

**MINUTES OF  
FAIRFAX COUNTY PLANNING COMMISSION  
THURSDAY, NOVEMBER 30, 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  
Julie M. Strandlie, Mason District  
Phillip A. Niedzielski-Eichner, Providence District  
Vacant, Sully District  
Mary Cortina, Commissioner At-Large

ABSENT: Earl L. Flanagan, Mount Vernon District

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The meeting was called to order at 8:17 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 Mary D. Cortina was appointed by Chairman Sharon Bulova to serve as at-large Planning Commissioner. Commissioner Cortina's term would commence immediately after the oath of office was administered. Commissioner Cortina would complete the unexpired portion of former at-large Commissioner Janyce N. Hedetniemi's term that would expire in December, 2020.

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John T. Frey, Clerk of the Circuit Court, performed the swearing-in ceremony for Commissioner Mary D. Cortina appointed by the Board of Supervisors.

Chairman Murphy thanked Mr. Frey for presiding over the swearing-in ceremony.

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2232-Y17-38 – VERIZON, 13857 McLearen Drive, Herndon

*(Start Verbatim Transcript)*

Commissioner Hart: Thank you, Mr. Chairman. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION CONCUR WITH STAFF'S DETERMINATION FOR APPLICATION 2232-Y17-38, THAT THE PROPOSED TELECOMMUNICATIONS FACILITY BY VERIZON, LOCATED AT 13857 MCLEAREN DRIVE IN HERNDON, IS

SUBSTANTIALLY IN ACCORD WITH RECOMMENDATIONS OF THE ADOPTED COMPREHENSIVE PLAN AND SHOULD BE CONSIDERED A "FEATURES SHOWN" OF THE PLAN, PURSUANT TO VIRGINIA CODE SECTION 15.2-2232, AS AMENDED.

Commissioner de la Fe: Second.

Chairman Murphy: Seconded by Mr. Hunt – Mr. de la Fe. Is there a discussion of the motion? All those in favor of the motion to concur with the feature shown determination in 2232-Y17-38, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hart: That's it. Thank you.

Chairman Murphy: Ms. Cortina abstains.

The motion carried by a vote of 9-0-1. Commissioner Cortina abstained from the vote. Commissioner Flanagan was absent from the public hearing.

*(End Verbatim Transcript)*

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ORDER OF THE AGENDA

Commissioner Hart established the following order of the agenda:

1. RZ/FDP 2017-SU-011 – DD SOUTH 5, LC
2. AA 2012-SU-001 – JON AND KIM HICKOX
3. SE 2017-MV-024 – FABIOLA SALINAS
4. FDPA 2011-PR-017 – MCLEAN PHASE I L/CAL, LLC
5. ZONING ORDINANCE AMENDMENT – ARTICLES 4, 5, 6, 7, 8, 9, 10, 11, 13, 17, 20, AND APPENDICES 1 AND 7; RESTAURANTS
6. PRC C-378/SE 2016-HM-024 – KENSINGTON SENIOR DEVELOPMENT, LLC

This order was accepted without objection.

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Chairman Murphy called the first case.

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*RZ/FDP 2017-SU-011 – DD SOUTH 5, LC – Appls. to rezone from PDC, I-5, HD and WS to PDC, HD and WS to permit site modifications related to office use at an overall Floor Area Ratio (FAR) of 0.49 and approval of the conceptual and final development plan. Located in the*

*S.E. quadrant of the intersection of Sully Rd. and Air and Space Museum Pkwy., W. of Centreville Rd. on approx. 77.31 ac. of land. Comp. Plan Rec: mixed use up to 0.35 FAR. Tax Map 34-2 ((1)) 2C1, 2D1, 2E, 3C1 and 6. SULLY DISTRICT. PUBLIC HEARING.*

Francis A. McDermott, Applicant's Agent, Hunton & Williams, LLP, reaffirmed the affidavit dated October 24, 2017.

Commissioner Hart asked that Chairman Murphy ascertain whether there were any speakers for this application. There being none, he asked that presentations by staff and the applicant be waived, and the public hearing closed. No objections were expressed, therefore, Chairman Murphy closed the public hearing and recognized the Commissioner Hart for action on this application.

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*(Start Verbatim Transcript)*

Commissioner Hart: Thank you, Mr. Chairman. This is a straightforward case. It has staff's favorable recommendation with which I concur, and I understand that Sully District Council has no opposition to it. For the record, Mr. McDermott, could you come to the podium please? Can the applicant please confirm that they have read – that they understand and agree to the development conditions dated November 17, 2017.

Francis A. McDermott, Applicant's Agent, Hunton & Williams, LLP: That is confirmed.

Commissioner Hart: Thank you. First, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE RZ 2017-SU-011 AND ITS ASSOCIATED CDP, SUBJECT TO PROFFERS DATED NOVEMBER 8, 2017.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2017-SU-011, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Cortina: I wanna abstain.

Chairman Murphy: Ms. Cortina abstains. Mr. Hart.

Commissioner Hart: Yes, thank you. Secondly, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2017-SU-011, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED NOVEMBER 17, 2017, AND SUBJECT TO THE BOARD'S

APPROVAL OF THE CONCURRENT REZONING AND CONCEPTUAL DEVELOPMENT PLAN APPLICATION.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of that motion? All those in favor of the motion to approve FDP 2017-SU-011, subject to the Board's approval of the conceptual development and rezoning, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Hart: Mr. Chairman.

Chairman Murphy: Mr. Hart.

Commissioner Hart: Thank you. Third, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THAT THE BOARD OF SUPERVISORS APPROVE THE WAIVERS AND/OR MODIFICATIONS AS SHOWN ON THE ATTACHMENT DATED NOVEMBER 30, 2017.

Commissioner Migliaccio: Second.

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

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Hart: Thank you, Mr. Chairman. Let me just make sure. Ms. Atkinson, I got - covered all the basis this week?

Kelly Atkinson, Zoning Evaluation Division, Department of Planning and Zoning: You got it right this time.

Commissioner Hart: Okay.

Ms. Atkinson: Thanks to me.

Commissioner Hart: Okay, thank you. I wanna thank – I wanna thank Ms. Atkinson again for last week and – but thank her again for the fine work on this case. Let me thank Mr. McDermott and the applicant also for the multiple meetings with the Land Use Committee and working with staff on this application. Thank you.

The motion carried by a vote of 9-0-1. Commissioner Cortina abstained from the vote. Commissioner Flanagan was absent from the public hearing.

*(End Verbatim Transcript)*

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*AA 2012-SU-001 – JON AND KIM HICKOX – A&F District Amendment Appl. authorized by Chapter 115 (County Code), effective June 30, 1983 to permit an amendment of a previously approved agricultural and forestal district to add approx. 60 ac. of land area. Located at 6780 Bull Run Post Office and 15950 Lee Hwy., Centreville, 20120, on approx. 81.0 ac. of land zoned R-C, HD, and WS. Tax Map 64-1 ((4)) 7 Z and 64-1 ((7)) A. SULLY DISTRICT. PUBLIC HEARING.*

Commissioner Hart asked that Chairman Murphy ascertain whether there were any speakers for this amendment. There being none, he asked that presentations by staff and the applicant be waived, and the public hearing closed. No objections were expressed, therefore, Chairman Murphy closed the public hearing and recognized the Commissioner Hart for action on this amendment.

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*(Start Verbatim Transcript)*

Commissioner Hart: Thank you, Mr. Chairman. Mr. Hickox, could you just come down to the podium for a moment? Come down here. Yes, please.

