MINUTES OF
PLANNING COMMISSION MEETING
OCTOBER 25, 1994

PRESENT: John R. Byers, Mount Vernon District
Judith W. Downer, Dranesville District
Patrick M. Hanlon, Providence District
Suzanne F. Harsel, Braddock District
Ronald W. Koch, Sully District
Peter F. Murphy, Jr., Springfield District
Carl L. Sell, Jr., Lee District
Alvin L. Thomas, Commissioner At-Large

ABSENT: Lawrence C. Baldwin, Commissioner At-Large
Robert v. L. Hartwell, Commissioner At-Large
John M. Palatiello, Hunter Mill District
Henry E. Strickland, Mason District

//

The meeting was called to order at 8:40 p.m. by Chairman Peter F. Murphy, Jr.
//

COMMISSION MATTERS:

Chairman Murphy announced that this was a special meeting of the Planning Commission and there was only one item to be addressed, a Zoning Ordinance Amendment on Retail Uses in Industrial Districts.

//

Commissioner Byers announced that the Policy and Procedures Committee would meet on Wednesday, November 16, 1994 at 7:45 p.m. in the Board Conference Room to discuss a program for writing an after-action report on the revisions to the Comprehensive Plan. He noted that subsequent meetings would be announced at a later date.

//

Chairman Murphy stated that because of scheduling changes the Planning Commission would not have public hearings on the following nights: Wednesday, November 2, 1994 and Thursday, November 10, 1994.

//

Chairman Murphy announced that the Mini-Mart Committee would meet on Wednesday, November 30, 1994 at 7:00 p.m. in the Board Conference Room. He noted that the purpose of

the meeting was to discuss a proposed Zoning Ordinance Amendment concerning the sale of food items by service stations and quick service food stores.

//

ORDER OF THE AGENDA ITEMS

Chairman Murphy announced that the Zoning Ordinance Amendment (Retail Uses in Industrial Districts) was the only item on the agenda this evening.

No objections were expressed.

//

> ZONING ORDINANCE AMENDMENT - CHAPTER 112 - On the matter of an amend. to Chap. 112, the Zoning Ord. of the 1976 Code of the County of Fairfax, as follows: Amend Art. 5, 9 & 20 to allow minor ancillary retail sales in conjunction with certain industrial uses as a permitted use in the I-4, I-5, & I-6 Districts, & to allow either furniture stores or retail sales establishments as a principal use by special exception in the I-4 & I-5 Districts. PUBLIC HEARING.

Mr. Michael Congleton, Zoning Administration Division (ZAD), Office of Comprehensive Planning (OCP) , presented the staff report, a copy of which is in the date file. He noted that given the typical operation of a furniture store, which could be characterized by a normally higher percentage of storage warehouses than other retail uses, and its documented trip generation and parking demand rate, staff felt that the use would be more appropriate as a special exception in the I-4 and I-5 Districts subject to the proposed standards. Therefore, he said, staff recommended adoption of the proposed amendment with Option 1.

In response to Commissioner Harsel's query, Mr. Congleton explained OCP's definition of ancillary use.

Commissioner Harsel asked if the Zoning Ordinance contained an ancillary use. Mr. Congleton responded in the negative. Ms. Jane Gwinn, Director, ZAD, OCP, gave a brief description of such a use which she said could also be referred to as an accessory use; e.g., a wholesale trade establishment.

With reference to Page 5, Paragraph 1, of the proposed amendment, Mr. Congleton responded to Commissioner Harsel's question by stating that subordinate retail sales to wholesale trade establishments, contractor's shops, and manufacturing uses were not specifically recognized by the Zoning Ordinance and would be deemed illegal uses in an industrial district.

In response to a question from Commissioner Harsel concerning the percentage of illegal uses referenced in "Portions of Sullyfield," on Page 5 of the Proposed Amendment, Mr. Congleton stated that staff had based their figures on an Aper business basis, not on space occupied.

With respect to passage of the proposed Zoning Ordinance Amendment, Commissioner Harsel asked if the Planning Commission would have to process Out-of-Turn Plan Amendments (OTPAs) to recognize those industrial areas where a retail use or contractor's office might be desired. Mr. James P. Zook, Director, OCP, stated that such OTPAs would not necessarily have to be done especially if Option 1 was adopted. He noted that if there was provision for Option 2 and there was a conflict between allowing a retail use with respect to the Plan language then an amendment to the Comprehensive Plan would be required. In response to another query from Commissioner Harsel, Mr. Zook stated that any decision to establish commercial/retail areas should be done through the Comprehensive Plan Review process rather than piecemeal through special exceptions in industrial zones.

