

Planning Commission Meeting  
April 4, 2013  
Verbatim Excerpt

ZONING ORDINANCE AMENDMENT (HOME CHILDCARE FACILITIES)

Decision Only During Commission Matters  
(Public Hearing held on March 20, 2013)

Commissioner Hart: Thank you, Mr. Chairman. On March the 20<sup>th</sup>, the Commission held a public hearing on a proposed Zoning Ordinance Amendment regarding home child care facilities. First, let me thank all the citizens who came and testified and those who submitted written comments. Provision of high-quality, affordable child care is an issue of high priority to the Board, to the Commission, and working parents in Fairfax County. Let me also thank staff, Cathy Belgin and Lorrie Kirst, for their fine work on a very difficult case. Currently, home child care applications are reviewed on a case-by-case basis through a public hearing process, generally a Special Permit in residential, or R-Districts, and a Special Exception in most planned development, or P-Districts. The established public hearing process allows balancing of the interests of the applicants and their neighbors and an evaluation of how best to mitigate impacts of not only this use but also many others through development conditions. Although some home child care providers obtained the required zoning approval, others did not. As a result of some administrative changes last year by the Department of Social Services in Richmond, it has become apparent that many home child care providers, who had obtained state licenses allowing up to 12 children, unfortunately never obtained a corresponding Special Permit or Special Exception for zoning approval. This discovery has created logistical problems for Zoning Enforcement as well as uncertainty for many providers. At the Board's request, staff investigated the home child care situation in Fairfax County and neighboring jurisdictions and made several recommendations as to how best to harmonize the local Zoning Ordinance with the state licensing requirements. Staff proposed, principally, four items: first, raising the possible maximum number of children over and above those in the provider's household from 10 to 12; second, streamlining the process for P-District applications to shift those cases from a Special Exception requiring two public hearings to a Special Permit with one public hearing before the Board of Zoning Appeals; third, giving the BZA some additional flexibility with respect to parking and loading requirements possibly being offsite, and; fourth, lowering the \$1,100 filing fee, possibly as low as \$435. The Board authorized only those narrow procedural issues for advertising and those amendments described in the staff report are the only issues under consideration at this time. This Amendment will facilitate home child care providers coming into compliance with the Zoning Ordinance. Let me reiterate that at no time was there a Zoning Ordinance Amendment proposed or advertised to lower the number of by-right children in a home child care facility in Fairfax County. Although many of the emails we received also requested the Commission consider allowing home child care up to 12 children by right, that issue was not authorized by the Board and was outside the scope of the advertising. Nevertheless, I will have a number of follow-on motions on the general subject of child care, including a monitoring period by staff. We may have more to discuss on this topic at a later date. I agree in general with the staff proposal, with the caveat that I am going to suggest that we recommend a filing fee of \$435, which is the low end of the advertised range. Staff had recommended reducing the fee from \$1,100 to \$910, but advertised a range down to \$435. Although a \$435 fee barely covers the

advertising, I am persuaded that Fairfax County wants to facilitate these applications being filed and make it easier for parents to locate affordable and convenient child care. In this instance a lower filing fee may be part of the County's governmental function and helps achieve the Board's goals of accessible child care for working parents. I will have another [sic] – I will have a number of other follow-on motions as well, some of which were suggested by the constructive comments we received. I recognize that 12 additional children in a house, on top of the provider's own children, particularly in a townhouse or apartment, may be too many and may create impacts on the neighbors and aggravate existing parking situations. The maximum number of children may not work in every residence. But I also believe that in many homes increasing the maximum to as many as 12 children will not create significant problems for the neighbors and will be welcomed. Our public hearing process will allow these competing concerns to be balanced, with the impacts and corresponding development conditions to be evaluated on a case-by-case basis. The Amendment has significant community support as well as staff's favorable recommendation, with which I concur. Therefore, Mr. Chairman, I first MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE PROPOSED ZONING ORDINANCE AMENDMENT REGARDING HOME CHILD CARE FACILITIES, AS ADVERTISED, WITH A SPECIAL PERMIT APPLICATION FEE SET AT \$435.00, WITH AN EFFECTIVE DATE OF 12:01 A.M. ON THE DAY FOLLOWING ADOPTION.

