

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
THURSDAY, OCTOBER 23, 2014**

PRESENT: Peter F. Murphy, Springfield District
Frank A. de la Fe, Hunter Mill District
Janet R. Hall, Mason District
James R. Hart, Commissioner At-Large
Ellen J. Hurley, Braddock District
John C. Ulfelder, Dranesville District
James T. Migliaccio, Lee District
Earl L. Flanagan, Mount Vernon District
Kenneth A. Lawrence, Providence District
John L. Litzenberger, Jr., Sully District
Janyce N. Hedetniemi, Commissioner At-Large
Timothy J. Sargeant, Commissioner At-Large

ABSENT: None

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The meeting was called to order at 8:17 p.m., by Chairman Peter F. Murphy, in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

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COMMISSION MATTERS

Commissioner Hart announced that the Planning Commission's Environment Committee had met earlier this evening to discuss future topics with staff for the MITRE II report on building energy monitoring and staff's response to the comments from the electric vehicle charging infrastructure workshop. He added that the Environment Committee would meet again at 7:00 p.m. on Wednesday, November 19, 2014, in the Board Conference Room of the Fairfax County Government Center to receive presentations from the Department of Public Works and Environmental Services regarding two upcoming Public Facilities Manual Amendments on underground stormwater maintenance and sidewalk waivers.

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Commissioner Lawrence stated that, due to his absence for medical reasons, he would not be able to attend the Planning Commission's meeting on Wednesday, October 29, 2014. He then said that, after coordinating with staff and the applicants, the public hearings originally scheduled for this meeting would be deferred; therefore, he **MOVED THAT THE PLANNING COMMISSION DEFER THE PUBLIC HEARING FOR RZ/FDP 2014-PR-004 AND PCA 88-D-005-08 TO A DATE CERTAIN OF THURSDAY, NOVEMBER 6, 2014.**

Commissioner Litzenberger seconded the motion, which carried by a vote of 12-0.

Commissioner Lawrence MOVED THAT THE PLANNING COMMISSION DEFER THE PUBLIC HEARING 2232-P14-6 TO A DATE CERTAIN OF WEDNESDAY, NOVEMBER 19, 2014.

Commissioner Litzenberger seconded the motion, which carried by a vote of 12-0.

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RZ/FDP 2013-PR-009 – TYSONS WESTPARK, LC (Decisions Only)
(The public hearing on these applications were held on October 22, 2014.)

Commissioner Lawrence: And lastly tonight, we had a case that we had a public hearing on last night. And because we got the staff report late, I deferred the decision until tonight to give everybody a chance to have a look. And the applicant is present. Are there any further – oh, we did get a revised version of Proffer 15A today by email, which addresses the question about the inclusion of vaults. And we also got a list of waivers and modifications, which I am going to move on block. Does anyone have any further questions of the applicant?

Chairman Murphy: Apparently not.

Commissioner Lawrence: Seeing and hearing none. Mr. Chairman, before we go on verbatim, I would like to make a very brief comment. This case shows a number of things. One, this is a very small site in comparison to the size of sites we are looking for in Tysons for the PTC. However, the applicants in this case and those adjacent have done very closely-coordinated planning to the point where I think we can say it amounted to concurrent planning for it. And that allowed us to develop a coherent urban environment to cover that much land at least. I think that was very important. Secondly, this case illustrates the flexibility that we have in the plan. Specifically, some adjustment was made to the height limitations on some of the buildings that the applicant proposes. No one should think that that flexibility extends across Tysons. That is peculiar to this site and the balance that was reached for staff approval and my concurrence on this site. Thirdly, we have flexibility of proffers. The applicant has done their best to look into the future and future-proof what we're going to have to have in the way of proffers. We know for sure that we don't know what's going to take place, but we are confident that it's going to be a long time to go through the redevelopment of Tysons. I think this case illustrates that very nicely. Finally, it was due to the cooperation of the applicant and the work with staff that we ended with a very nice piece of work. Thank you, Mr. Chairman. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2013-PR-009, SUBJECT TO THE PROFFERS DATED OCTOBER 23RD, 2014.

Commissioners Hart and Hedetniemi: Second.

Chairman Murphy: Seconded by Mr. Hart and Ms. Hedetniemi. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2013-PR-009, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner de la Fe: Abstain.

