

**MINUTES OF  
FAIRFAX COUNTY PLANNING COMMISSION  
WEDNESDAY, FEBRUARY 18, 2004**

PRESENT: John R. Byers, Mount Vernon District  
Frank de la Fe, Hunter Mill District  
Janet R. Hall, Mason District  
James R. Hart, Commissioner At-Large  
Nancy Hopkins, Dranesville District  
Ronald W. Koch, Sully District  
Kenneth Lawrence, Providence District  
Rodney L. Lusk, Lee District  
Peter F. Murphy, Jr., Springfield District  
Laurie Frost Wilson, Commissioner At-Large

ABSENT: Walter L. Alcorn, Commissioner At-Large  
Suzanne F. Harsel, Braddock District

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The meeting was called to order at 8:24 p.m. by Chairman Peter F. Murphy, Jr.

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**COMMISSION MATTERS**

Commissioner Hall announced that the Policy and Procedures Committee had met tonight to review the proposed Zoning Ordinance Amendment Work Program for 2004 and the proposed Residential Parking Zoning Ordinance Amendment. She noted that the Committee would reconvene on Thursday, February 19, 2004, at 7:15 p.m. in the Board Conference Room, to vote on these matters.

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Chairman Murphy announced that there would also be an Environment Committee meeting on Thursday, February 19, 2004, at 7:30 p.m., in the Board Conference Room.

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Chairman Murphy noted that the Planning Commission would not meet on Wednesday, February 25, 2004.

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Commissioner Lawrence MOVED THAT SEA 2002-PR-040, FAIRFAX PLAZA COMPANY, A VIRGINIA LIMITED PARTNERSHIP, BE DEFERRED TO A DATE CERTAIN OF MARCH 18, 2004.

Commissioner Hall seconded the motion which carried unanimously with Commissioners Alcorn and Harsel absent from the meeting.

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ORDER OF THE AGENDA

In the absence of Secretary Harsel, Chairman Murphy set the following order for the agenda items:

1. PCA 1998-SU-040-02 WEGMANS FOOD MARKETS, INC.
2. ZONING ORDINANCE AMENDMENT (Buildable Lots)  
SUBDIVISION ORDINANCE AMENDMENT (Buildable Lots)

This order was accepted without objection.

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The first case was in the Springfield District, therefore, Chairman Murphy asked Vice Chairman Byers to assume the Chair.

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PCA 1998-SU-040-02 - WEGMANS FOOD MARKETS, INC. -  
Appl. to amend the proffers for RZ 1998-SU-040 previously approved for commercial development to permit a waiver of certain sign regulations. Located in the N.E. quadrant of the intersection of Lee Hwy. and Monument Dr. on approx 12.08 ac. of land zoned C-6. Comp. Plan Rec: Fairfax Center Area-office/mixed use. Tax Map 56-2 ((1)) 70A. SULLY DISTRICT. PUBLIC HEARING.

Susan Yantis, with Walsh, Colucci, Emrich, Lubeley, and Terpak, representative for the applicant, reaffirmed the affidavit dated January 28, 2004.

Commissioner Hart disclosed that his law firm, Hart and Horan, PC, had one case pending with the law firm of Walsh, Colucci, Lubeley, Emrich and Terpak, P.C., listed on the affidavit as an agent of the applicant, but that the matter was unrelated to this application, there was no financial relationship, and it would not preclude his participation in this case.

Commissioner Murphy asked that Vice Chairman Byers ascertain whether there were any speakers for this application. There being none, he asked that presentations by staff and the applicant be waived and the public hearing closed. No objections were expressed, therefore, Vice Chairman Byers closed the public hearing and recognized Commissioner Murphy for action on this case. (A verbatim excerpt is in the date file.)

