

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
WEDNESDAY, FEBRUARY 10, 2021**

PRESENT: Peter F. Murphy, Chairman, Springfield District
John C. Ulfelder, Vice Chairman, Dranesville District
Timothy J. Sargeant, Secretary, Commission At-Large
Julie M. Strandlie, Parliamentarian, Mason District
Mary D. Cortina, Braddock District
John A. Carter, Hunter Mill District
Daniel G. Lagana, Lee District
Walter C. Clarke, Mount Vernon District
Phillip A. Niedzielski-Eichner, Providence District
Evelyn S. Spain, Sully District
Candice Bennett, Commissioner At-Large
Andres Jimenez, Commissioner At-Large

ABSENT: None

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The Planning Commission conducted a wholly electronic meeting because to the COVID-19 pandemic made it unsafe to physically assemble a quorum in one location or to have the public present. The meeting was conducted by way of video conferencing and the public was able to view the meeting on Channel 16, livestreaming on the Fairfax County website, or live audio over the phone. Testimony from the public could be provided through a phone call, recorded video, or submission of written testimony by mail or electronic means.

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The meeting was called to order at 7:30 p.m., by Chairman Peter F. Murphy. from Conference Room 11 in the Fairfax County Government Center located at 12000 Government Center Parkway, Fairfax, VA 22035.

The attending Commissioners attended the meeting from the following locations:

- John C. Ulfelder participated from the Dranesville District office, 397 Herndon Parkway, Suite 110, Herndon, VA 20170;
- Timothy J. Sargeant participated from the Mount Vernon District office, 2511 Parkers Lane, Mount Vernon, VA 22306;
- Julie M. Strandlie participated from her residence in the Mason District;
- Mary D. Cortina participated from her residence in the Braddock District office, 9002 Burke Lake Road, Burke, VA 22015;
- John A. Carter participated from the Hunter Mill District office, 1801 Cameron Glen Drive, Reston, VA 20190;

- Daniel G. Lagana participated from the participated from the Lee District office, 6121 Franconia Road, Alexandria, VA 22310;
- Walter C. Clarke participated from the Mount Vernon District office, 2511 Parkers Lane, Mount Vernon, VA 22306;
- Phillip A. Niedzielski-Eichner participated from the Providence District office, 3001 Vaden Drive, 2nd Floor, Fairfax, VA 22031;
- Evelyn S. Spain participated from the Sully District office, 4900 Stonecroft Boulevard, Chantilly, VA 20151;
- Andrés Jimenez participated from his residence in the Mason District; and
- Candice Bennett participated from Lee District office, 6121 Franconia Road, Alexandria, VA 22310.

Upon verifying the attendance of each Commissioner from their respective location, the meeting proceeded with Commission matters.

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Chairman Murphy relinquished duties of the virtual Chair and the virtual gavel to Vice Chairman Ulfelder.

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PRELIMINARY MOTIONS FOR CONDUCTING ELECTRONIC MEETING

Commissioner Murphy MOVED THE FOLLOWING:

- THE PLANNING COMMISSION CERTIFY FOR THE RECORD THAT EACH MEMBER'S VOICE MAY BE ADEQUATELY HEARD BY EACH OTHER MEMBER OF THIS COMMISSION AND THAT A QUORUM HAS BEEN ACHIEVED;
- THE PLANNING COMMISSION CERTIFY THAT THE STATE OF EMERGENCY CAUSED THE COVID-19 PANDEMIC MAKES IT UNSAFE FOR THE PLANNING COMMISSION TO PHYSICALLY ASSEMBLE AND UNSAFE FOR APPLICANTS, AND THE PUBLIC TO PHYSICAL ATTEND ANY SUCH MEETING IN PERSON. AND THAT AS SUCH, AN IN-PERSON MEETING CANNOT BE IMPLEMENTED SAFELY OR PRACTICALLY. FURTHER MOVE THAT THE PLANNING COMMISSION CONDUCT THIS MEETING ELECTRONICALLY THROUGH THE COUNTY'S VIDEO CONFERENCE SYSTEM, AND THAT THE PUBLIC MAY ACCESS THIS MEETING BY WATCHING CHANNEL 16 OR ITS LIVE STREAMING, MAY LISTEN TO LIVE AUDIO OF THIS MEETING AT 703-324-

5300, AND MAY PARTICIPATE IN PUBLIC HEARINGS BY TELEPHONE, BY YOUTUBE VIDEO SUBMISSION, OR BY WRITTEN TESTIMONY; AND

- THE PLANNING COMMISSION CERTIFY THAT ALL MATTERS ADDRESSED ON THE AGENDA CONCERN THE EMERGENCY AND ARE NECESSARY FOR CONTINUITY IN FAIRFAX COUNTY GOVERNMENT, AND THE ORDINANCE ADOPTED BY THE BOARD OF SUPERVISORS ON MAY 12, 2020. AND/OR ARE WITHIN THE PURVIEW OF AMENDMENT 28 OF HOUSE BILL 29, AS APPROVED BY GOVERNOR RALPH NORTHAM ON APRIL 24, 2020.

