

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
THURSDAY, OCTOBER 26, 2017**

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
John C. Ulfelder, Dranesville District
James T. Migliaccio, Lee District
Earl L. Flanagan, Mount Vernon District
Phillip A. Niedzielski-Eichner, Providence District
Vacant, Sully District
Vacant, Commission At-Large

ABSENT: Julie M. Strandlie, Mason District

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The meeting was called to order at 8:16 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

Chairman Murphy announced that Janyce Hedetniemi, who had served on the Planning Commission as an At-Large member, had submitted her letter of resignation from the Commission. He then stated that Ms. Hedetniemi had been appointed to the Commission by Supervisor Sharon Bulova on January 8, 2013 and commended her years of service. In addition, Chairman Murphy said that Ms. Hedetniemi had served the County on various boards and committees, such as the Fairfax County Park Authority Board, the Fairfax County Transportation Advisory Committee, the Tysons Land Use Task Force Steering Committee, and the Braddock District Land Use Committee. He also noted that she had served on the Commission's Tysons Committee, the Policy and Procedures Committee, the Transportation Committee, and the Land Use Process Review Committee. On behalf of the Commission, Chairman Murphy thanked Ms. Hedetniemi for her service. He also read a statement on behalf of Ms. Hedetniemi, thanking the Commission, the Board of Supervisors, and staff for the opportunity to serve and commending them for their ongoing efforts throughout the County.

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Commissioner Ulfelder announced that the Planning Commission's Parks Committee had met earlier that evening with staff from the Fairfax County Park Authority to discuss the 2016 Parks and Recreation Needs Assessment and the ongoing master plan. In addition, he said that the Parks Committee received an update on studies regarding the impact of synthetic turf field replacement efforts, adding that such studies were ongoing.

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Commissioner Hart announced his intent to move to approve the meeting minutes from September 2017 at the Planning Commission's meeting on November 9, 2017 and requested that Commissioners submit comments or revisions prior to that meeting.

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Commissioner Hart announced that the Planning Commission's Environment Committee would meet at 7:00 p.m. on November 9, 2017 in the Board Conference Room of the Fairfax County Government Center to discuss the pending Policy Plan amendment regarding energy conservation in green buildings with staff and stakeholders. He added that the meeting would be open to the public.

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Chairman Murphy announced that Karen Keys-Gamarra, who had served as Planning Commissioner for the Sully District since January 2016, had submitted her letter of resignation from the Commission. He said that she had been elected to the Fairfax County School Board as an at-large member. He also noted that she had served on the Planning Commission's Personnel and Budget Committee, the Schools Committee, the Parks Committee, and the Land Use Process Review Committee. On behalf of the Commission, Chairman Murphy commended Ms. Keys-Gamarra for her service to the Commission.

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Chairman Murphy announced that, in lieu of resignations by Janyce Hedetniemi and Karen Keys-Gamarra, the Planning Commission would operate with 10 members until new Commissioners were appointed. He added that until those positions were filled, the quorum for Planning Commission meetings would be 6 and advised Commissioners to plan accordingly.

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ADMINISTRATIVE ITEM: RZ 88-L-051 – BURGUNDY ROAD OFFICE BUILDING
(PROFFER NUMBER 13)

(Start Verbatim Transcript)

In the absence of Chairman Murphy, Secretary Hart assumed the Chair.

Commissioner Migliaccio: Thank you, Mr. Chairman. We have one administrative item in the Lee District. We have a proffer number 13 on a very old rezoning, RZ 88-L-051, on behalf of Burgundy Road Office Building. They needed to submit architectural details and landscape drawings. And I know we have those before us and just want to see if any Commissioners had any comment on that and, if not, I would just ask staff if they agree that the applicant has met Proffer 13 with their submittals.

Tracy Strunk, Zoning Evaluation Division, Department of Planning and Zoning: Yes.

Commissioner Migliaccio: Excellent. All right, thank you, Mr. Chairman. Therefore, I MOVE THAT THE PLANNING COMMISSION FIND THAT THE APPLICANT HAS SATISFIED THE REQUIREMENTS FOR PROFFER NUMBER 13 OF RZ 88-L-051.

Secretary Hart: The motion has been made by Commissioner Migliaccio. Is there a second?

Commissioner Sargeant: Second.