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Commissioner Murphy MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT APPROVE PCA 1998-SU-040-2, SUBJECT TO THE EXECUTION OF THE PROFFERS CONSISTENT WITH THOSE FOUND IN APPENDIX 1 OF THE STAFF REPORT AND ALSO APPROVE A WAIVER OF THE SIGN REGULATIONS, PURSUANT TO SECTION 9-620 OF THE ZONING ORDINANCE.

Commissioner Hall seconded the motion which carried unanimously with Commissioners Alcorn and Harsel absent from the meeting.

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At the conclusion of this case, Chairman Murphy resumed the Chair.

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ZONING ORDINANCE AMENDMENT (BUILDABLE LOTS) – To amend Chapter 112 as follows: Allows the issuance of Building Permits on certain lots that did not meet the zoning district requirements for minimum district size, lot area or lot width at the time of lot recordation, provided that the lot: (1) is described or depicted in a recorded metes and bounds description or unapproved subdivision plat prior to March 25, 2003; (2) is taxed as a separate parcel and depicted on the Fairfax County Property Identification Maps as a separate parcel on or before March 25, 2003; (3) contained an occupied principal structure on the effective date of this amendment that was occupied on that date or had been occupied within five years prior to the effective date of the amendment, or was under construction pursuant to a Building Permit and a Residential or Non-Residential Use Permit is issued within 12 months of the effective date of the amendment; and (4) otherwise meets all applicable Zoning Ordinance regulations including maximum building height, minimum yard requirements, maximum floor area ratio and permitted use regulations.

SUBDIVISION ORDINANCE AMENDMENT – To amend Chapter 101 as follows: Allows the validation of a lot created by the recordation among the Fairfax County land records of a metes and bounds description or an unapproved plat prior to September 1, 1947, provided that such lot met all applicable provisions of the Zoning Ordinance in effect when the lot was recorded or at some time thereafter, or meets the provisions of Sect. 2-405 of the Zoning Ordinance, and designates lots not meeting this requirement as outlots. Allows the validation of a lot created by the recordation among the Fairfax County land records of a metes and bounds description or an unapproved plat after August 31, 1947, provided that (1) such lot met all applicable provisions of the Zoning Ordinance in effect when the lot was recorded or at some time thereafter, or meets the provisions of Sect. 2-405 of the Zoning Ordinance, (2) the parcel is shown on the County's real

property identification map as a separate parcel on or after March 25, 2003, and (3) the parcel has been taxed as a separate parcel on or after March 25, 2003, (4) for a parcel created after March 25, 2003, it has been more than 2 years since the recordation of a metes and bounds description or unapproved plat that purported to create the parcel. Lots recorded after August 31, 1947 that do not meet the previously listed 4 criteria are designated as outlots. JOINT PUBLIC HEARING.

Donna Pesto, Zoning Administration Division (ZAD), Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. She noted that staff recommended approval of the amendments.

John Friedman, Department of Public Works and Environmental Services (DPWES), stated that the proposed Zoning Ordinance amendment would provide for the issuance of building permits for lots that did not meet zoning district requirements at the time of recordation under certain circumstances as described in the above proposed Zoning Ordinance amendment advertisement. He pointed out, however, that if the amendment was adopted, a question would still remain with respect to the status of the lots under the Subdivision Ordinance. Therefore, he said the proposed Subdivision Ordinance amendment would provide for validation of those lots that met the requirements of the new Zoning Ordinance amendment. Specifically, he noted that a proposed amendment to the Subdivision Ordinance, Code Section 101-1-12, would provide for validation of lots created prior to September 1, 1947 that met Zoning Ordinance requirements in effect at the time the lots had been created or any time thereafter. Mr. Friedman said current requirements allowed for validation of lots meeting the Zoning Ordinance requirements that were in effect at the time of recordation or on March 23, 2003, when the existing Ordinance provisions had been adopted. He also noted that a proposed amendment to Section 101-1-14 would allow lots created after August 31, 1947 and lots that could not be validated as buildable lots, to be designated as outlots which could then be legally sold or conveyed under the Subdivision Ordinance.