Chairman Murphy: Motion carries. Mr. de la Fe abstains.

Commissioner de la Fe: Not present.

Chairman Murphy: Not present for the public hearing.

Commissioner Lawrence: Next, Mr. Chairman, I need the applicant. Ms. Baker, would you please come down? Ms. Baker, will you confirm for the record that the applicant agrees to the proposed development conditions now dated October 8th, 2014?

Elizabeth Baker, Agents Applicant, Walsh, Colucci, Lubeley, Emrich & Walsh, PC: I do confirm it.

Commissioner Lawrence: Thank you very much.

Chairman Murphy: Would you just identify yourself for the record, please?

Ms. Baker: Elizabeth Baker, Walsh Colucci.

Chairman Murphy: Thank you. Mr. Lawrence.

Commissioner Lawrence: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2013-PR-009, SUBJECT TO DEVELOPMENT CONDITIONS DATED OCTOBER 8, 2014 AND SUBJECT TO THE BOARD'S APPROVAL OF RZ 2013-PR-009.

Commissioners Hart and Hedetniemi: Second.

Chairman Murphy: Same seconds. Is there a discussion of the motion? All those in favor of the motion to approve FDP 2013-PR-009, subject to the approval by the Board of Supervisors of the Rezoning and the Conceptual Development Plan, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Lawrence: Finally, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE MODIFICATIONS AND WAIVERS, AS LISTED IN THE HANDOUT DATED OCTOBER 23RD, 2013, that was provided today –

Commissioner Hart: Second.

Commissioner Lawrence: -and which shall be made a part of the record of this case.

Commissioners Hart and Hedetniemi: Second.

Chairman Murphy: Same seconds. We just saved an hour and a half, by the way. Is there a discussion of the motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Lawrence: Mr. Chairman, thank you very much indeed. Thank you, Bobby. Thank you, Elizabeth and the applicant's team.

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(Each motion carried by a vote of 11-0-1. Commissioner de la Fe abstained.)

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ORDER OF THE AGENDA

Secretary Hall established the following order of the agenda:

1. SE 2014-MA-012 – AAA MID-ATLANTIC, INC.
2. SE 2014-MV-028 – EJIGAYEHU AVALEW (JC'S CHILD CARE)
3. SE 2014-MV-029 – NEGAT H. IEHDEGO, NEGAT'S HOME CHILD CARE

This order was accepted without objection.

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SE 2014-MA-012 – AAA MID-ATLANTIC, INC. – Appl. under Sect. 4-704 of the Zoning Ordinance to permit a vehicle light service establishment and modifications in a CRD. Located on the N. side of Arlington Blvd. E. of its intersection with Wilson Blvd., on approx. 1.06 ac. of land zoned C-7, CRD, HC, and SC. Tax Map 51-3 ((1)) 35 A pt. and 35 B pt. MASON DISTRICT.
PUBLIC HEARING

Sara Mariska, Applicant's Agent, Walsh, Colucci, Lubeley, Emrich & Walsh, PC, reaffirmed the affidavits for each application dated August 29, 2014.

Commissioner Hart disclosed that his law firm, Hart & Horan, PC, had a case where attorneys from Ms. Mariska's firm were representing an opposing party, but noted that this matter and those parties were unrelated to these applications and there was no business or financial relationship.

Commissioner Hall asked that Chairman Murphy 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, Chairman Murphy closed the public hearing and recognized Commissioner Hall for action on this case.

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Chairman Murphy: Without objection, the public hearing is closed. Ms. Hall.

Commissioner Hall: Thank you, Mr. Chairman. This is – this particular application is in an existing shopping center. This particular pad site has been a restaurant for many, many years and now it will be an automobile facility. It does enjoy the support of Mason District Land Use and I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF SE 2014-MA-012, SUBJECT TO DEVELOPMENT CONDITIONS DATED OCTOBER 23RD, 2014.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2014-MA-012, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hall: Following, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF THE FOLLOWING:

