

**FAIRFAX COUNTY PLANNING COMMISSION  
AD HOC COMMITTEE ON PUBLIC ENTERTAINMENT ESTABLISHMENTS  
WEDNESDAY, APRIL 11, 2012**

**PLANNING COMMISSION 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 COMMISSIONERS 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)  
Jack Reale, Senior Assistant to the Zoning Administrator, ZAD, DPZ  
Michael Congleton, Property Maintenance Code Official, ZAD, DPZ  
WB Moncure, Investigator, Department of Code Compliance  
Barbara J. Lippa, Executive Director, Planning Commission Office  
Jeanette Nord, Deputy Clerk, Planning Commission Office  
Rosemary Ryan, Legislative Aide, Braddock District Supervisor's Office  
Goldie Harrison, Legislative Aide, Hunter Mill District Supervisor's Office  
Marlae Schnare, Senior Legislative Aide, Springfield District Supervisor's Office  
Meaghan Kiefer, Chief of Staff, Sully District Supervisor's Office

**OTHERS PRESENT:**

Jane Kelsey, President, Jane Kelsey & Associates, Inc.

//

Chairman James R. Hart called the meeting to order at 7:04 p.m., in Conference Rooms 2/3 of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, VA 22035.

//

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 began discussion on the handout entitled, *Staff Proposed Approach*, a copy of which is in the date file.

Mr. Reale stated that after reviewing the comments and suggestions regarding the original proposal to limit the dance floor area, more attention was given to ways in which entertainment space could be defined and provided within an eating establishment without necessarily singling out dancing. He briefly discussed the current process for obtaining an accessory use permit, acknowledging that it had been made clear that a limited dance floor area would not be viable. As a result, he said that the focus became finding an acceptable way to set a “bright line” limit that would clearly show the eating establishment as a primary use while accommodating another accessory use therein. He said that staff had several suggestions for discussion, including:

1. Differentiate between “big” and “small” eating establishments.
  - a. A small eating establishment would contain less than 3,000 square feet of gross floor area (GFA).
  - b. A large eating establishment would contain 3,000 or more square feet of GFA.

Mr. Reale pointed out that a 3,000 square-foot break point was merely a starting point for discussion, adding that it might not capture small eating establishments, such as “mom-and-pop” or single-owner establishments.

2. Set a maximum percentage or maximum area of indoor recreation/entertainment (in its aggregate form) that would be permitted as accessory to the principal eating establishment use, as follows:
  - a. A small eating establishment would be permitted to have a total area used for indoor recreation/entertainment that shall not exceed the lesser of (a) one-quarter of the public area of the eating establishment or (b) 500 square feet. The public area would be determined by subtracting the non-public areas of an eating establishment, such as the kitchen, storage areas, and offices, from the overall GFA of the use.
  - b. A large eating establishment would be permitted to have a total area that could be used for indoor recreation/entertainment that shall not exceed the lesser of (a) one-fifth of the public area of the eating establishment, or (b) 750 square feet.

Mr. Reale pointed out that none of the above would preclude an eating establishment from hosting private receptions, parties, or similar events that might include dancing and other entertainment activities. He added that the only caveat would be that such events must be truly private events and not open to the general public by means of advertisement through any form of media publication.

3. In cases where the maximum allowable indoor recreation/entertainment use exceeds the permitted area as formulated above, the use would be deemed a Public Entertainment Establishment (PEE), which might be allowed either by-right or by Special Exception (SE) approval, in accordance with the following:
  - a. By-Right – when meeting the following minimum use limitations:
    - i. The PEE may not stay open for business beyond 11:00 p.m. on weekdays and no later than 12:00 midnight on weekends.

- ii. It must be located on a major thoroughfare and may have no access to a local street.
- iii. The property on which a PEE is located must not abut or be across the street from a residentially-zoned or residentially-developed property.
- iv. The building in which the PEE is located must contain suitable noise attenuating devices or materials to include vestibules at all entrances.
- v. If located within a Planned Residential District, or P-District, such use must be represented on an approved development plan.

Mr. Reale noted that PEEs meeting the above by-right use limitations might be allowed in all commercial zoning districts presently allowing eating establishments by right, with the exception of the C-5, Neighborhood Commercial District. He added that by-right PEE's might also be allowed in the I-3, I-4, and I-5 Industrial Districts and the C-3 and C-4 Commercial Districts, all of which currently allowed eating establishments by SE approval.

