UNAPPROVED **MINUTES OF**
11/02/01 **FAIRFAX COUNTY PLANNING COMMISSION**
OCTOBER 25, 2001

PRESENT: Walter L. Alcorn, Commissioner At-Large
John R. Byers, Mount Vernon District
Joan M. DuBois, Dranesville District
Suzanne F. Harsel, Braddock District
John B. Kelso, Lee District
Ronald W. Koch, Sully District
Ilryong Moon, Commissioner At-Large
John M. Palatiello, Hunter Mill District
Linda Q. Smyth, Providence District

ABSENT: Janet R. Hall, Mason District
Peter F. Murphy, Jr., Springfield District
Laurie Frost Wilson, Commissioner At-Large

//

The meeting was called to order at 8:15 p.m. by Vice Chairman John R. Byers.

//

COMMISSION MATTERS

Commissioner Alcorn MOVED THAT THE DECISION ONLY ON ZONING ORDINANCE AMENDMENT (DRY CLEANERS) BE FURTHER DEFERRED TO A DATE CERTAIN OF NOVEMBER 14, 2001.

Commissioner Koch seconded the motion which carried unanimously with Commissioner Palatiello not present for the vote; Commissioners Hall, Murphy and Wilson absent from the meeting.

//

Commissioner DuBois MOVED THAT THE PUBLIC HEARING ON 2232-D01-17 AND SE-01-D-023, COMMUNITY WIRELESS STRUCTURES II, LLC, BE DEFERRED TO A DATE CERTAIN OF NOVEMBER 28, 2001.

Commissioner Koch seconded the motion which carried unanimously with Commissioner Alcorn not present for the vote; Commissioners Hall, Murphy and Wilson absent from the meeting.

//

Commissioner Palatiello MOVED THAT THE PUBLIC HEARING ON SEA-82-C-063-3, AAL PARTNERSHIP, BE DEFERRED TO A DATE CERTAIN OF NOVEMBER 7, 2001.

Commissioner Koch seconded the motion which carried unanimously with Commissioner Alcorn not present for the vote; Commissioners Hall, Murphy and Wilson absent from the meeting.

//

Commissioner Alcorn announced that the Development Criteria Review Committee would meet on November 15, 2001 at 7:00 p.m.

//

Commissioner Harsel announced that the Housing Committee would meet on November 28, 2001 at 7:00 p.m. in the Board Conference Room.

//

ORDER OF THE AGENDA

Secretary Harsel established the following order for the agenda items:

1. SE-00-V-046 - JAMES D. TURNER, TRUSTEE
2. SE-01-P-021 - CATHOLIC DIOCESE OF ARLINGTON, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON

This order was accepted without objection.

//

The first case was in the Mount Vernon District, therefore Vice Chairman Byers relinquished the Chair to Secretary Harsel.

//

SE-00-V-046 - JAMES D. TURNER, TRUSTEE - Appl. under Sect. 2-904 of the Zoning Ordinance to permit uses in a floodplain on property located generally to the N.W. of Cedar Rd. and Dogue Dr. on approx. 1.54 acres zoned R-2 and HC. Tax Map 109-2((3))(E)13;109-2((3))(C)7, 8. MT. VERNON DISTRICT. PUBLIC HEARING.

Jonathan Rak, Esquire, with McGuire Woods, LLP, reaffirmed the affidavit dated October 24, 2001. There were no disclosures by Commission members.

Ms. Cathy Belgin, 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 denial of the application because it was not in harmony with the Comprehensive Plan due to the location of the proposed development within an undisturbed environmental quality corridor (EQC).

In response to a question from Commissioner Byers, Ms. Belgin said that two properties adjacent to the application property had been purchased by the County in 1991 and demolished due to flooding and drainage problems.

Mr. Rak explained that the applicant owned 13 subdivided lots and desired to construct single family detached houses on three of them and to dedicate the remaining ten lots for a stream valley park. Referring to the issue raised by Commissioner Byers, Mr. Rak said that the difference between the properties demolished by the County and the application property was that the proposed houses would be raised above the flood level. Addressing a concern raised in the staff report that removal of vegetation could cause drainage, flooding or erosion problems, he said that preservation of vegetation and substantial buffers would result in minimal adverse effects downstream and that conditions of the special exception would require that clearing and grading be minimized and fill be maximized to the extent possible. Concerning another issue raised by staff, Mr. Rak acknowledged that the applicant had purchased the property after the adoption of floodplain regulations, but noted that many special exception applications for development in a floodplain had been approved in the past. He added that the applicant had been aware that development of the property would be subject to a rigorous review and could result in the loss of some lots, but was confident that a reasonable amount of development, representing a balance between environmental policy goals and the existing subdivided lots, would be approved. He cited a U. S. Supreme Court case in which the court found that acquiring property after regulations had been imposed did not prevent a landowner's claim for compensation for the effective taking of his property. He suggested that denial of the application would result in a taking of the property because there was no other economic use for the lots and would be inconsistent with dozens of other special exception applications which had previously been approved for development in an EQC in the Mount Vernon District and elsewhere. He submitted for the record two letters of support from neighbors. (These letters are in the date file.)