Chairman Murphy: You didn't leave already, did you?

Commissioner Hart: We haven't voted yet, so that's why you're here. Mr. Hickox can you confirm that you and your wife understand and agree to the Proposed Ordinance Provisions now dated November 29, 2017?

Joh Hickox, Applicant: Yes Sir.

Commissioner Hart: Thank you. Mr. Chairman, this is an amendment to an existing Agricultural Forestal District in the Sully District. It has staff's favorable recommendation, as well as the recommendation of the applicable advisory committee. It – and therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE AA 2012-SU-001, AND AMEND APPENDIX F OF THE FAIRFAX COUNTY CODE TO ADD APPROXIMATELY SIXTY ACRES OF ADDITIONAL LAND AREA, TO THE HICKOX LOCAL AGRICULTURAL AND FORESTAL DISTRICT, AND RENEW THE DISTRICT FOR AN EIGHT-YEAR TERM, SUBJECT TO ORDINANCE PROVISIONS CONSISTENT WITH THOSE DATED NOVEMBER 29, 2017.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve application AA 2012-SU-001, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Ms. Cortina abstains.

Commissioner Hart: Thank you Mr. Chairman.

The motion carried by a vote of 9-0-1. Commissioner Cortina abstained from the vote. Commissioner Flanagan was absent from the public hearing.

*(End Verbatim Transcript)*

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*SE 2017-MV-024 – FABIOLA SALINAS – Appl. under Sects. 6-105, 6-106 and 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 8471 Summer Breeze Ln., Springfield, 22153 on approx. 6,272 sq. ft. of land zoned PDH-3. Tax Map 98-1 ((4)) 338. MOUNT VERNON DISTRICT. PUBLIC HEARING.*

Fabiola Salinas, Applicant, reaffirmed the affidavit dated September 2, 2017.

Commissioner Sargeant asked that Chairman Murphy ascertain whether there were any speakers for this application. There being none, he asked that presentations by staff and the applicant be waived, and the public hearing closed. No objections were expressed, therefore, Chairman Murphy closed the public hearing and recognized Commissioner Sargeant for action on this application.

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*(Start Verbatim Transcript)*

Commissioner Sargeant: Thank you, Mr. Chairman. This is a straightforward application regarding a daycare facility – home daycare facility. I'd like to request, Mr. Chairman, that the applicant confirm for the record their agreement – if you can come back forward please. If you would please confirm for the record your agreement to the proposed development conditions dated November 15th, 2017.

Fabiola Salinas, Applicant: Yes, I read everything.

Chairman Murphy: Can you pull that microphone down just a little bit, so we can put it on the tape please?

Ms. Salinas: Yes.

Commissioner Sargeant: Reaffirm the affidavit...

Ms. Salinas: Yes, I read them.

Commissioner Sargeant: I mean the development conditions. Good.

Chairman Murphy: Okay. Thank you very much.

Commissioner Sargeant: Thank you.

Chairman Murphy: Mr. Sargeant.

Commissioner Sargeant: With that, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SE 2017-MV-024, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED NOVEMBER 15TH, 2017.

Commissioner Niedzielski-Eichner: Second.

Chairman Murphy: Seconded by Mr. Niedzielski-Eichner. All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2017-MV-024, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Sargeant: Thank you, Mr. Chairman.

Chairman Murphy: Thank you very much. Same abstention. Ms. Cortina abstains.

The motion carried by a vote of 9-0-1. Commissioner Cortina abstained from the vote. Commissioner Flanagan was absent from the public hearing.

*(End Verbatim Transcript)*

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*FDPA 2011-PR-017 – MCLEAN PHASE I L/CAL, LLC – Appl. to amend the final development plans for RZ 2011-PR-017 to permit a hotel. Located on the S. side of Anderson Rd. and E. of its intersection with Chain Bridge Rd. on approx. 1.23 ac. of land zoned PTC and HC. Tax Map 30-3 ((28)) (1) 1A. PROVIDENCE DISTRICT. PUBLIC HEARING.*

Elizabeth D. Baker, Applicant's Agent, Walsh, Colucci, Lubeley & Walsh, PC, reaffirmed the affidavit dated October 27, 2017.

Commissioner Hart disclosed the law firm of Hart & Horan, P.C. had two cases where the attorneys in Ms. Baker's firm represented an adverse party or adverse parties. He stated that matter and those parties were unrelated to application. Commissioner Hart stated the law firm of Hart & Horan, P.C. had no business or financial relationship and to his knowledge, did not

believe this matter before the Planning Commission would affect his ability to participate in the case.

Bob Katai, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. He stated that staff recommended approval of FDPA 2011-PR-017.

Commissioner Niedzielski-Eichner asked if the precedent setting with the proposed use was in relation to other types of uses for unleased space. In response, Mr. Katai stated this was the first application presented for a mixed-use of residential and hotel. As a result of the type of proposed mixed-use, Commissioner Niedzielski-Eichner inquired about any predicted implications of similar situations. Mr. Katai stated staff anticipated these types of high-rises would take a certain time period before full capacity was reached. Such occupied units would not be problematic, because anticipated impacts were viewed as part of the project.

Commissioner Hurley asked for confirmation that the proposed use would include Airbnb rentals or temporary lodging, the official legal term would be considered under hotel uses. Mr. Katai confirmed. Commissioner Hurley inquired about the differences between the proposed hotel use building codes versus residential use. In response, Mr. Katai stated there would be increased signage requirements. In addition, there would be in place requirements that addressed how the alarms would interconnect. Additional standards would also be required, because the proposed use would be classified as a different type of use under building code. Commissioner Hurley asked if additional changes would be required in order to be classified as temporary lodging. Mr. Katai stated the building official would offer guidance regarding those types of changes.

Commissioner Migliaccio inquired as to why the whole building was being used as a hotel. He stated if the applicant made a bad business model and could not rent out immediately, why not utilize a limited number of floors or a certain number of rooms. Commissioner Migliaccio also stated, there were no incentives in place for the applicant to lease any apartments before the two-year agreement. He further made reference to the Airbnb and short-term lodging, where in those types of uses, more money would be made on a daily basis, versus monthly. In response, Mr. Katai stated the applicant did not wish to specify which units would be rented. The applicant planned to utilize 115 of the 319 units for hotel use. Commissioner Migliaccio asked if a hotel was a non-residential use. Mr. Katai stated it was. Commissioner Migliaccio further asked why the applicant did not pay a fee into the Tysons non-residential housing fund. He stated this issue was precedent setting, and there was a Phase II of the project, therefore a fee should be considered. In response, Mr. Katai stated with recent developments and the lease rates in the Tysons area, coupled with and the length of time for occupancy, the proposed use was a way to generate faster occupancy.

Commissioner Hart made reference to a news story regarding an apartment building in the Tysons area, where after construction the building was deemed unsafe. He asked whether this was the same building for the proposed use. Mr. Katai confirmed it was not.

Commissioner Sargeant made reference to Development Condition Number 6. He inquired about the setup of the Transportation Demand Management (TDM) program, and the use of non-single occupancy vehicle modes for employees commuting to and from the hotel. He inquired if this



was a term of employment for the employees. In response, Mr. Katai stated staff requested the applicant submit a TDM plan. The TDM plan would explain the incentives program for thirty percent of the employees. Discussions continued regarding Development Condition Number 6 and incentives to employees which would encourage them to utilize the TMD program. Commissioner Sargeant stated working towards incentives for employees was standard practice in the TDM program. He suggested adding the word “incentives” for thirty percent of the employees to the development conditions.