- b. By SE – in the absence of the above use limitations.

Chairman Hart pointed out that, with the exception of the private receptions/parties, the new approach continued to measure the physical size of the space within an establishment. When he asked about an event such as "Poker Night," Mr. Reale said that it would be evaluated individually to determine the accessory use.

There was a brief discussion between Mr. Reale and Chairman Hart regarding by-right use versus SE approval, as defined in Approach Number 3. Although Mr. Reale acknowledged that the approach might be inconsistent with the current process, Chairman Hart suggested a possible amendment to the Zoning Ordinance to make eating establishments by-right, since they were a less intense use.

In response to an additional question from Chairman Hart, Mr. Reale explained that the prohibition on advertising private functions was an attempt to preclude the use of widespread social media that was typically used to solicit business for an establishment.

Responding to questions from Commissioner Migliaccio, Eileen McLane, Zoning Administrator and Director, ZAD, DPZ, noted that social media use for advertisement typically came under review when issues arose for a particular establishment.

In reply to additional questions from Commissioner Migliaccio, Mr. Reale said that restaurants like Applebee's or Outback Steakhouse would be considered larger establishments, mainly because they tended to have more resources at hand to provide the space for accessory entertainment.

Chairman Hart suggested that the language be flexible in the advertisement so that industry representatives could provide input later.

After a brief explanation from Michael Congleton, Property Maintenance Code Official, ZAD, DPZ, about the calculation for the maximum building occupancy, Gary Mann, a member of

several area dance organizations, asked why the uses could not be based on the maximum occupancy allowed in an establishment, regardless of the activity taking place within. WB Moncure, Investigator, Department of Code Compliance, explained that such a basis could require more stringent building and safety code regulations for the building/establishment owner. *(Note: For example, a restaurant use with seating for 50 people would have different safety and building code requirements than a typical dance hall use. However, a primary restaurant use seating 50 patrons, which also provided an accessory dance use serving 75 additional patrons, would have a total maximum limit of patrons to 125, thereby changing the safety, and possibly building code, requirement for that establishment, which could also be very costly.)* Mr. Reale added that evaluation on a basis of maximum patronage without regard for the activity would invalidate the current Special Permit process by eliminating the public hearing process. Ms. McLane noted that the parking requirement for a restaurant was different than that for a dance use, adding that the occupancy load was the determining factor. She also pointed out that the occupancy load of a restaurant varied much more than that of a dance hall.

Chairman Hart reminded Committee members that this evening's meeting would help formulate the language for advertisement and that the issue would not be resolved immediately.

Commissioner Lawrence suggested that given the contentiousness of this issue, at least one review should be done subsequent to the implementation of any Zoning Ordinance Amendment. Chairman Hart said that he had planned to include a review in the follow-on motions to the Amendment during the Planning Commission meeting on March 1, 2012.

Chairman Hart and Ms. McLane briefly discussed parking requirements for establishments with limited parking, agreeing to consider parking reductions such as those on the Route 1 Corridor.

Answering questions from Commissioner Migliaccio, Ms. McLane explained that the lack of specific distances in Approach Number 3a.iii. made it easier for administrative purposes.

John McBride, Esquire, Odin, Feldman & Pittleman, PC, said that the objective of the Committee was to avoid over-regulating while making sure to regulate the issues of concern. He expressed concern that the staff proposed approach was not in keeping with the objectives set by the Board of Supervisors, adding that the nature of the establishment under consideration was a mixture of traditional restaurant with indoor public entertainment under one roof. He echoed earlier remarks from Chairman Hart and Mr. Reale, but suggested that the break point between a small and large establishment be 4,000 square feet instead of 3,000. Additionally, Mr. McBride questioned the need for restrictions on small establishments and suggested that few, if any, problems originated from smaller establishments. Mr. Moncure stated that several small establishments, some as small as 2,200 square feet, had recently been found in violation for having uses other than the primary eating establishment.

During a brief discussion with Douglas McKinley, Attorney at Law, Mr. Congleton explained that the issue was not dancing, but rather zoning violations and criminal activity within eating establishments where the dining use had stopped to allow something different to take place.

Chairman Hart and Ms. McLane briefly discussed Approach Number 2, with Ms. McLane providing additional clarification on the requirement criteria for SE approval.

