

**FAIRFAX COUNTY PLANNING COMMISSION  
POLICY AND PROCEDURES COMMITTEE  
WEDNESDAY, NOVEMBER 17, 2004**

COMMITTEE MEMBERS PRESENT:

Walter A. Alcorn, At-Large  
John R. Byers, Mount Vernon District  
Janet R. Hall, Mason District  
Suzanne F. Harsel, Braddock District, Chairman  
James R. Hart, at-Large  
Nancy Hopkins, Dranesville District  
Laurie Frost Wilson, At-Large

OTHER PLANNING COMMISSION MEMBERS PRESENT:

Frank A. de la Fe, Hunter Mill District  
Peter F. Murphy, Springfield District

OTHERS PRESENT:

Jane Gwinn, Walsh, Colucci, Lubeley, Emrich & Terpak, PC  
William Shoup, Zoning Administrator, Department of Planning and Zoning (DPZ)  
Donna Pesto, Senior Assistant to the Zoning Administrator, DPZ  
Barbara J. Lipa, Executive Director, Planning Commission Office  
Linda B. Rodeffer, Clerk, Planning Commission Office

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The meeting was called to order at 7:30 p.m. by Chairman Janet R. Hall, in the Board of Supervisors' Conference Room, Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

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William Shoup, Zoning Administrator, Department of Planning and Zoning (DPZ), noted that the purpose of tonight's meeting was to brief Committee members on proposed Zoning Ordinance amendments relating to the establishment of a special permit or special exception process to address yard reduction, lot width, and fence height issues that were currently requested through the variance process. Donna Pesto, Senior Assistant to the Zoning Administrator, DPZ, distributed a discussion list of proposed amendments, a copy of which is in the date file.

Mr. Shoup explained that Phase I amendments would be presented to the Board for authorization on December 6, 2004 and that Phase II amendments would probably be presented to the Board for authorization in early 2005. He said the amendments in Phase I would include the addition of a new special permit use that would allow the Board of Zoning Appeals (BZA) to approve a reduction of the following minimum required yards by up to 50 percent: minimum yard requirements of any zoning district; permitted extensions into the minimum yard requirements as

set forth in Sect. 2-412 of the Zoning Ordinance such as decks, chimneys, and carports; front yard requirement of 25 feet for pipestem lots and lots contiguous to pipestem driveways; and accessory structure minimum yard requirements. In addition, he said standards were being proposed to ensure that the process was not open-ended and to give the BZA standards for determining impacts on adjoining properties. He said an example of such standards would include the possibility of locating the structure elsewhere on the lot.

Mr. Shoup said the next item to be addressed was adding a new special permit use to allow the BZA to approve, in conjunction with special permit approval, a reduction of the setback requirements for an existing use. He said a provision was also being proposed that would allow the Board of Supervisors (BOS) to approve special exception relief from a yard requirement so that if someone applied for a special permit or special exception use, and existing structures did not meet current yard requirements, they would not have to go through a separate variance process beyond getting special permit or special exception approval.

In response to a comment from Commissioner Byers about the possibility that the amendments were being proposed to circumvent recent litigation, known as the Cochran case, which restricted approval of variances, Mr. Shoup said that the intention of the amendments was to provide a reasonable process whereby the BZA or the BOS could approve relief under standards which were not as strict as those required under variances.

Responding to a question from Chairman Hall, Mr. Shoup said the proposed amendments would allow an additional type of special permit use subject to approval by the BZA.

Referring to Commissioner Byers' comment about recent litigation restricting approval of variances, Commissioner Hart said the Cochran litigation only pertained to variances and the BZA could allow almost anything in the Ordinance if it was not by variance.

Mr. Shoup said staff was also proposing, in conjunction with approval of a special permit, to allow the BZA to approve a reduction of the ten foot minimum distance between off-street parking spaces and the front lot line and the associated peripheral parking lot landscaping for parking lots containing 20 or more spaces. He explained that this would provide the BZA the same ability to provide relief when considering an application that the BOS had when considering rezoning and special exception applications. He added that the BZA had been provided with this authority this past summer at the request of both the Planning Commission and the BOS.

Mr. Shoup said approval of the proposed amendments would also add a new special permit use allowing the BZA to increase the height of fences and walls in front yards up to a maximum height of six feet instead of four feet.