Commissioner Strandlie asked staff for additional information regarding the third-party arrangement. She stated she was uncomfortable with the Airbnb analogy. Chairman Murphy requested that Commissioner Strandlie direct her question to the applicant.

Commissioner Ulfelder stated the applicant would be allowed hotel use as an interim use, and that hotel uses were allowed within the Planned Development Commercial (PDC) District. He asked for a list of other uses within the PDC District that would be allowed as interim uses in residential buildings. In response, Mr. Katai stated the types of uses allowed in the PDC District would be listed on the final development plan. The original final development plan did not include a hotel use. He further stated if the applicant added another use such as a funeral parlor, the applicant would have to seek approval from the Planning Commission. Staff and the Zoning Administrator would also have discussions and evaluate the application to determine whether a particular use would be allowed. Commissioner Ulfelder stated if an application was approved for residential use, there should be a determination as to the types of interim uses allowed within that residential use.

Ms. Baker gave a presentation wherein she stated the following:

- The application for the interim use extended for a duration of twenty-four months;
- Hotel and residential were similar uses. Sleeping areas were provided. An interim use of a hotel was accepted in an apartment complex;
- The proposed use would be an attractive use, where families with a need for more than a typical hotel room would find it useful;
- The proposed interim use would allow for no more than 115 rooms at any given time. As the apartment building leased up, there would be a decrease in the number of hotel rooms. Fifteen units would be the average number leased every month;
- The hotel uses would not be a part of the workforce housing units. The applicant would provide twenty percent workforce housing as part of the residential use. The workforce housing units would be the first homes leased;
- The proffers referenced office and residential TDM programs and following those programs, reference was made to hotel and retail uses. Employees in an office could be better controlled with different types of incentives for modes of transportation. Modes of

transportation for hotel and retail patrons would be harder to control. Incentives would be provided to hotel and retail employees;

- No penalties were assessed in the proffers which made reference to hotel and retail uses. Monitoring and penalties would not be assessed until the point of stabilization. Stabilization would materialize one to two years after occupancy, after which work and commuting patterns for occupants would be analyzed; and
- Other uses such as a funeral home or dog kennel would not be proposed. A hotel use in a residential building would be more acceptable.

Commissioner Niedzielski-Eichner inquired about the Airbnb use. In response, Ms. Baker emphasized the proposed use was not an Airbnb nor a short-term rental. The term "third-party operator" referenced a hotel operator, with a business and professional occupational license for a hotel. Room tax would be paid. The units were not owned or rented by an individual entity. Commissioner Strandlie requested additional information regarding the type of operator and methods of advertising. In response, Ms. Baker stated Expedia.com, Trivago.com, Hotels.com, and other similar platforms, were medians for advertising. No signage would be placed outside of the building. The Y Hotel was a possible third-party operator. The Y Hotel completed a similar hotel use in Arlington with The Bartlett located at 520 12<sup>th</sup> Street South, Arlington.

Commissioner Migliaccio stated he understood the workforce units in the building were not part of the hotel use. He asked why a contribution for non-residential use was not made by the applicant. He further stated with the proposed hotel use, 319 units were removed from the housing stock for two years, with no funds being provided to the housing fund. Ms. Baker disagreed. She stated 319 units were not being removed from the market. Commissioner Migliaccio interjected and stated most hotels operated where build up was required as part of the business plan. He stated he could not comprehend why this particular residential building was deemed a special use in the County. He also stated Airbnb and hotels were similar uses, and there were no benchmarks after one year the building was at a seventy percent lease capacity. Commissioner Migliaccio noted the applicant would generate the most funds, after which the building would be leased out until full capacity was reached. In response, Ms. Baker stated there was no deceitful intention on the part of the applicant. Commissioner Migliaccio stated his concerns did not imply any deception on the part of the applicant, but rather this was a bad business plan, and the proposed use was a way for the applicant to increase capital. Commissioner Migliaccio stated the precedent setting in the County was a concern for future applications. Ms. Baker apologized for her misinterpretation of Commissioner Migliaccio's statement. She stated the project was not a bad business plan, and the building was one of seven buildings which would be constructed. Ms. Baker further stated that in the Tysons area, larger residential buildings took longer to absorb. The proposed use was a mechanism which would provide an additional use, which would be an added benefit to the Tysons community. The applicant had no intention of slowing down leasing in order to allow for the continued hotel use. Ms. Baker stated that paying three dollars a square footage would add more to the applicant's fair share. The applicant would also be providing twenty percent of the workforce housing, as required in the Comprehensive Plan. Discussions continued regarding the need for compensation into the housing fund.

Commissioner Sargeant asked for confirmation a mandate would not be imposed on a thirty percent of employees. In response, Ms. Baker stated that in the TDM plans, there was an arrangement where there would be a reduction in the single occupancy vehicle traffic, or trips by thirty percent, and that thirty percent of the employees would not be charged. Commissioner Sargeant asked that the applicant revise the verbiage in Development Condition Number 6 to reflect same. The applicant agreed.

Commissioner Ulfelder asked should the application be approved, what would prevent current and future residential use applicants from building a condition into their final development plans, that would allow them to move forward without obtaining an approval from the Commission for a final development plan amendment. In response, Mr. Katai stated that the terms would have to be reflected and approved as part of the proffers.

Commissioner Hart asked for a follow-up response to Commissioner Ulfelder's inquiry. In response Leslie Johnson, Director, Zoning Administration Division, Department of Planning and Zoning, stated that at the November 1, 2017 Short-Term Lodging Workshop, there was a placeholder for such issues referenced by Commissioner Ulfelder. Staff was looking into rental multi-family apartment building scenarios and how short-term rentals would be treated. She stated there were other apartment complexes that offered short-term rentals. A number of short-term rental options would be presented to the Board's Development Process Committee. The outcome would be discussed with the Planning Commission. Ms. Johnson stated that in conjunction with a rezoning or by special exception in the transit station areas, staff would look at adding a time limit to lease-up options, or would limit the option to ten percent of the units in a building. The Tysons Partnership was in the process of conducting a forum discussion with their members. Ms. Johnson stated that until the Zoning Ordinance was amended, the option would be to amend the final development plan, or a proffered condition amendment that would add hotel/motel as a permitted use. Commissioner Hart inquired as to whether the proposed use was a creative marketing trend to occupy the space, and if so, would other residential uses request same. Ms. Baker could not speak for other residential use providers, nor whether this would become a trend. She stated there was nothing about the proposed use where the applicant expected slower absorption than the average building within the Tysons area. Fifteen units a month would be considered a good pace of absorption. Commissioner Hart asked why this was not requested when the building was approved. In response, Ms. Baker stated this concept was not discussed. Commissioner Hart stated that hotels and apartment buildings have different programmatic assignments of spaces. He asked whether changes were being made to the building, and were spaces being assigned in a different manner than what was approved. In response, Ms. Baker stated the number of units would be dependent on the time of the leasing. There would be a unit that would be dedicated for "front of the house", a location where a hotel guest would check-in. There would be another unit dedicated for "back of house", a location where inventory would be housed. The anticipated number of employees would be about twenty, most of which would be housekeepers. Ms. Baker stated this was not a full-service hotel. There were no restaurants, and the hotel guests would utilize the same amenities as the residents. Commissioner Hart asked whether apartment spaces were being turned into support spaces and would that be part of final development plan approval. Ms. Baker stated this was part of the hotel use, and no real changes were made to the spaces. Ms. Johnson stated a new use of hotel/motel would be added and that area could be used. She stated that use would become accessory to the

use, deeming it acceptable. Commissioner Migliaccio requested that housing advocates also be a part of the Tysons Partnership forum.

