MINUTES OF
PLANNING COMMISSION MEETING
OCTOBER 29, 1992

PRESENT: Lawrence C. Baldwin, Commissioner At-Large
David P. Bobzien, Centreville District
John R. Byers, Mount Vernon District
Patrick M. Hanlon, Providence District
Suzanne F. Harsel, Braddock District
Stephen J. Hubbard, Dranesville District
Maya A. Huber, Commissioner At-Large
Peter F. Murphy, Jr., Springfield District
Henry E. Strickland, Mason District
Alvin L. Thomas, Commissioner At-Large

ABSENT: Ronald W. Koch, Sully District
Carl L. Sell, Jr., Lee District

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The meeting was called to order at 8:20 p.m. by Chairman Peter F. Murphy, Jr.

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COMMISSION MATTERS

Commissioner Huber reminded her fellow Commissioners that the Office of Comprehensive Planning staff would have a presentation in the Board of Supervisors Auditorium on Wednesday, November 4, 1992, at 7:00 p.m., to brief the Commission on the proposed Zoning Ordinance amendment regarding special exceptions, special permits, planned rezonings, and proffered rezonings. She added that the briefing would be televised and would be open to the public.

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ORDER OF THE AGENDA

Secretary Harsel announced the sole case slated for tonight's agenda:

1. Zoning Ordinance Amendment (Churches)

This order was accepted without objection.

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ZONING ORDINANCE AMENDMENT (Churches) - On the matter of an amendment to Chapter 112, the Zoning Ord., of the 1976 Code of the County of Fairfax, as follows: Amend Articles 3, 4, 5, 6, 8, & 9 as follows:

- Convert churches, chapels, temples, synagogues & other such places of worship from a Group 3 special permit use to a Category 3 special exception use.

- Convert convents, monasteries, seminaries, & nunneries from a Group 3 special permit use to a Category 3 special exception use.

- Establish a new Category 3 special exception use of child care centers, nursery schools, & private schools when located on the same lot as a church or other such place of worship, regardless of daily enrollment.

- Revise & clarify the amendment & revocation provisions for special permit & special exception uses.

- In addition, pursuant to the authority granted by *Virginia Code* § 15.1-491(f), the amendment proposes to amend Article 18, Administration, Amendments, Violations, & Penalties, Sect. 18-106, Application Fees, to establish application fees for the following new special exception uses:

PROPOSED FEES

Churches, chapels, temples, synagogues,
other such places of worship: $135

Child care centers, nursery schools, &
private schools with an enrollment of 99
students or less when located on the same
lot as a church or other place of worship: $135

Child care centers, nursery schools, &
private schools with an enrollment of 100
students or more when located on the same
lot as a church or other place of worship: $1,980

Convents, monasteries, seminaries, &
nunneries: $135. PUBLIC HEARING.

Ms. Leslie Johnson, Zoning Evaluation Division (ZED), Office of Comprehensive Planning (OCP), gave the staff presentation, a copy of which is contained in the date file. She explained the proposed amendment to the Zoning Ordinance. She said that the total application process should take approximately five months and it was anticipated that the amendment would result in an additional 50 special exception applications a year which would impact both the Planning Commission and the Board of Supervisors (BOS) as public hearings would be required.

Ms. Johnson addressed questions from Commissioner Hanlon concerning the Ordinance's benefits.

Commissioner Thomas called attention to a matrix which was displayed on the viewgraph and showed the differences between special exceptions and special permits, a copy of which may be found in the date file.

In response to Commissioner Strickland's question, Ms. Johnson explained the purpose, usefulness, and differences between those applications to be heard by the Board of Zoning Appeals (BZA) and those by the Commission.

Ms. Jane Gwinn, Director, Zoning Administration Division, OCP, stated that the *State Code* allowed and the BOS adopted the Ordinance which determined the uses for special permits and special exceptions. She explained that both were legislative acts and there was no definitive answer.

In response to Commissioner Huber's question, Ms. Johnson explained differences regarding additional standards noting that the BOS had the authority to modify them while the BZA must abide by the guidelines.

In response to Commissioner Harsel's question, Ms. Johnson stated that if any applicant was unhappy with an action taken either by the BZA or the BOS, they could go through the Circuit Court as a right of appeal.

Ms. Barbara Byron, Director, ZAD, OCP, responding to Commissioner Harsel's question stated that she could not recall an instance when an applicant, who had gone through the BZA's procedure for the uses under discussion, had a need for a standard waiver.