In response to a question from Commissioner Hall, Mr. Shoup said the reason for this proposal was due to situations, particularly on corner lots, where a side or rear yard was considered a front yard because it abutted a street. He added, however, that this would not just apply to corner lots

because there could be other circumstances where a six foot fence along a side property line would need to be extended out beyond the front of the house or street. He said the BZA could then, after considering all the factors, provide relief so that a variance would not have to be obtained. Commissioner Hart pointed out that many such cases were denied and those which were not denied were due to unusual circumstance such as homes being located on a very busy street or on reverse frontage lots.

Mr. Shoup said that the proposed amendments would also allow the BOS to grant waivers of the minimum lot width requirements for residential districts with special exception approval, except for by-right cluster subdivisions.

In response to a question from Commissioner Byers, Mr. Shoup said the proposed amendments recommended that only the BOS be allowed to approve lot width changes, not the BZA.

Mr. Shoup said along with the proposed amendments, changes would also have to be made to the submission requirements and application fees for special permits and special exceptions. He noted that if the amendments were approved, pending variance applications would be administratively converted to new special permit applications at no further cost to the applicants.

Responding to a question from Commissioner Byers, Mr. Shoup said only deferred variance applications would be administratively converted to special permit applications, not those applications which had been withdrawn. Ms. Pesto added that any variance application which had been deferred due to the Cochran litigation would be administratively converted to the new application process.

In response to another question from Commissioner Byers, Mr. Shoup said the proposed text would be available by the time the BOS met on December 6, 2004. Commissioner Alcorn requested that Planning Commissioners also be provided with the proposed text.

Responding to a question from Chairman Hall, Mr. Shoup and Ms. Pesto explained the rationale for recommending that up to a 50 percent reduction of minimum yard requirements be allowed.

Mr. Shoup said the proposed amendments, if approved by the BOS for authorization, were scheduled for public hearings by the Planning Commission on January 12 and by the BOS on January 24, 2005.

Chairman Hall, referring to "Potential Amendments for Future Phases," found on page 4 of the handout, requested that "limited circumstances" be deleted and the circumstances which would allow the Zoning Administrator to administratively approve increases in fence or wall height by up to 10 percent be listed. Ms. Pesto responded by saying that topography was only used as an example for presentation to the Planning Commission tonight and that if such a provision were adopted, it would be more fully explained. Mr. Shoup added that this proposal needed further study by staff.

In response to a question from Commissioner Harsel, Mr. Shoup said reductions in minimum yard requirements would have to meet certain standards in order to be approved. Commissioner Hart added that standards would also provide a basis for denial.

Commissioner Hart said he hoped the proposed amendments would be advertised broadly enough to allow flexibility beyond the special exception process or by-right. Mr. Shoup noted that the current recommendation was for the special exception process only. Chairman Hall suggested that the scope of the advertisement include the special permit process so that it could also be discussed, even though that might not be the Commission's final recommendation. Commissioner Byers pointed out that the scope could be tightened up later. Commissioner de la Fe agreed.

Commissioner Hart explained that the BZA did not like granting lot width variances and had proposed to make them special permits a long time ago. He said the three alternatives were special exception approval by the BOS, which was included in the recommendations; special permit approval under certain circumstances, which was not included in the proposed amendments; and by-right modifications. He reiterated his belief that the advertised amendments should be broad enough to allow for the option of special permit or special exception approval, or some combination of the two. Mr. Shoup said staff was going to have one more meeting before making the final recommendations and said everyone's concerns would be considered.

Mr. Shoup said the following things also needed to be addressed: the methodology used for measuring the height of accessory structures; increasing the height of accessory structures that could be located in rear or side yards; allowing the BOS to reduce the minimum yard requirements in conjunction with the special exception or rezoning approval; deleting the term "patio" from the deck definition; and requiring additional photographic information for all special permit and special exception applications.

In response to a question from Commissioner Alcorn, Ms. Pesto indicated that the 60 pending variance applications had been categorized in existing tables, but that staff had not considered everything the Ordinance would have allowed as variances. Commissioner Alcorn said it would be helpful if the information distributed tonight could be summarized in a table.

Responding to a question from Commissioner Alcorn, Commissioner Hart said almost all variance issues had been addressed in the Phase I amendments, most of which were yard reduction issues. He said Phase II amendments would most likely address legitimate but unusual situations.

Barbara Lipka, Executive Director, Planning Commission Office, reminded members that the next meeting of the Policy and Procedures Committee would be held on December 9, 2004 to continue the current topic of discussion.

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ADJOURNMENT

November 17, 2004

The meeting was adjourned at 8:10 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: Linda B. Rodeffer

Approved: December 9, 2004

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Linda B. Rodeffer, Clerk  
Fairfax County Planning Commission