

**MINUTES OF  
FAIRFAX COUNTY PLANNING COMMISSION  
THURSDAY, MAY 16, 2019**

PRESENT: Peter F. Murphy, Chairman, Springfield District  
James R. Hart, Commissioner At-Large  
James T. Migliaccio, Lee District  
Timothy J. Sargeant, Commissioner At-Large  
Ellen J. Hurley, Braddock District  
John C. Ulfelder, Dranesville District  
John A. Carter, Hunter Mill District  
Julie M. Strandlie, Mason District  
Walter C. Clarke, Mount Vernon District  
Phillip A. Niedzielski-Eichner, Providence District  
Donté Tanner, Sully District  
Mary D. Cortina, Commissioner At-Large

ABSENT: None

//

The meeting was called to order at 7:32 p.m., by Chairman Peter F. Murphy, in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

//

COMMISSION MATTERS

Commissioner Migliaccio announced that the public hearing for PCA 2002-LE-005, Alwadi, LLC, had been administratively deferred to a date certain of July 31, 2019.

//

PCA 82-P-044-02 – GBA ASSOCIATES LIMITED PARTNERSHIP (Decision Only) (Public Hearing on this application was held on May 1, 2019)

*(Start Verbatim Transcript)*

Commissioner Niedzielski-Eichner: Yes. Thank you, Mr. Chairman. The GBA Associates Limited Partnership project is - needs a little bit more time to work with the community. Good progress has been made, but I am going to ask that we defer that action until next week. So, Mr. Chairman I MOVE THAT THE PLANNING COMMISSION DEFER THE DECISION ONLY FOR PCA 82-P-044-02, TO A DATE CERTAIN OF MAY 22<sup>nd</sup>.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of the motion? All those in favor to defer decision on this application to a date certain of May 22<sup>nd</sup>, with the record remaining open for written comment, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion Carries

The motion carried by a vote of 10-0. Commissioners Strandlie and Migliaccio were absent from the vote.

*(End Verbatim Transcript)*

//

ZONING ORDINANCE AMENDMENT – ARTICLES 2, 3, 6, 8, 10, 18 AND 20  
COMMUNITY GARDENS, FARMERS MARKETS, GARDENING AS AN ACCESSORY  
USE AND RELATED CHANGES (Decision Only) (Public Hearing on this application was held on April 24, 2019; Decision Only from May 1, 2019)

*(Start Verbatim Transcript)*

Commissioner Hart: Thank you, Mr. Chairman. On April 24, the Commission held a public hearing on a proposed Zoning Ordinance Amendment regarding community gardens, farmers markets, gardening as an accessory use, and related changes and deferred decision twice. I believe we are now ready to move this item forward to the Board of Supervisors. I want to thank the citizens who came out to the public hearing and those who submitted written and electronic comments to the Commission. I also want to thank staff, particularly Jennifer Josiah and Donna Pesto, as well as the Zoning Administrator, Leslie Johnson, for their fine work on this project, including extensive and patient outreach with citizens with a spectrum of opinions. This amendment resolves a number of wording issues, updating the current Ordinance. The amendment will facilitate beneficial and useful activity by residents both to allow potential gardening opportunities for apartment dwellers and on community association common area, as well as promoting resident accessibility to fresh and locally-sourced food through farmers markets in furtherance of the Board's objectives of a healthy and sustainable community. Ultimately, and largely thanks to the outreach efforts of staff over several months, the amendment package was not controversial, except for one aspect, whether to allow gardens in the front yards of single-family homes and townhouses. We have a long history of supporting gardening in Virginia. Thousands of tourists visit Mount Vernon, Monticello, and other historic sites to enjoy the gardens there. Fairfax County also maintains public gardens, such as Meadowlark Gardens, which are heavily visited, and residential gardening is a popular activity for many residents, supporting our local economy and many businesses. The Park Authority also allows the public to rent garden plots at Greenspring Gardens, which have become popular. Despite our traditions, the Zoning Ordinance, however, currently prohibits front yard gardens in Fairfax County, although some illegal gardens are in existence. Some residents feel strongly that front yard gardens will detract from residential character. Others feel that our restrictions are outdated and the prohibition is excessive and invites ridicule. Our definitions of front yards also

consensus with everybody. Ultimately, I have concluded that staff's recommendation as set forth in the staff report reflects a reasonable compromise and appropriate resolution of this difficult issue. Sometimes there may be a temptation to over-think or overregulate certain aspects of human behavior through the Zoning Ordinance. Neighborhood character can be changed by poor landscaping or lack of maintenance, but I believe that staff's balanced recommendation of allowing front yard gardens, but limiting the front yard garden area to a maximum of 100 square feet or 10-by-10 and locating the garden at least 15 feet back from the front line is an appropriate compromise, and that based on the photographs, no such garden will overwhelm the neighborhood. I also believe that most of these small gardens will blend in with the surrounding landscaping and that these small gardens will not be particularly noticeable in context in communities with a homeowners association subject to restrictive covenants or architectural rules, the association also still retains whatever ability it possesses to prohibit the gardens if they feel that such a prohibition is appropriate subdivision by subdivision, or enforce existing covenants. I also believe that the vast majority of homeowners would be responsible gardeners and that they will take pride in their front yard efforts, which will not detract in any meaningful way from the residential character of the districts. I will, however, have a follow-on motion to monitor this issue. With respect to the procedural question raised by Mount Vernon Council, yes, a variance application would be possible with a case-by-case review and public hearing, and subject to development conditions from the Board of Zoning Appeals if a resident wanted to reduce the 15-foot setback for a front yard garden. With respect to the question about plant structures, the moveable temporary stands or etageres for flowerpots are not deemed a permanent structure and are already allowed. Front yard structures generally are beyond the advertised scope of this amendment but may be revisited later in the context of zMOD or the Work Program. The amendment has staff's favorable recommendation, with which I concur, and I believe staff's suggested language is as close as we're going to get to consensus. I believe after review of all the submissions that staff's conclusion is the correct one. Therefore, Mr. Chairman, I FIRST MOVE THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THE ADOPTION OF THE PROPOSED ZONING ORDINANCE AMENDMENT REGARDING COMMUNITY GARDENS, FARMERS MARKETS, GARDENING AS AN ACCESSORY USE, AND RELATED CHANGES AS ADVERTISED AND AS SET FORTH IN THE STAFF REPORT DATED MARCH 19, 2019, TO TAKE EFFECT AS 12:01 A.M., ON THE DAY FOLLOWING ADOPTION.