Secretary Hart: Seconded by Commissioner Sargeant. Any discussion? Seeing none, we'll move to a vote. All those in favor, please say aye.

Commissioners: Aye.

Secretary Hart: Those opposed? That motion carries.

Commissioner Migliaccio: Thank you.

The motion carried by a vote of 8-0. Commissioner Murphy was not present for the vote. Commissioner Strandlie was absent from the meeting.

(End Verbatim Transcript)

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ORDER OF THE AGENDA

Secretary Hart established the following order of the agenda:

1. ZONING ORDINANCE AMENDMENT – MINOR MODIFICATIONS (ARTICLES 8, 9, 16, 18, AND 20) AND MINOR MODIFICATIONS TO APPROVED ZONINGS AND OTHER RELATED CHANGES

This order was accepted without objection.

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ZONING ORDINANCE AMENDMENT – MINOR MODIFICATIONS (ARTICLES 8, 9, 16, 18, AND 20) AND MINOR MODIFICATIONS TO APPROVED ZONINGS AND OTHER RELATED CHANGES – To amend Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax, as follows: Revises Sections 8-004, 9-004, 16-203, 16-403, and 18-204 to revise existing text for simplicity and clarity, and to give the Zoning Administrator additional authority to allow minor modifications to approved rezonings, special exceptions, special

permits, PRC plans, and final development plans in the following areas: (1) allow modifications to building setbacks up to 10%; (2) allow increases in building height up to 10 feet and in percentages of rooftop coverage for solar collectors and other innovative energy and environmental technologies; (3) allow changes to typeface and color of approved signage; (4) increase amount of floor area permitted for minor building additions to include cellar space and limited to the greater of 500 square feet or 5% of the approved floor area up to 2500 square feet for developments no larger than 250,000 square feet, or 1% of the approved floor area for developments of more than 250,000 square feet; and (5) clarify that minor building additions may not exceed the proffered density or FAR; and revises these sections to identify circumstances in which minor modifications will not be allowed.

Establishes a new procedure in Section 18-204 for Board of Supervisors approval, without a public hearing, of minor variations to proffered conditions in the following circumstances: (1) addition or modification of uses not otherwise prohibited; (2) additional building height; (3) modifications to yard dimensions and building setbacks; (4) modification or deletion of local community or homeowner association recreation facilities; (5) change in circumstances related to provision of services or new technologies where the proffer is ineffective or no longer relevant; and (6) changes to architecture, building features, or materials. The revised text requires that requests for minor variations be subject to the notice requirements set forth in § 15.2 2204 of the Code of Virginia.

1) Reorganizes and makes editorial revisions for simplicity and clarity to Sections 18 201, 202, and 203 related to initiation of amendments, submission requirements for applications for amendments to the zoning map (rezonings) and generalized development plan regulations.

2) Revises Sections 16 202, 16 401, and 18 204 regarding the circumstances in which a partial amendment can be filed. The revised text eliminates the requirement for a determination by the Zoning Administrator that a proposed partial amendment would not adversely impact the remainder of the property subject to proffered conditions prior to the acceptance of a partial amendment and allows the Board of Supervisors to consider whether a request for a partial amendment would have an adverse impact on the remainder of the property.

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3) Revises the definition of gross floor area in Article 20 to exclude an increase in floor space incidental to the replacement of an existing building facade. Revises Article 20, Part 2, Interpretations, to add a paragraph that says an amendment to the zoning map is also referenced as a rezoning.

4) Pursuant to *Virginia Code* §§ 15.2-107 and -2286(A)(6), revises Section 18 106 to establish a minimum fee of \$520 for a minor variation request. COUNTYWIDE. PUBLIC HEARING.

Commissioner Hart announced his intent to defer the decision only of the proposed amendment at the conclusion of the public hearing.

Kevin Guinaw, Zoning Evaluation 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 regarding minor modifications (Articles 8, 9, 16, 18, and 20) to approved zonings and other related changes.

In reply to questions from Commissioner Hart, Mr. Guinaw and Barbara Byron, Office of Community Revitalization, stated the following:

- The Board of Supervisors reserved the authority to determine whether a public hearing for a minor modification was warranted;
- The public hearing for a minor modification, if authorized by the Board of Supervisors, would be subject to a decision by both the Planning Commission and the Board;
- The decision rendered by the Board for a minor modification could be appealed through the Fairfax County Circuit Court within 30-days frame after approval; and
- The minor modifications, as determined by the Zoning Administrator, pertaining to proffer commitments would be addressed by the Board of Supervisors and those involving other issues would be addressed by the Board of Zoning Appeals.

