

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
THURSDAY, SEPTEMBER 22, 2016**

PRESENT: Peter F. Murphy, Springfield District
Frank A. de la Fe, Hunter Mill District
James R. Hart, Commissioner At-Large
Timothy J. Sargeant, Commission At-Large
Ellen J. Hurley, Braddock District
James T. Migliaccio, Lee District
Julie M. Strandlie, Mason District
Earl L. Flanagan, Mount Vernon District
Karen Keys-Gamarra, Jr., Sully District

ABSENT: John C. Ulfelder, Dranesville District
Kenneth A. Lawrence, Providence District
Janyce N. Hedetniemi, Commissioner At-Large

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The meeting was called to order at 8:15 p.m., by Chairman Peter F. Murphy, in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

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COMMISSION MATTERS

Commissioner Hart announced that the Planning Commission's Environment Committee would meet on Thursday, September 29, 2016, at 7:00 p.m. in the Board Conference Room of the Fairfax County Government Center. He added that this meeting was open to the public.

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Commissioner Hart announced to the Commission that final corrections for the Planning Commission minutes from March 2016 to May 2016 were due by Thursday, September 29, 2016.

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Commissioner Migliaccio MOVED THAT THE PLANNING COMMISSION DEFER THE PUBLIC HEARING FOR PCA 82-L-030-13, PCA 87-L-031-03, AND SE 2015-LE-031, WHITE HORSE FOUR, LLC, TO AN INDEFINITE DATE.

Commissioner Hart seconded the motion, which carried by a vote of 10-0. Commissioners Lawrence and Strandlie were absent from the meeting.

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Commissioner Keys-Gamarra MOVED THAT THE PLANNING COMMISSION DEFER THE PUBLIC HEARING FOR SE 2016-SU-015, ARDAVAN BADI & FOROUZANDEH FARNOUSH, DOING BUSINESS AS BULLION & DIAMONDS CO., TO A DATE CERTAIN OF OCTOBER 19, 2016.

Commissioner Hart seconded the motion, which carried by a vote of 10-0. Commissioners Lawrence and Strandlie were absent from the meeting.

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PA 2015-IV-MV3 – COMPREHENSIVE PLAN AMENDMENT (PENN DAW CBC, LAND UNIT G (PT.)) (Mount Vernon District) (Decision Only)
(The public hearing on this application was held on September 15, 2016.)

(Start Verbatim Transcript)

Commissioner Flanagan: Thank you, Mr. Chairman. At the public hearing for this Plan Amendment, two major issues arose concerning staff's recommendations regarding direct pedestrian and bicycle access to a planned transit station and the timing of the dedication of a public street connection between Fairview Drive and property to the north of the subject area. The size of the property does not appear to present challenges to achieving direct pedestrian and bicycle access at this time. Removing the word "direct" also would not preclude the ability of this type of connection to be made as part of the rezoning process. In fact, the transit station – the planned transit station location has not been fixed at this particular point, but will be maybe moved as a part of the Embark process. The two options for Plan language were presented at the public hearing to accommodate a suggested change from the property owner about the timing of right-of-way dedication that caused confusion. The staff recommendation about the right-of-way dedication does not involve the issue of timing and is more appropriate for discussion during the rezoning phrase (sic). Therefore, I support the staff recommended text regarding dedication, as shown on page 9 of the staff report dated September 1, 2016, which is to require the dedication with the site plan. I MOVE, THEREFORE, THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THE ADOPTION OF A PLANNING COMMISSION ALTERNATIVE TO THE STAFF RECOMMENDATION FOR PLAN AMENDMENT 2015-IV-MV3, AS SHOWN ON PAGE 2 THROUGH 4 OF MY HANDOUT DATED SEPTEMBER 22, 2016. The alternative would modify the staff recommendation bullets about pedestrian and bicycle access and parking and add a new bullet about contributions to offset the impact of the proposed development.

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 Plan Amendment PA 2015-IV-MV3, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Strandlie: Mr. Chairman, I was absent. I would like to abstain.

Chairman Murphy: Okay. Ms. Strandlie abstains.

(The motion carried by a vote of 8-0-1. Commissioner Strandlie abstained from the vote. Commissioners Hedetniemi, Lawrence, and Ulfelder were absent from the meeting.)

(End Verbatim Transcript)

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ORDER OF THE AGENDA

Chairman Murphy established the following order of the agenda:

1. ZONING ORDINANCE AMENDMENT – REFERENCE CITATIONS FOR NURSERY SCHOOLS, CHILD CARE CENTERS, & VETERINARY HOSPITALS; SPECIAL PERMIT SUBMISSION REQUIREMENTS; VARIANCE STANDARDS; AND CLARIFICATION OF THE DEFINITION OF PUBLIC USE (Countywide)

This order was accepted without objection.