In response to a question from Commissioner Byers, Mr. Rak said the question addressed by the U. S. Supreme Court was whether there was a reasonable investment-backed expectation on behalf of the landowner for development of his property.

Responding to a concern raised by Commissioner Byers about the possibility that the County would have to acquire the property if flooding occurred, Mr. Rak said that the applicant was proposing to alter the physical dimensions of the floodplain and to build the houses a foot and a half above the maximum 100 year flood elevation.

In response to a comment by Commissioner Smyth that when floodplains were filled, the water went someplace else, Mr. Rak said the floodplain study for Dogue Creek indicated that the additional fill would not raise the floodplain elevation by any measurable amount.

Responding to a question from Commissioner Harsel, Mr. Rak said that the applicant had been aware that the property was located in a floodplain when he purchased it, but believed through the special exception process, mitigation measures and the dedication of lots to the stream valley, that the property was developable.

In response to another question from Commissioner Harsel, Ms. Belgin said the existing Keys and Russell subdivision had been built in the 1950s and that she was not aware of any proposals to build in the area since that time.

In response to a question from Commissioner Palatiello, Mr. Rak said the court case to which he had referred held that a landowner was not prohibited from pursuing a claim of taking when there had been a reasonable investment-backed expectation of the landowner in acquiring the property. He added that because the property was designated as subdivided residential lots in the Comprehensive Plan, and because a number of special exceptions had been granted for fill in the floodplain for the construction of single family residences, he believed the applicant had a reasonable investment-backed expectation when he purchased the property.

Responding to a question from Commissioner Palatiello, Ms. Belgin said the subject property had been subdivided at the time the existing development was built.

Ms. Leslie Johnson, ZED, DPZ, said the subdivision of the lots in the 1950s predated floodplain regulations and that she was not familiar with the Subdivision Ordinance as it existed at that time.

Secretary Harsel called the first listed speaker and recited rules for testimony before the Commission.

Ms. Denise Mulholland, 5303 Cedar Court, Alexandria, said her property was located across the street from the lots owned by Mr. Turner. She said the majority of the residents of the Keys and Russell neighborhood opposed the development due to environmental and flooding concerns.

In response to a question from Commissioner Byers, Ms. Mulholland said that every time it rained, water pooled on Mr. Turner's property.

Mr. Douglas Card, 5301 Cedar Court, Alexandria, said he had lived across the street from the subject property for 22 years and described water problems he had had during that time. He said while he was not for or against the proposed development, he believed it might improve the existing problems.

Mr. Richard Jackson, 8912 Dogue Drive, Alexandria, expressed opposition to the proposed development. He referred to a petition signed by the majority of the residents of the Keys and Russell subdivision opposing the development. (A copy of the petition is in the date file.)

Mr. James Turner, address unknown, father of the applicant, said he hoped to live in one of the proposed homes and pointed out that if the lots were developed they would produce revenue for the County.

Mr. Philip Hepburn, 4505 Dolphin Court, Alexandria, expressed support for the proposed development and said he thought it would benefit the community.

Ms. Pilar Carpenter, 8905 Dogue Drive, Alexandria, said she did not know if development of the property would improve the flooding problem or make it worse, but she wanted the Commission to know that a problem definitely existed.

Mr. Paul Smith, 5205 Cedar Road, Alexandria, expressed opposition to the proposed development. He said there were no curbs or gutters on Cedar Road or Dogue Road and asked if any improvements had been planned.

Commissioner Byers suggested to Mr. Smith that his neighborhood association contact the Mount Vernon District Supervisor, Gerald Hyland, about a neighborhood improvement program.

There were no further speakers, therefore, Secretary Harsel called upon Mr. Rak for a rebuttal statement.

