

**FAIRFAX COUNTY PLANNING COMMISSION  
AD HOC COMMITTEE ON PUBLIC ENTERTAINMENT ESTABLISHMENTS  
MONDAY, APRIL 2, 2012**

**PC COMMITTEE MEMBERS PRESENT:**

James R. Hart, Commissioner At-Large  
Ellen J. Hurley, Braddock District  
Kenneth A. Lawrence, Providence District  
James T. Migliaccio, Lee District

**OTHER COMMITTEE MEMBERS PRESENT:**

John McBride, Esquire, Odin, Feldman & Pittleman, PC  
Douglas McKinley, Attorney at Law  
David Norton, Washington Dance Institute  
Gary Mann, Various Northern Virginia Dance Clubs

**OTHER PC MEMBERS PRESENT:**

Peter F. Murphy, Jr., Springfield District

**FAIRFAX COUNTY STAFF PRESENT:**

Eileen McLane, Zoning Administrator and Director, Zoning Administration Division (ZAD),  
Department of Planning and Zoning (DPZ)  
Lorrie Kirst, Deputy Zoning Administrator, ZAD, DPZ  
Jack Reale, Senior Assistant to the Zoning Administrator, ZAD, DPZ  
WB Moncure, Investigator, Department of Code Compliance  
Barbara J. Lippa, Director, Planning Commission Office  
Dawn Ashbacher, Assistant Director, Planning Commission Office  
Jeanette Nord, Deputy Clerk, Planning Commission Office  
Marlae Schnare, Senior Legislative Aide, Springfield District Supervisor's Office  
Meaghan Kiefer, Chief of Staff, Sully District Supervisor's Office

**OTHERS PRESENT:**

Christian Deschauer, Fairfax County Chamber of Commerce  
Jane Kelsey, President, Jane Kelsey & Associates, Inc.

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Chairman James R. Hart called the meeting to order at 7:02 p.m., in the Conference Rooms 2/3 of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, VA 22035.

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After brief introductions and a summary of the agenda, Chairman Hart introduced Jack Reale, Senior Assistant to the Zoning Administrator, Zoning Administration Division (ZAD), Department of Planning and Zoning (DPZ), who provided background on the proposed Zoning Ordinance Amendment regarding Public Entertainment Establishments. He cited his belief that there was a misunderstanding of the fundamental reason for the proposal, in addition to its

potential impacts on businesses if restrictions were imposed on certain uses and/or under certain circumstances.

Referring to his handout entitled “Key Zoning Ordinance Definitions,” a copy of which is in the date file, Mr. Reale explained the definitions and discussed the differences between an eating establishment, primary use, accessory use, and hotel/motel use.

In response to questions from John McBride, Esquire, Odin, Feldman & Pittleman, PC, Mr. Reale said that the restriction on floor area strictly applied to dance floors, adding that floor area could be more easily measured than time of use and/or revenue gained.

During a brief discussion with Douglas McKinley, Attorney at Law, Mr. Reale clarified that the Zoning Ordinance did not preclude an establishment from providing more than one principal use.

Gary Mann, a member of the Northern Virginia Shag Club, DC Hand-Dance Club, and other area dance organizations, cited examples of restaurants that hosted events like poker nights and/or tournaments and questioned why this should be treated differently from dance floors. Mr. Reale explained that nothing differentiated the two in terms of restrictions, adding that frequency of use would be the determining factor in such cases. Mr. Mann cautioned against passing any type of sweeping regulations that could negatively impact establishments with no prior history of violations.

During the ensuing discussion, Commissioners Hart and Lawrence pointed out other parameters that should be taken into consideration when defining accessory use, including frequency, hour of day, day of the week, and location.

When Commissioners Lawrence and Hart mentioned uses not specifically addressed in the Zoning Ordinance, Eileen McLane, Zoning Administrator, ZAD, DPZ, stated that the ZAD evaluated such cases individually to determine their use and appropriate zoning.

Commissioner Hurley suggested that the primary or accessory use of an establishment could be identified through a review of its revenues. In addition, she suggested reviewing the “permanence” of the interior, i.e., permanent theater seating versus furniture that could be moved to enlarge the floor space. She further noted that the zoning district should be a consideration, particularly with regard to noise impacts.

Mr. Mann reiterated his earlier remarks, adding that the proposed provision that the space made available for dancing not exceed one-eighth of the floor area available for dining was arbitrary and failed to address the issue that needed remediation. He also said that failure to address the real problem could alienate a large group of citizens.