In response to Commissioner Harsel's question, Ms. Johnson explained that the BOS had authorized the staff of OCP to prepare the ZO amendment; the staff reports were distributed, and a mailing, through OCP's normal process, was done from their distribution list of all those groups, individuals, etc., who are informed of ZOAs. She said that they did not have a master list of churches throughout the County nor was she sure if such a list existed.

Chairman Murphy added that the County was legally required to advertise ZOAs in the newspapers.

In response to Commissioner Baldwin's question, Ms. Johnson explained the type of action required when a use was no longer allowed.

Ms. Byron clarified that the BZA frequently approved special permits with a condition that restricted the special permit to the applicant only. She said that there had been many situations where a church had changed from one denomination to another and caused it to have to reapply for an amendment to their special permit. She noted that the proposed ZOA would allow that change through the BZA.

Ms. Gwinn further clarified the approval process.

Ms. Gwinn and Ms. Byron responded to questions from Commissioners Hanlon, Hubbard, and Strickland regarding special exception renewals under the ZO and the approximate time tables for BZA and BOS actions.

Chairman Murphy called the first listed speaker and reviewed the Commission's rules for presenting oral testimony.

Pastor Benjamin Sanders, representing the Bethlehem Baptist Church, 46401 West Ox Road, Fairfax, stated his support for the effort of the Planning Commission and the BOS to change the structure and procedure of the approval process. Pastor Sanders requested consideration of language which would amend the Code to repeal the special use or special exception and return churches to their original 1972 status of uses permitted by-right.

Commissioner Hanlon asked staff if it were proper and permitted, considering the notice requirements of State law, for the Planning Commission to consider Pastor Sander's amendment suggestion. Ms. Gwinn responded that it had not been advertised and therefore was outside the scope of the procedure before the Commission tonight and must be taken up as a separate ZOA.

Questions and discussion followed between Pastor Sanders and Commissioner Hanlon regarding church rights and basic freedoms, restrictions, whether real or presumed, imposed by the BZA, and the fact that churches should not be classified as a business.

Pastor Sanders stated that he believed that the BZA would restrict church's basic rights of growth and in so doing would restrict the right of freedom of religion.

Chairman Murphy interjected that the audience and the Planning Commission must refocus on what was before them tonight.

Commissioner Hubbard explained that the political process in which the Planning Commission engaged. He stressed that the process of application approvals required the imposition of conditions and the request of proffers as part of the zoning action. He said that it was his belief that the approval of this ZOA would result in more administrative processing and that some of the uses routinely approved by the BZA would not be approved.

Commissioner Hanlon explained the political process.

Commissioner Bobzien commented that it was wrong to assume that the proposed ZOA would result in less conditions than were imposed by the BZA but, in fact, there were sure to be more.

Commissioner Huber added that churches have many rights recognized by federal and state law and that the BZA was appointed by the courts. It was her opinion, she offered, that churches should not be regulated by the state but, if regulations became necessary, they should be regulated by a court appointed body. She noted that regulation had become necessary because of

the urbanization of the County and that the Zoning Ordinance had become necessary to regulate land use issues.

Pastor Sanders voiced concern over the prospect that a compromise of religious freedom might occur because of the many controls placed on churches with the result being a hindrance on and restriction of ministries.

William B. Lawson, Jr., Esquire, 4141 North Henderson Road, Arlington, noted the differences between the BZA and the Planning Commission's and BOS' review of an application. He commented on the fact that the BZA tended to be more quasi-judicial and more of a fact finder. If the processing were to be changed from the BZA, he suggested, it would become a legislative function and approvals would probably be more difficult. Mr. Lawson believed that the child care centers connected with churches should go before the same body as the churches and should not be separated. He gave his opinion on the clarification of standards for parking space designations for both child care centers and places of worship.

Mr. Glenn Dryden, 5443 Safe Harbor Court, Fairfax, commented on the frustration of religious organizations in their endeavors to perform their religious duties. He said it was his hope that the amendment might make the procedural tasks simpler.

David Lause, Esquire, Fadoul & Associates, Northern Virginia Church Planning Consultation & General Council for Catholic Diocese of Arlington, 8280 Greensboro Drive, Suite 700, McLean, stated that the Consultation's goals were to provide opportunities of cooperation, strategic long range planning, and improved relationship with citizens, businesses, and governments in all the jurisdictions of Northern Virginia. He contended that churches in neighborhoods were desirable uses because they added to the quality of life of communities. He noted that all churches differ in the problems each encounter when going through the application process and that the, process itself was far too complicated, complex and time consuming. Mr. Lause stated that churches were not businesses but integral parts of the community and their problems needed to be addressed. He requested that the Planning Commission defer the decision.

