquire. But if initiated by owner, City may acquire to “roll back” development.	No. Owner has development options for compatible and reasonable use. City need not acquire.
Undeveloped	Yes. Owner can initiate development to a compatible use. Every nonresidential zoning category allows some compatible & reasonable use.	Yes. Owner can initiate application for compatible use. City need not initiate rezoning because owner may seek approval for some compatible & reasonable use.	No. Generally, owner has development options for reasonable use, and City need not acquire. But if property is left with no reasonable use, City will	No. Owner has development options for compatible and reasonable use. City need not acquire.
RESIDENTIAL				
Developed (includes vested, but undeveloped, properties)	Not applicable because the property is already developed. Existing uses are “ <u>not incompatible</u> ” so no action is needed.	Yes. On case-by-case basis. Owner can initiate rezoning.	No. Existing use is “ <u>not incompatible.</u> ” thus City need not acquire. Except, if initiated by owner, City will acquire Qualifying Duplex Properties, tear-down duplexes and vested properties	No. Existing use is “ <u>not incompatible.</u> ” thus City need not acquire.
Undeveloped	No. There is no compatible use without rezoning/ CUP.	Yes. On case-by-case basis; depends on size, location and intended use of parcel. Either owner or City can initiate rezoning.	Yes. But only if unsuitable for rezoning/CUP and only if APZ-1 Ordinance leaves property without a reasonable use.	Yes. If voluntary acquisition is not possible and property cannot be rezoned, there is no reasonable use for the property. Eminent domain is appropriate to compensate owner for loss of all use.

How each category of property will be affected:

The following is a description of how each category of property will be treated under the Plan.

NONRESIDENTIAL/COMMERCIAL – DEVELOPED

- **Retain Existing Use or Develop Consistent with the OPNAV Instruction**

Developed Nonresidential/Commercial property within APZ-1 and Clear Zones would have some reasonable use under the new zoning rules. Owners of such property could retain their existing use, and they would also have other allowable compatible uses. Therefore, the owners of such property could keep their existing use or redevelop the property in any manner consistent with the OPNAV Instruction and the APZ-1 Ordinance, as amended. Such development might require a rezoning or conditional use permit, which would be evaluated on a case-by-case basis.

- **Voluntary Acquisition Available**

The City would be willing to purchase Developed Nonresidential/ Commercial property within APZ-1 and Clear Zones that are adversely affected by the APZ-1 Ordinance. Only voluntary sales would be permitted. Eminent domain would not be available for such acquisitions.

NONRESIDENTIAL/COMMERCIAL – UNDEVELOPED

- **Develop Consistent with the OPNAV Instruction**

Most undeveloped Nonresidential/Commercial property within APZ-1 and Clear Zones would have some reasonable use under the APZ-1 Ordinance. Therefore, the owners of such property could develop the property in any manner consistent with the OPNAV Instruction and the new APZ-1 Ordinance, as amended. Such development might require a rezoning or conditional use permit, which would be individually evaluated on the merits of each case.

- **Voluntary Acquisition Generally Unavailable**

Because most such properties will be left with some reasonable use, the City will not acquire them. If a property is deprived of all reasonable use, then the City will acquire it.

RESIDENTIAL – DEVELOPED

- **Existing Dwellings Will Remain**

Residential developed property would be considered to be a preexisting use and would be allowed to remain. Under the APZ-1 Ordinance, as amended, the property may be replaced, repaired, reconstructed, or otherwise improved, so long as the density is not increased.

- **Redevelopment to Compatible Use, Case-By-Case**

If the owner of residential developed property wanted to rezone the property or seek a conditional use permit to a traditionally compatible use such as industrial, such redirected uses would be welcomed, so long as the fit was right with the neighborhood. These redevelopments would be handled on a case-by-case basis and would be initiated by the owner.

- **Dwellings Will Not Be Acquired**

Eminent domain would not be available for developed residential properties under any circumstances. Dwellings generally will not be acquired by voluntary purchase; however, voluntary acquisition will be available in the limited circumstances of the following types of properties:

- 1) “Qualifying Duplex Properties” as that term is defined on Page 6;
- 2) Properties that were vested for new development or redevelopment on December 20, 2005, may be acquired by voluntary purchase or, at the owner’s request, by eminent domain;
- 3) Developed duplex properties. The Developed Duplex Acquisition Program is set forth in more detail on Page 7;
- 4) Privately owned properties located in the Clear Zone, regardless of zoning or existing use;
- 5) Properties located in the areas depicted as “Transitional” areas in the APZ-1 Master Plan, to the extent those properties are not already developed with a use deemed compatible in the applicable table in Section 1804 (b) of the City Zoning Ordinance; and
- 6) Properties located in the areas depicted as “Transportation” areas in the APZ-1 Master Plan as defined on Page 9, to the extent those properties are not already developed with a use deemed compatible in the applicable table in Section 1804 (b) of the City Zoning Ordinance.

