

**MINUTES OF  
FAIRFAX COUNTY PLANNING COMMISSION  
WEDNESDAY, MAY 3, 2023**

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

ABSENT: None

OTHERS: Tracy Strunk, Director, Department of Planning and Development (DPD)  
Leslie Johnson, Division Director, Zoning Administration Division (ZAD), DPD  
Carmen Bishop, ZAD, DPD  
Casey Judge, ZAD, DPD  
Jacob L. Caporaletti, Department of Clerk Services (DCS)  
Samantha Lawrence, DCS

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The meeting was called to order at 7:29 p.m., by Chairman Phillip A. Niedzielski-Eichner, in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

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ORDER OF THE AGENDA

Chairman Phillip A. Niedzielski-Eichner established the following order of the agenda:

1. READOPTION OF THE ZONING ORDINANCE AS AMENDED THROUGH MARCH 22, 2023

This order was accepted without objection.

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Chairman Niedzielski-Eichner made preliminary remarks on the purpose for the readoption of the Zoning Ordinance Modernization (zMOD) project, as amended. He explained that the Virginia Supreme Court had nullified the previous approval of zMOD and the County had been operating under the previous iteration of the Zoning Ordinance in the interim. The role of the Planning Commission in the readoption of zMOD was to make appropriate recommendations to

the Board of Supervisors, who would in turn render the final decision. He noted that the Board of Supervisors' public hearing for the reauthorization of zMOD was May 9, 2023.

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Chairman Niedzielski-Eichner announced the public hearing procedures for citizens who wished to testify before the Commission.

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READOPTON OF THE ZONING ORDINANCE AS AMENDED THROUGH MARCH 22, 2023 - The repeal of Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax ("County Code") and the replacement with a new Zoning Ordinance to promote the health, safety, and general welfare of the public. The proposal also includes the repeal and replacement of the 2021 Zoning Ordinance amendments ("2021 zMOD Ordinance"), codified as Chapter 112.1, or the sunseting of the new Zoning Ordinance if the 2021 zMOD Ordinance is later reinstated by others. This proposal and public hearing is prompted by a judicial opinion declaring void the March 23, 2021, adoption of the 2021 zMOD Ordinance. The proposal includes the following proposed changes, which may be adopted in full or in part and some of which reflect previous amendments to the 2021 zMOD Ordinance that were not the subject of the judicial opinion. The following is a descriptive summary only and does not include every detail:

- (1) Reorganize and reformat the Ordinance into nine articles, revise it to include new tables and graphics, and edit for plain language and readability.
- (2) Revise provisions throughout the Ordinance, such as the bulk regulations, parking rate table, the transitional screening and barrier table, and the airport noise compatibility table, to align with the new uses.
- (3) Article 1: Add references to an equitable community, providing affordable housing, and promoting a sense of community through placemaking in the purpose statements for the Ordinance. Replace effective date of the Ordinance. Add references to acknowledge Zoning Administrator's authority to interpret the Ordinance, issue determinations, and make reasonable accommodations.
- (4) Article 2: (a) Delete R-P (Residential-Preservation) and I-1 (Light Industrial Research) districts and associated provisions; (b) Delete angle of bulk plane (ABP) and add tables for setback relative to height to approximate most of the ABP standards; (c) In the R-A District, allow open space to count toward minimum 75 percent agriculture and delete the requirement that a single-family dwelling be allowed only in conjunction with an agricultural operation; (d) Replace the special permit ("SP"), which requires a public hearing, with an administrative

permit for setback modifications for certain R-C lots subject to a final consent decree entered in specific Circuit Court cases in the 1980s; (e) Add lot and building standards for new use of stacked townhouses; (f) Rename mobile home park to “manufactured home park” and add regulations on that use for clarity; (g) Delete reference in C8 District to uses requiring large land areas and good access, and delete preferred separation of 3 miles; (h) Delete requirement for P districts to conform with bulk regulations, landscaping, and screening provisions of conventional districts; (i) Add references to tree preservation and environmental protection in PDH purpose statement and delete advantageous construction techniques; (j) Delete PDH density bonuses; (k) Revise PDH secondary use limitations to align with new uses and classifications, including revising standards for secondary commercial uses to focus on design and integration rather than the need to serve residents of the development; (l) Add references to outdoor seating in PDH and PDC districts.

(5) Article 3: (a) Historic Overlay Districts (HOD) – add new alternative use of historic buildings; remove procedural details of archaeological survey requirements; edit criteria for establishing an HOD to follow the National Register criteria of significance; amend the administration of HODs to address ARB approval of subdivisions; delete the height compatibility restriction in the Lake Anne Village Center HOD; confirm the establishment of the Wellington Historic Overlay District regulations, consistent with ZO 112.1-2021-1, including the purpose, uses, additional standards, and a maximum height of 35 feet, adopted on April 13, 2021; confirm the establishment of the Hollin Hills Historic Overlay District regulations, consistent with ZO 112.1-2022-6, adopted on March 8, 2022; (b) Commercial Revitalization Districts – if specified in the Comprehensive Plan, allow increased flexibility for building height and specify minimum front setback of 20 feet; allow for up to a 100 percent increase in office use in C-8 by SE; and require interior parking lot landscaping when the resulting parking lot has 20 or more spaces; (c) Airport Noise Overlay District – revise noise compatibility table to apply the standard from outdoor commercial recreation to farm winery, limited brewery, or limited distillery, and revise the standard for stadium or arena.