Commissioner Hanlon commented that the processing of church applications was a highly political process. He called attention to the fact that there were many citizens from surrounding neighborhoods who become involved because of their concern over such issues as the overflow parking and cut-through traffic through their neighborhoods. He noted the kind of process which was the result of a case-by-case basis and of by-right resulted in an effect which almost certainly must accommodate all views because of the impacts which the development caused on its surroundings.

Chairman Murphy announced that Mr. Lause was the last of the listed speakers and asked if there was anyone present who wished to address the application.

Mr. William Nowers, representing Pastor Steve Reynolds of the Capital Baptist Church, 3435 Aston Street, Annandale, questioned the authority of the County to put restrictions on churches as he believed the entire process was illegal.

Pastor John Bond, Temple Baptist Church, 4510 Daly Drive, Chantilly, gave a brief history of his experiences dealing with the County's application process and commented that the system worked back then in the 1970s. He said his recent experiences were quite negative and his only recourse was to sue the County through the Circuit Court system. He noted that the problems churches were experiencing were escalating. Mr. Bond suggested that a new category of by-right development for churches be considered which would solely address the special needs of religious establishments.

Pastor Bud Calvert, Fairfax Baptist Temple, 9524 Braddock Road, Fairfax, suggested that a procedure be developed which would computerize the names and addresses of churches in the County so that an automatic mailing could be done when cases were to come before the Planning Commission which affected religious establishments. He noted that the reason a church was considered a special use was because, according to County records, often times a house was bought to hold religious services and its yard was converted into a parking lot and the special exception use permit was instituted to prohibit that practice.

There being no more speakers, Chairman Murphy asked if there were any closing comments from staff or questions from the Commission.

Ms. Byron commented that the new procedure of "Process Redesign" to streamline the application processing had instituted many shorter forms which brought the applications before the Commission in a shorter time and that other aspects of the planning development process were now being considered. She added that an additional enhancement to the process also being considered was bringing the Department of Environmental Management into the zoning process for the early resolution of engineering issues.

Commissioner Hanlon commented that the ZOA before them would only stipulate the bodies who decided the land use issues and did not address the issues raised by speakers, that of the procedures involved in processing applications through the County system. He suggested that a task force be formed to work towards a Zoning Ordinance which would better address and deal with the issues.

In response to Commissioner Hanlon's remarks, Ms. Gwinn noted that the Board of Supervisors and Supervisor Frey were heading up a committee to work with the church communities to address and respond to many of the issues voiced tonight. She conceded that some of the issues raised were not being addressed by the amendment; however, the site plan process, the submission requirements, and the Zoning Ordinance requirements were under review.

Commissioner Harsel introduced two letters for the record evidencing the individuals' views on the proposed ZOA. The first, she stated, was from Mr. Everett D. Greinke of the Hope Lutheran Church, 4604 Ravensworth Road, Annandale, and the second was a letter addressed to Chairman Murphy from Reverend David C. Jones of the Church of the Good Shepherd, 9350 Braddock Road, Burke, both of which are in the date file.

Chairman Murphy stated that a better form of communication between the County and religious establishments needed to be established and he requested those present to assist in the compilation of a mailing list for notification purposes.

Commissioner Hanlon requested that Ms. Gwinn assist in some kind of alternative route procedure so that those who don't want to go through a special exception process may retain an option to go through the BZA. He asked that the information be available sometime between now and the decision date.

As there were no further questions or comments, Chairman Murphy closed the public hearing and recognized Commissioner Thomas for action on the case. (Verbatim excerpts are in the date file.)

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Following summary remarks, Commissioner Thomas MOVED THAT WE DEFER THE DECISION ON THE PROPOSED ORDINANCE AMENDMENT TO ARTICLES 3, 4, 5, 6, 8, 9, AND 18, CHURCHES AND OTHER PLACES OF WORSHIP, UNTIL NOVEMBER 12, 1992, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENTS.

Commissioners Bobzien, Hanlon, and Huber seconded the motion which passed unanimously with Commissioners Koch and Sell absent from the meeting.

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The meeting was adjourned at 10:56 p.m.
Peter F. Murphy, Jr., Chairman
Suzanne F. Harsel, Secretary

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

Minutes by: Paula A. McFarland

Approved on: March 4, 1993

Mary A. Pascoe

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