Commissioner Hart asked how staff had determined the \$520 application fee for minor modification and the extent to which that fee mitigated the cost burden on staff and the applicant. Mr. Guinaw explained the staff analyzed the process with the intent of utilizing a fee structure that was streamlined and appropriate for applicants, adding that the process would be structured in a manner that was less costly than that of a proffered condition amendment. When Commissioner Hart asked for additional information regarding the Commission's authority to modify that fee, Mr. Guinaw indicated that the Commission was permitted to increase the fee, but reduce it below \$520, as articulated in the advertisement.

Commissioner Hart stated that in the event that a minor modification was requested, the applicant was not permitted to implement provisions that would aggravate the existing condition in the area. Mr. Guinaw concurred with that statement, adding that staff would evaluate the parameters of an existing approval in determining the feasibility of a minor modification. A discussion ensued between Commissioner Hart and Mr. Guinaw regarding the potential modifications that could be made within the scope of such standards and the discretion exercised by staff in determining whether a modification was consistent with such standards wherein Mr. Guinaw cited modifications to setbacks and variations as instances where those standards for a minor modification would be considered.

Commissioner Hart pointed out that the proposed amendment would modify text that utilized verbiage that included the word “shall” with “must” when articulating instances in which an action was mandatory. He then asked for additional information regarding such revisions. David Stoner, Office for the County Attorney, explained that the modification of the language was intended to provide sufficient clarity for mandatory provisions within the Zoning Ordinance, adding that the usage of “shall” had been subject to conflicting interpretations. He also indicated that the usage of “shall” within the Zoning Ordinance had not been exclusively associated with mandatory provisions. In addition, Mr. Stoner said that the Virginia Supreme Court had ruled that the meaning of “shall” did not denote mandatory action in every instance, noting that such verbiage had been utilized to reserve certain levels of permissiveness within a statute. He then stated that the County and the federal government had made efforts to reduce the usage of “shall” when articulating mandatory actions, in favor of the word “must.” When Commissioner Hart asked for further clarification on the usage of “must,” Mr. Stoner indicated that “must” would be utilized to denote explicit requirements, adding that such verbiage was intended to clarify the mandatory provisions in the Zoning Ordinance.

Commissioner Hart asked for additional information regarding potential rooftop structures other than solar panels that would be considered minor modifications under the revised text. Mr. Guinaw said that staff had crafted the language of the proposed amendment with the intent of ensuring flexibility in accommodating structures with uses not explicitly articulated in the Zoning Ordinance. When Commissioner Hart requested further clarification on the nature of the structure, Mr. Guinaw stated that such a structure was required to be a device relating to energy or environmental technologies. Ms. Byron added that staff had coordinated with the Board of Supervisors to utilize language that accommodated future technologies.

Commissioner Hart stated that the Commission had received numerous comments regarding the proposed amendment prior to the public hearing. He then cited a letter from the Reston Association (RA) that had expressed concern regarding the usage of the word “delete” in the language and suggested that the word be removed. Commissioner Hart asked staff to explain why “delete” had been utilized in the proposed amendment and inquired whether there was a method for differentiating the utilization of such language between zoning districts, such as PRC Districts. Ms. Byron stated that staff did not support removing the word “delete” from the proposed language because various portions of the County had expressed concern regarding the ability to remove certain features that were determined to be unnecessary. She also said that staff had coordinated with RA to address concerns regarding the ability for an applicant to remove

certain provisions from a development. She added that staff had acknowledged RA's concerns with the language, but favored retaining the word "delete" since the application would apply to the entire County. Mr. Stoner then indicated that there was no rational basis for differentiating the application of the language from one zoning district to another. A discussion ensued between Commissioner Hart and Mr. Stoner regarding the challenges associated with certain districts, the circumstances in which pursuing a minor modification would not provide sufficient transparency to the surrounding community, the input staff had received from citizen advisory groups on the process for minor modifications, and the nature of the applicants that would pursue such modifications wherein Ms. Byron reiterated that the Board of Supervisors had the authority to authorize a public hearing for a modification that included a deletion and Commissioner Hart suggested that staff conduct further evaluation of the issue during the deferral period.