Commissioner Niedzielski-Eichner made reference to the revised development conditions dated November 30, 2017, item Number 6, which made reference to the TDM. He asked whether the applicant was willing to accept Commissioner Sargeant's proposal to revise the language in the development conditions, referencing thirty percent of all employees through use of incentives. Ms. Baker stated that would be acceptable to the applicant. Commissioner Niedzielski-Eichner asked whether Commissioner Migliaccio's comment was note worthy of consideration in light of the application. In response, Ms. Johnson stated she did not have an immediate answer, and hoped that non-residential was part of the evaluation process, due to the twenty-percent workforce housing being provided. She further stated the situation would be evaluated, in an effort to address future regulations dealing with short-term rentals.

Commissioner Hurley stated that businesses in the transit station areas should not be exempt. She inquired why the business model was not applied across the county. In response, Ms. Johnson reverberated Commissioner Migliaccio's concern regarding the availability of rental units. She stated staff felt there was a distinction with transit station areas and the need for the short-term rentals with TDMs. In those areas, they were permitted with Board's approval in conjunction with a rezoning, special exception or added conditions. Ms. Johnson further stated sub-leasing was not allowed in some residential uses. In cases where sub-leasing was allowed and the County adopted a short-term rental, the tenant would be allowed to apply for a short-term rental. This would trigger the property owner to file for a short-term rental permit.

Commissioner Migliaccio asked if a Zoning Ordinance included short-term rentals, and language was incorporated for apartment buildings for rentals, would the need for final development plans become moot. In response, Ms. Johnson stated final development plans would still be required in conjunction with a rezoning, and as a result, could be evaluated which in turn would allow for the option.

There being no listed speakers, Chairman Murphy called for speakers from the audience and recited the rules for testimony.

Mary Holbeck, 1608 Colonial Lane, McLean, expressed her regret the residents were not invited to participate in the discussion. She stated that to her knowledge, in the Providence District, there were no solicitations for the opinions of the residents. Ms. Holbeck echoed Commissioner Sargeant's concerns regarding the TDM program, and the mandate placed on thirty-percent of the employees. She stated employees would end their work day at a time the buses were out of service. Ms. Holbeck stated she was baffled at the lack of discussion regarding transportation and the agonizing traffic issues. She noted Virginia Department of Transportation's letter to staff, dated September 17, 2017, Number 1, where inquiry was made regarding the status of Anderson Road along the property frontage. Ms. Holbeck stated she was an architect, and as a lifelong resident, encouraged the Commission and staff to visit with her office.

Commissioner Niedzielski-Eichner asked that staff respond to Ms. Holbeck's concern regarding the traffic flow impact as a result of the application. Mr. Katai stated Anderson Road was part of The Commons Development project, and was phased to be improved as part of the project.

Commissioner Niedzielski-Eichner inquired about the interim uses proposed with the application and the results of the traffic analysis. In response, Mr. Katai stated the traffic analysis showed no significant difference.

Ms. Baker in her rebuttal testimony stated Anderson Road was partly under construction, would be improved along the frontage, and there would be parking and bike-through lanes. The remainder of Anderson Road would be completed incrementally with other phases of the project, and would be fully improved before occupancy.

There being no additional speakers, further comments or questions from the Commission, Chairman Murphy closed the public hearing and recognized Commissioner Niedzielski-Eichner for actions on this application.

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*(Start Verbatim Transcript)*

Commissioner Niedzielski-Eichner: Thank you, Mr. Chairman. I have been listening intently to the discussion this evening, and would like to defer for a week until December 7<sup>th</sup>, to – for the digestion of these points in the – for Ms. Johnson to be able to give some additional thought to any of the issues being raised, and staff as well. So, I'm going to propose – I MOVE, MR. CHAIRMAN, THAT THE PLANNING COMMISSION DEFER THE DECISION ONLY FOR FDPA 2011-PR-017 TO A DATE CERTAIN OF DECEMBER 7<sup>TH</sup>, 2017.

Chairman Murphy: Thank you very much.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of the motion? All those in favor of the motion to defer decision only on FDPA 2011-PR-017 to a date certain of December 7<sup>th</sup>, with the record remaining open for comments, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much.

The motion carried by a vote of 9-0-1. Commissioner Cortina abstained from the vote. Commissioner Flanagan was absent from the public hearing.

*(End Verbatim Transcript)*

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ZONING ORDINANCE AMENDMENT – ARTICLES 4, 5, 6, 7, 8, 9, 10, 11, 13, 17, 20, AND APPENDICES 1 AND 7; RESTAURANTS – To amend Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax, as follows: Amend Sect. 20-300 to include new definitions for restaurants, restaurants with drive-through (drive-throughs), and carryout restaurants (carryouts), and these definitions result in the following: (a) restaurants encompass uses currently deemed an eating establishment or a fast food restaurant without a drive-through;

*(b) drive-throughs include establishments that sell food and contain a drive-through; and (c) carryouts have up to eight seats [Option: 0-15 seats]. The amendment also clarifies definitions of quick-service food store and retail sales establishment, and replaces eating establishments with restaurants in the definitions of hotel, motel, marina, and theatre.*

*(1) Delete the definitions of Eating Establishments and Fast Food Restaurants from Sect. 20-300 and delete all references to those terms throughout the Zoning Ordinance, and, where applicable, replace those terms with restaurants or drive-throughs, respectively.*

*(2) Revise Commercial District Regulations to: (a) allow carryouts and restaurants as permitted uses in the C-2 through C-8 Districts (or, Option 2: require special exception approval for those uses in the C-2 District); (b) delete eating establishment and fast food restaurant use limitations; (c) require special exception approval of drive-throughs in the C-5 through C-8 Districts; and (d) delete Part 9 to eliminate the C-9 District and delete all references to the C-9 District throughout the Zoning Ordinance.*

*(3) Revise the Industrial District Regulations to allow restaurants as an accessory service use in the I-1 District; allow restaurants by special exception in the I-2 through I-4 Districts; allow carryouts, restaurants, and drive-throughs by special exception in the I-5 and I-6 Districts; and replace eating establishment with restaurant in the use limitations of the I-1 through I-4 Districts.*

*(4) Revise Planned Development District Regulations as follows: (a) PDH District: permit restaurants and carryouts as a secondary use, but allow a drive-through by special exception; (b) PDC District: permit restaurants as a principal use and allow carryouts and drive-throughs as a secondary use; (c) PRC District: permit restaurants, carryouts and drive-throughs in areas designated Neighborhood Convenience Center, Village Center, Town Center, and Convention/Conference Center; (d) PRM District: carryouts and restaurants would be a secondary use; (e) PTC District: allow restaurants, carryouts, and drive-throughs as a permitted use; replace fast food and eating establishment with restaurant, carryout, and drive-through.*

*(5) Revise Overlay District regulations to replace eating establishments and fast food restaurants with restaurants, carryouts, and drive-throughs in the Noise Compatibility Table. Also replace fast food with drive-throughs in the Highway Corridor Overlay District.*