Commissioner Harsel referred to Page 11, subparagraph 6, and asked what made an establishment for production and processing different from a printing establishment. Ms. Gwinn stated that that was a grammatical error, as pointed out by Commissioner Byers, and staff would make the necessary change.

With reference to Page 12, subparagraph 3.A., Commissioner Harsel asked staff if a business that had been established in a warehouse would be allowed to have retail use and a display in the basement. Mr. Congleton replied that it could be but the warehouse would still be limited to forty percent (40%) of the floor area for retail and sixty percent (60%) above-ground space for warehousing.

Commissioner Harsel then referred to Page 15, subparagraph 2, which stated: "The structure shall be designed to promote the character of the district through architectural design which is compatible with surrounding industrial uses." She asked staff if that could be construed to mean that an owner would be required to redesign an existing building or part of an existing building. Mr. Congleton replied that that could be a consideration; however, it would be up to the Planning Commission and the Board of Supervisors to make that decision through the special exception process.

Chairman Murphy called the listed speakers and explained the rules and procedures for addressing the Planning Commission.

Mr. John Mazur, co-owner of the Weekend Furniture Store, 14320 Sullyfield Circle, Chantilly, stated that he and his partner operated two furniture stores; one in the Shell Industrial Park in Alexandria, and the other in Sullyfield Industrial Park in Chantilly. He said that to reach a solution, trip generation and parking; prevention of certain retail uses in I-zoned property from harming C-zoned property; and, changing the Comprehensive Plan needed to be resolved. Mr. Mazur gave examples of how those problems could be solved. Mr. Mazur stated that he would support Option 1 of the proposed Zoning Ordinance Amendment.

Mr. John Mitchell, President, DPM Furniture, 2738 Gallows Road, Vienna, VA, stated that his store was a medium to high end furniture store that operated out of a warehouse facility. He offered suggestions on how the County could address the retail uses dilemma. When asked by Chairman Murphy which option he preferred, Mr. Mitchell said he could only comment on references to furniture contained in the proposed Zoning Ordinance Amendment.

Commissioner Sell stated that the Comprehensive Plan of Fairfax County was similar to a contract with everyone living, working and operating businesses within its borders and contained information on how the County would develop. He suggested that anyone interested in future plans for the County should avail themselves of the information contained in it.

William H. Hansbarger, Esquire, with Baskin, Jackson and Hansbarger, represented Frugal Fannie's Fashion Warehouse, located in a warehouse facility on Port Royal Road in Springfield, VA. Mr. Hansbarger stated that Frugal Fannie's had been in operation at the same site for 11 years and only sold women's clothing. He noted that Frugal Fannies only operated on weekends and had encountered no problems with traffic congestion or adequate parking facilities. Mr. Hansbarger further explained his client's position with respect to the proposed Zoning Ordinance Amendment, and then suggested alternatives. He said that his client requested that Option 2 be adopted.

In response to Commissioner Harsel's question, Mr. Hansbarger said he represented only one of the Frugal Fannie's warehouses which was located on Port Royal Road. Responding to another question, Mr. Hansbarger stated that his client had not expanded its floor space at that location in the last 11 years. Commissioner Harsel disputed that statement and said that they had taken over the space of a furniture store which had been located on that site, and therefore their overall space had been increased.

Commissioner Harsel asked if Frugal Fannie's was able to provide parking on site. Mr. Hansbarger replied that it provided much of its parking on site and also rented space from the two office buildings located nearby.

Commissioner Harsel then read into the record a statement from Ms. Ellen Eggerton, President, Ravensworth Farm Civic Association, dated October 15, 1994, stating that the Association supported a special exception for Frugal Fannie's for retail use of nondurable goods in an industrial district. (A copy of the letter may be found in the date file.)

Commissioner Sell asked Mr. Hansbarger how Option 2 could be balanced against the specific language contained in the Comprehensive Plan. Commissioner Sell said it was his opinion that the Plan would have to be amended to allow commercial uses within an industrial zone and asked staff to respond to that sometime during the process. Mr. Hansbarger stated that the existing Zoning Ordinance permitted commercial use in a warehouse in both the I-4 and I-5 districts and, therefore, he saw no conflict. Commissioner Sell indicated his concern that the use, as stated in the Comprehensive Plan, could be compromised. Mr. Hansbarger argued that there would be no need for compromises if special exceptions were not granted and use was limited.

