Planning Commission Meeting
July 30, 2009
Verbatim Excerpt

ZONING ORDINANCE AMENDMENT (GRADE OF RESIDENTIAL STRUCTURES)

Decision Only During Commission Matters
(Public Hearing held on July 23, 2009)

Commissioner Hart: Thank you, Mr. Chairman. On July 23rd we held a public hearing on a proposed Zoning Ordinance Amendment on single family detached dwelling grade and deferred decision until tonight. Under the Amendment, the lower of pre-existing grade or finished average ground level becomes the baseline for measuring the height of the residential structure. The Amendment also establishes procedures for modifications to the height requirement, either through special permit or special exception in certain scenarios related to floodplains or through a variance for other requested modifications. Finally, the Amendment modifies the variance provisions in the Ordinance to bring it in line with the General Assembly's recent legislative response to the Cochran decision. I want to thank both DPZ and DPWES staff for their extraordinary work on this case over the past couple years. I particularly want to recognize Jack Reale, Eileen McLane, James Patteson, Lorrie Kirst, Bruce Nassimbeni, Chris McArtor, and Dan White, as well as Beth Teare in the County Attorney's office. I would acknowledge also that many other individuals have assisted with this project, and by not listing all their names, I do not mean to diminish their contributions, or those of the dozens of citizens and industry members who have spent many hours in meetings. It was an unexpected surprise that after two years of sometimes heated meetings and workshops, with heavy attendance from the community and industry, we had no speakers last week. That is a reflection of staff's successful consensus building on at least the four corners of this Amendment. At the same time, we may not be finished with this very difficult project. The Board originally directed staff to look at the issue of looming houses as a result of complaints about impacts of new by-right homes on smaller existing homes. New homes, built by right after an older home is demolished, may comply with the Ordinance as to minimum yard setbacks and height, but may also be perceived as looming over the existing homes. The issue of looming houses has become extremely complicated, the more time we've spent with the issue. Residential compatibility, however we try to define it, still means different things to different people. Some citizens have articulated frustration about overcrowding, boarding houses, street parking problems, mistakes made at the building permit counter, redevelopment on nonconforming lots, unenforced covenants, zoning enforcement delays, even immigration and myriad other issues, which complaints are not necessarily within the purview of the Zoning Ordinance, and will not easily be resolved with a single amendment. Industry also has articulated concerns about the increasing cost and complexity of obtaining construction approvals in Fairfax County, as well as delays and costs occasioned by additional regulations or layers of zoning approval, all of which contribute to the high costs of housing. Unfortunately, despite valiant efforts, including several recent sessions with land use conciliators from the University of Virginia, who facilitated extended discussions among citizens, industry, and staff, we have not reached anything close to a consensus as to whether there even is a problem; what exactly that problem is; whether it needs to be regulated beyond the amendments we are voting on tonight; and if the problem needs to be regulated, how that best should be done.

About as close as we have come to a consensus is that citizens and industry generally agree that if there is a problem, it appears to be in the R-2, R-3, and R-4 Districts, and not in R-C, R-E, and R-1. There are many different priorities and agendas, even among County citizens, which will not be easy to harmonize. This dynamic is highly unusual. In my experience even with complicated or controversial Zoning Ordinance amendments, even if unanimity is not achieved by the time of the staff report, we typically have moved closer to a consensus as the dialogue progressed. Here, on the underlying issue, I think the division in the community was even sharper two nights ago than it was two years go. As the Commission may remember, we had originally anticipated coupling tonight's amendment with something called angle of bulk plane as a methodology for restricting looming. Angle of bulk plane establishes an imaginary diagonal plane tipped in from the side lines at some angle from some elevation and restricts building height at the edges of the building envelope. It is relatively simple to understand if you have a flat rectangular lot with a house that is square to the lot line. But with our wide variety of angled and pie-shaped lots, irregular lot edges, sloping topography, and homes not exactly square to the lot line, this method can become extremely tricky as applied to any given lot as to which tips of eaves and roofs penetrate these imaginary planes. Angel of bulk plane, in the view of some industry professionals, could impose significant additional upfront engineering costs to determine whether a home or addition would conflict with these imaginary planes, or even whether a home could be built on a vacant lot, which costs would be passed through the homeowner or purchaser. Angle of bulk plane also appears difficult for County staff to administer, both at the counter and in the field, due to the three-dimensional geometry. The Board decided several months ago not to authorize advertizing the angle of bulk plane amendment and directed staff to pursue simpler options. Staff subsequently evaluated another model which we have called setback ratios, which is conceptually similar to angle of bulk plane, but could be somewhat easier for staff to apply, at least on flat rectangular lots with houses square to their lot lines. But setback ratios still would require some three-dimensional mathematical evaluation as to a given structure and generate some of the same drawbacks as angle of bulk plane. Although there appears to be some consensus that setback ratios may be preferable to angle of bulk plane, there is no consensus that setback ratios are the preferred way to regulate looming. Staff will report back to the Board's Development Process Committee in September with the results of this adventure so far. In the meantime, I believe it is appropriate to go forward on tonight's item, with a follow-on motion on one aspect. Tonight's amendment is a significant step towards restricting some of what has generated complaints. The Amendment will minimize the practice of by-right building up a lot with fill to construct a 35-foot house on top of the fill. Fill is still allowed, as are 35-foot houses, but you no longer get your 35 feet on top of the fill. If you still need to fill and go 35 feet up, we are creating procedural routes for exceptions to the rule in proximity to the floodplain, either with a special permit application to the BZA or in conjunction with a special exception or rezoning application to the Planning Commission and Board of Supervisors or, in other cases, with a variance. All of those will require a public hearing and allow for citizen input, and all of those options contemplate development conditions mitigating impacts of any such approval. I note, in passing, that the General Assembly recently amended the *State Code* statute on variances to delete the phrase "approaching confiscation" some years after the Cochran decision severely limited the availability of that land use