Commissioner Ulfelder: Second.

Chairman Murphy: Seconded Mr. Ulfelder. Is there a – Ms. Strandlie? Is there a discussion of the motion? Ms. Strandlie.

Commissioner Strandlie: Thank you very much. I was not here for the public hearing, but I did watch the public hearing, and after reviewing that and hearing from constituents in Mason and actually being on the phone with an HOA president on the way to this meeting, I would like to -- I think it is important we delete the provision for the community – for the gardens in the front yards. A side yard or a backyard garden should be sufficient to accommodate all the things that were brought up during the - the Planning Commission hearing about the soil, about the lighting, but maintaining the ambiance in the front and – the front of the home, plus the issues with being able to ensure code compliance for this issue. So, I would support the motion, minus the provision for the garden in the front yard.

Chairman Murphy: Mr. Hart?

Commissioner Hart: Is that a motion?

Commissioner Strandlie: I will make a friendly – a motion – friendly. Excuse me. Not a friendly motion. A MOTION TO...

Chairman Murphy: Amend.

Commissioner Strandlie: AMEND, TO DELETE THE FRONT YARD GARDEN.

Chairman Murphy: Is there a second?

Commissioner Tanner: Second.

Chairman Murphy: Can we do that? Okay. Seconded by Mr. Tanner. Is there a discussion of that motion? Yes, Mr. Ulfelder.

Commissioner Ulfelder: I am going to oppose the motion and I'd like to tell a brief story. My youngest son and his family live across the river in Tacoma Park and my oldest grandson some years ago, when he was younger and I was too, tried to start a garden in their backyard. He, they lived in a long, but narrow lot. It had a pretty good-sized back yard. They were older homes and they were overshadowed by some majestic oak trees and other trees and he tried to start a garden back there for two years and it just didn't work. In fact, the lawn back - the grass back there doesn't grow very well either. The front of the house, which faces south, had a nice front yard and he decided he ought to move his garden out there, where there was sun and it would work. And he worked that garden for about four years, and grew different vegetables and so on, that they used in salads and in their - as part of their diet, and the only problem was he didn't - he didn't follow the 15 yard - 15-foot setback, and they had about a two-foot retaining wall, and so the pests that were the biggest problem were the two-legged pests - the people walking up and down the sidewalk, when they would see a ripe cucumber, would grab it out of his garden, but the point is, it -- and it was discussed at the time of the hearing that there are situations where the back, and in some cases side yards, just don't get enough sun and are not adequate for a garden. I think that a 100 square-foot maximum with a setback that the Zoning Ordinance proposes is adequate. I think it's a good first step. Many other places have gone further. In fact, Florida this year passed a state law that preempts localities from banning front yard gardens, and I, so I think this is where things are going. I think people are understanding - under the guise of sustainability and they are more interested in growing some of their own food, that some people who haven't got the option ought to do it in their back yard or side yard, ought to have the option to do it in their front yard, so I will oppose the motion.

Chairman Murphy: Mr. Hart.

Commissioner Hart: Thank you. Commissioner Ulfelder said I think, pretty much what I would say about the amendment. I neglected to mention the follow-on motion, in that it was actually in discussions with Commissioner Ulfelder and staff that we came up with this, but my intention

would be to recommend that this be monitored for a period of 18 months and particularly with respect to the idea of maintaining character of residential neighborhoods, and we can revisit this, if this turns out to be a problem. I think that we are mature enough as a county that we can handle different types of vegetation in a front yard without doing violence to the fabric of the community. I think that some people wouldn't know whether a plant was a vegetable or a fruit or a flower or something else, or a weed, unless you told them, and many people wouldn't notice the difference between the 10-by-10 vegetable patch or an herb garden or something else. We recognize, also, that it's very difficult to prohibit these totally and that there are gardens already. And I think that's enough. If we in 18 months decide this didn't work out, maybe we're back to where we started, but I think we can handle 10-by-10 gardens that are set back and we'll see what happens.

Chairman Murphy: Yes, Mr. Clarke.

Commissioner Clarke: Thank you, Mr. Chairman. Growing up in a farming community and having gardens, if you drove down the road that I grew up on, you looked at my parent's garden, it was awesome. It was great. Look across the street at my uncle's garden, you'd be like eh, you know, it just – it wasn't that good. And granted, we are mature in the county, yes, but we all don't have that green thumb that we think we may have. I'm glad to hear the follow-on motion that's being proposed and watching this over 18 months, and in the real estate world, in terms of looking at values, I don't know or I haven't seen enough information, or we don't have enough information how that would impact the values. Some neighborhoods, community gardens is just fine and appropriate, maybe. In my neighborhood, where I live now, now that we are bringing this amendment forward, I'm starting to notice some illegal front yard gardens. But saying all of that, I'm just concerned about the neighborhoods that it may not be appropriate for and does not have a HOA or covenants that would prohibit it, so that's, that's my concern with the front yard gardens. And I wanted to add that, and I know Mount Vernon Council did support the front yard gardens with the stipulation in the language that Commissioner Hart has mentioned, so I wanted to add that piece and we see where the vote goes from here.