*(6) Delete special permit requirement for restaurants in older structures in the C-3 and C-4 Districts in Articles 4 and 8.*

*(7) Revise Special Exception regulations to (a) allow the following uses by right or as an accessory service use: (i) restaurants and carryouts in all P and C-2 through C-8 Districts (OPTION 2: Require a special exception for restaurants and carryouts in the C-2 District); (ii) restaurants in I-1 District; (iii) drive-throughs in PDC, PRC, and PTC Districts; (b) require a special exception for the following: (i) restaurants in the I-2 through I-6 Districts; (ii) carryouts in the I-5 and I-6 Districts; and (iii) drive-throughs in the PDH, C-5 through C-8, and I-5 and I-6 Districts; and (c) to update additional standards to include restaurants, drive-throughs, and*

*carryouts; delete references to PDC District; and, in Part 6, replace fast food with drive-throughs.*

*(8) Revise Article 10 to replace eating establishment with restaurant, and revise Part 2 of Art. 10 to identify where restaurants and carryouts will be permitted as accessory service uses.*

*(9) Revise parking regulations in Section 11-104 as follows: (a) OPTION 1: Leave the parking rate as is, except that the term eating establishment is replaced with restaurant and fast food is replaced with drive-through [additional OPTION: drive-throughs could be parked at the restaurant rate]; or (b) OPTION 2: Create new parking rates for restaurants and drive-throughs based on gross floor area [Range: between 9-12 parking spaces per 1000 square feet of gross floor area]. Under either option, amend the following:*

- (a) Add carryout to the quick-service food store parking rate;*
- (b) Within shopping centers, allow restaurants and drive-throughs that are 5000 square feet or less to park at the shopping center rate;*
- (c) Permit up to 20 outdoor seats that are not included in parking calculations for restaurant or drive-through [Option: 0 to 35 seats];*
- (d) Exclude spaces designated for curbside pickup from minimum required parking;  
and*
- (e) Establish a parking rate for craft beverage production establishment which is the same as the eating establishment rate.*

*(10) Revise Article 13, Transitional Screening & Barrier Matrix, by replacing eating establishments with restaurants and carryouts and replacing fast food with drive-through.  
COUNTYWIDE.*

Carmen Bishop, Zoning Administration Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. She stated that staff recommended adoption of the Zoning Ordinance Amendment, Articles 4, 5, 6, 7, 8, 9, 10, 11, 13, 17, 20, and Appendices 1 and 7; Restaurants.

Commissioner Hart asked in a scenario where there was an existing restaurant building, the lessor loses the lessee and the space remained vacant for a period of time, and another lessee tried to obtain a non-residential use permit, what would be required from that new lessee. In response, Ms. Bishop stated the grandfathering provisions were intended to ensure that, should parking requirements be increased, no harm would come as a result. She made reference the staff report, Conclusion Section, Number 3, which stated that lawfully existing eating establishments and fast food restaurants would be grandfathered, regardless of changes in ownership or tenant. Commissioner Hart inquired as to how one would alleviate the “one-size fits all” approval approach. In response, Ms. Bishop stated staff was not proposing revisions to the stacking requirements for drive-thru lanes. She stated the parking being proposed for both options of the

application, the goal was to adhere to the current Zoning Ordinance. Definitional changes were being made, after which parking rates would be applied. Commissioner Hart stated additional parking may be required for restaurants due to popularity versus size. Andrew Hushour, Planning Division, Department of Planning and Zoning, addressed Commissioner Hart's comment and stated under the current zoning regulations, based on the number of seats, there was no accurate formula which would allow for the calculation for such a restaurant. It may be popular through a drive-thru component as well as dine-in. He stated staff concluded the rate, options and square footage were applicable to other establishments. Commissioner Hart followed-up by asking if this issue was easier to deal with on a case-by-case basis. In response, Mr. Hushour stated that when drive-thrus are involved, during the special exceptions process, there may be some flexibility in dealing with some of the issues generated by a particular restaurant, either through parking, stacking or drive-thru lanes.

Commissioner Migliaccio inquired about the targeted range of zero to thirty-five outdoor seating recommended. He stated thirty-five as a set number versus a range, would remedy the outdoor seating in the County. Commissioner Migliaccio also made reference to Page 8 of the staff report, Outdoor Seating, which referenced the minimal impact of outdoor seating on parking. In response, Ms. Bishop stated a trend study was conducted and staff had discussions with the restaurant industry. Coupled with the trend study and discussion, staff arrived at a number of five tables of four. She further stated at the Board's Development Process Committee meeting, a higher number of thirty-five was suggested. That number was included in the advertising.

Commissioner Hurley complemented staff on the work done on the application. She cautioned the reference made to a Planned Residential Community (PRC) in the staff presentation and reminded staff there were three PRCs in the County, two of which were in the Braddock District. She further stated Cardinal Forest and Burke should be acknowledged.

Commissioner Sargeant made reference to a report language that highlighted "parking studies may be completed" as part of the Zoning Ordinance Modernization (zMOD) process, which would enable future review. He stated there were different categories being revised and asked whether more certainty should be added based on staff's experiences with various phases. In response, Ms. Johnson stated staff could not wait on the amendment as there were many factors involved. The economic success strategy was considered, staff heard from industry, and restaurants and they were the driver of many retail operations. Staff also acknowledged a long-term evaluation of parking rates should be considered across the board. As part of the zMOD effort, the initial focus would be on revising the format, structure and the categorization of uses. Ms. Johnson further noted, the Board of Supervisors was scheduled to go for authorization on the parking reductions. Commissioner Sargeant stated a timeframe should be in place.

Commissioner Niedzielski-Eichner asked how one would be privy to changes made to a restaurant's outdoor seating. In response, Ms. Bishop stated the restaurants seating would be shown on their site plan. A parking tabulating would be required, should there be a need for additional seating. Commissioner Niedzielski-Eichner asked if an amendment would be required. In response, Ms. Johnson stated Land Development Services (LDS) would submit an



amendment, which would increase the area exempted from obtaining a site plan up to 2,500 square feet.

Chairman Murphy called the first listed speaker and recited the rules for testimony. Mark Looney, 11951 Freedom Drive, Suite 1400, Reston, expressed support for Option Number 2 of the amendment. Mr. Looney also stated the following:

- His colleagues spent a fair amount of time working with clients in the capacity of building owners, restaurant operators and lenders, where the topic of discussion have always been the way Fairfax County treats restaurants. And, at what point one becomes another use;
- Parking requirement tabulation at present for eating establishments has become most challenging; and
- On a year-to-year basis, clients retain the services of Cooley, LLP to sometimes determine how to re-park their shopping center or mixed use development. In some cases, their site plan decades ago, showed a certain number of seats and there had been several different tenants throughout that timeframe to that shopping center or mixed-use development. Some of these tenants provided a parking tabulation, others did not and as a result the number of seating allowed, was back into question.

Commissioner Hart stated staff recommended Option Number 2, where twenty free seating would be included, and up to twenty-five would be considered. He asked for Mr. Looney's view on the number of parking allowed in the amendment. In response, Mr. Looney stated a number of individuals met with staff to discuss the amendment and one of the questions asked was "How did staff arrive at the twenty?" He also stated the applicant understood staff's rationale of five tables of four, twenty seemed a bit arbitrary; however, any other number could make a difference. Mr. Looney stated outdoor seating was most prevalent in larger scale restaurants and suggested an increase in the number.