procedure. Tonight's amendment will apply to all variance applications, not just dwelling height. Because the local Ordinance must track this *State Code* provision, we must bring our Ordinance in line with this change. The Amendment restores some procedural flexibility for case-by-case review of unusual situations, without requiring the landowner first to show that the Ordinance deprives him or her of all reasonable beneficial uses of the land taken as a whole. Hardship will still be required, as opposed to a mere convenience for the owner, but that hardship need not rise to the level of a total wipeout. A range of fees for these applications was advertised; staff is supporting fees at the low end of the range, with which I agree. Even if this Amendment does not solve all the problems articulated by citizens and industry, it should reduce the frequency of looming complaints and eliminate at least one type of controversial building practice. With the new tree ordinance and other regulations, some of the by-right development impacts also will be minimized, no matter what else happens. The Amendment package has the favorable recommendation of staff, with which I agree, and the support of the McLean Citizens Association, the Mount Vernon Council, and the Holland Hall Village Citizens Association. We also have a letter in support from several Lee District citizens, and no opposition expressed. We did receive a letter from a local engineer pointing out several concerns which largely fall outside the scope of the advertising, but which I would like to address in a separate motion. I agree with staff that we should have a uniform method for measurement of residential height across all zoning districts. At the same time, there are legitimate constraints other than floodplains, including elevations above a septic field or above a gravity sewer, why a dwelling might properly be elevated. In certain zoning districts, if the lots were large enough and the structures were far enough away from all lot lines, the 35-foot height limit may be too restrictive. On a two-acre lot, for example, if the home was 50 feet from all lot lines, 35 feet of height may not impact anyone, but might need to be bumped up to allow for the higher interior ceilings some buyers want, or accommodate other construction techniques, or to create positive drainage on a site away from a basement. Under certain circumstances, additional height may also promote tree save, limitation on site disturbance, and other environmental issues by affording some flexibility in placement of houses on larger lots. That issue came to light after the staff report, and although it is outside the scope of advertising for tonight's amendment, it will be the subject of a follow-on motion. Therefore, Mr. Chairman, I have a series of motions. First, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE PROPOSED ZONING ORDINANCE AMENDMENT REGARDING SINGLE FAMILY DETACHED DWELLING GRADE BE ADOPTED, AS SET FORTH IN THE STAFF REPORT DATED JUNE 22, 2009.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it adopt the proposed Zoning Ordinance Amendment, Single Family Detached Dwelling Grade, in accordance with the staff report, say aye.

Commissioners: Aye.

Commissioner Hall: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Hall: I'm going to –

Commissioner Harsel: – abstain.

Commissioner Hall: Thank you. I'm going to abstain; not present for the public hearing.

Chairman Murphy: Chair also abstains; not present for the public hearing. All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Chair and Ms. Hall abstain.

Commissioner Hart: Secondly, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE FOLLOWING BE GRANDFATHERED FROM THE PROPOSED BUILDING HEIGHT MEASUREMENT CHANGE AS IT PERTAINS TO GRADE:

- ALL SPECIAL PERMIT, SPECIAL EXCEPTION, AND PROFFERED REZONING APPLICATIONS AND AMENDMENTS THERETO THAT SET FORTH BUILDING HEIGHTS FOR SINGLE FAMILY DETACHED DWELLING UNITS, WHEN APPROVED PRIOR TO THE EFFECTIVE DATE OF THIS AMENDMENT,

- BUILDING AND GRADING PLANS SUBMITTED ON OR BEFORE THE EFFECTIVE DATE OF THE AMENDMENT, PROVIDED:

    1. THE GRADING PLAN AND BUILDING PERMIT ARE APPROVED WITHIN 12 MONTHS OF THE RETURN OF THE INITIAL SUBMISSION TO APPLICANT/AGENT;

    2. THE PLAN OR PERMIT DOES NOT EXPIRE;

    3. A BUILDING PERMIT FOR THE STRUCTURES SHOWN ON THE APPROVED PLAN IS ISSUED;

    4. THE STRUCTURE IS CONSTRUCTED IN ACCORDANCE WITH THE APPROVED PERMIT; AND/OR ANY OTHER CIRCUMSTANCES GIVING RISE TO A VESTED RIGHT AS SET FORTH IN *VIRGINIA CODE* ANNOTATED SECTION 15.2-2307.

Commissioner Litzenberger: Second.

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

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hall: Abstain.

Chairman Murphy: Same abstentions.

Commissioner Hart: Finally, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THEY DIRECT STAFF TO REVIEW THE CURRENT SINGLE FAMILY DETACHED DWELLING BUILDING HEIGHT LIMITATION OF 35 FEET TO CONSIDER WHETHER IT MAY BE APPROPRIATE TO INCREASE THIS HEIGHT LIMITATION FOR SINGLE FAMILY DETACHED DWELLINGS THAT ARE LOCATED ON LOTS IN THE R-1, R-E, AND R-C DISTRICTS, OF A CERTAIN MINIMUM SIZE, AND SET BACK A SPECIFIED DISTANCE FROM ALL LOT LINES.

Commissioner Lawrence: Second.

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

Commissioners: Aye.

Commissioner Hall: Abstain.

Chairman Murphy: Opposed? Motion carries. Same abstentions.

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(The motions carried by a vote of 7-0-2 with Commissioners Hall and Murphy abstaining; Commissioners Alcorn, Flanagan, and Lusk absent from the meeting.)

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