Mr. Rak said that representatives from the Virginia Department of Transportation and the Department of Public Works and Environmental Services had indicated to the applicant that proposed improvements to drainage ditches and culverts should provide some benefit to the existing homes. He pointed out that there had been some reduction in flooding due to a number of flood control projects put in place upstream on Dogue Creek. He explained that the reason no special exception applications had been filed for filling in the floodplain in this area was because the only floodplain property was owned by Mr. Turner. He noted that the previous owner had acquired the legally subdivided lots before the floodplain regulations had been imposed and if the property could not be developed, the restrictions essentially created a public park. Mr. Rak said that an EQC designation and floodplain regulations should not be grounds for completely prohibiting development of the property because restrictions could be imposed through the special exception process. He requested a favorable recommendation.

In response to a question from Commissioner Harsel, Mr. Rak said that the purpose of the special exception process was to address situations where there would be no economic use for property if it were not allowed to be developed.

Responding to a question from Commissioner Harsel, the applicant, Mr. James D. Turner, said that his research showed that the County had approved over 100 special exception applications in the last 20 years and said he did not feel he was being treated in an equitable manner.

Secretary Harsel inquired if staff had any closing remarks. Ms. Belgin said that staff's position in recommending denial of the application was based on the fact that the property was located within the EQC, the floodplain and the resource protection area (RPA). She said other

applications had been approved for property located in both the floodplain and the RPA, but which had not been located in an EQC. She added that the County Attorney's Office had participated in the review of the application and staff's recommendation.

There were no further comments or questions, therefore, Secretary Harsel closed the public hearing and recognized Commissioner Byers for action on this item. (A verbatim transcript is in the date file.)

//

Commissioner Byers MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT SE-00-V-046 BE DENIED.

Commissioner Smyth seconded the motion which carried unanimously with Commissioner Alcorn not present for the vote; Commissioners Hall, Murphy and Wilson absent from the meeting.

//

Vice Chairman Byers resumed the Chair.

//

SE-01-P-021 - CATHOLIC DIOCESE OF ARLINGTON, THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON - Appl. under Sect. 3-104 of the Zoning Ordinance to permit a church and private school of general education on property located at 8601 Wolftrap Rd. on approx. 24.25 acres zoned R-1. Tax Map 39-1((1))3&5. PROVIDENCE DISTRICT. PUBLIC HEARING.

Ms. Stacy Rothfuss, with Cooley Godward, LLP, agent for the applicant, reaffirmed the affidavit dated September 19, 2001. There were no disclosures by Commission members.

Ms. Cathy Belgin, 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 the application.

Vice Chairman Byers said the Commission would stipulate that the church provided many worthwhile services to its parishioners and the community, but noted that a recommendation would be based on land use issues only.

Ms. Rothfuss said Our Lady of Good Counsel Church (OLGC) desired to expand and renovate its church and school facilities. She explained that the proposed expansion of the school would consist of a gymnasium and an area along the front of the school for administrative use. She

noted that the existing gym would be renovated and used for a computer lab and a library, and that routine upgrades would be made to the classrooms. She said the proposed expansion of the church included a new multi-purpose hall, an expanded entryway, a small additional storage space and a small chapel. She stated that additional parking would be provided and that much of the existing vegetation would be preserved with a minimal increase in the amount of impervious surface. Ms. Rothfuss described the proposed building materials and said the new structures would compliment the height, setback and ambience of the present buildings. She noted that two meetings had been held with members of the community and their suggestions had been incorporated into the plan. She said the applicant was in agreement with all development conditions with the exception of Number 7 which limited the hours of operation of the school to 10:00 p.m. on Friday evenings. She pointed out that the applicant would prefer 11:00 p.m. which would be consistent with staff's recommendation for Saturday evenings. She requested a favorable recommendation.

In response to a question from Commissioner Palatiello, Ms. Belgin said the special exception application would supersede the previously approved special permit.

Vice Chairman Byers called the first listed speaker.

Ms. Nancy McGrath, 2676 Glencroft Road, Vienna, expressed support for the application. She said she had two children enrolled in the school and described the inadequate facilities of the present school.

Mr. David Tondreau, 8519 Quaint Lane, Vienna, also expressed support for the application, and said he was in favor of the hours of operation as requested by the school.

Ms. Nancy Fon, 8517 Quaint Lane, Vienna, requested that a tree buffer be provided between the application property and the adjacent neighborhood; that OLGC be responsible for cleaning the outside of nearby homes after completion of construction; and that a noise study be done to ensure that neighborhood children would not be disturbed while trying to study or sleep when the gym was in use. She also suggested that the size of the gym be scaled down.