- MODIFICATION OF THE OFF-STREET PARKING REQUIREMENTS OF THE CRD, TO PERMIT THE ELIMINATION OF TWO PARKING SPACES FOR THE PURPOSE OF CREATING A SEATING AREA;
- WAIVER OF THE INTERIOR PARKING LOT LANDSCAPING REQUIREMENTS OF THE CRD, IN LIEU OF THE ALTERNATIVES AS SHOWN ON THE PROPOSED PLAT AND AS CONDITIONED;
- MODIFICATION OF THE PERIPHERAL PARKING LOT LANDSCAPING REQUIREMENTS OF THE CRD, IN FAVOR OF THE ALTERNATIVES AS SHOWN ON THE PROPOSED PLAT AND AS CONDITIONED; AND FINALLY
- DEVIATION TO THE TREE PRESERVATION TARGET, IN FAVOR OF THE ALTERNATIVES AS SHOWN ON THE PROPOSED PLAT AND AS CONDITIONED.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion? Ms. Mariska, would you come forward please. You have to ask if she agrees with the conditions.

Commissioner Hall: Well of course she agrees.

Chairman Murphy: Well I know, but you got to ask her.

Commissioner Hall: Well we'll do it again. Ms. Mariska, do you agree with the proposed development conditions contained in the staff report dated October 23rd, 2014?

Sara Mariska, Applicant's Agent, Walsh, Colucci, Lubeley, Emrich & Walsh, PC: Yes, we do.

Chairman Murphy: Thank you very much is there further-

Commissioner Hart: It's not in the staff report.

Commissioner Hall: Well it's in the staff report now.

Commissioner Hart: Second.

Commissioner Hall: It's an attachment.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion, as stated by Ms. Hall, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much.

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(Each motion carried by a vote of 12-0.)

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SE 2014-MV-029 – NEGAT H. IEHDEGO, NEGAT'S HOME
CHILD CARE – Appl. under Sect. 6-105 of the Zoning Ordinance
to permit a home child care facility. Located at 8940 Singleleaf
Cir., Lorton, 22079, on approx. 1,598 sq. ft. of land zoned PDH-4.
Tax Map 107-2 ((8)) (E) 31. MOUNT VERNON DISTRICT.
PUBLIC HEARING

Negat Iehdego, Applicant/Title Owner, reaffirmed the affidavit dated June 18, 2014. There were no disclosures by Commission members.

Carmen Bishop, Zoning Evaluation Division (ZED), 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 application SE 2014-MV-029.

Referring to the drawing in Appendix 2 of the staff report, which depicted the floor plan of the basement where the home child care center would operate, Commissioner Flanagan noted that this area would be accessed by the front door of residence. He then noted that the dwelling unit included a garage, which was not shown on this drawing. A discussion ensued between Commissioner Flanagan and Ms. Bishop regarding the proximity of the garage to the child care center and the amount of space available for this use wherein Ms. Bishop indicated that, due to the space limitations of the dwelling unit, the applicant was requesting that a maximum of seven children be permitted.

In response to questions from Commissioner Flanagan, Ms. Bishop said that the Laurel Hill Community Association (LHCA) did not object to the subject application and confirmed that their statement reflecting this sentiment was included in Appendix 4 of the staff report. She also confirmed that if the applicant sought to increase the number of children permitted at site, then she would be required to submit a Special Exception Amendment, adding that the LHCA did not object to permitting a maximum of 12 children.

In reply to questions from Commissioner Hart, Ms. Bishop confirmed that the backyard play area was fenced, as shown in the photograph in Appendix 2 of the staff report. She also confirmed that the shed located in the backyard of the subject property was locked during staff's visit to the site. A discussion ensued between Commissioner Hart and Ms. Bishop regarding the possibility of requiring the applicant to keep the shed locked during the hours of operation for the child care center.

Referring to the photograph of the backyard play area in Appendix 2 of the staff report, Commissioner Hart asked for more information on the features of this area. Ms. Bishop explained that the backyard play area contained supports for a gazebo, which was above the grade of the play area and accessible from the second floor of the dwelling unit. She said that the children at the child care center would not utilize the gazebo. In addition, she indicated that the dwelling unit had been inspected by the Department of Code Compliance and no issues had been raised.

When Commissioner Hall expressed safety concerns regarding the play area, noting the presence of concrete surfaces, Ms. Bishop deferred to the applicant for more information on this issue, noting the limited space of this play area.

When Commissioner Ulfelder asked whether the child care center in the dwelling unit could be accessed through the garage, Ms. Bishop deferred to the applicant.