RESIDENTIAL – UNDEVELOPED

- **Rezone/Conditional Use Permit (CUP), If Appropriate**

After the APZ-1 Ordinance went into effect, some undeveloped residential properties were left with no reasonable compatible use. Such property could be rezoned or issued a conditional use permit on a case-by-case basis, but certain properties might not be suitable for any nonresidential use. The City would first evaluate whether a rezoning or conditional use permit would be appropriate.

- **Acquire By Agreement or Condemnation**

If there are no suitable nonresidential uses, the City would acquire the property because the owner would be left without any reasonable use of its property. Either voluntary purchase or eminent domain would be available. If the City were unable to reach an agreement as to value with the owner, the City could condemn the property.

QUALIFYING DUPLEX PROPERTIES

- **Voluntary Acquisition Available**

The City would be willing to purchase “Qualifying Duplex Properties” within APZ-1 and Clear Zones, as defined and described on Page 6. Eminent domain would not be available for such acquisitions.

Acquisition Rules.

Voluntary Acquisitions.

Affected Property: Property located wholly or partially within APZ-1 and/or Clear Zones that is (a) undeveloped property which is currently zoned for residential use; (b) developed and residentially zoned, falling within any of the five (5) types of properties identified on Page 4; or (c) developed commercial property. For the Voluntary Purchase Program for Qualifying Duplex Properties in APZ-1 and Clear Zones, see Page 6.

Owner-initiated sales only for nonresidential or tenant-occupied residential property. Developed commercial property and tenant-occupied residential property will be acquired only if the owner of the property initiates the sale.

Fee Simple or Development Rights/Easements To Be Acquired. The City might acquire either fee simple title, restrictive easements or development rights. In certain cases (for example large lots) the City might want to acquire the land in fee so that the property could be acquired and put to some compatible use. In other cases (for example small infill lots in residential neighborhoods where the owner owns an adjacent, developed lot) the City might want to acquire only development rights. The City may add as a condition to its acquisition of only the development rights that the adjacent owner must resubdivide the property to remove lot lines and create one larger lot.

In other words, the City would avoid buying in fee small lots in neighborhoods where it is possible to pay only for the development rights and have the adjacent owner fold the property into his existing use. The object is to avoid City-owned vacant lots that would be difficult to maintain and could adversely affect the neighborhood. The goal would be for the City and the owner to work together to find a solution that compensates the owner and makes the most sense in the context of the neighborhood.

City to Pay Market Value Without Regard to APZ-1 Ordinance for Undeveloped Residential Land. Owners of vacant residential property (undeveloped residential land) will be paid market value based on sales of similar properties that are not within APZ-1 and Clear Zones, so there is no “blight” on the value of their property. The property will be valued as if the APZ-1 Ordinance’s prohibition against new residential development does not apply.

City to Pay Market Value for Commercial Properties. Owners who sell their commercial property to the City will be paid based on fair market value, with consideration given for the limitations and provisions of the APZ-1 Ordinance and the AICUZ Overlay Ordinance.

Voluntary Purchase Program for Qualifying Duplex Properties in APZ-1 and Clear Zones

1. ***Application.*** This program applies only to properties that meet the following criteria (“Qualifying Duplex Properties”):
 - a. Located in APZ-1 and/or Clear Zone;
 - b. Currently improved with a single-family home; and
 - c. Duplex use was legally and physically possible before the adoption of the APZ-1 Ordinance (zoning district allowed “by-right” duplex development; physical features made duplex use a reasonable option; and there were no title restrictions preventing duplex use).
2. ***Voluntary Purchase Program.***
 - a. Fee Simple/Total Purchase only. The City will purchase, by voluntary agreement, the lot and all improvements from the owner.

b. Valuation. As compensation, the City will pay the market value of the property and improvements at their highest and best use at the time of sale (i.e., higher of value as single-family residence or duplex) as if the APZ-1 Ordinance's prohibition against new residential development does not apply.

c. Appraisal. The City will pay for an appraisal of the property, after the City and the owner have agreed on an appraiser.

3. ***City's Options after Purchase.*** After purchase of a Qualifying Duplex Property, the City shall rezone the property or otherwise eliminate the potential for duplex development, and do any of the following to be determined on a case-by-case basis:

a. Sell the house and lot to a third party as excess property for continued use as a single-family home;

b. Lease the house and property to a third party for residential use;

c. Demolish the improvements and sell the lot to adjacent landowners; or

d. Rezone the property, if appropriate, to a nonresidential zoning classification and sell or lease the property for new development compatible with the OPNAV Instruction.

