

**FAIRFAX COUNTY PLANNING COMMISSION
POLICY AND PROCEDURES COMMITTEE
SEPTEMBER 9, 2004**

COMMITTEE MEMBERS PRESENT:

Walter L. Alcorn, At-Large
John R. Byers, Mount Vernon District
Suzanne F. Harsel, Braddock District
James Hart, Commissioner At-Large
Nancy Hopkins, Dranesville District
Laurie F. Wilson, At-Large

COMMITTEE MEMBERS ABSENT:

Janet R. Hall, Mason District

STAFF PRESENT:

Barbara J. Lippa, Executive Director, Planning Commission (PC)
Sara R. Hardy, Assistant Director, PC
Norma J. Duncan, Associate Clerk, PC
Barbara Byron, Director, Zoning Evaluation Division (ZED), Department
of Planning and Zoning (DPZ)
Audrey Clark, Office of Building Code Services (OBCS), Department of Public Works
and Environmental Services (DPWES)
Lorrie Kirst, Zoning Administration Division (ZAD), (DPZ)
Pamela K. Pelto, Esquire, Office of the County Attorney (CAO)
William E. Shoup, Director, ZAD, DPZ
Diane Johnson-Quinn, Assistant Zoning Administrator, ZAD, DPZ
John White, Battalion Chief, Fire and Rescue Department (FRD)

OTHERS PRESENT:

Frank de la Fe, Hunter Mill District Commissioner
Kenneth Lawrence, Providence District Commissioner
Rodney Lusk, Lee District Commissioner

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In the absence of Chairman Janet Hall, Acting Chairman Walter Alcorn called the meeting to order at 7:30 p.m. in the Board of Supervisors' Conference Room at 12000 Government Center Parkway, Fairfax, VA 22035.

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Diane Johnson-Quinn was asked by Acting Chairman Alcorn to give a brief update on the Planned Districts Zoning Ordinance Amendment draft text. After introducing Lorrie Kirst, Pamela Pelto, and John White, she explained that staff was revising the text to consolidate the submission process to achieve greater detail when assessing proposals. She acknowledged that staff had met with industry representatives and would incorporate their comments along with

those from the Northern Virginia Building Industry Association (NVBIA) and was hoping to release the information the next week. She also noted that comments would be on the website. She offered to hand-deliver copies to the Commissioners.

Ms. Johnson-Quinn mentioned hosting a Public Information Session on Planned Districts Zoning Ordinance Amendment on September 16, 2004, at 7:30 p.m., in the Herry Building and said she would review the text to be sure everyone understood the proposal. She referred to previous meetings where there had been discussion regarding the lack of setbacks in the P districts, noting that house fires were a serious concern. She requested clarification by the Fire and Rescue attendees on current Code requirements.

Acting Chairman Alcorn noted that changes were necessary and the Commission was reevaluating how P Districts should be revised. He introduced Audrey Clark, Director of the Building Plan Review Division, DPWES. She used a flipchart to illustrate current and future code requirements for minimum separation between residential structures. She gave a brief history of building codes, then explained the existing international residential code for houses indicating feet for fire walls, but said the new code which had become effective on September 8, 2004, had different requirements.

Commissioner Byers questioned the proposed change to Section 6-108 regarding sideyards and asserted that with current requirements of less than 10 feet, contractors should have to use non-combustible materials.

Commissioner de la Fe gave examples of how some older, well-built townhouses with adjoining firewalls had been saved from fires. He noted that he did not want to have the unintended consequence of forgetting what P Districts were about. He added that many high-value, older, existing homes in Reston, would not meet some of the new requirements.

Commissioner Hart noted that useable outdoor space and relationships between adjacent buildings were different from fire safety issues. Ms. Clark responded to a question from Commissioner Hart by explaining that measurements would be made to the wall regardless of whether there was a carport or an open porch. Commissioner Hart also questioned how they would measure the four feet if there were channels of space between houses that included chimneys, overhangs, gutters, interruptions or penetrations. In that case, Ms. Clark responded, they would only measure to the chimney, rather than to the roof. Commissioner Hart asserted that the whole wall would have to be regular and inquired if the measurement was just to the edge of the chimney or to the whole wall. Ms. Clark replied that, theoretically, if it were less than five feet, it might be the only wall that was fire-rated.