Ms. Iehdego addressed Commissioner Hall's concerns regarding the safety of the play area, saying that she would place protective mats on this area while the children utilized this area. A discussion ensued between Commissioner Hall and Ms. Iehdego regarding the extent to which these mats were utilized.

Commissioner Ulfelder reiterated his question regarding the ability to access the child care center through the garage. Ms. Iehdego explained that the garage area had been renovated and was no longer utilized as a garage. A discussion ensued between Commissioner Ulfelder and Ms.

Iehdego, with input from Chairman Murphy, regarding this garage area wherein Ms. Iehdego said that this area was now utilized for storage and indicated that the children could not access this area.

When Commissioner Hart pointed out that Development Condition Number 9, as shown in the development conditions listed in Appendix 1 of the staff report, required that the garage not be converted into any use that would preclude accommodating a vehicle, Catherine Lewis, ZED, DPZ, said that staff had not been informed that the applicant had converted the garage. A discussion between Commissioner Hart and Ms. Bishop ensued regarding whether Development Condition Number 9 conflicts with the existing status of the garage and the reason for including Development Condition Number 9 wherein Ms. Bishop said that staff included this provision to ensure sufficient parking for the child care center use, adding that there was parking available in the visitor parking area.

Answering questions from Commissioner Hart, Ms. Iehdego stated that she and her husband owned two vehicles, one of which was parked in the driveway while the other one was parked in the visitor parking area. She said that her child care center did not have an employee. She then indicated that the driveway on the site could only accommodate one vehicle and if a vehicle was present in this driveway, then it could not be utilized for pick-up and drop-off. A discussion ensued between Commissioner Hart and Ms. Lewis regarding the pick-up/drop-off procedures for the child care center on the site and the impact on these procedures by parents not being able to utilize the driveway wherein Ms. Lewis reiterated that staff included Development Condition Number 9 to ensure the driveway would be free to facilitate pick-up/drop-off for the children.

Commissioner Hart pointed out that staff needed to determine if there was sufficient parking near the site to ensure vehicles did not park along the street for pick-up and drop-off.

Replying to questions from Chairman Murphy, Ms. Iehdego said that she intended to hire an assistant for the home child care center if the subject application were approved. She also stated that the assistant would park in the visitor parking area located near the site, adding that she frequently parked her vehicle in the visitor parking area and she would permit the assistant to utilize the driveway.

A discussion between Commissioner Hall and Ms. Iehdego ensued regarding the availability of parking at the site and the parking accommodations for the assistant.

Responding to questions from Commissioner Hall, Ms. Iehdego explained that the garage had been converted into a room and noted that the garage door could not be opened. Commissioner Hall pointed out that this modification conflicted with the provisions of Development Condition Number 9.

Commissioner Flanagan indicated that he intended to defer the decision only for this application at the conclusion of the public hearing.

In response to questions from Commissioner Sargeant, Ms. Bishop stated that the children at the home child care center took naps in the basement area and indicated that staff did not have any concerns regarding the ventilation of this area.

Commissioner Hart expressed concern regarding the applicant's understanding of the proposed development conditions, the application process, and the parking provisions in the absence of the garage. Ms. Bishop concurred and indicated that staff would review the development conditions with the applicant during the deferral period.

Commissioner Hart expressed concern regarding whether the presence of the gazebo affected the classification the backyard play area as a patio, which might not be consistent with the provisions of the Final Development Plan (FDP) for the P-District. Ms. Bishop said that staff had inspected the backyard play area and indicated that this area was consistent with the FDP and the applicant had obtained the necessary permits.

A discussion between Commissioner Litzenberger and Ms. Lewis ensued regarding the possibility that requiring the applicant and the assistant to park in the visitor spot during the hours of operation of the home child care center would address concerns regarding pick-up and drop-off.

A discussion between Commissioner Hall and Ms. Bishop ensued regarding the language in Development Condition Number 9 prohibiting the conversion of the garage into a use that would preclude its use for parking wherein Ms. Bishop said this matter would be addressed during the deferral period.

Commissioner Flanagan suggested that staff and the applicant coordinate with the LHCA to address the Commission's concerns regarding parking and the garage. Ms. Bishop concurred with this measure.

Commissioner Lawrence suggested including a development condition to address potential parking conflicts that might occur in situations where the husband of the owner of the home child care center was not working and needed to park his car at the site.