(6) Article 4: (a) Amend land uses and associated regulations to revise use names, permissions, and standards, create new uses, and consolidate uses; (b) Present use permissions by tables and revise use permissions for uses, including the following (consolidated and revised use names): agritourism; bed and breakfast; riding and boarding stable; stacked townhouse dwelling; live-work development; religious group living; residence hall; adult day support center; alternate use of public facility; child care center; club, service organization, or community center; college or university; community swim, tennis, and recreation club; cultural facility or museum;

religious assembly; religious assembly with private school, specialized instruction center, or child care center; private school; specialized instruction center; cemetery; crematory; funeral home; airport; helipad; transit facility; solar power facility; heavy utility facility; light utility facility; animal shelter; kennel; pet grooming establishment; veterinary hospital; catering; hotel or motel; retreat center; drive-through financial institution; financial institution; office; office in a residential district (“R district”); massage therapy establishment; banquet or reception hall; indoor commercial recreation; outdoor commercial recreation; public entertainment; golf course or country club; large health and exercise facility; small health and exercise facility; commercial marina; quasi-public park, playground, or athletic field; smoking lounge; stadium or arena; zoo or aquarium; convenience store; drive-through pharmacy; garden center; general retail sales; car wash; commercial off-street parking; truck rental establishment; vehicle fueling station; light vehicle repair and maintenance; vehicle sales, rental, and service; data center; goods distribution hub; self-storage; warehouse; wholesale facility; contractor’s office and shop; storage yard; accessory living unit; electric vehicle charging; gardening and composting; home day care facility; home-based business; limited riding or boarding stable; residence for manager or employee; solar collection system; construction site office and storage; food truck; and alternative use of historic building; (c) Present use-specific standards for each use; and (d) Specify that certain use standards, and in some circumstances, any such standards, may be modified or waived by the Board of Supervisors (“Board”). Most standards are carried forward, but some have been revised, including:

- i. Where a use was permitted only within an office or industrial complex with a minimum of 30,000 square feet, replace that area requirement with a complex planned and managed on an integrated and coordinated basis.
- ii. General Use Standards: 1. Add a special exception (“SE”) for alternative use of historic buildings; 2. Revise the uses, permissions, and standards for accessory service uses, renamed associated service use; 3. Specify what standards may be modified or waived by the Board; 4. Clarify and revise standards that apply to outdoor storage; 5. Include performance standards; 6. Delete maximum sizes of business establishments in C-5; 7. Limit on parking or storage of construction machinery or equipment, vehicles used for transporting construction equipment or materials, or similar vehicles extended to C-5 through C-8; 8. Expand standards for administrative permit approvals to additional uses.
- iii. Agricultural and Related Uses: 1. Remove lodging from the events that are not permitted, and replace the term “major arterial” with “principal arterial” in the standards for farm winery, limited brewery,

and limited distillery; 2. Add standard requiring a conservation plan for a riding or boarding stable approved by SE or SP; 3. Revise a riding or boarding stable and a limited riding or boarding stable (under Accessory Uses) to specify that where 7 or more acres are devoted to activities meeting the definition of an agricultural operation, the use is an agricultural operation; 4. Require a minimum of 7 acres to be dedicated to production of an agricultural product or the housing of livestock for an agricultural operation; 5. Add standards for a wayside stand and farm worker housing in conjunction with an agricultural operation; 6. Add standards for agritourism, and modify the standards for farm winery, limited brewery, or limited distillery to remove lodging from the prohibited activities.

iv. Residential Uses: 1. In commercial and industrial districts (“C and I districts”), require religious group living to be in conjunction with and in the same structure as a religious assembly and require a residence hall to be in conjunction with a private school, college or university, or a religious assembly use; 2. Extend the maximum length of contiguous single-family attached and stacked townhouse dwellings to 250 feet; 3. Add standards for the new live-work development to prohibit any activity that is not a permitted or an SE or SP use, as well as other specified types of nonresidential uses; 4. Add standard making nonconforming any manufactured home that does not meet federal regulations; 5. Require a group household to provide sufficient parking.

v. Public, Institutional, and Community Uses: 1. Add standards for the new adult day support center use relating to access, location, outdoor recreation, and other provisions; 2. Add a standard to prohibit a club, service organization, or community center use in an R district or residential area of a P district from renting out its facility for non-member events unless approved by the Board; 3. Add standards requiring a college or university to be enclosed and not have residential, athletic, or large-scale assembly facilities when by right; 4. Require a parsonage or rectory in a C or I district to be located in conjunction with a religious assembly use when by right; 5. Allow a columbarium as part of a funeral home in an enclosed building in C and I districts; 6. Add standards for the new solar power facility use, including setbacks, height limits, decommissioning plans, and requirement that in R-A it can be located only with an agricultural operation; 7. Allow the specialized instruction center use for vocational training by SE in I-6; 8. Specify that a wireless facility is not subject to lot size and bulk regulations; 9. Revise the definition and standard for a community swim, tennis, and recreation club to limit membership to primarily residents of a designated area.