Commissioner Migliaccio asked for additional information regarding the procedures that the Board of Supervisors would utilize for requiring a public hearing for a minor modification, a proffered condition amendment, and the fee structure involved. Ms. Byron stated that the Board had broad authority to require a public hearing and such a determination could be rendered at any Board meeting during the Board matters portion of the meeting. In addition, she said that if the determination was made during the review process that a proffered condition amendment was warranted, then the fee that had been paid towards the minor modification would be applied to the proffered condition amendment application. When Commissioner Migliaccio requested additional information regarding the timeframe for processing a proffered condition amendment application that had begun as a minor modification, Ms. Byron indicated that such an application would be fast-tracked through the evaluation process.

Commissioner Sargeant pointed out that the proposed amendment would grant the Zoning Administrator greater flexibility in determining whether a minor modification intensified an existing use. He then asked for additional information regarding the standards utilized to determine whether such a modification constituted increased intensity. Mr. Guinaw described the process for determining increased intensity in a minor modification, stating that the proposed amendment required the applicant to notify the neighboring properties of the modification. He then said that the proposed amendment included guidelines for determining intensity, citing instances where additional office space in an office building constituted greater intensity whereas a storage area would not. In addition, Mr. Guinaw noted that the proposed amendment included provisions for certain modifications that would not constitute increased intensity, such as a minor increase in the number of seats in a church. A discussion ensued between Commissioner Sargeant and Mr. Guinaw regarding the other instances in which a minor modification within an existing development constituted increased intensity, the potential difficulty in determining the impact of certain modifications, and the review process for evaluating the intensity of such modifications wherein Mr. Guinaw indicated that such modifications would be subject to an appropriate review by staff.

Commissioner Sargeant requested additional information regarding what constituted popular recreation uses and the scope of the Board of Supervisors' authority in determining the criteria for such uses. Mr. Guinaw explained that the language of the proposed amendment was intended to facilitate additional opportunities for various modifications, but there were provisions that

permitted the Board to utilize other procedures in determining whether those modifications were appropriate, adding that such procedures could include a public hearing. A discussion ensued between Commissioner Sargeant and Mr. Guinaw regarding the instances in which the Board would utilize the procedures for minor modifications, the instances in which a public hearing for a modification was warranted, and the extent to which the Board considered community sentiment in authorizing such modifications.

When Commissioner Sargeant asked for additional information regarding staff's efforts to inform the necessary stakeholders of the revised procedures for minor modifications, as articulated in the proposed amendment, Mr. Guinaw and Ms. Strunk stated the following:

- The procedures articulated in the memorandum dated October 23, 2017 included a framework for conducting dialogue between staff and the Board of Supervisors for implementing the revised procedures; and
- The ongoing efforts conducted by the Board of Supervisors to improve public engagement could also be utilized to provide information on the revised procedures.

(A copy of the memorandum is in the date file.)

Commissioner Hurley noted that there were two existing PRC Districts in the Braddock District. She then requested that staff evaluate how the revised procedures for minor modifications affected those districts during the deferral period.

Commissioner Flanagan stated that for minor modifications involving an increase in building height, the proposed amendment limited such increases to 15 feet, noting that such increases were necessitated in the event that a development encountered topographical barriers. He then pointed out that the proposed amendment also permitted a building height increase of 15 percent under the standards of a minor modification and requested clarification on the standards that would be utilized for authorizing such an increase. Mr. Guinaw explained that the 15 percent limit would be the primary standard for determining whether building height increase constituted a minor modification, but the 15-foot limit was included to provide a cap to limit the increase for taller buildings. Commissioner Flanagan suggested that the language for building height increases under the minor modification provisions be clarified during the building period.

When Commissioner Niedzielski-Eichner asked for additional information regarding instances in which a building required a minor modification that included an increase in building height, Ms. Byron indicated that there had been multiple instances throughout the County where an approved development could not implement a secondary use without a minor building height increase. A discussion ensued between Commissioner Niedzielski-Eichner and Ms. Byron regarding the circumstances in which an increase in building height was necessary and the language utilized by the proposed amendment for permitting such an increase wherein Ms. Byron stated that staff's coordination with the citizens' committee had assisted in the effort to determine appropriate standards for such increases.