A discussion between Commissioner Sargeant and Ms. Lewis ensued regarding the applicant's current use of the garage and its impact on State Codes for child care centers.

In reply to questions from Commissioner Flanagan, Ms. Bishop clarified that the applicant was licensed by the State of Virginia to care for a maximum of 12 children, but noted that the applicant did not intend to permit more than 7 children at the facility. She also confirmed that the applicant currently cared for 6 children at the facility. In addition, she said that a home child care provided required approval from the County to care for more than 5 children at a facility.

When Chairman Murphy asked how approval of the subject application would affect the maximum number of children permitted at the site, Ms. Lewis indicated that the maximum would remain at seven children because the State of Virginia required providers to comply with the provisions approved by the County.

Commissioner de la Fe stated that the applicant would not require a Special Exception if her home child care facility cared for a maximum of five children and Ms. Bishop concurred.

Chairman Murphy called for speakers from this audience, but received no response; therefore, he noted that a rebuttal statement was not necessary. There were no further comments or questions from the Commission and staff had no closing remarks; therefore, Chairman Murphy closed the public hearing and recognized Commissioner Flanagan for action on this case.

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Chairman Murphy: Public hearing is closed. Mr. Flanagan.

Commissioner Flanagan: Well I’m glad I brought up the garage on the plan. It seems to have been attracting a lot of attention and rightfully so. So I guess I – at this particular point, I don’t need to ask whether the applicant is –

Chairman Murphy: No.

Commissioner Flanagan: In that particular case then, Mr. Chairman, I MOVE TO DEFER THE DECISION ONLY FOR SE 2014-MV-029 TO A DATE CERTAIN OF NOVEMBER 6, 2014, WITH THE RECORD REMAINING OPEN FOR WRITTEN TESTIMONY.

Commissioner Hall: Second.

Chairman Murphy: Seconded by Ms. Hall. Is there a discussion of the motion? All those in favor of the motion to defer decision only on SE 2014-MV-029 to a date certain of November 6th, with the record remaining open for comment, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much.

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(The motion carried by a vote of 12-0.)

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SE 2014-MV-028 – EJIGAYEHU AVALEW (JC’S CHILD CARE) – Appl. under Sect. 6-105 of the Zoning Ordinance to permit a home child care facility. Located at 9607 Sloway Coast Dr., Lorton, 22079 on approx. 4,330 sq. ft. of land zoned PDH-4. Tax Map 107-3 ((6)) 182. MOUNT VERNON DISTRICT.
PUBLIC HEARING

Ejigayehu Avalew, Applicant/Title Owner, reaffirmed the affidavit dated June 23, 2014. There were no disclosures by Commission members.

Carmen Bishop, Zoning Evaluation Division (ZED), 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 application SE 2014-MV-028.

Answering questions from Commissioner Flanagan, Ms. Bishop confirmed that the volume of concrete depicted in the photograph of the rear yard in Appendix 2 of the staff report was in violation of the Zoning Ordinance and Development Condition Number 13, as listed in the revised set, required the volume of concrete in this area be reduced. She also stated that the reduction of the concrete in the rear yard had to be completed prior to permitting a maximum of 10 children at the home child care facility and a maximum of 7 could be permitted in the interim. In addition, Ms. Bishop indicated that the children could utilize the tot lot located near the subject property while the rear yard was brought into conformance, adding that the Lorton Valley Homeowners Association (LVHA) had granted the applicant permission to use the tot lot. A discussion ensued between Commissioner Flanagan and Ms. Bishop, with input from Catherine Lewis, ZED, DPZ, regarding the activities for the children at the home child care facility while the rear yard and the deck were brought into conformance with the Zoning Ordinance wherein Ms. Lewis deferred to the applicant for more information on the activities of the children and Ms. Lewis described the design of the deck, noting that it stood approximately one-and-a-half feet above grade and did not contain any crawl spaces underneath. (A copy of the revised development conditions dated October 22, 2014 is in the date file.)

Responding to additional questions from Commissioner Flanagan, Ms. Bishop said that the deck on the property could not be utilized by the home child care facility until the necessary permits had been obtained. She also confirmed that the revised set of development conditions included a modification to Development Condition Number 12, which articulated that the deck would not be utilized until it passed all necessary inspections, and Development Condition Number 14 was added to require the construction of a walkway for a rear entrance.

