

**FAIRFAX COUNTY PLANNING COMMISSION
ENVIRONMENT COMMITTEE/
ENVIRONMENTAL QUALITY ADVISORY COUNCIL MEETING
THURSDAY, MAY 28, 2009**

COMMITTEE MEMBERS PRESENT:

Walter L. Alcorn, At-Large
Frank A. de la Fe, Hunter Mill District
Jay P. Donahue, Dranesville District
Earl L. Flanagan, Mount Vernon District
James R. Hart, Commissioner At-Large, Chairman
Kenneth A. Lawrence, Providence District
Timothy J. Sargeant, At-Large

ENVIRONMENTAL QUALITY ADVISORY COUNCIL MEMBER PRESENT:

Stella Koch, At-Large, Chair

DEPARTMENT OF PLANNING AND ZONING STAFF PRESENT:

Eileen M. McLane, Zoning Administrator, Zoning Administration Division (ZAD)
Lorrie Kirst, Deputy Zoning Administrator, ZAD
Jack Reale, Planner IV, ZAD
Noel H. Kaplan, Senior Environmental Planner, Environment and Development Review
Branch

DEPT. OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES STAFF PRESENT:

James W. Patteson, Director, Land Development Services (LDS)
Judith Cronauer, Code Analysis Division, LDS

PLANNING COMMISSION OFFICE STAFF PRESENT:

Christopher B. Remer, Communications Specialist II
Kara A. DeArrastia, Deputy Clerk

OTHERS PRESENT:

Mark Headly, Wetland Studies and Solutions, Inc. (WSSI)
Ben Rosner, WSSI

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Chairman James R. Hart called the meeting to order at 7:04 p.m., in the Board Conference Room, 12000 Government Center Parkway, Fairfax, Virginia 22035.

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Chairman Hart said the first item on the agenda was approval of minutes.

Commissioner de la Fe MOVED THAT THE ENVIRONMENT COMMITTEE MINUTES OF APRIL 16, 2009 AND APRIL 30, 2009, BE APPROVED.

Commissioner Lawrence seconded the motion which carried unanimously.

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Recommendation to the Planning Commission on Riparian Buffers

Chairman Hart noted that Committee members should have received the most recent version of a position statement on riparian buffers, a copy of which is in the date file. He also noted that Commissioners had received a memorandum dated May 22, 2009, from Noel H. Kaplan, Senior Environmental Planner, Environment and Development Review Branch, Department of Planning and Zoning (DPZ), which transmitted the Environmental Quality Advisory Council (EQAC) statements relating to protection of headwaters areas of streams through regulation. (A copy of the memorandum is in the date file.) Chairman Hart said the EQAC statements were consistent with the Committee's position statement. He suggested that the Committee vote on this recommendation this evening, and that it be forwarded to the Planning Commission for action on Thursday, June 11, 2009, prior to the Board of Supervisors' (BOS) Environmental Committee meeting on Monday, June 15, 2009.

In response to a question from Commissioner Lawrence, Chairman Hart explained that the position statement did not specify desired legislative actions by the General Assembly to facilitate implementation of future local regulation for protection of riparian buffers. He said legislative initiatives previously discussed by the Committee include addressing the following restrictions:

- reforestation only can be required when the proposed development is encroaching in the buffer area,
- Resource Management Performance Criteria can only apply to land disturbance greater than 2,500 square feet, and
- Resource Protection Area buffers must be a minimum of 100 feet wide.

Chairman Hart noted that the BOS Legislative Committee could consider these issues, among others.

Commissioner Lawrence **MOVED THAT THE ENVIRONMENT COMMITTEE ADOPT THE POSITION STATEMENT ON RIPARIAN BUFFERS.**

Commissioner Donahue seconded the motion.

Following a brief discussion on legislative authority from the General Assembly, it was the consensus of the Committee that staff present to the BOS Legislative Committee specific examples of legislative authority initiatives. The Committee also recognized that the BOS could choose to take no action or add or alter language relating to the position statement.

The motion carried unanimously.

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Zoning Ordinance Amendment on Residential Building Height and Fill

Chairman Hart stated that staff from the Department of Public Works and Environmental Services (DPWES) and DPZ had conducted several stakeholder meetings, public workshops, and other public meetings to discuss changes to the definition of building height to address the construction of single-family detached dwellings that tower above neighboring dwellings and the artificial elevating of lots by adding fill dirt to raise the effective height of residential dwellings. He said some citizens had expressed concerns about the impact of particular houses looming over neighboring houses and had requested that the County further regulate the height of structures at the edges of the building envelope in residential districts, particularly regarding infill development and the tear down and replacement of homes. Chairman Hart explained that one component of the proposed Zoning Ordinance Amendment (ZOA) defined residential building height as measured from the lower of pre-existing grade or post-construction, which prohibited developers from filling first and then building up to 35 feet to the mid-point of the roof. He noted that staff had initially evaluated an angle of bulk plane approach, which used three dimensional illustrative drawings to restrict the tops of structures generally at the sides of the lot at or close to the building restriction line. He pointed out that the BOS had not yet authorized public hearings on a proposed ZOA that included the angle of bulk plane and had directed staff to explore whether there might be simpler and less costly alternative methods that could achieve similar results as compared to the angle of bulk plane. Chairman Hart stated that staff had recommended a setback ratio regulation as a less complicated and more cost-efficient alternative to the angle of bulk plane, which was similar to that implemented by the City of Alexandria, although the County had a greater range of setbacks than the City. He said Northern Virginia Building Industry Association representatives and homeowners have been discussing the setback ratio alternative in meetings with facilitators from the University of Virginia. He noted that the ZOA pertaining to measuring residential building height would be presented for public hearings this summer.