He noted that the County had implemented the Comprehensive Plan with the adoption of the Zoning Ordinance, which in turn authorized limited commercial use within the I-4 and I-5 Districts.

Mr. Zook and Commissioner Hanlon discussed the possibility of amending the Comprehensive Plan should certain retail uses be allowed in an industrial zone; granting special exceptions to churches requesting location in residential areas; the existence of five commercials zones which had been set aside for commercial retail use; and, the distinction between examples set forth by Commissioner Hanlon and the special exceptions for institutional or church uses.

Commissioner Sell said he was concerned about the integrity of the Comprehensive Plan and argued that it would be inappropriate to allow the Zoning Ordinance to dictate uses not previously identified in the Plan. He said appropriate language would have to be added to the Plan before retail sales establishments within an industrial zone were allowed.

Commissioner Hanlon rebutted by stating that the Planning Commissioners already allowed certain uses which could qualify as "commercial" in residential areas; e.g. day care centers. He said he disagreed with Mr. Zook's analogy that uses not identified by zone should not be identified by specific language in the Comprehensive Plan. He said the question was whether or not those uses were compatible and that was how the special exception standard was applied. He indicated that he did not think it was necessary to have specific Plan language to deal with the issue at hand if they were compatible uses, rather than general principles of the Plan which would govern them.

Mr. Charles Stein, Managing Director, Frugal Fannie's, said that Mr. Hansbarger had presented his views and declined to speak.

Thomas Lawson, Esquire, 10805 Main Street, Fairfax, represented Marlo Furniture. He said that his client was opposed to Options 1 and 2. He stated that while retail uses in the I categories could be permitted, it should be kept in mind that all business people had to play by the rules because the ramifications could cause chaos.

Mr. Lawson complimented staff on their analysis and preparation of the two proposed amendments to the Zoning Ordinance. He referred to the difference in lease rates for retail space between commercial and industrial areas. He then submitted two letters for the record; one from Mr. Edward Murphy, Senior Vice President, Combined Properties, Washington, DC, dated October 14, 1994, and the other from Mr. Robert Rubin, General Partner, Richard H. Rubin Management Corporation, Rockville, MD, dated October 20, 1994. (Copies of the letters may be found in the date file.) He indicated that the cost of space in an industrial area would rise if indiscriminate retail uses were allowed. Mr. Lawson said he could foresee two major problems: 1) the lack of a clear definition for furniture stores; and, 2) the lack of a time limit, should the proposed amendments be adopted.

Commissioner Byers asked staff if the adoption of Option 2 would allow an industrial office park to be taken over by retail establishments and, in effect, become a small shopping center. Mr. Congleton stated that could happen and, if approved through the special exception process, an industrial office park could become totally retail.

Mr. Adam Glickfield, Vice President, Real Estate, Marlo Furniture, 5650 General Washington Drive, Alexandria, said his company did not feel that all businesses currently operating in the I Districts were abiding by the same rules and regulations and he felt they should. He addressed statements made previously concerning traffic generation and the potential loss of revenue to the owners of commercial properties.

In response to Chairman Murphy's question, Mr. Glickfield stated that his company was not trying to force anyone out of business; however, they were requesting that everyone be obligated to abide by the current Zoning Ordinance and that no changes be adopted.

Mr. Scott Myer, co-owner of the Weekend Furniture Store, 14320 Sullyfield Circle, Chantilly, addressed the following subjects: whether or not furniture/retail establishments that were not 40/60 by-right should be allowed to operate in I Districts; traffic patterns; hours of operation; and, whether or not such establishments provided an unfair competitive edge. Mr. Myer noted that it was not economically feasible to separate the sales area of furniture stores from their warehouses. Mr. Myer said that he supported Option 1.

Responding to Commissioner Koch's question, Mr. Myer stated that one of his stores conformed to the present Zoning Ordinance and the other did not. In the instance where the store was not in conformance, he said the configuration was approximately 70/30. Mr. Myer stated that he could not decrease his retail area to be in compliance with the current Ordinance. He explained that being in conformance with the Ordinance would depend upon the size of the space and how the warehouse could be racked to comply with the 60/40 regulation.