If the City decides to proceed under part 3a or 3b above, it is the City's intent to cause noise attenuation measures to be performed on the single-family home, prior to occupancy.

Involuntary Acquisitions/Eminent Domain

Affected Property. Eminent domain will only be used to acquire **undeveloped property zoned for residential use**, only if the property has no other reasonable use and only after efforts to voluntarily purchase the property have failed.

State legislation needed. State enabling legislation will be needed before condemnation can be used. The City has requested state legislation that gives the City the power to condemn, and condemnation will only be allowed for the following circumstances:

- Only for undeveloped property zoned for residential use.
- Only where property is deprived of all reasonable use.
- Only where development rights have not vested.
- Only for property wholly or partially within APZ-1 and Clear Zones.
- Only after all efforts to reach a voluntary sale have been unsuccessful.
- Only so long as acquisition is needed to protect NAS Oceana as a Master Jet Base.

Rights to be Acquired. Either development rights or fee simple rights would be acquired, depending on the particular circumstances of each property. Where the owner owns developed adjacent property, acquiring development rights only will be favored.

City to Pay Full Fair Market Value. Where eminent domain of vacant residential land is authorized, Owners will be paid fair market value based on sales of similar properties that are not within APZ-1 or Clear Zones. The property will be valued as if the APZ-1 Ordinance does not apply.

Developed Duplex Acquisition Program

Recognizing the City's goals of reducing density in APZ-1 while maintaining the quality of the neighborhoods, the City Manager is authorized to acquire existing duplexes in APZ-1 for the purpose of removing the structures.

The City Manager should evaluate the condition of the duplex and should prioritize acquisition of duplexes based on their relative age and condition and whether noise attenuation measures have been incorporated into the structure. Preference should be given to duplexes that are in the poorest condition and that have not had noise attenuation improvements.

After acquisition of a duplex under this Program, the City may elect to do any of the following:

1. Remove the structure, restrict the site to development of a single-family home, and sell to a third-party for new construction of one dwelling unit;
2. Remove the structure, restrict any new dwelling units from being constructed and sell the site to adjacent landowner(s) who must resubdivide their lot(s) to include the vacant site;
3. Remove the structure and assemble the property for nonresidential, conforming uses, but only if (a) the property is in a neighborhood that is trending toward non-residential uses and (b) there will be no adverse impact on the surrounding properties;
4. Remove the structure and use the property for public use or hold the property for future public use.

The Acquisition Rules set forth on Page 5 shall apply to these sites the same as they do to any voluntary acquisitions under this APZ-1/Clear Zone Use and Acquisition Plan.

Voluntary Acquisition of Properties Vested Development

The City Manager is authorized to acquire properties in APZ-1 where the Planning Director and the City Attorney have determined that the owner of the property had vested rights in developing the property with a residential use before the City adopted the APZ-1 Ordinance on December 20, 2005.

Only properties that have not yet been developed with new structures are eligible for acquisition, unless the owner/developer has not yet sold or contracted to sell developed dwellings to individual owners.

The Acquisition Rules set forth on Page 5 shall apply to these sites in the same manner as to any voluntary acquisitions under this APZ-1/Clear Zone Use and Acquisition Plan.

Acquisition of Clear Zone Properties

The City Manager is authorized to acquire by voluntary agreement properties located fully or partially within any of the Clear Zones for the purpose of removing structures. It is the City's goal to remove from the Clear Zone all private development.

The City Manager should evaluate each property and may acquire any such properties he deems meet the purposes of this Plan and where the property owner and the City mutually agree on the terms of sale.

Acquisition of Properties Identified in the APZ-1/Clear Zone Master Plan as Transitional or Planned Transportation Improvements

On April 1, 2008, the City Council adopted the APZ-1/Clear Zone Master Plan ("APZ-1 Master Plan") as an amendment to the City's Comprehensive Plan. The City's 2009 Comprehensive Plan Amendment adopted the APZ-1 Master Plan by reference.

Transitional Areas.

The APZ-1 Master Plan also identifies areas as "Transitional." Such areas are residential and undeveloped areas that are adjacent to major arterials, planned transportation improvements, or surrounded by existing non-residential uses. The City Manager is authorized to acquire properties within or partially within those areas described as "Transitional" in the APZ-1 Master Plan for the purpose of assembling land for conversion to conforming uses.

After acquisition, the City may elect to do one or more of the following with the Transitional properties determined on a case-by-case basis:

1. Demolish the improvements;
2. Rezone the property to a nonresidential zoning classification and sell or lease the property for new development in conformance with Article 18 of the City's Zoning Ordinance (Special Regulations for Air Installation Compatible Use Zones); or
3. Use the property for a public purpose;
4. Sell the lot to adjacent landowners after restricting it to compatible uses.