Commissioner Hall expressed concern about articulating time frames for obtaining certain approvals for a home child care facility and favored specifying the steps an applicant needed to complete within this time frame to aid the inspection process. Ms. Lewis concurred and agreed to discuss this issue with the Zoning Administration Division, but she noted the difficulty in determining the necessary permits for certain facilities. A discussion ensued between Commissioner Hall and Ms. Lewis regarding the uncertainty of the procedures that applicants were required to follow during these timeframes for obtaining permits and the difficulty of enforcing these procedures wherein Ms. Lewis said that staff favored including broader language to ensure sufficient flexibility and Commissioner Hall indicated that she still favored providing additional guidance to the applicant.

When Commissioner Hall asked how the timeframe for obtaining certain permits was determined for an applicant, Ms. Lewis stated that staff determined it based on the estimated time required to hire contractors to conduct the necessary work and Ms. Bishop pointed out that staff determined the 12 month timeframe for the applicant to accommodate a Final Development Plan

Amendment for the deck, but she noted that the applicant had indicated that this measure would not be pursued.

Commissioner Hall suggested that the applicant be required to post signs articulating that the deck was not to be used until the necessary permits were obtained. Ms. Lewis did not object to such a requirement.

A discussion ensued between Chairman Murphy and Ms. Lewis regarding extent to which the subject application had addressed outstanding issues prior to the public hearing, the demand for child care services within the County, and the safety concerns associated with home child care facilities wherein Ms. Lewis pointed out that other Special Exception applications had been approved with provisions that included timeframes in which certain modifications had to be made and staff had concluded that the safety concerns associated with the subject application could be addressed by limiting access to the rear yard and the deck.

Commissioner Hart concurred with Chairman Murphy’s remarks. He also expressed support for the modifications made to Development Condition Number 12, which prohibited the use of the deck. He expressed concern regarding the safety of decks, citing incidents where unsafe decks had caused serious injury. In addition, he noted the importance of meeting expectations of safety demanded of home child care centers, citing an incident at another home child care center that resulted in serious injury. Ms. Lewis pointed out that the home child care center in the incident cited by Commissioner Hart had been unlicensed. A discussion ensued between Commissioner Hart and Ms. Lewis regarding the approvals this unlicensed home child care facility did or did not have and the importance of ensuring that these facilities have the necessary permits wherein Commissioner Hart said that he did not support approving home child care applications that had unresolved safety issues, such as uninspected decks.

Commissioner Hart pointed out that the development conditions did not include a provision requiring pick-up and drop-off to occur in the driveway of the home child care facility. He also noted that the garage at the facility could accommodate two cars and the applicant had indicated that two assistants would be present, who would also need sufficient parking. He then asked why there was no provision limiting the pick-up and drop-off to the driveway. Ms. Lewis explained that the driveway for the home child care center was large enough to accommodate pick-up and drop-off, adding that a condition was not included due to the abundance of parking in the surrounding area. A discussion between Commissioner Hart and Ms. Lewis ensued regarding the need for a development condition limiting drop-off/pick-up parking to the driveway and the parking accommodations for the assistants wherein Ms. Lewis pointed out that there was sufficient street parking at the site, which made such a development condition unnecessary.

Commissioner Hurley echoed remarks from previous Commissioners regarding safety concerns and supported installing signage articulating that use of the deck was prohibited until the necessary permits were obtained. She also acknowledged the growing demand for daycare services. A discussion ensued between Commissioner Hurley and Ms. Bishop, with input from Ms. Lewis, regarding the location of the playground and the open space that would be utilized by the home child care center wherein Ms. Bishop indicated that these areas were located near a stormwater detention area, noting that there were sufficient pedestrian paths around this area.

Referring to the assessment conducted by the Zoning Inspections Branch (ZIB) shown on Page 3 of the staff report, Commissioner Sargeant asked how issues raised regarding the sleeping room, which was determined to not have adequate emergency egress, was resolved. Ms. Bishop explained that the applicant addressed this issue by relocating the sleeping areas to an area closer to an egress point and utilizing the original sleeping area as a general play area.

A discussion ensued between Commissioner Sargeant and Ms. Bishop, with input from Ms. Lewis, regarding the location of the heating system within the basement of the home child care center, the extent to which the facility had been inspected, the liability that the County would incur in the case of a violation, and the amount of staff dedicated to addressing cases involving home child care facilities.