Commissioner Lusk referenced Ms. Clark's assertion that the Commission could not affect change that was directly in disharmony with the building Code, or change the manner of construction, and asked if there was a request process to revise the code, as Commissioner Byers had suggested, regarding non-combustible materials on the sidewalls. Ms. Clark replied that they were currently reviewing the Code change process. She added that the related codes were the 2000 edition and that they were preparing for the 2004 Virginia Uniform State-wide Building

Code. After that, she said, they would adopt the related 2003 model codes.

Ms. Clark indicated that ordinary individuals could submit Code changes to the Commonwealth of Virginia by using a code change form which also required submission of a justification. To Commissioner Lusk's question regarding the process after submission, Ms. Clark acknowledged that the process involved public comment and that homebuilders would likely lobby the General Assembly. The hearing would be followed by a negotiation process, she added, to decide whether the code change was the correct one. She said there was a Codes and Standards Committee constituted with individuals throughout the Commonwealth of Virginia.

Commissioner Byers interjected the idea that the Board of Supervisors should develop the proposed change, commenting that Supervisor Hyland agreed it was a good idea. He recommended asking the Board to initiate such a request at their next meeting. Acting Chairman Alcorn agreed that they usually recommended those types of requests to the Board.

Commissioner Harsel asked when a new vacancy would occur on the committee. Ms. Clark said the committee was new and that appointments were usually for 3-5 years. She stated that Tom Fleury with West*Group and the Board of Housing and Community Development, was on that committee.

Ms. Byron inquired as to what Ms. Clark meant when she said not to worry about the change in building codes that had gone into effect on September 8th. Ms. Clark replied that September 8th was an effective date and that the 2003 Uniform State Building Code had been adopted October 1, 2003, with a one year grace period, which meant that any plans submitted between October 1, 2003, and September 30, 2004, could use either code.

Commissioner Hart conjectured as to how a special situation might be impacted and how fire-rating violations could be caught after the building permit application had already been approved, based on architectural and elevations. He indicated that building permit application time was too late.

Ms. Byron stated that she would have to send an advisory memo to staff, since there was no hard and fast rule, to make them aware that anything less than three feet could not have openings. Ms. Clark responded to a question from Ms. Kirst about whether the rule applied to accessory structures. Ms. Clark noted that this was the first time accessory structures had been mentioned and that although some did not require a building permit, they would now require a fire rating. She also stated her concern about how this information would be disseminated to the public.

Acting Chairman Alcorn asked if Battalion Chief John White had anything to add. Mr. White declined commenting from a Code standpoint but mentioned that the Institute of Technology had initiated a task force at Prince William County's request in July on six-foot separation distances. He explained the construction of a typical test house and how a couch had been set on fire and within three minutes and 40 seconds the window had failed, and in five minutes the fire had penetrated the wall of an adjoining house. He said that a ten foot separation did not sound like a lot but since fires operate on the inverse, when doubling the distance it used a quarter of the

energy. At a 6 to 12 foot separation, the fire intensity reduced to one quarter what it would be at the original distance, he said, and that 10 feet gave the fire department more time to work.

Commissioner Harsel commented that there might not be a 10 foot separation if homes were built right at the property line. Ms. Clark contended that if there was an existing house built at the property line, it should still have a one-hour fire-resistance rating with no openings because that code had already been established.

Commissioner Byers stated that they had to abide by the Code and that the Zoning Ordinance required a side yard. Ms. Byron emphasized that Ms. Clark was only talking about the building code but agreed that the committee could not collectively disregard the Ordinance and that sideyards were indeed mandated.

Acting Chairman Alcorn asked if there were approved P districts that were right on the outside lot lines. Ms. Byron acknowledged there were a few and as an example named one on Germantown Road. There was a short discussion about internal and external zero lot lines and they agreed that both could not exist at the same time.

Commissioner Hart noted his concern with how the County would know when a special wall was required since some accessory structures did not require building permits. Ms. Clark agreed that she had the same concern. However, she said there was a specific statement in the Code that maintained that even when there was no requirement for a building permit, there remained a requirement to comply with the Code.

Mr. Shoup stated that even when sheds were located too close to the lot line, under the Zoning Ordinance, the homeowner was presumed to know the law.

In response to a question from Commissioner Harsel, Ms. Clark repeated a list of structures which did not require a building permit. She confirmed that sheds, fences, small retaining walls, re-roofing, re-siding, poured slabs, and brick patios did not require building permits. There was a short discussion about small swimming pool dimensions that would not require a building permit.