Commissioner Niedzielski-Eichner said that existing policies permitted the Planning Commission to approve final development plan applications without subsequent approval by the Board of Supervisors. He then requested for additional information regarding the Commission's role in approving minor modifications to final development plans. Mr. Stoner explained that the *Code of Virginia* granted the Board the authority to determine whether a modification to a commitment by an applicant was warranted. He then said that the decision to conduct a public hearing on such a modification resided with the Board of Supervisors, adding that the Planning Commission would not be involved in the process of rendering such a determination. A discussion ensued between Commissioner Niedzielski-Eichner and Mr. Stoner regarding the authority that the Board had delegated to the Commission on final development plan applications and the extent to which the Commission would be involved in approving minor modifications wherein Mr. Stoner reiterated that the Board would render the decisions for such modifications, adding that such a policy was consistent with the statutes prescribed by the *Code of Virginia*.

Responding to questions from Commissioner Migliaccio, Ms. Byron indicated that staff would monitor information on the efficacy of the procedures for approving minor modifications, as outlined in the proposed amendment. She also stated that staff intended to compile a report on the process that determined the impact on each magisterial district, adding that subsequent modifications to the procedures might be warranted. In addition, Ms. Byron said that the report would be submitted to the Planning Commission and staff would continue coordinating with Commissioners to address concerns.

Addressing Commissioner Flanagan's comments regarding instances in which an increase in building height was warranted, Commissioner Ulfelder cited a parking structure at the Innovation Station development located near Route 28 as an instance where the topography of the site hindered a developer's ability to construct the facility with adequate provisions.

Referring to Attachment A, which delineated the procedures for applying for a minor variation, Commissioner Ulfelder pointed out a typographical error in Paragraph 5, Sub-Section A that did not adequately specify the timeframe for submitting a minor variation for consideration by the Board of Supervisors. He then requested that staff revise the language to ensure sufficient clarity on the timeframe for applicants pursuing minor modifications. (A copy of Attachment A is in the date file.)

Commissioner Sargeant asked for additional information regarding the review procedures for designating staff personnel for various applications. Ms. Strunk described the process that would be utilized to direct applications for minor modifications to appropriate personnel, noting that certain modifications required input from various departments. When Commissioner Sargeant inquired as to whether the proposed amendment would impact those procedures, Ms. Strunk indicated that the process would remain similar under the revised guidelines.

Chairman Murphy called the first listed speaker and recited the rules for public testimony.

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Jody Bennett, 1459 Hunter View Farms, Vienna, representing the Hunter Mill Defense League, voiced the following concerns regarding the proposed amendment:

- The procedures for administratively approving minor modifications did not contain adequate provisions for informing the public;
- The usage and meaning of the word “may” within the Zoning Ordinance had not been sufficiently explained;
- The procedures did not specify whether applications for minor modifications would be processed in a manner similar to administrative items;
- The process the Board of Supervisors would utilize for minor modifications applications had not been sufficiently outlined;
- The potential impact of the revised procedures on financial proffers had not been sufficiently evaluated;
- The provisions for permitting building height increases as a minor modification were not sufficiently clear and permitting such increases without a public hearing could incur significant impacts on surrounding communities;
- The standards for determining whether a minor modification affected the intensity of a development were not adequate and such standards could permit increases in intensity without adequately notifying the public;
- The proposed language did not sufficiently articulate the limits and prohibitions of minor modification procedures;
- The extent of certain minor modifications that could be approved without a public hearing, under the proposed amendment, would incur a significant impact on the surrounding community; and
- The procedures for approving minor modifications would delegate significant authority to staff to approve modifications without sufficient public input.

(A copy of Ms. Bennett’s statement is in the date file.)