Commissioner Sargeant suggested designating certain staff members to resolving issues regarding the application process for home child care facilities.

Commissioner Litzenberger expressed concern about the Planning Commission making determinations on the sufficiency of features such as decks and garages in applications pertaining to home child care facilities. A discussion between Commissioner Litzenberger and Ms. Lewis ensued regarding the extent to which other departments in the County were involved in assessing applications involving home child care facilities, the roles certain departments had in processing these applications, the qualifications of those inspecting these facilities, and the Planning Commission’s authority to rule on certain issues.

Referring to Appendix 5 of the staff report, Commissioner Hedetniemi pointed out that the inspection conducted by ZIB recommended a secondary egress point, but noted that there was nothing in the proposed development conditions to address this issue. Ms. Bishop explained that this issue had been addressed when the applicant relocated the sleeping area to an area closer to an existing point of egress. A discussion ensued between Commissioner Hedetniemi and Ms. Bishop regarding safety concerns for the main staircase within the home child care facility and how these concerns could be addressed wherein Commissioner Hedetniemi echoed remarks from Commissioner Litzenberger regarding the Planning Commission’s purview in assessing safety issues within a home child care facility.

A discussion ensued between Commissioner Migliaccio and Ms. Lewis regarding the usability of a deck that had not been inspected wherein Commissioner Migliaccio suggested that the language in Development Condition Number 12 be modified to prohibit the use of the deck during the hours of operation of the home child care center and Ms. Lewis did not object to such a modification.

Commissioner Lawrence recommended precluding applications for home child care facilities from conducting a public hearing before the Planning Commission if all the necessary inspections had not been conducted. He also supported articulating this policy during the pre-application briefing part of the process. In addition, he also acknowledged the importance of ensuring the continuation of the services provided by home child care centers, but noted the importance of ensuring that every outstanding safety concern had been addressed, adding that applications with unresolved issues would not be supported by the Commission.

When Commissioner Lawrence expressed concern about ensuring that applicants understood the application process and potential language barriers that might impede that process, Ms. Lewis concurred with these concerns, adding that the County did have translator services available for applicants as needed.

A discussion between Commissioner Ulfelder and Ms. Lewis ensued, with input from Commissioner Flanagan, regarding the number of home child care centers currently operating within the county that were licensed by the State of Virginia, the number of home child care facilities operating within the County by-right, the number of facilities that have received County approval, the number of outstanding applications for home child care facilities seeking approval from the Planning Commission, and the possible measures that staff could implement to expedite the processing of these applications wherein Commissioner Ulfelder expressed concern about the overall efficiency of the application process for home child care centers.

Commissioner Sargeant encouraged greater coordination between the County and the State of Virginia on the criteria for inspections regarding home child care centers.

Commissioner Flanagan expressed safety concerns about potential fire hazards for home child care facilities located in the basements of residential dwelling units. He also pointed out that larger child care facilities were required to disclose the age range of the children cared for at the facility and certain age ranges required additional safety considerations, noting that the presence of infants and the number of assistants present required the installation of a sprinkler system. Ms. Lewis acknowledged the different criteria for child care operations that accommodated infants and noted the current demand for infant care services. Commissioner Flanagan then stated that applicants for home child care centers were not required to disclose the age range of children cared for at the facility and recommended that such information be included in future applications. In addition, he supported prohibiting the use of the backyard area by the home child care center while the deck was being modified to bring it into compliance.

Commissioner Flanagan echoed remarks from previous Commissioners regarding safety concerns for the children being cared for at home child care facilities. He added that he intended to defer the decision only for the subject application at the conclusion of the public hearing, adding that he supported additional study of these issues for future applications. A discussion ensued between Commissioner Flanagan and Ms. Lewis, with input from Ms. Bishop, regarding safety concerns at home child care facilities and the dedication of the providers towards ensuring the safety of the children wherein Ms. Bishop indicated that the licensing system utilized by the State of Virginia for home child care facilities listed the age range of the children as part of the criteria and stated that the applicant had attempted to obtain all the necessary approvals for her facility, but noted that she did not have the necessary funds to do so.

Ms. Avalew stated that she had received permission from the LVHA to utilize the playground. She also expressed her intent to make the appropriate modifications to the deck and obtain the associated permits.