Mr. Reale stated that there was a need for a clear definition of accessory use, with some additional criteria, and said that it would be challenging to place it in the Zoning Ordinance without some degree of subjectivity. Chairman Hart suggested that there might be room in the current Zoning Ordinance for language that would clarify accessory uses.

After a brief discussion regarding the public area within an eating establishment, Chairman Hart asked what the problem was with the vestibule space, as referenced in Approach Number 3a.iv. Mr. Congleton explained that the doorways to the vestibules were found to remain open, often causing negative impacts within the establishment as well as outside.

Chairman Hart pointed out that the definitions for public and non-public uses would need to be more fully developed.

Mr. McBride pointed out that the Zoning Ordinance needed to be updated to reflect the uses currently in the I-Districts in the County, adding that an eating establishment would be compatible. Chairman Hart agreed, adding that the I-3 through I-5 Districts tended to be quiet after dinner time because of their location, which would be ideal for dance halls.

Commissioner Migliaccio expressed concern about the proximity of entertainment venues in I-Districts near stable residential areas in the Lee and Mount Vernon Districts. During the ensuing discussion, Committee members discussed the zoning and roads in both Supervisor Districts.

When Commissioner Lawrence suggested placing eating establishments with accessory uses within the I-Districts in Merrifield, Ms. McLane said that it might meet the criteria for permitted use, depending on the surrounding street classifications and whether parking arrangements could be made with the existing business owners.

Commissioner Hurley and Ms. McLane briefly discussed the entertainment space, private events, and clarification of the definition for accessory use. Commissioner Hurley also pointed out that clarification was still needed with regard to weekly/occasional events. As the discussion continued, Ms. McLane briefly described a banquet hall use and explained the historical reference in the proposed Amendment, pointing out that it was not an accessory use. She also confirmed that there could be two primary uses within one establishment.

Mr. Mann explained that the language for private functions would not apply to dance clubs that had open membership and websites that published events and instruction schedules. He expressed concern about staff's persistence in approaching the existing problem by limiting the size of the dance floor area and said that such stringent standards would severely impact the dance community. He said that the dance community should not have to mobilize to resolve a basic enforcement issue that the County and this Committee failed to fix.

Ms. McLane pointed out that this evening's proposals provided methods to make it easier to provide by-right dance uses.

Mr. Reale countered Mr. Mann's remarks regarding citizen mobilization by suggesting that he instead have members of the dance community consolidate and provide funding to establish by-right venues, thereby ensuring an available venue that would be in conformance with the Zoning Ordinance.

David Norton, Washington Dance Institute, noted that Picante's would lose square footage for its dance floor accessory use under Approach Number 2 and said that one percentage should apply to all venues regardless of total square footage. In addition, he questioned how the frequency of events would be enforced, noting that his operation had not been closed down as a result of complaints, but because of a random visit from several off-duty officers. He expressed concern about the definition of "dance," and asked if an owner would be cited for patrons dancing in places other than the dance floor. Additionally, Mr. Norton asked if someone notifying friends of a gathering at a public place for a birthday party would be considered advertising or promotion. Mr. Norton also suggested consideration of a system like that in Baltimore, Maryland, where the State Liquor Board was sending establishment owners and citizens to meet with the community law centers to work out legally binding compromises called Memorandums of Understanding (MOU).

Commissioner Migliaccio pointed out that in cases where the owner did not act in good faith, such a compromise would not be feasible and enforcement would continue to be necessary. He add that the SE approval process would essentially be the establishment's MOU with Fairfax County to operate in good faith.

In reply to questions from Jane Kelsey, President, Jane Kelsey & Associates, Inc., Mr. Reale explained that an eating establishment and banquet hall were different uses, but said that in certain circumstances, an establishment with both uses might be permitted.

In addition, Ms. McLane and Chairman Hart, briefly discussed parking options for entertainment establishments in I-Districts.

Chairman Hart announced that the next Committee meeting would take place on Wednesday, April 25, 2012 at 7:00 p.m., in the Board Conference Room of the Government Center, and suggested that Committee members submit comments and suggestions to staff prior to the next meeting.

//

The meeting was adjourned at 9:02 p.m.  
James R. Hart, Chairman

SIGNATURES

April 11, 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 25, 2012

---

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