Commissioner de la Fe stated that a good way to enforce codes was to educate industry representatives. He said that hardware stores in Reston had changed their inventory when they realized their products were not to code and were not selling. Ms. Clark noted that her staff had visited Lowes and Home Depot at least once a year to deliver brochures and discuss products, adding that those dealers had been very cooperative.

Ms. Johnson-Quinn conjectured that DPWES, like DPZ, probably knew about violations because of neighbor complaints. Ms. Clark admitted that there was a similar group in her department who investigated complaints.

Acting Chairman Alcorn moved to the last agenda item to be addressed by Ms. Pelto from the County Attorney's Office. He reminded the Committee that they were not in closed session so

the County Attorney might not want to comment on some items. Commissioner Alcorn explained that there had been a concern expressed by the Committee about the P District wherein they might lack legal authority to deny applications when, for example, the homes were designed too close together and whether Commissioners had an obligation to approve such applications.

Ms. Pelto stated that the Planning Commission might find various reasons for denying P District applications such as compatibility, transportation, and/or compliance with the Comprehensive Plan and indicated that she didn't think the County was legally bound to approve every application. She added that such applications could not be denied just because Commissioners might not be in favor of P Districts, and a valid reason would be required similar to any other zoning application action.

Commissioner Harsel asked if the issues relating to the denial of P District applications were different from other Zoning district applications. Ms. Pelto responded that the Ordinance was all the same. Ms. Byron added her agreement that meeting the general standards, design standards, and the Zoning Ordinance should determine application approvals.

Acting Chairman Alcorn pointed out that he and Commissioner Harsel had attended a PC certification course in 1997, and noted that one of the standards in passing any legal test in the Commonwealth of Virginia was that you could not remove the economic use. Ms. Pelto referred to that as the "takings." She said that every area in the County had some zoning attached to it with permitted uses. She said that in the Supreme Court, "takings" meant that you could not deny somebody the right to any use of a property at all and P Districts were zoned for creative design already, so that would not apply.

Commissioner Lawrence mentioned that he had taken the same certification course and recalled two ideas: the applicant had to be left without a reasonable use and a denial had to be unreasonable to be overturned. Ms. Pelto said that was a different kind of legal argument which dealt with the standard of review for a rezoning action by the Board of Supervisors which was somewhat debatable. She clarified that it was a different standard from the "takings." Commissioner Lawrence said he understood that no reasonable use constituted a "taking." Ms. Pelto agreed that it meant that someone would be unable to use their property at all.

Ms. Byron commented that she had worked with the County Attorney's Office to get alternative zoning in order to meet the legal challenge of leaving a reasonable use which could be sustained in court.

Acting Chairman Alcorn asked if there were further questions. Commissioner Harsel asked about the next step which Acting Chairman Alcorn acknowledged to be the information meeting on Thursday. He asked staff when the new version would be released. Ms. Johnson-Quinn said they expected to get a draft out the next week. She noted that it was a work in progress and wanted comments. After the public information session, she said they would incorporate ideas into text for the staff report recommendations.

Commissioner Harsel asked about another meeting before the public hearing to go over the

rough draft. Acting Chairman Alcorn asked for a consensus of the Committee. He then asked staff to come back with the draft after the public information session, before advertising, and prior to request for authorization.

Commissioner Hart recommended getting the draft prior to the meeting on Thursday in order to make intelligent comments. Ms. Johnson-Quinn said that an email would be sent to alert interested parties whenever it was posted on the website.

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Ms. Robin Hardy, Assistant Executive Director of the Planning Commission Staff, reminded Acting Chairman Alcorn that minutes for January 14 and May 27, 2004 required approval.

Acting Chairman Alcorn MOVED THAT THE MINUTES FOR JANUARY 14, 2004, AND FOR MAY 27, 2004 BE APPROVED.

Commissioner de la Fe seconded the motion.

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The meeting was adjourned at 8:15 p.m.
Janet R. Hall, Chairman

For a verbatim record of this meeting, reference may be made to the audio recording which can be found in the Office of the Planning Commission of Fairfax County, Virginia.

Minutes by: Norma Duncan

Approved: March 9, 2005

Linda Rodeffer, Clerk
Fairfax County Planning Commission