Chairman Murphy: Thank you very much. Mr. Tanner.

Commissioner Tanner: Thank you Mr. Chairman. I actually agree with Commissioner Hurley on this – or sorry, Commissioner Strandlie on this one, in the sense that, I believe this whole plan amendment is a great idea. I think the intention is great, but when you start talking about regulating our front yard gardens, there's a lot that goes into it. You know. For one, keeping pests out, what does that fencing look like? Now you have this big mesh box in the middle of the front yard, and to your point Commissioner Clarke, curb appeal is a great part about that. You know, in any kind of home sale. My biggest concern with this one was the HOAs. If the HOAs were, you know, already have that in covenants, that's great, they can still prohibit it for their communities. But if it's not already there because they figured it wasn't allowed anyway, then what would be the steps for them to actually go back and put that into their covenants and make a choice there? And for most situations, I know especially for ours, it's a – it's an expensive and long, arduous process, so I don't think having that, you know, having that there, having this language in there, you know, at least the intent, or what we're trying to do at least gives that power back to the HOAs. So, I do agree with Commissioner Strandlie and believe that section should be struck.

Chairman Murphy: Further discussion? Yes, Mr. Niedzielski-Eichner.

Commissioner Niedzielski-Eichner: Yes, I am going to support this motion. I agree with my colleagues on this. The one – if we had a situation where it was a one, two, three, a back yard doesn't work, side yard doesn't work. Oh okay, then the front yard, but what this does is it basically allow a front yard garden without, with - with no intent of trying to use the backyard. I just think that the indication of the potential neighborhood impact is not fully addressed by this, and I don't think that the – the front yard should be the location of first resort. If it is the location of last resort, that would be a different matter, so I will support this motion.

Chairman Murphy: Further discussion? Yes, Ms. Cortina.

Commissioner Cortina: Well, speaking as a gardener, the thing about gardening is that you don't decide where things will grow. The plants decide, and it's - it's the sunniest spot. Wherever the sunniest spot is. And most of us do not have sunny spots in the backyard. If we do, we have a single-family house because of the trees. And really, the only option is the front yard. If you could plant in the backyard and you had enough sun, that would be the preference anyway, because it keeps other people away from your plants and your produce, so it's really, by default, having a front yard garden in most cases really is because of the sun. So, I'm in favor of having the front yard gardens. I am in favor of having them wherever the sun shines. So, thank you for that.

Commissioner Niedzielski-Eichner: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Niedzielski-Eichner: May I ask a question?

Chairman Murphy: Sure.

Commissioner Niedzielski-Eichner: So, Mr. Tanner raises the question of – we all – many of our neighborhoods have particularly, if we want to have wildlife – wildlife and particularly gardens, are in conflict. Mr. Tanner's point is in order to protect the garden, there are certain structures that have to be put in place to do that. How do we respond to that context? And I'm asking Commissioner Cortina. What is your view of that?

Commissioner Cortina: Well again, in terms of deer, I – I didn't have a problem with deer because I used the garden at the garden plot. I just didn't have enough sun. But there are always some kind of things that get into your garden, and you can't keep them out. It's just how much you know how prolific your tomato vines are. And again, the people that took the most product from me were really the folks that – that were on two legs, as you say. So, the issue is really that you tend to grow enough that you can take some in and you lose a few to, you know, a rabbit or something like that. It is not a big deal.

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Mr. Hart.

Commissioner Hart: To Commissioner Niedzielski-Eichner's question, this paragraph is overlaid into an Ordinance that restricts a lot of other things for other reasons anyway. Fencing would be governed by the same provisions that govern fences existing. Fences are limited to four feet in a front yard and I think seven or eight in a side and rear, and subject to some other – I mean there's a way to get a special permit to go a little higher in a front yard or maybe you could get a variance in some unusual circumstance. And along certain types, certain classifications of roads, you could be, you could technically be in a front yard, but have a higher fence under the Ordinance, so you might not be able to see what is behind the fence. But fences are already regulated in the Ordinance, and a fence that would keep deer out or the fence that would be high enough to keep deer out, if it exists, would probably not be a front yard fence anyway, because they can step over a 4-foot or 6-foot fence. As far as structures, we've struggled with this on a number of cases. Now – and this is going to be a horrendous verbatim, and now you know why deferred this twice and maybe I should have deferred it again. One timber high, I think the Zoning Administrator has okayed as a landscaping feature. Three timbers high was a violation, when that came up, and I'm not sure we've settled on what happens if they have two timbers, but they need a retaining wall building permit if they're over a certain number of inches. The permutations of garden structures are going to be governed by whatever else is in the Ordinance, and I think the issue about that Commissioner Migliaccio had about the, whatever they are called with the flower pots in them – if it's a temporary moveable thing, it's allowed anyway. That's to the going to be a violation. If you put three timbers high and fill it with dirt, you may have a problem and Ms. Pesto, I don't know if I put my foot in it here, but two timbers, I can't remember.

Donna Pesto, Zoning Administration Division, Department of Planning and Zoning: Thank you, Donna Pesto, Zoning Administration. Essentially, we use a rule of thumb of about 18-inches. So, some people use stone, some people use timber, some people use, you know, whatever, to line their gardens with. When you get above that, it starts to take more of a structure form on. The - the retaining wall issue, that's always a separate issue. That's subject to separate permits and there is no limitation. If it's genuinely a retaining wall, that means it has to be retaining something, and that's usually for reasons other than gardening. It's usually for slope issues and other things, so – you know, I think for the most part, things that normally demarcate a garden would be permitted under, under these provisions.