Bruce Bennett, 1459 Hunter View Farms, Vienna, spoke in opposition to the proposed amendment because the procedures for approving minor modifications did not contain sufficient opportunities for public engagement and would grant significant authority to staff for approving such modifications. He cited a Washington Post article that had been included with his statement that noted the need for facilitating redevelopment while preserving opportunities for public engagement. He then said that the County’s efforts to improve the redevelopment procedures for

the County, such as Fairfax Forward, had not included provisions for preserving public engagement. Mr. Bennett also noted the existing issues associated with administratively approving redevelopment efforts in areas such as Reston that had incurred significant impacts on density. In addition, he pointed out that there had been previous instances where the administrative approval of certain features, such as a sewage dump site, had generated a significant impact on the surrounding area. Mr. Bennett described the challenges associated with public engagement, citing instances with previous applications, such as one involving Oakcrest School. He then expressed concern that the minor modifications procedures outlined in the proposed amendment would permit modifications on approved developments without public input. In addition, he noted that the process for appealing administrative approvals for minor modifications had not been adequately articulated. In conclusion, Mr. Bennett reiterated the proposed amendment granted excessive authority to staff in administratively approving modifications on existing developments without sufficient opportunities public input. (A copy of Mr. Bennett's statement is in the date file.)

Commissioner Hart addressed Mr. Bennett's comments regarding the County's efforts to facilitate redevelopment, noting that the Fairfax Forward process that the County had adopted in 2013 had been modified to utilize standards similar to those of the previous area plans review process. He added that the process for modifying and improving those procedures was ongoing, noting that such procedures included opportunities for citizen participation.

Commissioner Hart addressed Mr. Bennett's concerns regarding the possibility that minor modifications applications would be utilized to permit modifications for previously-approved developments, pointing out that changes such as those pursued by Oakcrest School would not be considered a minor modification. He added that the modifications proposed for Oakcrest School had been subject to a special exception amendment approval that had included a public hearing and the proposed amendment would not impact that process. A discussion ensued between Commissioner Hart and Mr. Bennett regarding the process utilized to improve the modifications pursued by the Oakcrest School and the issues associated with those modifications wherein Commissioner Hart reiterated that the procedures articulated by the proposed amendment would not have impacted the process for approving the modifications at Oakcrest School.

A discussion ensued between Commissioner Hart and Commissioner Niedzielski-Eichner, with input from Mr. Bennett, regarding the process for approving the modifications to Oakcrest School and the challenges associated with that application wherein Commissioner Hart stated that the process had included public notification provisions.

Shane Murphy, 7900 Tysons One Place, Suite 500, Tysons, representing Reed Smith, LLP, spoke in support of the proposed amendment because it would provide greater flexibility for applicants pursuing redevelopment throughout the County. He added that he spoke on behalf of two clients, Capital One and the IDI Group, and both clients had expressed support for the proposed amendment. Mr. Murphy indicated that multiple clients had encountered issues in which the existing provisions for minor modifications were prohibitive and the only alternative was to pursue a proffered condition amendment. He then said that the language in the proposed amendment would facilitate the process for approving minor modifications, adding that the need

for such modifications was common with large redevelopment efforts, citing an instance where topography had necessitated a modification for a previously-approved development. Mr. Murphy said that the notification procedures articulated in the proposed amendment were sufficient to address the concerns from previous speakers regarding opportunities for public engagement. In addition, he stated that the revised process for pursuing minor modifications would provide opportunities for applicants to implement more features into a development in a manner that was more efficient than the process for pursuing a proffered condition amendment. (A copy of Capital One's statement of support for the proposed amendment is in the date file.)

Commissioner Ulfelder pointed out that certain modifications to approved proffers could be implemented through the procedures articulated in the proposed amendment, but others would not. He then asked for additional information regarding the process that applicants utilized for determining whether pursuing a minor modification was warranted instead of a proffered condition amendment. Mr. Murphy indicated that the procedure utilized by an applicant depended on the stated goal of the modification. A discussion ensued between Commissioner Ulfelder and Mr. Murphy regarding the instances in which an applicant would pursue a proffered condition amendment, the areas of the County in which such a procedure was warranted over that of a minor modification, and the benefits of utilizing the minor modification process wherein Mr. Murphy stated that the minor modification procedure provided greater flexibility for applicants.

A discussion ensued between Commissioner Flanagan and Mr. Murphy regarding the cost of pursuing a proffered condition amendment compared to that of a minor modification, the factors that affected the cost of those applications, and the process an applicant would utilize in evaluating whether one process was warranted over the other wherein Mr. Murphy indicated that the cost of minor modifications was less than that of a proffered condition amendment.