Commissioners Sargeant seconded the motions, which carried by a vote of 12-0.

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Chairman Murphy resumed duties of the virtual Chair and the virtual gavel.

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COMMISSION MATTERS

MINUTES APPROVAL – JULY, SEPTEMBER, AND OCTOBER 2020

Commissioner Sargeant MOVED APPROVAL OF THE PLANNING COMMISSION MEETING MINUTES FOR THE FOLLOWING DATES:

- JULY 8, 2020;
- JULY 15, 2020;
- JULY 22, 2020;
- JULY 29, 2020;
- SEPTEMBER 16, 2020;
- SEPTEMBER 17, 2020;
- SEPTEMBER 23, 2020;
- OCTOBER 7, 2020;
- OCTOBER 14, 2020;
- OCTOBER 21, 2020; AND
- OCTOBER 28, 2020.

Commissioner Clarke seconded the motion, which carried by a vote of 12-0.

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zMOD – ZONING ORDINANCE MODERNIZATION PROJECT

(The public hearing on this item was held on January 28, 2021; a Q&A session was held on 2/3/21)

Commissioner Sargeant MOVED THAT THE PLANNING COMMISSION DEFER THE DECISION ONLY FOR ZMOD, ZONING ORDINANCE MODERNIZATION PROJECT, TO A DATE CERTAIN OF FEBRUARY 24, 2021, WITH THE RECORD REMAINING OPEN FOR WRITTEN TESTIMONY.

Commissioner Ulfelder, Commissioner Niedzielski-Eichner, and Commissioner Strandlie seconded the motion, which carried by a vote of 12-0.

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Chairman Murphy thanked Commissioner Sargeant, Commissioner Bennett, and staff for their hard work zMOD.

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PRC-C-020-02 ZONING TALL OAKS AT RESTON, L.C.

Commissioner Carter MOVED THAT THE PLANNING COMMISSION DEFER THE PUBLIC HEARING FOR PRC-C-020-02, TALL OAKS AT RESTON, L.C., TO A DATE CERTAIN OF MARCH 24, 2021, AT THE APPLICANT'S REQUEST FOR ADDITIONAL TIME TO FINALIZE THIS APPLICATION.

Commissioner Niedzielski-Eichner seconded the motion, which carried by a vote of 12-0.

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Commissioner Ulfelder announced that the Land Use Review Committee would meet virtually on Thursday, February 11, 2021. He added that the agenda would include staff's presentation on the proposal for Wellington/River Farm Historic Overlay District. He added that the public would be able to watch this meeting on Channel 16 or stream it live from the Channel 16 website.

Chairman Murphy advised that the meeting could be impacted by severe winter weather and indicated that any changes to the meeting would be broadcast by Channel 16.

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Chairman Murphy requested that Commissioners who had not submitted their Committee Preference Forms do so as soon as possible by sending them to Jill Cooper, Clerk to the Board of Supervisors, Department of Clerk Services.

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ORDER OF THE AGENDA

Chairman Murphy established the following order of the agenda:

1. zMOD –ZONING ORDINANCE MODERNIZATION PROJECT (FLAGS AND FLAGPOLES).

This order was accepted without objection.

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zMOD –ZONING ORDINANCE MODERNIZATION PROJECT (FLAGS AND FLAGPOLES)– *The Planning Commission will hold a public hearing on the matter of an additional amendment to the previously advertised repeal of Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax and replacement of the current Zoning Ordinance with a new Zoning Ordinance (Chapter 112.1) to promote the health, safety, and general welfare of the public. The additional amendment includes the following proposed changes (with advertised options in brackets), which may be adopted in full or in part:*

- (1) Establish specific regulations for flags and flagpoles as follows:**
 - (a) Delete flagpoles and monuments from types of accessory structures exempt from height limits; (b) On a lot developed with a single-family dwelling, limit the height of a flagpole to 25 feet; (c) On a lot developed with another other use, limit the height of a flagpole to 60 [20 – 80] feet; (d) Establish a minimum front setback of five feet for a freestanding flagpole; (e) On a lot developed with a single-family dwelling, permit up to two [2 – 3] flags, each no more than 24 [15 – 40] square feet; and (f) On a lot developed with any other use, permit up to three flags, each no more than 96 [96 – 216] square feet.*
- (2) Revise the definition of a flag, including adding “regardless of content” and deleting the references to being attached at the top and draped. (Countywide)**

There were no disclosures from the Commission.