Commissioner Hart: We get into a weird area, unless we have a front yard of a lot that's above 36,000 square feet. If we're below 36,000 square feet, which most of the lots are the, a structure in the front yard is prohibited, except we have exceptions, like we can have a flag pole or bird bath or I think a fountain, but like sheds and garden-type potting sheds and things like that, you couldn't have that in a front yard. Some of that is may be looked at in zMOD, but the whole area of structures in a front yard is whole another quagmire. This is really just a square of dirt in the ground and what plants you choose to put in it.

Ms. Pesto: That's the intent. Yes, sir.

Chairman Murphy: Yes. Further discussion? Mr. Clarke.

Commissioner Clarke: Okay. Question for Commissioner Hart. The 18-month period, so how will we revisit this in 18 months? Or what's the process?

Commissioner Hart: Well, I can read what the follow-on motion was. We haven't got there yet, but it was going to be In order to ensure that the changes proposed by this amendment maintain neighborhood character, I move the Planning Commission recommend to the Board of Supervisors that staff be directed to report back to the Planning Commission and Board in 18 months following adoption on any complaints that have been filed regarding gardens and/or related structures in the front yard. Such report should include the specific basis of the complaint and the resolution of the complaint. That was the product of Commissioner Ulfelder's concern and staff's response and some discussions back and forth, but we thought, you know, let's look at this, let's do it for a year and a half, let's see what happens, and then if we messed up, we can tighten it up.

Commissioner Clarke: So, in history have we passed something like this and then rolled back? Has that been able to scale something back?

Commissioner Hart: We've revisited things, I'd say when we set a time limit, it always ends up taking longer, but I mean the intention is there. I don't think anybody is particularly opposed to that. We wouldn't be proposing staff to do something for nothing. If this is something we're uncertain about, yeah maybe so.

Chairman Murphy: Mr. Ulfelder.

Commissioner Ulfelder: We included such a motion in connection with the short-term rental provisions, which I think the – the study or whatever we are going to call it, is probably, has a few big problems because of the fact, the legal challenges to that Ordinance, but we did include the follow-on motion that asked them to come back to the Board and the Planning Commission with information, based on the experience - the initial experiences with that Ordinance.

Chairman Murphy: Mr. Migliaccio and then Ms. Strandlie.

Commissioner Migliaccio: Just on that point. Even different item was our new APR process, Fairfax Forward, that was countywide and we took a, we revisited that and decided it wasn't what we wanted and we redid it. And so, this is minor in comparison to some of the implications for the APR process. But to the motion, I am going to not support Commissioner Strandlie's motion. I think that front yards can be appropriate for gardens because you do need your full front back, side, to decide, as Commissioner Cortina mentioned. The soil may be different in the front. You may be more acidic in the back because your neighbor has pine needles, and only certain things can grow, the sun is only on certain areas in your yard, so I think I think with the appropriate follow-on motion, I will be supporting Commissioner Hart's main motion. Thank you

Chairman Murphy: Mrs. Strandlie.

Commissioner Strandlie: One of the problems with this, and also the follow-on motion, is that it's compliant-driven. I think that if anything should happen, there should be a proactive staff

study of what the impact is. So, I think that is a false and a loophole in this that will not solve the problem that we are facing.

Chairman Murphy: Mr. Migliaccio.

Commissioner Migliaccio: Based on that, our whole zoning is complaint-driven. I mean, if your neighbor doesn't mind that you're doing something, zoning enforcement is not going out as, the nanny state.

Commissioner Strandlie: Right. No, I understand that. But in a case where we have a study, we have an 18-month look back, I think there should be something a little more proactive than just the complaint driven process.

Chairman Murphy: Mr. Sargeant. Did you have something? I'm not trying to coax you.

Commissioner Sargeant: No. I'm – I think we're fine. I just would note all the specifics that are not allowed, no closer than 15 feet, composting not permitted, no accessory uses or structures, no lighting allowed, and we are looking at a review period after this. So, that would my intention to support the original motion.

Chairman Murphy: All those in favor of the motion.

Commissioner Niedzielski-Eichner: Chairman? Chairman, let me just one note. I'm persuaded with the follow-on motion. My main concern is the protection of the character of the neighborhood. I'm concerned for fencing, that seems to be something I missed in terms of the overall Ordinance, other provisions within the Ordinance. The other thing, I believe, the thing I worry about is equipment and other ancillary facilities that are associated with gardening, but that seems to be addressed as well. So, with particularly then, with the follow-on motion where we do have the ability to revisit this matter, I'm gonna change my position and vote in opposition to the amendment in support of the main motion.

Chairman Murphy: Further discussion, he asked hesitantly? Yeah. Thank you. All those in favor of the motion as articulated by Ms. Strandlie to delete gardens in the front yard, say aye.

Commissioners Strandlie and Tanner: Aye.

Chairman Murphy: Opposed?

Commissioners: Nay.

Chairman Murphy: The nays have it. The motion fails. Who supported it? Mrs. Strandlie and Mr. Tanner. Return to the main motion, Mr. Hart.

Commissioner Hart: Yes. Thank you. Well, the main motion I thought was okay. I mean I have the follow-on motion. We have to vote on the main motion first.

Chairman Murphy: All those in favor of the main motion as articulated by Mr. Hart, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Tanner abstains.

Commissioner Strandlie: No.

Chairman Murphy: And Ms. Strandlie votes no. Mr. Hart.