David Norton, representing the Washington Dance Institute, noted that the proposal addressed eating establishments with quantifiable parameters for code enforcement. He pointed out, however, that his dance events were held in a restaurant owned by someone else. He added that the owner received little, if any, revenue from these events and expressed concern that such agreements between restaurant owners and entrepreneurs like Mr. Norton might be discouraged if there were a misunderstanding of how the business revenues were collected.

Ms. McLane pointed out that ZAD operated on a complaint basis and responded to citizens' calls regarding problems with establishments in their communities. She added that revenues would not be an appropriate parameter since such information could be difficult to obtain.

Chairman Hart added that the dance floor parameter of one-eighth was a cap for by-right uses that could be increased with a Special Exception approval. In addition, he noted that a citizen applying for a new business would have no financial history; therefore, revenue could not be a factor in determining its business lines.

While acknowledging the revisions that needed to be made the proposal, Mr. McBride asked what the specific issues had been so that Committee members could address them properly. Commissioner Migliaccio explained that some of the restaurants in the Lee and Mount Vernon Districts had ceased their restaurant services during night time hours so they could operate as dance/entertainment clubs, negatively impacting the quality of life in the nearby communities.

Commissioner Hurley noted that available parking should be taken into consideration as well, noting the limited parking that would be available in the revitalized Tysons Corner area as a point of concern. However, Commissioner Lawrence explained that Tysons Corner was planned as an urban mixed-use center where entertainment uses would share parking with commercial entities.

Commissioner Hart referred to the handout entitled, "Public Entertainment Establishment Committee - Examples of Possible Approaches," a copy of which is in the date file, and suggested that Committee members submit comments and suggestions to staff prior to the next meeting on Wednesday, April 11, 2012 in Conference Rooms 2/3 of the Government Center.

Mr. Reale concurred, adding that all ideas were welcome, and reiterated the importance of members submitting their remarks to staff prior to the next meeting. He then briefly described the approaches provided in the handout as follows:

1. Establish a minimum separation distance between a public entertainment establishment and a residentially-occupied or zoned property.

Mr. Reale noted that this was typical in zoning regulations, but pointed out that it could be difficult to administer and enforce. A brief discussion followed between Lorrie Kirst, Deputy Zoning Administrator, ZAD, DPZ, and Chairman Hart regarding instances in which public entertainment uses might be permitted.

2. Establish a maximum allowable dance floor area (or aggregate recreational use area) that is permitted as accessory to an eating establishment by using an area limit or an area limit in combination with percentage ratio that corresponds to dining area.

Noting Mr. Mann's concerns about the pre-set fixed percentage in the original proposal, Mr. Reale said that a more preferable approach would involve a less restrictive concept that would still be enforceable.

3. Apply a tiered approach that recognizes two or more eating establishment size categories, each with a unique formula for permitted accessory recreational use area.

Mr. Reale explained that this approach could be used to differentiate the primary use from the accessory use.

4. Look at additional zoning district (such as certain I-Districts) opportunities and possible by-right options for dance halls and other public entertainment establishments.

Pointing out that no provision for such opportunities existed in the current Zoning Ordinance, Mr. Reale noted that this could be detail-intensive.

5. Consider circumstances under which a public entertainment establishment could be permitted by-right with certain use limitations - similar to how some uses are currently regulated under the Zoning Ordinance.
6. Consider metric solutions that could be used either as alternate methods or in combination with a maximum allowable dance floor size (e.g., occupancy limits, time limits; also see above item).
7. Consider the feasibility of employing a nightclub licensing system with Zoning Administrator authority to revoke or suspend a license or operating permit. (Note: staff is looking into the question of enabling legislation regarding this item.)

Mr. Reale pointed out that the authority for licensing could only be provided to Fairfax County by Virginia General Assembly.

There was a brief discussion between Chairman Hart and Mr. Reale with regard to providing a draft strawman document, including possible additional recommendations, to the Board's Development Process Committee after the meeting on April 11. Chairman Hart also suggested that the Board of Supervisors submit a request to its Legislative Committee to consider seeking authority from the Virginia General Assembly to implement such a nightclub licensing system.

Chairman Hart pointed out that industrial districts might be ideal for dance hall uses because of their locations and their defining conditions. Ms. McLane added that office parks might also be ideal, but cautioned that their proximity to residential uses could be problematic.

When Commissioner Migliaccio expressed concern about the proximity of an entertainment venue in an I District to some stable residential areas in the Lee and Mount Vernon Districts, Ms. McLane explained that staff would review the Zoning Ordinance regulations as well as existing conditions on a subject site to determine the impact.