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ZONING ORDINANCE AMENDMENT – REFERENCE CITATIONS FOR NURSERY SCHOOLS, CHILD CARE CENTERS, & VETERINARY HOSPITALS; SPECIAL PERMIT SUBMISSION REQUIREMENTS; VARIANCE STANDARDS; AND CLARIFICATION OF THE DEFINITION OF PUBLIC USE – To amend Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax, as follows:

- (1) Clarify that nursery schools, child care centers and veterinary hospitals are permitted uses in their respective Commercial Districts subject to specific use limitations by amending the respective “Permitted Use” sections of the Zoning Ordinance to insert cross-references to the corresponding Zoning Ordinance sections that contain the existing use limitations.
- (2) Amend the submission requirements for all special permits set forth in Sect. 8-011 by making minor changes to reduce the number of copies of the application that is completed and signed by the applicant from four copies to one original copy and to require that the statement confirming ownership of the property be notarized.

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(3) Amend the Additional Standards for Home Child Care Facilities by replacing the requirement for 10 copies of a plan with a requirement for the submission of 15 large copies and one 8 1/2" x 11" copy of a plat that is certified by a licensed, professional engineer, land surveyor, architect or landscape architect, as well as a dimensioned floor plan of the interior of the dwelling, certified by a licensed, professional engineer, architect or other similarly licensed professional, that identifies all rooms and/or facilities to be used in conjunction with the home child care facility and ingress and egress from the dwelling with corresponding digital photographs of the rooms and/or facilities to be used in conjunction with the home child care facility and points of ingress and egress.

(4) Amend the Additional Standards for a Home Professional Office by deleting the renewal provision for applications approved prior to January 24, 1977, and inserting a provision requiring a dimensioned floor plan, certified by a licensed, professional engineer, architect or other similarly licensed professional, depicting the internal layout of the residence, gross floor area of and use of each room, identification of all rooms and/or facilities to be used in conjunction with the home professional office, and ingress and egress from the dwelling, with corresponding digital photographs of the rooms and/or facilities to be used in conjunction with the home professional office and ingress and egress from the dwelling.

(5) Amend the Additional Standards for an Accessory Dwelling Unit to 1) allow the BZA to approve an alternative entrance location for accessory dwelling units located within the structure of a single family detached dwelling on lots less than 2 acres in area; 2) delete the renewal provision for such applications approved prior to July 27, 1987; 3) add a requirement for the submission of 15 large copies and one 8 1/2" x 11" copy of a plat that is certified by a licensed, professional engineer, land surveyor, architect or landscape architect, with specific requirements for the information to be contained on such certified plat; and 4) add a requirement for the submission of a dimensioned floor plan, certified by a licensed, professional engineer, architect or other similarly licensed professional, depicting the internal layout and gross floor area of the both the principal and accessory dwelling units, the use of each room, and ingress and egress from each of

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the dwellings with corresponding digital photographs of all such rooms and ingresses and egresses depicted on the floor plan.

(6) Amend those variance provisions found in Sect. 18-404 and Sect. 19-209 of the Zoning Ordinance to conform such provisions to the new standards and requirements for variances that are set forth in Virginia Code § 15.2-2309, as amended in 2015.

(7) Amend the definition of a public use to clarify that uses sponsored or operated by any other county, city or town within the Commonwealth of Virginia other than Fairfax County shall not be deemed a public use and shall be subject to the applicable Zoning Ordinance provisions for such use and to amend the definition of a school of general education to clarify that a school of general education shall include a public school operated by other counties, cities or towns within the Commonwealth of Virginia..

COUNTYWIDE. PUBLIC HEARING.

Andrew Hushour, Zoning Administration Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. He noted that staff recommended adoption of the proposed Zoning Ordinance Amendment.

Mr. Hushour said that the proposed Amendment had been reviewed by the Fairfax County Board of Zoning Appeals and the Child Care Advisory Council (CCAC), adding that suggested revisions from these organizations had been incorporated into the language articulated in the staff report. He then indicated that both organizations supported the proposed Amendment.

In reply to questions from Commissioner Hart, Mr. Hushour stated that the provisions for variances were intended to ensure that the standards of the Zoning Ordinance were consistent with those prescribed by the State of Virginia. He added that these provisions had been reviewed by the County Attorney's office and no objections had been expressed. In addition, Mr. Hushour confirmed that the proposed Amendment would not impact previously-approved applications for public facilities that had been reviewed under the existing provisions of the Zoning Ordinance, such as schools from other jurisdictions operating within the County.