Jack Reale, Planner IV, Zoning Administrative Division (ZAD), DPZ, distributed the draft ZOA text currently being refined by staff, a copy of which is in the date file. He said staff expected to deliver a package to the BOS for authorization on June 22. He explained that building industry representatives and homeowners generally concurred with measuring the grade at the pre-existing level or finished grade, whichever was lower. Mr. Reale explained the current Ordinance provisions regulating residential building grade and height. He said the proposed ZOA would restrict artificial placement of fill and essentially close a loophole regarding the outcome of the actual building height. He reviewed three typical cases where an exception or modification of grade might be appropriate to allow additional fill:

- 1) A residential dwelling located within a floodplain that needed to be elevated to meet applicable Building Code requirements.
- 2) A dwelling located on a lot that was topographically lower than adjacent properties and needed an increase in grade to be at a height compatible with the neighborhood.
- 3) Sewer connections that needed to begin at a certain elevation so they could flow to the existing sanitary sewer line.

Mr. Reale said the County could grant a variance to remedy any of those situations, provided that they met the standards on page 3 of the proposed ZOA. He pointed out that a special exception (SE) option would be provided for the case involving a house located within a floodplain. He said staff would try to develop another tool to supplement the ZOA.

Replying to a question from Chairman Hart, Eileen M. McLane, Zoning Administrator, ZAD, DPZ, said the ZOA would address egregious cases where fill was used to raise the height of already large houses. She noted that at the BOS Development Process Committee meeting on March 16, staff had recommended moving forward with the grade component.

Chairman Hart commented that it was less expensive to place fill dirt from a basement excavation around the foundation of the house rather than hauling it off-site. Mr. Reale explained that depending on the location and topography of the lot, this situation could cause drainage problems.

Chairman Hart said residential building height issues appeared to be related to a third floor addition but not for a two-story house with a walk-out basement. He described two past Board of Zoning Appeals (BZA) cases for residential building height variances.

In response to a question from Commissioner Flanagan, Mr. Reale said that in a steeply sloping neighborhood, the problem of looming needed to be mitigated on the upslope side since it was exacerbated on the down slope. Commissioner Flanagan commented that complaints about looming generally did not come from steep sloping communities but from relatively flat neighborhoods like Hollin Hall Village in Alexandria.

Chairman Hart pointed out that certain issues related to intensity, such as extended families living in a single family house and boarding houses, would not be resolved by the proposed ZOA. He explained the controversy surrounding the Hollin Hall redevelopment where old small houses had been torn down and replaced with two larger houses on a single lot. He said the case of *Concerned Citizens of Hollin Hall Village v. County of Fairfax* had made its way to the U.S. Supreme Court, which ruled in favor of the County and allowed the redevelopment to proceed. (A copy of a *Washington Post* article about this issue is in the date file.)

Commissioner de la Fe said he supported the proposed ZOA as opposed to the angle of bulk plane approach. He said the other issues should be considered at a later time.

Recent Amendment to the *Code of Virginia* regarding Variances

Ms. McLane explained that the 2009 Virginia General Assembly had amended Section 15.2-2309 of the *Code of Virginia* to remove "approaching confiscation" from the stipulation that the granting of a variance would alleviate a clearly demonstrable hardship. She said this amendment would help staff deal with grade exceptions. (A copy of the amendment in the date file.)

Lorrie Kirst, Deputy Zoning Administrator, ZAD, DPZ, explained that a SE or a special permit (SP) could be granted to allow a grade elevation for a residential dwelling located outside a

floodplain so that it could meet applicable floodplain requirements. Ms. McLane added that a variance option would also be available in this situation. Chairman Hart pointed out that development conditions would still be required for a variance, SE, or SP.

In response to a question from Commissioner Alcorn, Ms. McLane noted that the amendment to the *Code of Virginia* had been reflected in the proposed ZOA.

Responding to a question from Commissioner Flanagan, Chairman Hart said the Virginia Supreme Court decision in *Cochran v. Fairfax County Board of Zoning Appeals* had been legislatively overruled. He indicated that before the *Cochran* case, *Natrella v. Board of Zoning Appeals of Arlington County*, 231 Va. 451 (1986) had suggested that if the Ordinance interfered with a reasonable use, a variance could be granted if it was an extraordinary circumstance. He explained that the *Cochran* decision had declared that variances could only be approved if there would be no reasonable and beneficial uses of the property.

In reply to a question from Commissioner Alcorn, Chairman Hart said although the variance option would be available, people who sought a modification of grade for a residential dwelling might opt instead to apply for a SE or SP if it was easier.

Ms. Kirst responded to a question from Chairman Hart about the provisions for modification of grade for dwellings located in proximity to a floodplain.

Replying to a question from Chairman Hart, Ms. Kirst announced that the proposed ZOA was scheduled for Planning Commission public hearing on Thursday, July 23, 2009, and BOS public hearing on Monday, September 14, 2009.

Future Meeting Date

Chairman Hart announced that the Committee would continue discussion of encroachments into the Environmental Quality Corridor at the next meeting on Thursday, June 11, 2009, at 7 p.m., in the Board Conference Room.

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The meeting was adjourned at 7:50 p.m.
James R. Hart, Chairman

An audio recording of this meeting is available in the Planning Commission Office, 12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Kara A. DeArrastia
Approved: July 30, 2009

Linda B. Rodeffer, Clerk
Fairfax County Planning Commission