Scott Adams, 1750 Tysons Boulevard, Suite 1800, Tysons, expressed support for the amendment. He stated it was a common-sense change to the Zoning Ordinance, which would help align it with the restaurants operation. He also endorsed staff's recommendation of Option Number 2 regarding parking. Categorization of restaurants between eating establishments and fast food could create issues that ran counter to some of County's policies. Mr. Adams stated there have been issues where tenants in an existing office building in a C-3 District, where an attempt was made to add a Starbucks or another coffee shop on the ground floor. Under the current Zoning Ordinance, those would be considered fast food restaurants and would not be permitted in that district. In a Tysons location where the ground floor was being activated, a use could not be housed, and would run counter to the County's policies. Mr. Adams stated the changes being proposed to the definitions and updated to the district requirements, would elevate those issues and some deficiencies which existed in the Zoning Ordinance. He stated his support for the

parking changes in Option Number 2 and echoed Mr. Looney's comments regarding parking tabulations and outdoor seating. Mr. Adams also stated his support for the proposed rates.

Greg Budnik, P. O. Box 1214, Newington, expressed support for the amendment. Mr. Budnik stated his engineering firm had been preparing parking tabulations and parking studies in the County for over twenty-five years. He echoed Mr. Looney's and Mr. Adams's comments for Option Number 2. This option would simplify the process and would address the economic side. Mr. Budnik stated parking tabulations for occupancy permits start at a cost of \$3,000 and would average around \$5,000, with a timeframe of around two to three months. He stated in cases where tabulations did not yield results, the minimum cost would be \$5,000 and could run into the five-figure range, with a much longer timeframe before approval. Regarding outdoor seating, Mr. Budnik stated the best way would be to state twenty seats would be appropriate for most restaurants. A sliding scale based on the actual size of the restaurant might be more appropriate. Mr. Budnik concurred with staff's estimate regarding the parking rate using seat count. He also reverberated shopping center parking rates should be preserved for restaurants.

Commissioner Ulfelder requested additional information regarding outdoor seating space parking calculation. He asked if twenty seats were adopted, and a tenant added twenty-four seats, would the first twenty not be counted as part of the parking space calculation. Ms. Bishop stated that would be the case.

There being additional speakers, further comments or questions from the Commission, Commissioner Murphy closed the public hearing and recognized Commissioner Hart for action on this amendment.

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*(Start Verbatim Transcript)*

Commissioner Hart: Thank you. First, I wanna thank the speakers for coming out tonight and contributing to this discussion. I also want to thank staff, Ms. Bishop, Mr. Hushour, Ms. Johnson, for their fine work on this. I think we're very close. I also would note this doesn't go to the Board till January 23<sup>rd</sup>. And I think I would just like to take one more pass at the outdoor parking, and think about, you know, the sliding scale was kind of a new idea tonight. And I don't know but, I wonder if there's some – let's reflect on that. We have time, we don't have to decide this tonight. So, I also had a minor question about the effective date, but we can talk about that offline. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION DEFER THE DECISION ONLY FOR THE PROPOSED ZONING ORDINANCE AMENDMENT REGARDING RESTAURANTS TO A DATE CERTAIN OF DECEMBER 7, 2017, WITH THE RECORD REMAINING OPEN FOR WRITTEN AND ELECTRONIC COMMENTS.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of the motion? All those in favor of the motion to defer decision only on the proposed Zoning Ordinance Amendment on

Restaurants, to a date certain of December 7<sup>th</sup>, with the record remaining open for written comments, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much.  
Commissioner Hart: Thank you.

The motion carried by a vote of 9-0-1. Commissioner Cortina abstained from the vote.  
Commissioner Flanagan was absent from the public hearing.

*(End Verbatim Transcript)*

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The Commission went into a recess at 10:08 p.m. and reconvened in the Board Auditorium at 10:23 p.m.

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*PRC C-378 – KENSINGTON SENIOR DEVELOPMENT, LLC – Appl. to approve the PRC plan associated with RZ –C-378 to permit a medical care facility (assisted living). Located at 11501 Sunrise Valley Dr., Reston, 20191 on approx. 1.8 ac. of land zoned PRC. Comp. Plan Rec: Residential Planned Community- Retail and Public Facilities. Tax Map 17-4 ((17)) 1C. (Concurrent with SE 2016-HM-024). HUNTER MILL DISTRICT. PUBLIC HEARING.*

*SE 2016-HM-024 – KENSINGTON SENIOR DEVELOPMENT, LLC – Appl. under Sect. 6-304 of the Zoning Ordinance to permit a medical care facility (assisted living). Located at 11501 Sunrise Valley Dr., Reston, 20191 on approx. 1.8 ac. of land zoned PRC. Tax Map 17-4 ((17)) 1C. (Concurrent with PRC-C-378). HUNTER MILL DISTRICT. PUBLIC HEARING.*

Mark Looney, Applicant's Agent, Cooley LLP, reaffirmed the affidavit dated November 14, 2017.

Harold Ellis, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. He stated that staff recommended approval of PRC C-378 and SE 2016-HM-024.

Mr. Looney gave a presentation wherein he stated the following:

- The site was one of three PRC Districts in Fairfax County. Under the PRC regulations there was a requirement for a master plan. The Zoning Ordinance divided the PRC regulations into five different use subcategories;
- The site was rezoned pursuant to the original Reston Master Plan, which designated the site and property to the west as a convenience center. The intent of the site was to provide

services to adjacent residential developments. The site was since then rezoned to PRC regulations under the convenience center designation;

- The development plan approved designating the site and the adjacent site to one large convenience center. There were no building footprints or specific uses listed. There were no height or density limitations;
- The existing daycare facility was constructed pursuant to the original PRC rezoning;
- The applicant identified the site and spoke with the owner who was interested in selling the site;
- The applicant identified the site as a possible site to house an assisted living facility which under the County's Zoning Ordinance, would be classified as a medical care facility;
- The site would be located across from Sunrise Valley Drive, from the Commerce Metro Center;
- The site borders the south and west portion of the Reston National Golf Course, and part of the convenience center and the Wethersfield cluster townhomes to the south and east;
- The applicant worked with the Design Review Board (DRB), independent Reston Association. The first visit was in January 2017, and held approximately ten meetings with members. Five formal presentations were made before the design was finalized and approved by the DRB early fall of 2017;
- When the application was first filed, the building size was roughly 91,000 square feet, with three to four stories. There were three levels of living above the first floor of parking;
- The height of the roof was lowered and the roof style was changed. More residential architecture was added. The building size was kept, but it was pushed farther south and west in order to create more distance between the Wethersfield cluster and preserved more vegetation along the border between the two communities;
- The DRB approved Option Number 5. This design eliminated one of the residential floors and condensed the square footage of the project from 91,000 square feet to 65,000 square feet. There was a reduction in unit count from 91 to 70, and bed count from 135 to 96. The same amount of parking was kept. The width of the building was narrowed and shifted farther south and west in order to preserve additional vegetation. The applicant would meet with the DRB for final approval of the final landscape plan, final architecture, lighting and signage;

- An outdoor patio seating was incorporated into the design, with an elevated outdoor patio on the second level, rare end of the building. This would accommodate memory care patients who required a contained space for recreation; and
- Trees located where the building footprint or grading was required to accommodate the parking garage, would be removed or relocated. An attempt would be made to preserve as much vegetation at the property line, as well as provide supplemental screening on site.

