

**FAIRFAX COUNTY PLANNING COMMISSION  
AD HOC COMMITTEE ON PUBLIC ENTERTAINMENT ESTABLISHMENTS  
WEDNESDAY, APRIL 25, 2012**

**PLANNING COMMISSION COMMITTEE MEMBERS PRESENT:**

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

**OTHER COMMITTEE MEMBERS PRESENT:**

John McBride, Esquire, Odin, Feldman & Pittleman, PC  
Douglas McKinley, Esquire  
David Norton, Washington Dance Institute

**COMMITTEE MEMBERS ABSENT:**

Kenneth A. Lawrence, Providence District  
Gary Mann, Various Northern Virginia Dance Clubs

**OTHER COMMISSIONERS PRESENT:**

Peter F. Murphy, Jr., Springfield District

**FAIRFAX COUNTY STAFF PRESENT:**

Eileen McLane, Director, Zoning Administration Division (ZAD), Department of Planning and Zoning (DPZ)  
Jack Reale, Senior Assistant to the Zoning Administrator, ZAD, DPZ  
Barbara J. Lippa, Executive Director, Planning Commission Office  
Jeanette Nord, Deputy Clerk, Planning Commission Office  
Rosemary Ryan, Legislative Aide, Braddock District Supervisor's Office  
Meaghan Kiefer, Chief of Staff, Sully District Supervisor's Office

**OTHERS PRESENT:**

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 Conference Rooms 2/3 of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, VA 22035.

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Douglas McKinley, Esquire, MOVED TO APPROVE THE MINUTES OF THE APRIL 11, 2012 MEETING OF THE AD-HOC COMMITTEE ON PUBLIC ENTERTAINMENT ESTABLISHMENTS.

Commissioner Migliaccio seconded the motion which carried unanimously.

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Eileen McLane, Director, Zoning Administration Division (ZAD), Department of Planning and Zoning (DPZ), explained that on Monday, May 7, 2012, she would attend a meeting with representatives from the Fairfax County Departments of Fire and Rescue, Public Works and Environmental Services, Code Compliance, and the County Attorney's Office to determine what, if any, authority the County's Fire Marshal might have to address some of the issues related to public entertainment establishments.

Chairman Hart noted that while the Committee had endeavored to resolve the issues and reach consensus, there was much work yet to be done. He added that more time was needed to compile and analyze the information discussed so far.

Mr. McKinley expressed concern that the cost to file a special exception (SE) application was excessive for small business owners, particularly in comparison to nearby jurisdictions. He added that a recreational use should be allowed by special permit (SP) approved by the Board of Zoning Appeals, especially since SE approval was not guaranteed, regardless of the costs incurred by an applicant.

Chairman Hart said that some of the Supervisors had expressed a desire to hear cases on public entertainment establishments, thus creating the need for the proposed amendment.

Commissioner Migliaccio pointed out that stronger measures were necessary for establishments located in residential neighborhoods where some owners would discontinue the restaurant use in the early evening while allowing the entertainment to continue to closing time between midnight and 2:00 a.m.

A brief discussion followed regarding the impact of an entertainment use on nearby residential neighborhoods and possible strategies for mitigating those impacts.

John McBride, Esquire, Odin, Feldman & Pittleman, PC, acknowledged the need for changes to the Zoning Ordinance, adding that the County's Code Enforcement staff should be given more tools to address problems experienced in residential areas. He also suggested a conservative approach by providing County staff with necessary tools to enforce current codes while work continued on the proposed Amendment language. In addition, Mr. McBride said that the current dance permit should align with corresponding regulations for building, fire protection, and noise, adding that revocation/suspension of a dance permit should be an active enforcement tool. He also noted that further refinement of the definitions for traditional restaurant and accessory entertainment uses would be helpful.

Chairman Hart noted that staff needed to determine whether the current enforcement regulations were adequate and added that additional resources, including enabling authority for the Zoning Administrator from the Virginia General Assembly, might be necessary.

As discussion ensued regarding language to ensure that entertainment uses were not located in or near residential neighborhoods, Ms. McLane pointed out that safety code violations tended to address problems more quickly than Zoning Ordinance violations. Chairman Hart agreed,

pointing out that addressing the issue with a Zoning Ordinance Amendment seemed counter-intuitive, considering the extensive time taken to remedy current problems citizens encountered.

In response to a question from Commissioner Hurley, David Norton, representing the Washington Dance Institute, explained that he had 30 days to obtain an accessory dance permit, at which point he stopped providing dance lessons since the process took longer.

Ms. McLane noted that the most recent proposal from staff dealt more with the accessory use alone rather than the size of a dance floor only, adding that this approach would work better within the confines of the Zoning Ordinance.

Answering questions from Mr. Norton, Mr. McBride reiterated his earlier suggestion regarding aligning the dance permit with the building, noise, and fire protection codes. He added that if noise was problematic, its cause was immaterial because the originator would still be in violation of the Noise Ordinance.

A lengthy discussion ensued regarding the by-right entertainment use, which currently allowed up to one-eighth of an eating establishment's space. Anything over one-eighth of an establishment's space would require a SP and public hearing. Ms. McLane added that many restaurant owners simply applied for the accessory entertainment use by-right because it was much easier and less time-consuming than applying for the SP entertainment use.

Chairman Hart introduced Jack Reale, Senior Assistant to the Zoning Administrator, ZAD, DPZ, to discuss the "Revised Staff Approach" document dated April 25, 2012, a copy of which is in the date file.