Answering a question from Commissioner Hurley, Ms. McLane explained that zoning districts were laid out compatibly; hence, dance halls would not be permitted because of the hazards traditionally involved with I Districts. She pointed out, however, that the majority of I Districts in Fairfax County were office parks and could therefore support uses such as restaurants with entertainment or dance halls.

Commissioner Lawrence suggested that the process to obtain licensing authority begin immediately in light of the amount of development occurring in the County. He also suggested that the opportunities for locating venues in I-Districts should be evaluated on a case-by-case basis.

Mr. Mann pointed out the number of dance instructors/classes provided by and for citizens in Fairfax County, referred to the second suggestion regarding the maximum allowable dance floor area, and reiterated his earlier objections.

Mr. McBride noted that there was a broader issue than dance floors, and pointed out that there was a movie theater at Fairfax Corner that also provided a full-service restaurant and bar, and questioned which use was considered primary and which was accessory.

Mr. Norton pointed out that the theater was a good example of a business changing its focus, adding that that was precisely what he did as an entrepreneur. He added that grocery stores like Wegmans also included restaurants within, but had no restrictions; neither did home businesses, which changed according to customer needs. He stated that the Zoning Ordinance must accommodate the changing needs of its citizens.

Ms. McLane acknowledged that there were restaurants in some grocery stores but pointed out that dancing did not occur in such establishments. In addition, she noted that she often received complaints about home businesses with regard to adverse effects on traffic or other elements, depending on the business.

There was a lengthy discussion about the proposal, its contentious history, and the difficulty of addressing the concerns of affected citizens.

Chairman Hart suggested developing language addressing restaurants with accessory dance floors, and possibly allowing them by-right in commercial districts where such eating establishments were now allowed. In addition, he said that language for objective criteria might be developed to draw a distinction between a restaurant with a large dance floor and a nightclub that would have bigger impacts on its surroundings, noting that the hours and/or the days of operation should be considered. He reiterated that I Districts would be ideal because of their locations and conditions and asked that staff consider ways to objectively define the use and enforcement.

When Mr. Mann questioned the reason that dance floor space had to be limited, Ms. McLane cited a case where complaints about an establishment had been discontinued once its dance hall permit was revoked.

In the brief discussion that followed, WB Moncure, Investigator, Department of Code Compliance, explained to Commissioner Hart that while some establishments operated without entertainment/dance permits, others had pre-existing permits that predated the current Zoning Ordinance requirements.

Chairman Hart pointed out that the proposed amendment would change the procedure for the specified uses in that applicants would be required to present their proposals in public hearings before the Planning Commission and Board of Supervisors as part of a Special Exception application process. He questioned whether that would be necessary for all of the use types and noted that it could also have budget implications by adding extra meeting time for the hearing bodies.

Commissioner Lawrence briefly summarized this evening's discussion with the following goals:

- Provide measures to ensure that no one is inadvertently impacted;
- Provide a combination of conditions to allow these types of establishments to exist; and
- Address problem areas correctly and find appropriate solutions.

Mr. Reale concurred with Commissioner Lawrence's comments and reiterated that Committee members send comments and suggestions to him prior to the next meeting on Wednesday, April 11, 2012. In addition, he provided the following timeline for the proposal:

- Tuesday, May 15, 2012 – Staff meets with the Board of Supervisors' Development Process Review Committee
- Tuesday, June 5, 2012 – Board of Supervisors meeting with anticipated authorization of Public Hearings before the Planning Commission and Board of Supervisors
- Thursday, July 12, 2012 – Planning Commission scheduled Public Hearing
- Tuesday, July 31, 2012 – Board of Supervisors' scheduled Public Hearing

Mr. Norton reiterated his suggestion that staff consider that oftentimes entrepreneurs not own the venues in which they provided services. He also pointed out that in the event a restaurant owner impacted by this regulation decided to discontinue a business relationship like the one he currently enjoyed as a dance instructor, it could severely impact his business if he lost customers who did not want to go to another location for instruction.

Chairman Hart noted that Wednesday, April 25, 2012 would be scheduled as a tentative "Placeholder Date" for another meeting of this Committee, should it be necessary.

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The meeting was adjourned at 9:06 p.m.  
James R. Hart, Chairman

AD HOC COMMITTEE ON PUBLIC ENTERTAINMENT  
ESTABLISHMENTS

April 2, 2012

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

Minutes by: Jeanette Nord

Approved: April 11, 2012

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Kara A. DeArrastia, Clerk to the  
Fairfax County Planning Commission