Keith Martin, Esquire, with Walsh, Colucci, Stackhouse, Emrich & Lubeley, stated that he represented land owners who were working with Frugal Fannie's. He indicated that he agreed with the remarks made by Mr. Hansbarger. Mr. Martin said his clients supported Option 2 of the staff report because they believed it was fair and manageable; that the special exception approach would not change the underlining zoning district; and, that it would allow the Planning Commission and the Board of Supervisors to impose reasonable development conditions regarding hours of operation, landscaping, and parking on a case by case basis. He noted that Option 1 would protect approximately 94 percent of the cases but would leave over 30 businesses with little or no reasonable recourse.

Responding to a question from Commissioner Hanlon, Mr. Martin stated that although he was a member of the Board of Directors of the Fairfax County Chamber of Commerce he could not speak on their behalf. He did say, however, that they had members on both sides of the fence on this issue, and because of that the Chamber had opted not to take a position but to allow its members to speak on their own behalf. He said the Chamber had notified its members of the

public hearing and had requested that they take action either by speaking out this evening or writing to the Planning Commission and Board of Supervisors indicating their position on the issue. He expressed surprise that there was so little representation from those businesses that had received notices of violation from the County.

Chairman Murphy, referring to a comment made by Mr. Martin concerning a bus trip taken by the members of the Retail Uses Committee, stated that approximately one year ago the Planning Commissioners had taken a trip to visit the various Industrial parks in question and determine for themselves which businesses were in compliance and which were not.

Mr. Ze'ev Revitch, owner of a small business on General Washington Drive, Alexandria, stated that 14 years ago, when he established his business, he had to comply with all of the regulations imposed by the County on businesses such as his. He expressed dismay that so many businesses had been allowed to operate in noncompliance with the present Zoning Ordinance and that County staff was just now trying to enforce it. He said he thought that everyone should have to comply with the existing regulations and no one should be grandfathered.

Carmela Leone Bell, Esquire, Vice President and General Counsel for Reliable Stores, Inc., Columbia, MD, stated that her company had business dealings with the Hub Furniture store and Lazy-Boy in Fairfax. She also stated that she was a member of the Legislative Committee of the Maryland Retail Merchants Association which was opposed to any of the proposed changes to the current Zoning Ordinance because they were committed to remaining in commercial areas. Ms. Bell said that the Association was concerned about the high vacancy rate in commercial areas and acknowledged that rents definitely had something to do with that vacancy. She noted that they were concerned about neighboring tenants leaving; the huge effect the vacancies would have on traffic reduction to those sites; and the negative impact it would have on consumers.

Commissioner Hanlon queried Ms. Bell as to why, given the high vacancy rates in commercial spaces, owners refused to reduce rents in order to attract tenants. Ms. Bell said that it was her experience that landlords would not reduce rents but that recently some were willing to make non-monetary provisions. Commissioner Hanlon and Ms. Bell then discussed some of the reasons why owners would not reduce commercial space rates; and, types of non-monetary amenities they were willing to include in lease agreements.

Mr. Greg Gershon, Music Incorporated, 5590 General Washington Drive, Alexandria, stated that his company was not involved in retail sales and had moved to an Industrial park to avoid a retail situation. He said they were not in favor of the proposed Zoning Ordinance Amendment and asked that the Commission enforce the provisions of the current Zoning Ordinance.

Mr. Alan Nash, General Partner, Chantilly Park Associates, 5100 Twinbrook Road, Fairfax, stated that his company owned the Chantilly Park Shopping Center, located at 14511, 14531 and 14515 Lee Jackson Memorial Highway, Chantilly. He noted that five years ago the shopping center was 100 percent rented and that over the last five years they had lost 25 percent of their

tenants due to bankruptcies and loss of assets caused by retailers being allowed to operate in nearby industrial parks. He stated that he was opposed to any of the changes referenced in the proposed Zoning Ordinance Amendment. He said staff should enforce the laws now on the books and reduce the illegal retail uses in warehouse space. (A copy of a letter submitted by Mr. Nash may be found in the date file.)

Commissioner Downer asked Mr. Nash to explain the circumstances that led to his company's loss of one quarter of its tenants. Mr. Nash gave examples of the types of tenants that had moved out; the lower cost of rent per square foot for warehouse space; and, the problems his company was encountering as a result.