Mr. Reale discussed the first bullet, Revision to Eating Establishment Definition/Criteria for Determining "Accessory" Entertainment, which proposed:

- Elimination of the restriction of a dance area up to one-eighth of the available dining floor area, and
- Substitution of a new limit to be the lesser of:
  - One-fifth of the eating establishment's gross floor area, or
  - A maximum floor area (1,000-2,000 suggested square feet) that can be used for any single or combined indoor entertainment use(s).
- In addition, the eating establishment's kitchen facilities must remain open when during hours of operation.

Responding to questions from Commissioner Migliaccio, Mr. Reale acknowledged that although the size of the accessory entertainment use would increase, the proposed recommendations provided limits that previous proposals did not. Commissioner Migliaccio said he could not support such an increase for establishments located near residential areas.

Chairman Hart noted that it had been brought to his attention that the Virginia Beach City Council had determined that an establishment could be considered a nightclub if all of the following three criteria applied:

- Alcoholic beverages were served;
- The establishment remained open past midnight; and
- Amplified music not meant as background for dining was provided.

Answering a question from Chairman Hart, Commissioner Migliaccio explained that these criteria might help to resolve issues that have occurred in the Lee District; however, they could be problematic in more commercially zoned areas.

Answering another question from Chairman Hart, Mr. Norton concurred with Commissioner Migliaccio's remarks, pointing out that noise was at the heart of the issue and that the other issues resulted from the activity inside the establishment.

Ms. McLane explained that the revised approach should be considered in tandem with enforcement measurements to help crack down on repeat violations without adversely affecting other establishments.

Mr. McBride and Commissioner Migliaccio discussed the impacts of the revised proposal on small family-owned establishments located in residential neighborhoods. Mr. McBride noted that such businesses tended to be very small and would likely not have room for dancing; therefore, refinement of the definition for entertainment uses should be undertaken to properly enforce the building, safety, noise codes, and other ordinances.

Mr. Reale explained that the second bullet of the revised approach discussed creating a new entertainment establishment as a principal use to include indoor entertainment activities such as dancing, billiards, and karaoke. He also noted that the proposed approach would expand potential locations where an entertainment establishment could locate by right, subject to use limitations, or by SE or SP approval. He said that the following use limitations would be required: there must be a minimum separation/distance from residentially zoned/developed property; the entertainment establishment must be located on a major thoroughfare; and suitable noise attenuation measures must be provided. Mr. Reale added that entertainment establishments could be allowed by right in commercial retail districts, C-6 through C-9, if use limitations could be met. He also said that commercial office districts and industrial parks, C-2 through C-4 and I-2 through I-6, might be suitable by-right options for entertainment establishment uses when the same limitations were met. He stated that the required parking for an entertainment establishment would be based on an occupancy rate of one space per three persons and, when located in a shopping center, the parking would be based on the entertainment establishment rate, not on the shopping center rate. Mr. Reale suggested that all parking reductions for entertainment establishments, particularly those in Commercial Revitalization Districts (CRD), require approval by the Board of Supervisors.

Chairman Hart questioned the CRD parking reduction language, saying that it would only exacerbate existing parking problems by forcing people to park in residential neighborhoods.

Mr. McKinley suggested that the language specify the type of road to help determine the required distance for an entertainment establishment. He added that language regarding noise limitations would also be helpful.

Answering a question from Commissioner Hurley, Ms. McLane explained that the entertainment uses were addressed in the Comprehensive Plan for the Planned Tysons Corner Urban District (PTC).

Committee members briefly discussed current roadways, zoning districts, appropriate locations for entertainment establishments, safety measures, and noise violations.

Mr. Norton asked why the use should be a problem if the noise bothered no one. Ms. McLane explained that commercial entities in residential neighborhoods that stayed open late in the evening tended to generate complaints.

Ms. McLane explained to Committee members that County staff could only handle complaints between 8:00 a.m. and 5:00 p.m., adding that the Fairfax County Police Department handled complaints for events occurring between 5:00 p.m. and 8:00 a.m., including those resulting from issues involving entertainment establishments during late evening hours. She added that noise was difficult to measure and required several readings from different locations. She also pointed out that police were often required to place noise violations on low priority to respond to more urgent calls.

Committee members agreed that dancing combined with drinking late was problematic and the County needed to locate such establishments where patrons would have enough parking.

When Chairman Hart again mentioned aligning the Virginia Beach criteria with the County's Zoning Ordinance, Commissioner Migliaccio explained that the Virginia Beach City Council had adopted a new Noise Ordinance because in 2009, the Virginia State Supreme Court had declared its previous Ordinance unconstitutionally vague. He added that he did not want the language in the proposal to be too vague.

Regarding the new limits on accessory entertainment use, Commissioner Migliaccio reiterated his concern about the proximity to residential neighborhoods and asked if additional options were available for locating this use farther from residential areas.

Discussion ensued wherein Mr. Norton pointed out that people often parked in residential neighborhoods because they feared being towed from nearby privately-owned lots. Committee members also talked about by-right accessory entertainment uses in relation to residential versus commercial areas. Mr. Reale also pointed out that the distance measurement could become complicated by factors like trees and buildings and might not be worth the effort.

Answering questions from Committee members, Ms. McLane said that on Tuesday, May 15, 2012, staff would meet with the Board of Supervisors' Development Process Committee to brief them on the discussions of the Ad-Hoc Committee to date. She added that a copy of the briefing would be provided to Committee members prior to the meeting.

Chairman Hart noted that the Ad-Hoc Committee on Public Entertainment Establishments had not scheduled another meeting, adding that more work needed to be done before an official

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advertisement could be posted. He thanked the County staff for their assistance and the Committee members for their input, and adjourned the meeting.

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The meeting was adjourned at 8:36 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: Jeanette Nord

Administratively Approved: November 14, 2012

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