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

Jane Anthony, 2055 Wethersfield Court, Reston, expressed her opposition to the application. Ms. Anthony also stated the following:

- The Kensington developers did their best to accommodate the design and outside appearance, and removed an entire floor of the structure. This change was commendable, however, not on the site where a medical exemption was needed;
- The application should not have made it through the Reston Planning and Zoning Committee. Several members were absent the night the hearing was held, and it passed by one vote;
- The new proposed building was twelve times the size of the existing structure. Its underground parking was too limited for guests and employees. The convenience center had little parking now that staff at the dental offices have to utilize remote parking. There was an overflow from Kensington and the convenience center;
- The building size infringed on the privacy of the long-standing townhouse cluster and commercial convenience center;
- There was a minimal amount of landscaping and tree buffer;
- Adding the proposed building to the south side of Reston would allow for and promote additional similar structures on the south side of Sunrise Valley Drive;
- Being a homeowner in a gated community feels like the homeowner was the one gated in. There was one entrance directly onto the flow of traffic on Sunrise Valley Drive. Exiting the cluster was a challenge, and the ability to turn left diminished throughout the day. Turning right in rush hour was also a challenge. The congestion on Sunrise Valley Drive posed a problem for emergency vehicles; and
- Many of these large developments were approved without funding commitments, and schedules to infrastructure upgrades necessary to support massive growth. Growth was welcomed, but not at the expense of a quality of life for residents.

Lynwood Patin, 2027 Approach Lane, Reston, stated his opposition to the application. He also indicated the following:

- The applicant was proposing a 65,000-square foot building to be built on a parcel of land about 77,500 square feet. The size of the building in relation to the size of the lot appeared disproportionate. In order to accommodate the 65,000 square feet, the proposed structure would spread over the parcel of land, and the footprint of the proposed building would cover the majority of the site. The close proximity of the proposed building would be intimidating, and overbearing to the townhomes on Approach Lane;
- To accommodate the 65,000 square feet, the height of the proposed structure would need to be increased. This would allow for visual access over the privacy fences and into the townhomes on Approach Lane;
- Due to the size and elevation of the proposed structure, trees and scrubs would not provide adequate screening between it and the residents on Approach Lane;
- From Hunter Mill Road to Sulstone Drive the south side of Sunrise Valley Drive was lined with residential communities with the exception of the convenience center on the corner of Sulstone Drive. No other developments on the south side compared to what was proposed by the applicant. The location of the structure was not appropriate; and
- The value of the homes on Approach Lane and the ability to sell a home situated in close proximity to the proposed development, would be adversely impacted, should the project proceed as presented. This would also allow for the invasion of privacy for the homeowners and a negative impact on the value of the homes.

Stephen Cerny, 2011 Approach Lane, Reston, stated his opposition to the application. Mr. Cerny said he was a former planning and zoning committee member and the Chairman of the Hunter Mill Land Use Committee. He stated in spring of 2016, the Hunter Mill Committee Land Use Committee voted to oppose the proposed project. With the current revisions made to the original plan, the Hunter Mill Land Use Committee remained in opposition. Mr. Cerny stated moving forward with this project would violate the spirit of the Reston Master Plan. He stated the proposed structure was too large for the site. The recently amended Reston Master Plan envisioned a hard break between the development on the north side of Sunrise Valley Drive, and what existed on the south side, from Reston Parkway to Hunter Mill Road. Mr. Cerny stated when the Board voted, the vote was not in opposition to the use, but rather the size of the structure. The size and scale of the project was incompatible with the townhomes on Approach Lane. He acknowledged the reduction in height of the structure; however, further noted that the residents of the proposed structure would have visuals into the master bedrooms of the residents of the nearby townhomes. Mr. Cerny stated that the Board of Directors strongly disagreed with conclusion reached in Denise James', Chief, Environment and Development Revie Branch, Department of Planning and Zoning (DPZ), September 26, 2017 memorandum to Tracy Strunk, Director, Zoning Evaluation Division, DPZ, where it was determined the proposed density height

and mass were compatible with the adjacent areas. In closing Mr. Cerny stated approving this application would create a dangerous precedent.

Commissioner Hart stated the Reston Master Plan called for public facilities, governmental or institutional use on the proposed site. He asked Mr. Cerny whether he believed the proposed use was not part of the referenced categories. In response, Mr. Cerny stated the residents were trying to convey that a healthcare facility with its current size and scale, being permitted at that the proposed site, would be an anomaly. Commissioner Hart stated a healthcare type use would be an institutional use, and nothing in the Plan precluded the proposed use. Mr. Cerny reiterated the residents were not in opposition to the use, but rather its size and scale. Commissioner Hart stated there was no language or guidance in the Comprehensive Plan that prohibited the construction of a building of .85 floor area ratio. He asked for any specific guidance in the Plan that addressed the size and scale, and would not allow for the development. Mr. Cerny stated he did not have an answer to the question. He further stated this was a quality of life issue, and the Planning Commission should not only adhere to the Comprehensive Plan, but also to the size and scale of the project which was out of proportion to its surroundings.

Commissioner Ulfelder asked whether the front of the townhomes on Approach Lane, faced the proposed property. In response, Mr. Cerny stated there was a line of townhomes which directly faced the proposed structure, and at the end of the street housed another line of townhomes facing northward. In terms of the height difference, Commissioner Ulfelder asked for differences between the front along Approach Lane and the proposed site. Mr. Cerny stated the site was below and the top story would be visible to the townhomes on Approach Lane.

Robert Anthony, 2055 Wethersfield Court, Reston, stated his opposition to the application. Mr. Anthony also indicated the following:

- He was a resident of the Wethersfield Cluster for over twenty-eight years. During that time, Reston had tremendous growth. Over the last few years, residents sat through many planning meetings and discussed the future growth along the Dulles corridor, across Sunrise Valley Drive;
- The proposed Kensington development would be situated into a small parcel between a cluster of townhomes and a few buildings that remained in the small convenience center to the west;
- The large size and placement of a use on a small parcel was typical of the development projects along the Dulles Corridor to the north, and not the residential and low density character of the Reston Master Plan, that governs Wethersfield Cluster and the convenience center;
- Approval of the proposed development would likely to set a precedent for future intensive developments, and other projects throughout the Reston Master Plan area;

- There was a disparity in scale between the adjacent structures and the lack of space left over to buffer a project of this size, on a small plot available at the convenience center; and
- Parking congestion at the convenience center would also be a major concern.

Gene Morris and Angela Palazzolo, 2045 Approach Lane, Reston, stated their opposition to the application. Ms. Palazzolo further indicated the following:

- The proposed project was too large and was out of character with the Wethersfield and the surrounding community;
- The proposed residential building would occupy eighty-five percent of the 1.8-acre lot;
- The proposed building was 371 feet wide, and would run along Approach Lane. This would be the width of approximately seventeen Wethersfield townhomes;
- The height of the proposed residential building was approximately twice the height of a Wethersfield townhome;
- The edge of the proposed development to the townhomes was 100 feet and not 150 feet as shown on the application;
- The square footage of the building was more than thirty-six of the residential townhomes;
- Privacy would be an issue; and
- The proposed use was out of character, would not blend in and was not transitional in the small 1.8-acre space.