Commissioner Hart: Yeah, thank you, Mr. Chairman. Next time I'll just keep deferring it. This always happens. Well, I read the follow-on motion, I'll read it again. In order to ensure that the changes proposed by this amendment maintain neighborhood character, I MOVE THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT STAFF BE DIRECTED TO REPORT BACK TO THE PLANNING COMMISSION AND BOARD IN 18 MONTHS FOLLOWING ADOPTION ON ANY COMPLAINTS THAT HAVE BEEN FILED REGARDING GARDENS AND/OR RELATED STRUCTURES IN THE FRONT YARD. SUCH REPORT SHOULD INCLUDE THE SPECIFIC BASIS OF THE COMPLAINT AND THE RESOLUTION OF THE COMPLAINT.

Commissioner Sargeant: Second.

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

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

The amendment to the main motion failed by a vote of 2-10. Commissioners Strandlie and Tanner voted in favor.

The main motion carried by a vote of 10-1-1. Commissioner Strandlie voted in opposition. Commissioner Tanner abstained from the vote.

The follow-on motion carried by a vote of 12-0.

*(End Verbatim Transcript)*

//

PCA 2011-PR-023-02/CDPA 2011-PR-023-02/FDP 2011-PR-023-05/PCA 2011-PR-023-03 – CITYLINE PARTNERS, LLC (Decisions Only) (Public Hearing on this application was held on April 24, 2019; Decision Only from May 8, 2019)

*(Start Verbatim Transcript)*

Commissioner Niedzielski-Eichner: Yes. Thank you. Again, this is a particularly complex

project. A lot of moving pieces. I give all the parties kudos for staying at and making sure that the product that we received as a Commission is in a complete state, so that when we consider it we don't have the chance to have any errors or mistakes in the product. So, we're gonna – I'm gonna ask that we defer this another week. With that, I MOVE THAT THE PLANNING COMMISSION DEFER THE DECISION ONLY FOR PCA – PCA/CDPA 2011-PR-023-02, FDP 2011-PR-023-05, AND PCA 2011-PR-023-03 – CITYLINE PARTNERS, LLC, TO A DATE CERTAIN OF MAY 22<sup>nd</sup>, WITH THE PUBLIC RECORD REMAINING OPEN FOR WRITTEN COMMENTS.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Discussion? All those in favor of the motion to defer these applications to a date certain of May 22<sup>nd</sup>, with the record remaining open for written comments, say aye.

Commissioners: Aye.

Chairman Murphy: And that's the Cityline Partners applications. Motion carries.

The motion carried by a vote of 11-0. Commissioner Migliaccio was absent from the vote.

*(End Verbatim Transcript)*

//

#### ORDER OF THE AGENDA

Commissioner Migliaccio established the following order of the agenda:

1. 2232-S18-31 – DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES
2. ZONING ORDINANCE AMENDMENT – EDITORIAL AND MINOR REVISIONS TO ARTICLE 2, 7, 10, 16, 17, 18 AND 19

This order was accepted without objection.

//

The first public hearing was in the Springfield District; therefore, Chairman Murphy relinquished the Chair to Vice Chairman Hart.

//

2232-S18-31 – DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES – Appl. under Sections 15.2-2204 and 15.2-2232 of the *Code of Virginia* to consider the proposal by the Fairfax County Department of Public Works and

Environmental Services (DPWES) to construct a salt storage facility at Central Material Facility site, located at 5414 Ladue Lane, Fairfax, VA 22030. Tax Map Number: 67-4 ((1)) 19. Area III. SPRINGFIELD DISTRICT. PUBLIC HEARING.

Yvonne Goh, Planning Division (PD), Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. She noted that staff recommended that the Commission find 2232-S18-31 substantially in accord with the provisions of the adopted Comprehensive Plan.

There was a discussion between Ms. Goh; Michelle Stahlhut, PD, DPZ; and multiple Commissioners on the following issues:

- The location, operation, and efficacy of the bio-retention facility on the site in processing runoff mixed with salt;
- The environmental impact of salt mixing with stormwater runoff;
- The process for disposal of runoff mixed with salt;
- The lighting fixtures of the proposed salt storage structure and the visual impact on surrounding properties;
- The ongoing studies being conducted by the County on the usage of salt chemicals for treating roads during winter weather events;
- The ability of the proposed salt storage structure to safely store various salt-based chemicals in the event that County standards were modified;
- The existing access provisions for the site utilized by trucks;
- The presence of an existing resource protection area (RPA) near the site and the impact of salt storage on that area;
- The efforts to preserve and protect the existing RPA from the potential impacts of the proposed salt storage facility;
- The reason why approval of a 2232 application was required for the proposed salt storage structure;
- The history of usage on the site;
- The source, ownership, and usage of the salt that would be stored at the proposed salt storage structure; and
- The process staff utilized in evaluating alternate sites for the proposed salt storage structure.

The discussion resulted in no changes to the subject application.

Martha Sansaver, Applicant's Agent, Capital Facilities, Department of Public Works and Environmental Services (DPWES), gave a presentation on the subject application.

There was a discussion between Ms. Sansaver; Bobby Kerns, Chief Maintenance Operations Branch, DPWES; and multiple Commissioners on the following issues:

- The process for storing and disposing stormwater runoff generated by the proposed salt storage structure on-site;
- The size and capacity of the storage tanks that would contain stormwater runoff;
- The frequency with which the storage tanks that contained the stormwater runoff would be emptied;
- The extent to which the County's salt storage facilities complied with appropriate environmental standards;
- The presence of similar salt storage facilities at other County sites and the need for constructing such a facility on the subject property;
- The capacity of the proposed facility on the site compared to those located in other parts of the County;
- The coordination between DPWES sites during winter weather events in salting the roads and efforts to mitigate the traffic impact of salt dispensing trucks;
- The process staff and the applicant utilized in evaluating alternative sites for the proposed facility;
- The process for loading salt dispensing trucks at the proposed facility;
- The existing structures on the site that would be located near the proposed facility;
- The existing salt storage facility on the site;
- The presence of an existing dry pond in the nearby RPA and the extent to which such a pond was consistent with County standards;
- The history and existing conditions of the dry pond located near the RPA;
- The impact of retaining the existing dry pond on the stormwater management provisions on the site; and
- The process for determining appropriate stormwater management provisions in the event that the site was expanded.