Scott Adams, 1750 Tysons Boulevard, Suite 1800, McLean, representing McGuireWoods, LLP, said that he was also speaking on behalf of the National Association for Industrial and Office Parks (NAIOP). He then voiced support for the propose amendment, echoing remarks from Mr. Murphy regarding the greater flexibility that the revised procedures provided for applicants pursuing minor modifications. He pointed out the importance of such flexibility, noting the frequency with which modifications were required during the redevelopment process. Mr. Adams also stated that the proposed amendment would improve the economic viability of redevelopment efforts throughout the County, adding that utilizing proffered condition amendment applications for such modifications incurred a significant cost. In addition, he commended staff's effort on the proposed amendment. Mr. Adams also indicated that the amendment was consistent with Fairfax First and the County's Economic Success Strategic Plan to promote the speed, consistency, and predictability of development.

Chairman Murphy called for speakers from the audience.

Fran Wallingford, 3311 Mantua Drive, Fairfax, voiced opposition to the proposed amendment due to concerns regarding the notification process for informing the public of minor modifications and the limited opportunities for public input during the review process. She then

said that she favored revising the language to articulate a notification process for developers seeking a minor modification. She also noted the importance of public engagement in the development process to ensure that applicants were aware of public concerns. In addition, Ms. Wallingford expressed concern regarding the usage of the word “shall” in the Zoning Ordinance and supported efforts to clarify the definition of such verbiage.

A discussion ensued between Commissioner Migliaccio and Ms. Strunk regarding the ongoing efforts to improve the notification process, the possibility of furthering those efforts as the County updated the website, and the usage of a listserv for informing the public wherein Ms. Strunk indicated that the notification process would be evaluated as part of the various efforts to update the County’s system for land use development services.

Commissioner Ulfelder stated that concerns expressed by citizens’ groups regarding the notification process for minor modification applications had frequently included requests that citizens be notified earlier in the review process. He added that the concerns expressed by Ms. Wallingford had been echoed by other citizens.

Commissioner Hart pointed out that Board of Supervisors’ efforts to improve citizen engagement had included discussions for providing a notification service from which citizens could receive information regarding ongoing issues throughout the County. He then suggested utilizing a similar service to provide notifications to citizens for issues that did not require a specified notification procedure.

Mark Looney, 11951 Freedom Drive, Reston, representing Cooley, LLP, spoke in support of the proposed amendment, echoing remarks from previous speakers regarding the greater flexibility that would be provided for applicants pursuing minor modifications. He described instances in which applicants pursued minor modifications, noting the frequency with which such modifications were necessary. Mr. Looney pointed out that certain tenants often required provisions that required a minor modification and such modifications were necessary to secure tenants. He also cited instances where unexpected issues had arisen during the construction process that required a subsequent modification, such as the presence of unknown utility features. In addition, Mr. Looney said that the scope of various modifications pursued during the redevelopment process did not warrant a proffered condition amendment, which incurred significant costs on applicants. He also noted the limited flexibility of the existing provisions for minor modifications and the proposed amendment would facilitate redevelopment efforts throughout the County.

Greg Budnik, P.O. Box 1214, Newington, representing Community Association Engineering (CAE), said that he supported deferring the decision only of the proposed amendment to evaluate opportunities to reduce the fees associated with pursuing minor modifications. He described the activities of CAE, stating that the organization coordinated primarily with homeowners associations in implementing minor modifications to a community. He then said that the cost and process for pursuing such modifications for homeowners associations was prohibitive. Mr. Budnik cited efforts such as expansions to parking facilities as common modifications that a homeowners association would pursue, noting that certain communities lacked the financial

resources to cover the costs of those modifications. He said that he supported efforts to reduce the fees for applications, such as proffered condition amendments or proffer interpretations, to provide greater flexibility for homeowners associations. Mr. Budnik noted the importance of providing opportunities for homeowners associations to implement various modifications, adding that certain modifications had not been pursued due to the cost. He also indicated that the proposed amendment had not adequately addressed that issue and favored including provisions that provided opportunities to waive the fees or assorted submission requirements for certain modifications during the deferral period.

A discussion ensued between Commissioner Hart and Mr. Budnik regarding the portions of the review process for minor modifications that homeowners associations determined to be cost prohibitive, the common modifications pursued by homeowners, and the scope of the proposed amendment wherein Mr. Budnik cited instances where minor modifications had not been pursued due to the cost of the application process and Commissioner Hart indicated that such provisions were beyond the scope of the amendment, but requested language for a potential follow-on motion be provided during the deferral period.