Chairman Murphy reiterated remarks from previous Commissioners regarding the demand for home child care services, the safety concerns associated with such facilities, and the importance of making the process more efficient for future applicants. He also encouraged greater

coordination between staff and the applicants for home child care cases to improve the application process. In addition, he echoed Commissioner Lawrence's remarks regarding the need for translators for applicants in need of such services.

Commissioner de la Fe echoed remarks from previous Commissioners regarding safety concerns for home child care providers, the demand for child care services, and the importance of ensuring that applicants understood the application process. He also expressed concern regarding providers operating unlicensed due to the difficulty of the application process for home child care centers.

Commissioner Sargeant pointed out the differences between the County and the State of Virginia with respect to the codes and guidelines for home child care facilities, noting the greater detail and complexity of the code from the State of Virginia. Ms. Lewis concurred with Commissioner Sargeant's remarks, adding that the efficiency of the application process for home child care facilities was still being improved.

Commissioner Hart indicated that the Board of Zoning Appeals went through a similar process regarding applications for home child care providers and described how this process was improved, noting the challenges associated with ensuring that applicants complied with the codes and guidelines of both the County and the State of Virginia.

Commissioner Hedetniemi suggested that staff and the Commission create a template to utilize for future applications to ensure greater efficiency. She also acknowledged the growing demand for processing applications for home child care centers.

Commissioner Migliaccio encouraged District Commissioners to coordinate with staff, applicants, and District Supervisors to address outstanding issues associated with applications involving home child care centers prior to the public hearing.

Chairman Murphy called for speakers from the audience, but received no response; therefore, he noted that a rebuttal statement was not necessary. There were no further comments or questions from the Commission and staff had no closing remarks; therefore, Chairman Murphy closed the public hearing and recognized Commissioner Flanagan for action on this case.

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Chairman Murphy: Public hearing is closed. Mr. Flanagan.

Commissioner Flanagan: Before we go on verbatim, I have a question for staff.

Chairman Murphy: We're on verbatim.

Commissioner Hall: Too late.

Commissioner Litzenberger: Too late.

Chairman Murphy: We now are off verbatim.

Commissioner Flanagan: If – I'm going to defer this for – until November 6. Does that give you enough time to take all of these comments and – or would you like more time or – I hate to hold this application up. I think there are solutions here where we can approve something for her within two weeks and then get onto some of these other issues at some later time.

Carmen Bishop, Zoning Evaluation Division, Department of Planning and Zoning:
Commissioner Flanagan, if we – if you would like us to draft conditions to address some of the comments that we've heard here tonight, we can definitely do that. If you are looking for the deck to be permitted and inspected, I do not believe that can be done by November 6th. So it depends on which way you want to go with that.

Commissioner Flanagan: Well this would be a condition for the approval that there would be no use of the backyard until – you know, that sort of thing.

Ms. Bishop: Okay, we could definitely work on that.

Commissioner Flanagan: Okay. Well let's – I can always defer again on November 6th if we don't have anything – you know, to report at that time. But I WOULD MOVE, Mr. Chairman, TO DEFER THE DECISION ONLY FOR SE 2014-MV – oops, wrong one.

Chairman Murphy: 028.

Commissioner Flanagan: 029 [sic].

Commissioners: 28.

Commissioner Litzenberger: You already did 029.

Commissioner Flanagan: Oh yeah, that's right – 28 – TO A DATE CERTAIN OF NOVEMBER 6TH, 2014, WITH THE REMAINING OPEN FOR WRITTEN TESTIMONY.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there a discussion of the motion? All those in favor of the motion to defer decision only on SE 2014-MV-028 to a date certain of November 6, with the record remaining open for comments, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much. Thank you, staff.

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(The motion carried by a vote of 12-0.)

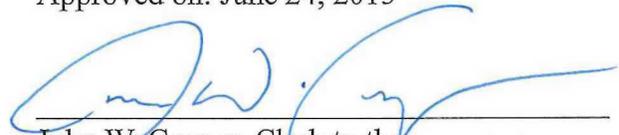
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The meeting was adjourned at 10:01 p.m.
Peter F. Murphy, Chairman
Janet R. Hall, Secretary

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: Jacob Caporaletti

Approved on: June 24, 2015



John W. Cooper, Clerk to the
Fairfax County Planning Commission