Carmen Bishop, Zoning Administration Division (ZAD), Department of Planning and Development (DPD); Casey Judge, ZAD, DPD; and Leslie Johnson, ZAD, DPD, presented the report entitled Zoning Ordinance Modernization Project (zMOD), Flags and Flagpoles Public Hearing Draft dated November 24, 2020 and subsequently edited on February 3, 2021, a copy of which is in the date file. She noted that staff recommended adoption of the proposed revisions to Article 4: Use Regulations, Subsection 4102.7.A(16), Page 305, Lines 13 through 17; Article 5: Development Standards, Subsection 5100.2.C, Page 339, Line 6; and Article 9: Definitions, Subsection 9102, Page 645, Lines 8 through 10 of the Zoning Ordinance, as articulated in the report.

There was a discussion between Ms. Bishop, Ms. Judge, Ms. Johnson, and multiple Commissioners on the following issues:

- Previously approved sign regulations and subsequent amendments;
- Policies pertaining to content-neutrality in relation to signage and flags;
- Clarification that existing HOA policies, which typically have more restrictive standard to their covenants, were allowed within the new zMOD updates and subject to private enforcement;
- Discussion on the Virginia Supreme Court decision for Reed et al. v. Town of Gilbert, Arizona, et al.;
- Clarification of the criteria that determined the classification for a flag and a sign;
- Clarification that obscenity on signs and flags would be determined on a case-by-case bases; and
- Clarification that zMOD would create limit on the number of flags, but not the number of flagpoles.

The discussion resulted in no changes to zMOD, Flags and Flagpoles.

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

William Denk, 708 Seneca Road, Great Falls, VA, spoke in opposition to zMOD, Flags and Flagpoles. Mr. Denk voiced concerns about the proposed limitation of the size of flags and strongly recommended that the American Flag be exempt from such regulations.

Commissioner Niedzielski-Eichner asked staff to speak on the concerns brought forward by Mr. Denk regarding the possible exclusion of the American Flag from size limitations. Ms. Bishop stated that such an exception would not be granted for the American flag or any flag.

Robert Maggi, 7443 Clifton Road, Clifton, VA spoke in opposition to zMOD, Flags and Flagpoles, echoing concerns from previous speakers regarding the proposed limitation flag sizes and supported including an exemption for the American Flag.

Clyde Miller, 3436 Skyview Terrace, Falls Church, VA, spoke in opposition to zMOD, Flags and Flagpoles. A copy Mr. Miller's written testimony is in the date file.

Adrienne Whyte, 6704 West Falls Way, Falls Church, VA, spoke in opposition to zMOD, Flags and Flagpoles. Ms. Whyte voiced the following concerns:

- Potential safety hazards for vehicular traffic related to the location, size, and content of flags and flagpoles.
- Concern regarding the lack of regulation of the content of flags and signage;
- Concern that zMOD did not adequately differentiate between the contents of flags and signage;
- Concern that the standards for flag displays on non-residential would negatively impact neighboring residential communities; and

- Concern that there had not been sufficient time for a proper review of the standards by citizens and citizen groups.

Commissioner Clarke asked staff to address the concerns brought forward by Ms. Whyte regarding the regulation of offensive content on flags and signage. He also requested clarification on the procedures for how to report such incidents. Ms. Johnson stated that citizens could file a report with the Department of Code and Compliance (DCC) for further investigation. She also noted that zMOD, Flag and Flagpoles, was intended to provide guidance on the size, location, height, and emphasized that content neutrality was outside of the scope of what could be enforced.

The discussion resulted in no changes to zMOD, Flags and Flagpoles.

Fran Wallingford, 3311 Mantua Drive, Fairfax, VA, spoke in opposition to zMOD, Flags and Flagpoles. Ms. Wallingford voiced the following concerns:

- The impact of height regulation for flags and flagpoles on smaller lots;
- The use of flagpoles on residential lots for the purpose of advertisement;
- The lack of provisions to mitigate the impact of such flags on neighboring properties.
- The lack of regulation of the content of flags and signage within zMOD; and
- The unintended consequences of the revised guidelines for flags and flagpoles.

Jody Bennett, 1459 Hunter Mill Road, Vienna, VA, representing Hunter Mill Defense League, voiced the association's opposition to zMOD, Flags and Flagpoles. She voiced concerns about the negative impact of flags, flagpoles, and signage would have on the Historic Overlay Districts, such as Georgetown Pike. She also raised concerns about the implications of proposed zMOD on the eligibility for Hunter Mill Road to be designated a Historic Overlay District. Ms. Bennett echoed the previous speaker's request for further clarification on whether flags and flagpoles would be permit advertisement for home-based businesses and other commercial uses in residential zoned areas.