Replying to questions from Commissioner Hurley, Mr. Hushour said that the provisions pertaining to home child care facilities applied to both Special Permit (SP) applications and Special Exception (SE) applications. He also indicated that the cost for conducting an acceptable survey for a Home Child Care Facility, as would be required under the proposed Amendment for such facilities, was approximately \$500 to \$600. In addition, Mr. Hushour explained that when the proposed Amendment had been authorized by the Board of Supervisors, concerns regarding the Amendment's impact on Home Child Care Facilities had been raised. He then indicated that staff addressed these concerns by incorporating revised language that permitted waiving the land

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survey requirement for Home Child Care Facilities if the information could be attained from an existing source. Mr. Hushour pointed out that the proposed language in the final sentence of paragraph 5 in Section 8-305, Additional Standards for Home Child Care Facilities, included language that permitted the Zoning Administrator to accept a survey conducted by the applicant in lieu of one conducted by a professional.

Commissioner Hurley expressed concern regarding the additional costs that the proposed Amendment would incur on home child care providers, stating that such cost would discourage providers from obtaining the necessary permits. She then asked when in the application process the providers would be informed about the requirements prescribed by the proposed Amendment. Mr. Hushour explained that providers would be informed of these requirements during the early stages of the process, adding that staff would coordinate with the CCAC to ensure that providers were sufficiently informed. In addition, he stated that the adoption of the proposed Amendment would not impact the home child care providers that had been approved under the existing Zoning Ordinance provisions. Commissioner Hurley supported further coordination between staff and child care providers to ensure that providers were sufficiently informed. Mr. Hushour reiterated that staff would continue coordinating with the CCAC and other government agencies on this issue.

A discussion ensued between Commissioner Migliaccio and Mr. Hushour regarding the number of prospective home child care providers that utilized professional surveys compared to those who utilized hand-drawn surveys, the number of home child care facilities that had been processed since the State of Virginia's laws for these facilities had been modified, the flexibility afforded to providers in complying with these laws, and the importance of providing the information included in the surveys for home child care facilities wherein Commissioner Migliaccio echoed Commissioner Hurley's concerns regarding the cost for conducting the surveys required under the proposed Amendment and the subsequent impact on such facilities.

Commissioner Migliaccio expressed concern regarding the ability for staff to waive the survey requirement for home child care facilities for certain providers and the criteria for granting such waivers. He then suggested that additional guidelines for granting such a waiver be included to ensure that staff and providers were informed on the methods for complying with these criteria.

When Commissioner Sargeant asked whether the revised requirements for home child care facilities and home offices in the proposed Amendment had been translated into multiple languages, Mr. Hushour indicated that these provision had not been translated, but noted that the County had existing services that could provide sufficient translation services for prospective applicants. A discussion ensued between Commissioner Sargeant and Mr. Hushour regarding the number of applications that would require assistance in bearing the cost of the necessary surveys for uses such as home child care facilities and the number of applicants that were capable of providing the necessary information without conducting such a survey wherein Commissioner Sargeant said that he supported requiring adequate surveys for uses such as home child care

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facilities, but echoed concerns from Commissioner Hurley and Commissioner Migliaccio regarding the impact that the cost of such surveys would incur on providers.

Commissioner Sargeant suggested that staff coordinate with the Board of Supervisors to address issues pertaining to applicants who need assistance providing the necessary surveys for uses such as home child care facilities.

Commissioner Flanagan expressed concern that the public was not sufficiently informed regarding the County's policies pertaining to child care services. A discussion between Commissioner Flanagan and Mr. Hushour regarding the different requirements for certain child care services wherein Mr. Hushour confirmed the following:

- A child care service that cared for five or fewer children did not require an SE or SP;
- A child care service that cared for between 6 and 12 children did require an SE or SP and these services were identified as home child care facilities;
- A child care service that cared for more than 12 children were identified as a child care center.

Commissioner Flanagan then expressed concern regarding the discrepancies of the terms utilized in the proposed Amendment, pointing out that portions of the Staff Report, such as the background information on Page 1, utilized the term "child care centers" while the conclusion section on Page 6 utilized the terms "home child care facilities." Mr. Hushour explained that the use of these terms was appropriate because they each referred to different portions of the language in the proposed Amendment. A discussion ensued between Commissioner Flanagan and Mr. Hushour regarding the extent to which the advertisement adequately reflected the definition of the "home child care facilities" and "child care centers" wherein Mr. Hushour pointed out that the language pertaining to SE and SP requirements was the only language that applied to home child care facilities.

Addressing the concerns raised by Commissioners, Commissioner Hart explained the following:

- The issue of home child care providers avoiding the SE or SP process due to the cost was considered during the review of the proposed Amendment;
- The majority of the applications submitted by home child care facilities in response to the State of Virginia's revisions on policies regarding such facilities had been processed and would not be affected by the proposed Amendment;
- The State of Virginia's policies for licensing home child care facilities provided additional mechanisms for ensuring that appropriate safety regulations were utilized;

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- The survey requirement articulated in the proposed Amendment would be easier to comply with in newer developments and P-Districts because these developments included updated plats;
- The majority of the existing plats on record for applicants seeking an SP and SE for a home child care facility would sufficiently comply with the survey requirement articulated in the proposed Amendment and cases where another survey was necessary would be infrequent; and
- The purpose of including the survey requirement in the proposed Amendment was to ensure that the health and safety policies were utilized.