Responding to a question from Commissioner Hanlon, Mr. Nash stated that he could not answer in the affirmative or negative as to whether or not the businesses he had cited earlier could be considered illegal competition. Commissioner Hanlon and Mr. Nash discussed the reasons why he and other owners of commercial space could not or would not reduce rents in order to compete with the industrial parks.

Commissioners Sell and Hanlon and Mr. Nash discussed the cost of commercial center infrastructures; acknowledged that loan repayment was the reason rents were so high; and, noted that the Zoning Ordinance required that commercial centers provide amenities such as parking and landscaping and did not require them for industrial parks.

Commissioner Hanlon stated that the issue at hand was not one of land use as long as all the policies had been addressed, but it was one of economics from which the citizens of Fairfax County were benefiting. He said that in conjunction with the directive set forth by the Chairman of the Planning Commission this evening, only land use issues be addressed. Commissioner Hanlon stated that it was his opinion that was what staff had done with the proposed options. Those options, he noted, would require that each application be addressed on a case by case basis. He also advised the Planning Commission could not get involved in economics because they were not authorized to do so.

Commissioner Sell expressed his opinion concerning land use. He said he thought the proposed Zoning Ordinance Amendment would change the character of various zoning classifications which could have a tremendous impact not only on economics but other issues as well.

Mr. Thomas George stated that he represented a temperature controls contractor located in the Shirley/Edsall Industrial Park. He indicated that his company was not in favor of the proposed amendment to the Zoning Ordinance.

Mr. Paul Kracunas, 5331 Black Oak Drive, Fairfax, indicated that he agreed with comments made earlier by Commissioner Sell and stated that if either of the recommended options were adopted there would be a drastic, negative impact on the Comprehensive Plan. He discussed the issues that lead up to numerous law suits after the Board of Supervisors passed the Zoning

Ordinance Amendment to the Commercial and Industrial Districts (C&I). He said it was his opinion that the issues raised this evening concerning retail uses in Industrial Districts would generate the same type of negativity.

Commissioner Hanlon and Mr. Kracunas discussed the differences between the C&I litigation and the proposed Zoning Ordinance Amendment before the Commission this evening.

Mr. Kracunas expressed the opinion that the Planning Commission could not disassociate itself from the economic impact the proposed amendment would have on the owners of commercial space. He said it was part and parcel of the problem and would have to be addressed eventually.

There being no further speakers to this item, Chairman Murphy called for closing staff comments. Mr. Congleton and Ms. Gwinn declined.

Commissioner Downer and Mr. Congleton discussed the 1,000 square foot, 10 percent limitation on businesses for display purposes; how warehouse vs. display area was configured; space allocations; and, trip generation. Ms. Gwinn noted that industrial parks were basically warehouses and were designated for storage. Ms. Downer and Ms. Gwinn also discussed the meaning of "establishment"; e.g. would a business owner have to confine everything to one building or could he occupy space in another building and still have it be considered as one establishment. Ms. Downer suggested that perhaps staff should look into the possibility of combining shopping centers with industrial parks and creating a new category which would allow a store in front and a warehouse in the back.

Chairman Murphy thanked Mr. Congleton for putting together a succinct proposal and Ms. Gwinn and Mr. Zook for their support.

Commissioner Hanlon stated that he thought the proposal before the Commission this evening was one of the best considered Zoning Ordinance Amendments to come before the Commission. He said it was an exemplary procedure and should be followed in the future. He complimented the Chairman and OCP staff for their innovation.

Commissioner Sell expressed the opinion that in the future, consideration should be given to limiting the Zoning Ordinance Amendment processes.

There being no further comments or questions, Chairman Murphy closed the public hearing. (Complete verbatim excerpts may be found in the date file.)

//

Chairman Murphy MOVED THAT THE PLANNING COMMISSION DEFER DECISION ON ARTICLES 5, 9, AND 20, RETAIL USES IN INDUSTRIAL ZONING DISTRICTS, OF THE PROPOSED ZONING ORDINANCE AMENDMENT, TO A DATE CERTAIN OF

NOVEMBER 30, 1994, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENT.

Commissioners Byers and Hanlon seconded the motion which passed unanimously, with Commissioner Harsel not present for the vote; Commissioners Baldwin, Hartwell, Strickland and Palatiello absent from the meeting.

//

The meeting was adjourned at 10:29 p.m.
Peter F. Murphy, Jr., Chairman

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: Mary A. Pascoe

Approved on: July 26, 1995

Mary A. Pascoe

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