Commissioner Lawrence: Second.

Chairman Murphy: Seconded by Mr. Lawrence. Is there a discussion of the motion? Mr. Migliaccio.

Commissioner Migliaccio: Mr. Chairman, I am not going to be able to support this motion tonight. I do not believe taking the - - taking the SE away and making it a Special Permit and putting it into the venue of the BZA would be in the best interest. So that is why I am not supporting it. I'm okay with moving it from 10 to 12, but I would rather keep the SE for the P-Districts. Thank you.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve the home care – home child care facilities Zoning Ordinance Amendment, as articulated by Mr. Hart this evening, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Migliaccio votes no.

Commissioner Hart: Secondly, Mr. Chairman, I MOVE THAT THE COMMISSION RECOMMEND THAT THE BOARD DIRECT STAFF TO EVALUATE WHETHER THE 6:00 P.M. EVENING CUT-OFF COULD BE MODIFIED IN VIEW OF THE CURRENT NORTHERN VIRGINIA TRAFFIC SITUATION AND THE UNCERTAINTIES OF EVENING TRAFFIC AND, IN PARTICULAR, UNDER WHAT CIRCUMSTANCES A HOME CHILD

CARE PROVIDER OUGHT TO BE ALLOWED TO HAVE A NON-RESIDENT EMPLOYEE ON-SITE AFTER 6:00 P.M., AND MAKE A RECOMMENDATION FOR AN ADDITIONAL AMENDMENT AS APPROPRIATE.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hart: Third –

Chairman Murphy: Mr. Migliaccio, what are you going to do on this one?

Commissioner Migliaccio: Aye.

Chairman Murphy: Oh, okay.

Commissioner Hart: Third, Mr. Chairman, I MOVE THAT THE COMMISSION RECOMMEND THAT THE BOARD DIRECT STAFF TO INVESTIGATE WHETHER AND TO WHAT EXTENT OUR APPLICATION PROCESS COULD BE HARMONIZED WITH THE STATE LICENSING PROCESS AND INFORMATION AND/OR PAPERWORK SHARED, OR ANY OTHER STREAMLINING OF THE ZONING APPROVAL PROCESS, AND REPORT BACK TO THE BOARD WITH APPROPRIATE SUGGESTIONS.

Commissioners Lawrence and Sargeant: Second.

Chairman Murphy: Seconded by Mr. Lawrence and Mr. Sargeant. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hart: Fourth, Mr. Chairman, I MOVE THAT THE COMMISSION RECOMMEND THAT THE BOARD DIRECT STAFF TO EVALUATE WHETHER THE CURRENT FILING FEE OF \$1,100 FOR OTHER CHILD CARE USES UP TO 99 CHILDREN SHOULD BE ADJUSTED UPWARDS IN THE CONTEXT OF THE NEXT AVAILABLE REVIEW OF DPZ APPLICATIONS FEES.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hart: Finally, Mr. Chairman, I MOVE THAT THE COMMISSION RECOMMEND THAT THE BOARD DIRECT STAFF TO CONTINUE TO MONITOR THE APPLICATIONS UNDER THE AMENDED ORDINANCE FOR 24 MONTHS AND, IN LIGHT OF THAT EXPERIENCE, REPORT BACK TO THE BOARD WITH SUGGESTIONS FOR ANY ADDITIONAL AMENDMENTS TO THE HOME CHILD CARE PROVISIONS OF THE ZONING ORDINANCE AS APPROPRIATE.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(The first motion carried by a vote of 9-1 with Commissioner Migliaccio opposed; Commissioners Hall and Hedetniemi absent from the meeting.)

(The second through fifth motions carried unanimously with Commissioners Hall and Hedetniemi absent from the meeting.)

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