Commissioner Wilson noted that she would be deferring the decision on the amendments to tomorrow night, Thursday, February 19, 2004.

Responding to a question from Commissioner Hart about the record retention policy of building permits, William Shoup, Zoning Administrator, ZAD, DPZ, said that by law DPWES was allowed to destroy building permits after a certain number of years, but that DPZ maintained a permanent copy of building permits issued within the last two decades.

Responding to a question from Commissioner Hart, John Foster, Esquire, Assistant County Attorney, indicated that if the five year occupancy requirement in the proposed Zoning Ordinance amendment was increased or eliminated, it would exceed the scope of advertising.

Commissioner Hart commented that it seemed unfair to designate properties as unbuildable if they had been unoccupied for five years.

Answering questions from Commissioner Wilson, Mr. Foster stated the advertising criteria was very specific and for a lot to qualify for validation it would have to satisfy all the criteria in the proposed amendment.

Responding to a question from Commissioner Hall, Mr. Foster pointed out that the Planning Commission had two options: 1) to recommend that the proposed amendment drafted by staff at the direction of the Board of Supervisors be adopted; or 2) to recommend to the Board that another amendment be authorized for advertisement to include criteria that was outside the scope of the current proposal.

Chairman Murphy commented that while there should be some latitude in the process, citizens would be deprived of their right to testify on changes that initially had not been within the scope of the advertisement.

Responding to a question from Commissioner Wilson, Ms. Pesto agreed that the language in Paragraph 2 of the proposed Zoning Ordinance amendment could be interpreted in different ways. She said if a lot did not meet the Ordinance requirements in effect at the time of recordation, the lot could be used for any use permitted in the zoning district pursuant to a building permit. She added, however, that it did not mean that proof of a building permit would be necessary for an existing structure.

There were no listed speakers, therefore, Chairman Murphy called for speakers from the audience and recited the rules for testimony.

Mary Theresa Flynn, Esquire, with Hunton and Williams, appearing on behalf of a client, expressed support for the proposed amendments. She said until 1978 when a uniformed State-wide Building Code had been adopted, requirements for building permits varied from county to county. She said many owners had bought property in good faith, made improvements, and paid taxes with the assumption that they owned buildable lots and approval of the amendments would validate that assumption.

Ms. Pesto and Mr. Friedman responded to questions from Commissioner Wilson about the reference to a minimum district size in paragraph 2 of the proposed Zoning Ordinance Amendment.

There were no other speakers. The Commission had no further comments or questions and staff had no closing remarks, therefore, Chairman Murphy closed the public hearing and recognized Commissioner Wilson for action on this application. (A verbatim excerpt is in the date file.)

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Commissioner Wilson MOVED THAT THE PLANNING COMMISSION DEFER ITS DECISION ONLY ON THE PROPOSED ZONING ORDINANCE AMENDMENT ON PERMITTED REDUCTIONS AND LOT SIZE FOR CERTAIN LOTS, I.E., BUILDABLE

ZONING ORDINANCE AMENDMENT/SUBDIVISION  
ORDINANCE AMENDMENT (BUILDABLE LOTS)

February 18, 2004

LOTS, AND THE PROPOSED COUNTY CODE AMENDMENT, CHAPTER 101 OF THE SUBDIVISION ORDINANCE, ON VALIDATION OF CERTAIN LOTS RECORDED BY MEETS AND BOUNDS ON AN APPROVED PLAT, UNTIL A DATE CERTAIN OF FEBRUARY 19, 2004.

Commissioner Byers seconded the motion which carried unanimously with Commissioners Alcorn and Harsel absent from the meeting.

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The meeting was adjourned at 9:18 p.m.  
Peter Murphy, Chairman  
Suzanne F. Harsel, Secretary

Audio and video recordings of this meeting are available at the Planning Commission Office, 12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Heidi Baggett

Approved on: July 20, 2006

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Linda B. Rodeffer, Clerk to the  
Fairfax County Planning Commission