Commissioner Smyth commented that the neighbors had experienced problems with noise from the existing gym and were therefore concerned that a new, larger gym would generate even more noise. She pointed out, however, that because the new gym would be air conditioned and the windows would remain closed, it was hoped that the noise volume would decrease. She said this was one of the reasons the gym would not be allowed to be used after 10:00 p.m. on Friday evenings. She added that if the church desired to expand in the future, and the neighbors had not experienced an increase in noise, perhaps the hours could be extended.

Commissioner Koch asked if the gym could stay open until 11:00 p.m. on Fridays for a trial period of time so that if volume of noise was acceptable to the neighbors, the church would not have to file an amendment to the application to change the hours. Commissioner Smyth was not in favor of this suggestion.

Commissioner Kelso complimented the architects for an excellent job of designing the addition.

Ms. Gail McCarthy, address unknown, said she was in favor of allowing the gym to stay open until 11:00 p.m. on Friday evenings.

Ms. Johnson and Ms. Belgin responded to questions from Commissioner Palaltiello about Zoning Ordinance provisions that addressed noise attenuation.

Commissioner Smyth said that the neighbors were not only concerned about the noise coming from the gym, but also about noise associated with the building being vacated and cars leaving the parking lot.

In response to a question from Commissioner Palatiello, Mr. Jared Wilcox, with Lemay Erickson, Architects, explained that the new gym would have a 25-50 percent better acoustical absorptive quality and mass that would suppress any additional noise that might be generated. In addition, he said that supplemental plantings along the perimeter of the property, the added mass of the building, and the orientation of the parking lot which encouraged users of the facility to enter away from the property line, would also minimize the noise impact.

In response to a question from Commissioner Koch, Ms. Belgin said that language had been added to Development Condition Number 7 which prohibited the use of the rear doors and parking area behind the proposed gym, adjacent to residential property, during evening activity hours.

There were no further speakers, therefore, Vice Chairman Byers called upon Ms. Rothfuss for a rebuttal statement.

Ms. Rothfuss said additional efforts to minimize the noise impact included the retention of existing vegetation, evergreen plantings of six to eight feet in height, and the possibility that some of the vegetation would be installed in advance of construction.

Commissioner Koch said that the lack of speakers in opposition to this application indicated that the church had been a good neighbor and had addressed their concerns.

There were no further comments or questions from the Commission and staff had no closing remarks, therefore, Vice Chairman Byers closed the public hearing and recognized Commissioner Smyth for action on this application. (A verbatim transcript is in the date file.)

//

Commissioner Smyth MOVED TO RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SE-01-P-021, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED OCTOBER 24, 2001.

Commissioner Koch seconded the motion which carried by a vote of 7-0-1 with Commissioner Harsel abstaining; Commissioner Alcorn not present for the vote; Commissioners Hall, Murphy and Wilson absent from the meeting.

Commissioner Smyth MOVED TO RECOMMEND TO THE BOARD APPROVAL OF A WAIVER OF THE BARRIER REQUIREMENT TO THE NORTH, A MODIFICATION OF THE BARRIER REQUIREMENT TO THE WEST AND EAST IN FAVOR OF THE EXISTING FENCING, AND A MODIFICATION OF THE TRANSITIONAL SCREENING REQUIREMENT TO THE NORTH, EAST AND WEST IN FAVOR OF THE EXISTING VEGETATION WITH SUPPLEMENTATION AS SHOWN ON THE SE PLAT.

Commissioner Koch seconded the motion which carried by a vote of 7-0-1 with Commissioner Harsel abstaining; Commissioner Alcorn not present for the vote; Commissioners Hall, Murphy and Wilson absent from the meeting.

Commissioner Smyth FURTHER MOVED TO RECOMMEND THAT THE BOARD OF SUPERVISORS WAIVE THE SITE PLAN REQUIREMENT FOR FRONTAGE IMPROVEMENTS INCLUDING CURB AND GUTTER AND TO PERMIT THE SIDEWALK TO BE CONSTRUCTED AS DESCRIBED IN THE PROPOSED DEVELOPMENT CONDITIONS.

Commissioner Koch seconded the motion which carried by a vote of 7-0-1 with Commissioner Harsel abstaining; Commissioner Alcorn not present for the vote; Commissioners Hall, Murphy and Wilson absent from the meeting.

//

The meeting was adjourned at 10:15 p.m.
Peter F. Murphy, Jr., Chairman
Suzanne F. Harsel, Secretary

For a verbatim record of this meeting, reference may be made to the audio and video recordings which may be found in the Office of the Planning Commission of Fairfax County, Virginia.

Minutes by: Linda B. Rodeffer

Approved on:

_____

Mary A. Pascoe, Clerk to the
Fairfax County Planning Commission