The discussion resulted in no changes to the subject application.

Vice Chairman Hart called for speakers from the audience and recited the rules for public testimony.

Tom Jingle, no address given, spoke in opposition to the proposal because it would generate additional truck traffic on the existing road network, which was in poor condition and subject to significant safety hazards. He also expressed concern regarding the environmental impact the proposed salt storage facility would incur on neighboring residential development.

There was a discussion between Ms. Stahlhut and Vice Chairman Hart on the following issues:

- The status of Ladue Lane as a private road;
- The existing condition of Ladue Lane;
- The ability for large trucks to make turns from Ladue Lane onto Popes Head Road;
- The presence of other vehicles and equipment on the subject property;
- The operations permitted for a site designated for public use and uses that required approval of a 2232 application; and

- The source of water for the facilities operating on the subject property.

Ellanor Curtis, 5419 Ladue Lane, Fairfax, voiced opposition to the proposed application due to concerns of increased truck traffic and the associated safety hazards for vehicles utilizing Popes Head Road. She also expressed concern that the proposed salt storage facility would negatively impact the property values of neighboring residential properties.

There was a discussion between Ms. Curtis, Mr. Kerns, and multiple Commissioners on the following issues:

- The location of existing residential development located near the subject property;
- The existing road network around the site;
- The vehicular access provisions for the subject property and neighboring residential areas; and
- The impact on truck traffic generated by the facilities on the site.

The discussion resulted in no changes to the subject application.

Steven Curtis, 5419 Ladue Lane, Fairfax, spoke in opposition to the proposal, echoing concerns from previous speakers regarding the safety hazards and increased truck traffic generated by the proposed salt storage facility on the site.

There was a discussion between Mr. Curtis and Vice Chairman Hart on the following issues:

- The existing condition of the residential properties located near the site; and
- The existing condition and safety hazards of Popes Head Road.

The discussion resulted in no changes to the subject application.

There being no more speakers, Vice Chairman Hart called for a rebuttal statement from Ms. Sansaver, who addressed the following issues:

- The traffic and safety concerns expressed by speakers regarding Popes Head Road, which would continue to be managed by the applicant through an existing easement.

There was a discussion between Ms. Sansaver and multiple Commissioners on the following issues:

- The applicant's outreach efforts to inform residents of the surrounding community of the proposal;
- The history of land use on the subject property and the applicant's process for determining the need for a salt storage facility;
- The process for implementing modifications to Ladue Lane and Popes Head Road;
- The scope of the subject application;

- The appropriate method for addressing the safety concerns on Popes Head Road that had been expressed by speakers; and
- The process for removing hazardous materials prior to the applicant's acquisition of the subject property.

The discussion resulted in no changes to the subject application.

Vice Chairman Hart called for closing remarks from Ms. Goh, who declined.

Commissioner Hart suggested that the applicant consider modifications to the ingress/egress provisions of the site to facilitate truck traffic and improve safety conditions.

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

*(Start Verbatim Transcript)*

//

Commissioner Murphy: Thank you, Mr. Chairman. Certainly, some issues were raised tonight that I was not aware of. I knew there were some issues with the lighting, and I knew there were some issues with the road, but some of the issues that were brought up tonight were not on my score sheet as the issues we discussed. I apologize for that, but that's the way it happens sometimes in the wonderful world of land use. I'm gonna defer this application to 5/22.

Vice Chairman Hart: 6/20, 6/12 is the first meeting after May.

Commissioner Murphy: Okay. I'm gonna go for the June meeting because we're gonna need more time than that. So that's June 12<sup>th</sup>?

Vice Chairman Hart: June 12<sup>th</sup>.

Commissioner Murphy: So, I MOVE THAT THE PLANNING COMMISSION DEFER DECISION ONLY ON 2232-S18-31 TO A DATE CERTAIN OF JUNE 12<sup>TH</sup>, WITH THE RECORD REMAINING OPEN FOR COMMENT.

Commissioner Sargeant: Second.

Vice Chairman Hart: Seconded by Commissioner Sargeant. Any discussion on that motion? Seeing none, we move to a vote. All those in favor of the deferral to June the 12<sup>th</sup> please say aye.

Commissioners: Aye.

Vice Chairman Hart: Those opposed, please say nay. That motion carries.

The motion carried by a vote of 12-0.

(End Verbatim Transcript)

//

Chairman Murphy resumed duties of the Chair.

//

ZONING ORDINANCE AMENDMENT – EDITORIAL AND MINOR REVISIONS TO ARTICLE 2, 7, 10, 16, 17, 18 AND 19  
– An amendment to Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax, as follows:

- 1) Change the agency name from “Department of Planning and Zoning” or “DPZ” to “Department of Planning and Development” or “DPD” throughout the Ordinance, and specifically in Articles 2, 7, 16, 17, and 18.
- 2) Clarify that solar collection systems are an accessory use; clarify the types of items that can be for sale at a garage/yard sale as an accessory use to a dwelling and that garage/yard sales are permitted in the residential portion of P-Districts.
- 3) Revise the provisions addressing finality of the Board of Zoning Appeals’ decisions and its ability to reconsider its decisions.
- 4) Clarify the provisions related to searches and inspections, as well as permit revocations and appeals. COUNTYWIDE. PUBLIC HEARING.

Sara Morgan, Zoning Administration Division (ZAD), Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. She noted that staff recommended adoption of the proposed Zoning Ordinance Amendment.