Commissioner Migliaccio reiterated his concerns regarding the cost of conducting surveys for prospective home child care facilities and his suggestion that prospective applicants be informed of the guidelines for granting a waiver of this requirement. Addressing this concern, Mr. Hushour pointed out that the proposed Amendment included language on the last sentence of paragraph 5 in Section 8-305, Additional Standards for Home Child Care Facilities, on page 9 of the staff report that granted the Zoning Administrator the authority to accept land surveys not conducted by a licensed professional if the survey adequately depicted the room in question. He then indicated that staff had determined that requiring such a survey was appropriate. A discussion ensued between Commissioner Migliaccio and Mr. Hushour regarding the issues that might arise from applicants who did not have sufficient funds to conduct the required survey.

Answering questions from Commissioner Sargeant, Mr. Hushour stated that issues pertaining to the guidelines for granting a waiver of the survey requirement for home child care facilities or home office uses were beyond the scope of the proposed Amendment. He added that existing procedures for reviewing an application provided sufficient guidelines for determining whether such a waiver was warranted. Mr. Hushour also noted that the Board of Supervisors had the authority to waive fees associated with the application process. In addition, Commissioner Hart indicated that procedures for granting waivers would not be modified under the proposed Amendment and explained that the ability of an applicant to provide sufficient documentation to fulfill a survey requirement was not the same as granting a waiver of a fee. He then stated that this issue could be addressed with a follow-on motion to clarify these procedures.

When Commissioner Flanagan reiterated his concerns regarding the use of the terms “child care centers” and “child care facilities” in the advertisement text for the proposed Amendment, Commissioner Hart pointed out that these terms referenced different parts of the language articulated in the Amendment, noting that the language pertaining to “child care facilities” did not apply to that pertaining to “home child care centers.” A discussion ensued between Commissioner Flanagan and Commissioner Hart, with input from Mr. Hushour and Chairman Murphy, regarding the language in the proposed Amendment that applied to home child centers, the language that applied to the SE and SP process, and the extent to which the advertisement

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reflected this language wherein Mr. Hushour said that staff had determined that the advertisement for the proposed Amendment was appropriate.

Chairman Murphy called for speakers from the audience, but received no response; therefore, he noted that a rebuttal statement was not necessary. There were no further comments or questions from the Commission and staff had no closing remarks; therefore, Chairman Murphy closed the public hearing and recognized Commissioner Hart for action on this case.

(Start Verbatim Transcript)

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Chairman Murphy: Public hearing is closed. Recognize Mr. Hart.

Commissioner Hart: Thank you, Mr. Chairman. I – I wasn't sure how this was going to go, but I think, based on the discussion, there's no harm in deferring the decision for a short period and looking at some of these things a little more closely. And before I make the motion, Mr. Hushour, if we go two weeks to October 4th or 5th, is – 5th or 6th -.

Chairman Murphy: 5th and 6th.

Commissioner Hart: -Which night is better?

Andrew Hushour, Zoning Administration Division, Department of Planning and Zoning: The Board – I mean, the Board hearing advertisements have gone out. I mean, it's scheduled for October 18th.

Commission Hart: Well, I'm trying to do it two weeks before the Board, so it doesn't matter. Let's do it October 5th then. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION DEFER DECISION ON THE PROPOSED ZONING ORDINANCE AMENDMENT REGARDING REFERENCE CITATIONS FOR NURSERY SCHOOLS, CHILD CARE CENTERS, AND VETERINARY HOSPITALS; SPECIAL PERMIT SUBMISSION REQUIREMENTS; VARIANCE STANDARDS; AND DEFINITIONS OF PUBLIC USE AND SCHOOL OF GENERAL EDUCATION TO A DATE CERTAIN OF OCTOBER 5, 2016, AND THAT THE RECORD REMAIN OPEN FOR WRITTEN AND ELECTRONIC COMMENTS.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of the motion? All those in favor of the motion to defer this application for decision only on October 5th, with the record remaining open for comments, say aye.

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Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(The motion carried by a vote of 9-0. Commissioners Hedetniemi, Lawrence, and Ulfelder were absent from the meeting.)

(End Verbatim Transcript)

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The meeting was adjourned at 9:14 p.m.


Peter F. Murphy, Chairman

James R. Hart, Secretary

Audio and video recordings of this meeting are available at the Planning Commission Office,
12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Jacob Caporaletti

Approved on: March 29, 2017



John W. Cooper, Clerk to the
Fairfax County Planning Commission