There was a discussion between Ms. Bishop and Commissioner Niedzielski-Eichner about whether a Virginia Byway or a Historic Overlay District, designation, would have any implications on the application of the existing sign ordinance and the proposed revisions within zMOD for flags and flagpoles. Ms. Bishop stated that areas within an Historic Overlay District would be subject to regulation of the specific overlay. She added that staff had consulted with the Heritage Resource staff about concerns brought forward by Ms. Bennett regarding Georgetown Pike and indicated that zMOD would not have jurisdiction in the area. Additionally, Ms. Bishop validated Ms. Bennett's concerns about the current lack of regulations on the content of flags and signages could potentially enable advertisements for commercial purposes in residential zoned areas. She then explained that zMOD, Flags and Flagpoles, would provide some regulation to address said concern. Commissioner Niedzielski-Eichner asked for further clarification on whether historic overlay districts would have their own set of regulations on flags, flagpoles, and signage. Ms. Bishop added that external modifications to a Historic Overlay District would presumably be subject to approval by the Architectural Review Board for approval.

Commissioner Ulfelder stated that he was unaware of any Historic Overlay District which addresses the issue of flags and flagpoles. He then expressed concern regarding the impact of this issue on future applications that were subject to Architectural Review Board approval.

The discussion resulted in no changes to zMOD- Flags and Flagpoles.

Sheila Dunheimer, 10505 William Terry Drive, Vienna, VA, spoke in opposition to zMOD- Flags and Flagpoles. A copy of Ms. Dunheimer's written statement is in the date file.

There being no listed speakers, Chairman Murphy called for virtual speakers and recited rules for testimony.

Kerry McCabe, 3307 Gentle Court, Alexandria, VA, spoke in opposition to zMOD, Flags and Flagpoles. Mr. McCabe voiced concerns with Article 4-16, A and C, related to use regulations, stating that these provisions were excessively restrictive. Mr. McCabe also raised concerns about the implications of zMOD, Flags and Flagpoles, on existing flagpoles that did not comply with the proposed standards.

There was a brief discussion between Ms. Bishop and Commissioner Niedzielski-Eichner wherein Commissioner Niedzielski-Eichner asked for further clarification on concerns brought forward by Mr. McCabe, regarding existing flag poles. Ms. Bishop clarified that existing flagpoles were exempt from the proposed revisions in zMOD, Flags and Flagpoles. She also stated that staff was currently working on adding language which would permit the flags remain as well.

The discussion resulted in no changes to zMOD- Flags and Flagpoles.

Joseph Johnston 15205 Wetherburn Drive, Centreville, VA, spoke in opposition to zMOD, Flags and Flagpoles because it would destabilize existing homeowner's associations, impose excessive restrictions on the erecting of flags, and lacked an appropriate recourse for citizens who found the contents of certain flags offensive. A copy of Mr. Johnston's written statement is in the date file.

There being no additional speakers, Chairman Murphy called for further questions and comments from the Commission and staff.

Commissioner Niedzielski-Eichner asked staff to address an issued raised in a previous testimony on whether the proposed 5-foot setback regulation was from the right-of-way or the property line. Ms. Judge clarified that the proposed five-foot set-back regulation would apply for both the right-of-way and the property line.

Ms. Johnson made closing remarks wherein she reiterated the purpose of the content neutral provisions in the sign ordinance was to protect citizens' first amendment right to free speech. She also added that staff would conduct further study on this issue and determine appropriate provisions to provide further guidance on the matter.

Commissioner Niedzielski-Eichner made a final comment wherein he supported a provision to make American Flag be exempt from the limitations proposed in zMOD, Flags and Flagpoles.

The discussion resulted in no changes to the proposed amendments.

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

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Commissioner Sargeant MOVED TO DEFER THE DECISION FOR THE PROPOSED CHANGES RELATING TO FLAGS AND FLAGPOLES, ARTICLATED WITHIN ZMOD, ZONING ORDINANCE MODERNIZATION PROJECT, TO A DATE CERTAIN OF FEBRUARY 24, 2021, WITH THE RECORD REMAINING OPEN FOR WRITTEN TESTIMONY.

Commissioner Bennett seconded the motion, which carried by a vote of 12-0.

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The meeting was adjourned at 8:55 p.m.
Peter F. Murphy, Chairman
Timothy J. Sargeant, 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: Satabdi Samaddar

Approved on: June 30, 2021

Jacob Caporaletti

Jacob L. Caporaletti, Clerk to the
Fairfax County Planning Commission

County of Fairfax
Commonwealth of Virginia

The foregoing instrument was acknowledged before me this 12 day of October 2021, by
Jacob Caporaletti.

Timothy M. Sargeant

Signature of Notary

Notary registration number: 7114113

Commission expiration: January 31, 2024