Commissioner Hart made a brief statement wherein he explained the following:

- The Board of Zoning Appeals (BZA) had not taken a position on the proposed amendment;
- The circumstances of the *West Lewinsville Heights Citizens Association vs. Board of Supervisors* case that had been heard by the Virginia Supreme Court in 2005 in which BZA overruled a decision rendered by the Zoning Administrator;
- The circumstances of the *Board of Supervisors vs. Board of Zoning Appeals* case that had been conducted by the Fairfax County Circuit Court;

- The existing criteria regarding reconsiderations of actions by the BZA, as articulated in the BZA's bylaws;
- The timeframe for pursuing a reconsideration and the existing policies for administering that timeframe;
- The usage of Roberts Rules in BZA procedures;
- The process for considering a reconsideration of actions by the BZA and the issues that had arisen in past efforts to administer that process;
- The standards and procedures for reconsideration of actions by the Planning Commission and the Board of Supervisors; and
- The concerns that had been raised regarding the provisions for the finality of decisions of the BZA and reconsideration of actions, as articulated in the proposed amendment.

There was a discussion between Ms. Morgan; Sarah Hensley, Office of the County Attorney; Donna Pesto, ZAD, DPZ; and multiple Commissioners on the following issues:

- The extent to which guidelines on reconsideration of actions were articulated in the BZA's bylaws;
- The process by which reconsiderations of actions were administered under Roberts Rules;
- The impact of decisions rendered by the Virginia Supreme Court on procedures pertaining to reconsideration of actions;
- The revisions to the Zoning Ordinance to the County's policy regarding the finality of decisions of the BZA and for reconsideration of actions, as articulated by the proposed amendment;
- The intent of the revisions to the BZA's provisions for reconsideration of actions and the extent to which the revisions reflected the determinations rendered by the courts;
- The number of requests for reconsideration of actions that had been made in the past year;
- The recourse of deferring adoption of the proposed amendment on the procedures for reconsideration of actions by the BZA;
- The possibility of future revisions to the BZA's bylaws;
- The Board of Supervisors and Planning Commission's respective bylaws for reconsideration of actions compared to those utilized by the BZA;
- The policies for advertising a case that had been voted on for reconsideration by the BZA;
- The basis for considering a reconsideration of actions and the impact the proposed amendment would incur on such considerations;
- The policies for reconsideration of actions in other jurisdictions;
- The difference between a reconsideration of actions compared to an appeal;
- The process for applicants to propose a reconsideration of actions and the procedures that the Planning Commission and the BZA would utilize to implement such actions;
- The impact that approval of the proposed amendment would incur on related matters that were under review by the Fairfax County Circuit Court and the Virginia State Supreme Court;

- The ability of the Planning Commission to recommend adoption of certain portions of the proposed amendment;
- The instances in which the Planning Commission would pursue a reconsideration of actions and the potential obstacles associated with such efforts; and
- The scope of the proposed amendment and the ability of the Planning Commission to render decisions that affect the operation of other official bodies, such as the BZA.

The discussion resulted in no changes to the proposed amendment.

Chairman Murphy called the first listed speaker.

Tricia Moore, 1506 Chain Bridge Road, McLean, representing Citizens 4 Short-Term-Rentals, voiced support for the proposed amendment, but favored applying the standards and provisions articulated in the proposed amendment to the County's policies for short-term rental. She also supported a subsequent review and revision of the County's short-term rental policies.

William B. Lawson, Jr., 900 North Stafford Street, Suite 2323, Arlington, spoke in opposition to the proposed amendment's revisions pertaining to the BZA's policies for reconsideration of actions because it would incur significant costs to prospective applicants. He added that the BZA's bylaws contained adequate provisions for reconsidering and rehearing applications.

Chairman Murphy called for speakers from the audience.

Bill Baskin, 9409 Lakeside Drive, Vienna, voiced opposition to the proposed amendment's revisions pertaining to the BZA's policies for reconsideration of actions, stating that such revisions were not warranted and the existing procedures for reconsidering or appealing a decision rendered by the BZA were adequate. He also noted the infrequency with which such reconsiderations were successfully pursued.

Lauren Icehonder, no address given, voiced concern that the recommended revisions to Paragraphs 3 and 4 of Section 18-901, General Provisions, in the proposed amendment would not be applied to short-term rental units.

There was a discussion between Ms. Hensley and Commissioner Cortina on the following issues:

- The County's policies pertaining to inspections of uses that had been granted by Special Permit;
- The existing standards of the County's policies for short-term rental units;
- The impact of the proposed amendment on short-term rental units; and
- The unresolved legal issues regarding short-term rental units that were under review by the State of Virginia.

There being no more speakers, Chairman Murphy called for closing remarks from Ms. Morgan, who declined. There were no further comments or questions from the Commission; therefore,

Chairman Murphy closed the public hearing and recognized Commissioner Cortina for action on this case.

*(Start Verbatim Transcript)*

//

Commissioner Cortina: Thank you, Mr. Chairman. Well clearly, we still have a few more questions to look at. Specifically, the procedure with the Board of Supervisors and also this matter of whether we can be silent on one provision of this so-called editorial and minor revisions. Whenever it says that, I pay particular attention. So, at this point, I'd like to go ahead and defer for - we only have one week because this goes to the Board of Supervisors. So, I WOULD LIKE TO MAKE A MOTION TO MOVE TO DEFER THE PLANNING COMMISSION'S DECISION ON THE PROPOSED ZONING ORDINANCE AMENDMENT ENTITLED EDITORIAL AND MINOR REVISIONS TO ARTICLES 2, 7, 10, 16, 17, 18 AND 19 TO MAY 22, 2019, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENTS.