Jon Clark, 7227 Auburn Street, Annandale, spoke in opposition to the proposed amendment because the procedures articulated in the process for minor modifications were not consistent with the County's ongoing efforts to improve community engagement. He described the efforts for improving community engagement, citing two committees that had been formed by the Board of Supervisors for that purpose. He then indicated that efforts to implement policies to facilitate engagement had not been adequate. Mr. Clark also described the committee meetings he had attended on citizen engagement, noting that the meetings had not adequately accommodated public input. He stated that the proposed amendment would disproportionately benefit applicants pursuing minor modifications at the expense of the community impacted by such efforts. Mr. Clark suggested that the decision for the proposed amendment be deferred a year to permit sufficient time for evaluation by the public.

There being no more speakers, Chairman Murphy called for closing remarks from Mr. Guinaw, who declined.

A discussion ensued between Commissioner Ulfelder and Ms. Byron regarding the criteria for determining whether a feature was under the purview of a minor modification, the criteria that had been excluded from the proposed amendment, the process for determining that criteria, and the input staff had considered in determining the criteria wherein Ms. Byron explained the following:

- The input from developers and communities had been considered by staff in finalizing the criteria;
- The analysis conducted by staff concluded that a narrow criteria for such modifications was appropriate;

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- The public input for the proposed amendment had come from multiple community meetings and land use committee meetings;
- The majority of those who had attended those did not object to the proposed amendment;
- The proposed amendment had been subject to revisions in response to the input generated by the community meetings; and
- The citizens' committee that reviewed the proposed amendment had been organized by the Board of Supervisors and the input generated by that committee had been considered by staff in finalizing the amendment.

There were no further comments or questions from the Commission; therefore, Chairman Murphy closed the public hearing and recognized Commissioner Hart for action on this item.

(Start Verbatim Transcript)

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Commissioner Hart: Thank you, Mr. Chairman. First, I want to thank all the folks that came out. And I do want to say, when we are working on a zoning ordinance amendment – or almost any land use kind of case, but particularly a zoning ordinance amendment like this. in my view, our process needs to be collaborative rather than adversarial. And we benefit, very much, from the input from speakers, whether it's from the community or industry or wherever, giving us things to think about. And I think we've been given several things to think about both before this evening and the – and the discussion tonight – both the comments from the Commissioners or from the – and the discussion with the speakers. I think – we had a zoning ordinance amendment in 1941 and again in 1959 and again 1978. And it's been a long time and it's probably time to do something again. And we know that and we've been saying that and it keeps coming up in meetings or retreats or whatever. And we've started. Tonight was the first step, I think, in the zMOD process and nobody said it was going to be easy. And it isn't. And re-writing something with the objectives of trying to clean it up and make it more understandable, make it so that, whether it's citizens or industry or anybody else, we know what it means and we're doing the right thing. We're going to have to crunch through some difficult issues, but I think we got a good start. I think we have a number of things to think about. And therefore, Mr. Chairman, I WILL MOVE THAT WE DEFER THE DECISION ONLY ON THE ZONING ORDINANCE AMENDMENT, MINOR MODIFICATIONS (ARTICLES 8, 9, 16, 18, AND 20) AND MINOR MODIFICATIONS TO APPROVED ZONINGS AND OTHER RELATED CHANGES TO A DATE CERTAIN OF NOVEMBER 9, WITH THE RECORD REMAINING OPEN FOR WRITTEN AND ELECTRONIC COMMENTS.

Commissioner Migliaccio: Second.

ZONING ORDINANCE AMENDMENT – MINOR MODIFICATIONS
(ARTICLES 8, 9, 16, 18, AND 20) AND MINOR MODIFICATIONS TO
APPROVED ZONINGS AND OTHER RELATED CHANGES

October 26, 2017

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of the motion? All those in favor of the motion to defer decision on this proposed zoning ordinance to a date certain of 11/9, November 9th, say aye.

Commissioners: Aye.

Chairman Murphy: And, of course, the record remains open for written comment or electronic comment.

The motion carried by a vote of 9-0. Commissioner Strandlie was absent from the meeting.

(End Verbatim Transcript)


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The meeting was adjourned at 10:26 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: December 6, 2017



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