John Higgins, 2041 Approach Lane, Reston, stated his opposition to the application. Mr. Higgins also stated the following:

- The proposed building was too large for the site. The volume was twenty-six times of the structure it would replace;
- The site was planned for public facilities use. Residents were informed assisted living facilities were within the definition of healthcare, and in staff's opinion served as a hospital, and therefore conformed to the uses envisioned by the Comprehensive Plan. However, when this question was proposed earlier in 2017 for a similar facility in McLean, the Board of Supervisors made clear that the facility was viewed as residential use. Assisted living facilities were a valuable part of the mosaic that comprises a community; however, they should be viewed in the context of its surroundings. The proposed use did not operate as a hospital, and paled in comparison to the dental offices to the west side of it. It was an apparent residential use;



- The applicant stated the project was designed to a residential scale that was compatible with adjacent uses, and helped ease the transition between the retail uses to the west and residential uses to the east. However, this proposed use was not compatible with the townhomes in close proximity from the proposed building. The proposed project would create a veritable brick wall at the doorstep of neighbors to the east and would intrude into their front yards and master bedrooms; and
- There was a lack of screening and buffering. Significant landscaping was not proposed to provide screening from the existing residential to the east. The site was down an embankment. Seasonally existing foliage, provided full privacy and the tall pine trees at the top of the slope, were basically bare to the first twenty feet, allowing for light and the feel of the proverbial open space. The proposed structure would diminish existing foliage, and peaceful tranquility the residents enjoyed.

Tammi Petrine, 2503 Foxcroft Way, Reston, stated her opposition to the application. Ms. Petrine was a resident of Reston for the past forty-two years. She stated she was not a resident of the Wethersfield cluster; however, was the co-chair of the Reston 20/20, an independent Reston citizen's committee. She attended five years of meetings during the Reston Master Plan. Ms. Petrine stated Sunrise Valley Drive was a hard line drawn between reasonable structures that are to scale, versus the structures across the street within the corridor. The project went through eight iterations with the DRB, which showed the proposed project was not within reason. There were three external spaces, and parking would become an issue. The convenience center employee currently park off-site. In order for service vehicles to gain access to the proposed facility, they would be required to utilize the convenience center parking lot. She echoed Mr. Higgins concerns regarding foliage and peaceful tranquility. The ground space generator would pose a noise disturbance to the neighboring community. Ms. Petrine further stated there were many exceptions required for approval, and the Planning Commission should reject the proposed application.

Mr. Looney in his rebuttal testimony stated that in terms of the Comprehensive Plan's designation, he was part of the task force that worked on the transit station area amendments for the Reston transit stations, to include updates made to the Comprehensive Plan initially adopted in 2001 and updated in 2014. Part of the updates brought discussions about drawing a hard line on Sunrise Valley Drive regarding transit oriented densities not bleeding over across Sunrise Valley Drive, with respect to transit station utilization as the principal driver for that density. The Comprehensive Plan was updated in 2014 for the parcels north of Sunrise Valley Drive, in-between the toll road. In 2015, staff, the Planning Commission and Board of Supervisors made additional updates to the remainder of Reston's development, and updated the Reston Master Plan. This update reflected the long-term development patterns in the areas outside the transit station areas. The proposed site was included in the Phase II plan amendments which were adopted in 2015. Changes to the plan's convenience center designation, affected the original convenience center area and labeled the proposed site for institutional and governmental uses. The applicant was not perusing transit oriented development densities adopted in 2014 as part of the transit station area updates, but rather the 2015 Comprehensive Plan amendments implemented. Mr. Looney stated there were two distinct phases and amendments and the

proposed project had nothing to do with the phase in the transit station areas. He stated the existing zoning on the property permitted a number of uses as by-right uses. Uses such as eating establishments, taxi stands, commercial development and dwellings, would be applicable. The DRB took into consideration that if not the proposed use, then it would be another less compatible use. The residents of the proposed use were not very active. Other than staff and visitors, there would not be a high level of traffic. Mr. Looney also stated the DRB encouraged the applicant to make the project design more compatible with the neighboring townhomes, and as a result, the floor on the back side of the building was removed. By doing so, two levels of the assisted living facility would face two levels of the neighboring townhomes in the Wethersfield cluster, as opposed to three looking down. He stated the privacy concerns worked both ways. Mr. Looney stated he understood the concerns, many of which have been addressed and clarified.

Commissioner Hart stated the Comprehensive Plan offered specific guidance regarding the maximum building height and floor area ratios. He asked for references in the Plan that would limit either the height of the building or the floor area ratio to anything less than what was being proposed. Mr. Looney stated that to his knowledge, could not reference any.

Commissioner Niedzielski-Eichner asked about the transition zone and landscaping improvements. Mr. Looney stated as part of the plan, the applicant planned to install a heavy amount of additional landscaping along the common boundary line. This would provide better screening between the two uses, all of which would be subject to the DRB's approval. The applicant offered to explore with the residents of Wethersfield cluster, additional supplemental landscaping on their side of the property line. This offer was made in part to remedy privacy concerns. Commissioner Niedzielski-Eichner asked if the applicant was willing to add the additional landscaping to the development conditions. Mr. Looney stated the applicant would. Commissioner Niedzielski-Eichner and Mr. Looney discussed the height of the building, line of site, and distance between the proposed structure and townhomes. Commissioner Niedzielski-Eichner and William Mayland, Zoning Evaluation Division, Department of Planning and Zoning discussed the by-right capability compared to the proposed use. Mr. Mayland stated the proposed site had a development plan for a convenience center as a designation. A PRC plan may be required, should a use be placed that required a change in the structure. He also stated certain uses may be by-right: however, if there was a change in the structure, a PRC plan would then be required and would be subject to the Planning Commission and Board of Supervisors review. Commissioner Niedzielski-Eichner and Mr. Looney circled back to the distance between the proposed use and townhomes. Mr. Looney stated the distance between the existing office building and existing townhomes was approximately 210 feet. The proposed building would reduce that distance by approximately 110 feet. Mr. Looney stated the existing day care structure was a one-story building. The applicant proposed to replace the existing structure with one level of above grade parking, and the top would be two levels of medical care facility assisted living, with a larger footprint. On the far right of the proposed structure, was a medical office building which was located off property.

There being no additional speakers, further comments or questions from the Commission, Commissioner Murphy closed the public hearing and recognized Commissioner de la Fe for action on this amendment.

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*(Start Verbatim Transcript)*

Commissioner de la Fe: Thank you very much, Mr. Chairman. I wanna thank everybody who came out to speak. We have also received a number of written communications and e-mails, and all those will be made part of the record. And, Mr. Chairman, there obviously some things that we need to look at, and I would MOVE THAT THE PLANNING COMMISSION DEFER THE DECISION ONLY FOR SE 2016-HM-024 AND PRC C-378 TO A DATE CERTAIN OF DECEMBER 7<sup>TH</sup>, 2017.

Commissioners Sargeant and Hart: Second.

Chairman Murphy: Seconded by Mr. Sargeant and Mr. Hart. Is there a discussion of the motion? All those in favor of the motion to defer decision only on SE 2016-HM-024 and PRC C-378, to a date certain of December the 7<sup>th</sup>, with the record remaining open for comments, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. I would like to also congratulate all of you that came in this evening for this orderly, well done, professional public hearing. We appreciate your opinions and we understood what everybody was saying because it was done in an orderly manner. Please drive safely, and thank you very much for coming. The motion carried by a vote of 9-0-1. Commissioner Cortina abstained from the vote. Commissioner Flanagan was absent from the public hearing.

*(End Verbatim Transcript)*


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The meeting was adjourned at 11:34 p.m.  
Peter F. Murphy, Chairman Murphy  
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: Samantha Lawrence

Approved on: March 7, 2018

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