Commissioner Tanner: Second.

Chairman Murphy: Seconded Mr. Tanner. Is there a discussion of the motion?

Commissioner Ulfelder: Yeah.

Chairman Murphy: Yes. Mr. Ulfelder.

Commissioner Ulfelder: The - I don't know - I mean the front of the report says the Board isn't going to hear this until June 25<sup>th</sup>.

Donna Pesto, Zoning Administration Division, Department of Planning and Zoning: That is true. The Board is going to hear this June 25<sup>th</sup>, the Board package is due tomorrow. So, we were hoping for a shorter-

Commissioner Ulfelder: The Board package is due May?

Ms. Pesto: The Board package is due tomorrow for June 25<sup>th</sup>. Believe it or not.

Chairman Murphy: Is that a new reg?

Commissioner Ulfelder: So, any of the cases we decide between now and the 25<sup>th</sup> are gonna be heard on the 25<sup>th</sup>, they're gonna be added to the Board package?

Ms. Pesto: Yeah. I mean there are - I mean we're going to actually be submitting this late if you take action next week, because that's a Wednesday I think, the 22<sup>nd</sup>. So, probably we can get it to them by Friday, so it's be a week late. You know the problem, obviously, is that the Board packages, what some 900 pages long, so they do have to assemble that in advance. That's why

these are due in advance. You know it's not an impossibility to go a little bit longer, but it is not ideal for the County Executive's Office to put that Board package together. So, we do try to stick with their schedule. You know it's up to you if you want to go a week longer. Actually, I don't know what the other dates are, I think there's a gap. You all have a gap in meeting dates coming up.

Chairman Murphy: Yeah. We're out fair week and the week after Memorial Day.

Ms. Pesto: Yeah, so I think there's about a two-week gap. That would be, that would be probably a problem.

Commissioner Ulfelder: Whatever.

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Yes Mr. Hart.

Commissioner Hart: Separate from the instant amendment, we have run up on the deadline thing before, and as much as possible, I think we were trying to never, ever schedule a public hearing without a deferral date before it goes to the Board of Supervisors. Because then there's no way to react to what we hear at the public hearing. It's like we get a spoon-fed thing and we have to - we just have to vote on it up or down, and we don't have the opportunity to digest it. I'm not saying you all set this up, but we absolutely need the flexibility to defer a decision sometimes - sometimes more than once or we're forcing the Board to defer it. And that was a scheduling problem for us, because I can't remember if it came up in the budget, but we were getting blamed by a board member, I think. We were getting blamed to the Board for the BZA - the BZA gets blamed a lot - the Planning Commission was getting blamed for delaying things, which we didn't delay. We were, we were doing it on the dates that we always had. This is the first date this has ever had. And it's like it's the only date if we have to vote tonight. We can't be doing this. I'm not saying you all did. But no, I mean we can't have this where we got to vote and just give it to the Board without thinking about it and trying to fix it.

Commissioner Ulfelder: And we need to schedule for 40 days ahead of the Board's date.

Chairman Murphy: Yeah, I mean the simple statement is you can't have it both ways, I mean that's basically, we're always stuck between the rock and the hard place on this kind of stuff, and it's - it's got to be worked out. For both, parties actually.

Ms. Pesto: On your calendar, is there a day beyond? What is the next day beyond November 22<sup>nd</sup>.

Commissioner Cortina: We have the 12<sup>th</sup>. We have the 12<sup>th</sup> of June.

Commissioner Hart: June the 12<sup>th</sup>.

Commissioner Cortina: June 12<sup>th</sup>.

Commissioner Cortina: June 12<sup>th</sup>.

Commissioner Hart: Which we deferred the, that salt pile thing to.

Ms. Pesto: Alrighty. It is what it is. We have taken things to the Board that, like you said, that have been acted on, on a Thursday and the Board took action on a Tuesday. They just have to get the report that day, and that has been frowned upon so we do try to avoid that, but you know if that's what works, that we can make work.

Commissioner Cortina: Well, we do, we have a completely full schedule next week. So, I will defer. I will retract my earlier motion that hadn't been seconded.

Chairman Murphy: I was gonna vote for reconsideration anyways.

Commissioner Hart: Second.

Commissioner Cortina: I MOVE TO DEFER THE PLANNING COMMISSION'S DECISION ON THE PROPOSED ZONING ORDINANCE AMENDMENT ENTITLED EDITORIAL AND MINOR REVISIONS TO ARTICLES 2, 7, 10, 16, 17, 18 AND 19 TO JUNE 12<sup>TH</sup>, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENTS.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded Mr. Sargeant. Is there a discussion of the motion? All those in favor of the motion to defer the decision only on the Zoning Ordinance Amendment Editorial and Minor Revisions to Articles 2, 7, and you know the rest, to a date certain of June 12<sup>th</sup> with the record remaining open for comments, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed. Motion Carries.

The motion carried by a vote of 12-0.

*(End Verbatim Transcript)*

//

The meeting was adjourned at 10:04 p.m.  
Peter F. Murphy, Chairman  
James T. Migliaccio, Secretary

Audio and video recordings of this meeting are available at the Planning Commission Office,  
12000 Government Center Parkway, Suite 552, Fairfax, Virginia 22035.

Minutes by: Jacob Caporaletti

Approved on: December 11, 2019

*Jacob Caporaletti*

Jacob Caporaletti, Clerk to the  
Fairfax County Planning Commission

County of Fairfax  
Commonwealth of Virginia

The foregoing instrument was acknowledged before me this 22 day of January 2020, by  
Jacob Caporaletti.

*Doreen M. Steele*  
Signature of Notary

Notary registration number: 7114113

Commission expiration: January 31, 2020