Planned Transportation Improvements.

The APZ-1 Master Plan identifies areas of “Planned Transportation Improvements” to allow those implementing this APZ-1/Clear Zone Use and Acquisition Plan to consider planned public projects when evaluating the voluntary purchase and re-use of land. To the extent that properties identified in these Planned Transportation Improvements areas designated in the APZ-1 Master Plan do not already qualify for acquisition in other segments of this Plan, the City Manager is hereby authorized to acquire, by voluntary acquisition, the properties located within or partially within the areas identified as “Planned Transportation Improvements.” Nothing herein shall be deemed to waive or alter any statutory powers or methods the City may otherwise have to acquire private property for public uses.

After acquisition, the City may elect to do any of the following:

1. Remove the structure(s), if any, and hold for future public use;
2. Lease the property and structure for any conforming interim use;
3. Sell the property for a conforming use, reserving to the City any property or easements needed for planned public uses;

The City Manager should evaluate each property and may acquire any such properties he deems meet the purposes of this Plan and where the property owner and the City mutually agree on the terms of sale.

The Acquisition rules set forth on Page 5 shall apply to these sites in the same as to any voluntary acquisitions under this APZ-1/Clear Zone Use and Acquisition Plan.

Plan is Flexible

The preceding guidelines shall be followed in implementing the APZ-1/Clear Zone Use and Acquisition Plan, except where circumstances dictate other options particular to a specific property. In such cases, the City will consider other options only when (i) the proposed option is consistent with the intent to stop development incompatible with the OPNAV Instruction; (ii) the proposed option “rolls back” existing non-conforming uses by eliminating the use or reducing the density or intensity of the use; or (iii) no other reasonable, compatible use for the property is allowed; provided, that the option, in the judgment of City Council, does not have an unduly adverse impact on adjacent properties.

Other possible options:

The City Manager is directed to continue the consideration and development of other methods of converting uses in APZ-1 and Clear Zones that do not conform to the OPNAV Instruction to uses compatible with the OPNAV Instruction. Such other options shall have the effect of accomplishing the intent of the APZ-1 Ordinance and the APZ-1/Clear Zone Use and Acquisition Plan and reducing uses not conforming with the OPNAV Instruction within APZ-1 and Clear Zones

whenever reasonable and feasible. Options considered shall include, but not be limited to, assemblage of property for redevelopment, the use of Economic Development Incentive Program funds and the use of zoning and land use incentives.

Implementation instructions:

I. Notification

This Plan is effective as of December 20, 2005. This Plan amendment to include Clear Zones is effective upon adoption. Thereafter, the City staff shall, within sixty (60) days, identify all property within Clear Zones and notify the property owners by certified letter of the APZ-1 Ordinance, the classifications of property under the APZ-1/Clear Zone Use and Acquisition Plan, and provide the owners with a copy of the APZ-1/Clear Zone Use and Acquisition Plan.

II. Purchase

Beginning January 1, 2006, property owners desiring to sell their property consistent with the provisions of the APZ-1/Clear Zone Use and Acquisition Plan shall notify the City Manager or his designee by letter. Letters received shall be date-stamped and priority of purchase shall be by date received, earliest to latest, except that (1) properties left without a reasonable use shall be given first priority; and (2) City Council may elevate the priority of property owners who suffer a demonstrated hardship if an expedited sale would ameliorate such hardship. Purchases of eligible property shall be made in such order, upon approval of the City Council, to the extent that funds are available each fiscal year.

Annual Report

The City Manager shall report annually to the City Council on the status of all uses not conforming with the OPNAV Instruction within APZ-1 and Clear Zones. The format of the report shall include an inventory of property within each classification under the APZ-1/Clear Zone Use and Acquisition Plan.

Funding

The City Manager is directed each fiscal year to include in the City's annual budget funds for the purpose of acquiring properties within APZ-1 and Clear Zones designated for acquisition under the APZ-1/Clear Zone Use and Acquisition Plan in the amount of Fifteen Million Dollars (\$15,000,000.00) or such greater amount as circumstances may warrant. Any proceeds the City receives from selling or leasing properties acquired under this APZ-1/Clear Zone Use and Acquisition Plan shall be deposited into the APZ-1/Clear Zone acquisition fund. If in any fiscal year there remains an amount available after the purchase of properties within APZ-1 and Clear Zones, such funds shall be used to purchase properties to be acquired in the Interfacility Traffic Area for purposes other than the Southeastern Parkway and Greenbelt Project.

Plan Administration

The City Manager may promulgate rules, regulations and policies consistent with the APZ-1/Clear Zone Use and Acquisition Plan to further the efficient implementation and administration of this Plan.