vi. Commercial Uses: 1. Allow outdoor facilities with animal shelter, kennel, or veterinary hospital in commercial and planned districts by SE, subject to additional standard for animals to be kept indoors during

certain time period unless modified by the Board; 2. Add standards for new pet grooming establishment use; 3. Prohibit accessory rental of bed and breakfast to non-guests for events unless approved by the Board, and when a bed and breakfast is in conjunction with an agricultural operation, require a minimum of 20 acres, allow events only as agritourism, and apply the standards regarding exterior appearance, prohibition of restaurants, and the location of parking and loading; 4. Add size limits to new catering use in certain C and I districts and allow limited accessory retail sales in I districts; 5. Prohibit storage of commercial vehicles with commercial off-street parking use; 6. Delete list of specific types of activities associated with indoor commercial recreation and add standards, including a requirement for a structure to be fully enclosed with certain materials for discharge of firearm, a limit on the by-right size in C-5, and allowance for by right in C-3 and C-4 only if in existing building; 7. Add minimum lot area for certain outdoor commercial recreation uses, including ropes courses, paintball, and golf driving ranges in certain R districts; 8. Extend limits on accessory landscape contracting services with a by-right garden center in C-5 through C-8; 9. Add standards to office: a. Limit explosive and potential hazardous materials in commercial and planned districts; and b. Allow SE for office use to be up to 100 percent of the permitted floor area ratio in certain commercial districts; 10. Add standards to new public entertainment use to: a. Allow the Board to consider factors such as safety, noise, and hours and impose conditions during the SE review process; b. Permit food, beverage, and smoking activities in conjunction with the use; and c. Allow only in conjunction with certain uses in I districts; 11. Add standards to new smoking lounge use, including allowing accessory retail sales when permitted by SE or SP and allowing as an accessory use in conjunction with a restaurant or public entertainment use; 12. Replace restaurant standard allowing 1/8 of the dining area to be accessory entertainment with 15 percent or 250 square feet, whichever is larger, and allow accessory hookah and other activities without specific area limit; 13. Revise and delete certain existing standards for general retail sales; 14. Require all truck parking to be on-site with a truck rental establishment and allow by SE in I-4 with self-storage; 15. Allow vehicle sales, rental, and service use by right in certain districts when office size is limited to 2,500 square feet, the number of rental vehicles is limited to 15, and there is no car wash, maintenance, or refueling on-site; 16. Add standard to light vehicle repair and maintenance to require storage of vehicles to be shown on an approved site plan.

vii. Industrial Uses: 1. Add standards for new data center use, including: a. Requirement for enclosure or screening of associated equipment in certain zoning districts; b. Maximum size limits; and c. Size limits allowed to be exceeded with repurposing or SE approval; 2.

Add standards for new goods distribution hub use, including: a. Maximum size limits; b. Vehicle number and size limits; and c. Size limits allowed to be exceeded with repurposing accompanied by retail sales or in-person interaction or SE approval; 3. Add standards to self-storage, including allowing incidental retail sales and requirements for screening, appearance, and parking of trucks; 4. Allow a storage yard for vehicle storage by SE in certain I districts when in association with self-storage; 5. Prohibit outdoor storage of more than 5 inoperable vehicles with a vehicle storage or impoundment yard in I-5.

viii. Accessory Uses:

1. Rename accessory dwelling units as accessory living units (“ALUs”) and revise the standards, including: a. Interior ALUs within a single-family detached dwelling unit: (i) allow by administrative permit; (ii) prohibit a separate driveway or curb cut and require that any new garage or carport be next to any existing garage or carport; (iii) limit the size to 800 square feet or 40 percent of the gross floor area of the principal dwelling or the entirety of the basement or cellar, up to the size of the basement or cellar as of July 1, 2021 [or the new ordinance effective date], when approved by administrative permit; and (iv) add a parking space requirement when approved by administrative permit; b. Detached ALUs: Limit the size to 1,200 square feet; c. Interior and Detached ALUs: (i) Remove the requirement for an occupant to be 55 years in age or older or disabled, remove the standard requiring access and mobility features for a disabled person, and remove the caretaker quarters use; (ii) Add requirements relating to well and septic systems and fire safety, and reduce the initial renewal timeframe. SP standards are revised to allow modification of external entrances and street access, maximum size, or on-site parking requirement for interior ALUs.

2. Add standards for new electric vehicle charging use including: a. Limit the height of dispensers and associated equipment; b. Allow associated solar canopies; c. Require screening or landscaping; d. Allow spaces to be counted toward minimum required number of parking spaces; e. Limit digital display to one square foot.

3. Limit the allowance for a request to increase fence or wall height in conjunction with approval of proffered conditions or another SE or SP request to nonresidential use when the height increase is needed for the use. Delete swimming pools as an example of an accessory structure that may have a higher fence or wall as an integral part of the structure. Allow a fence or wall that is an integral part of an electric substation to exceed the maximum allowed fence or wall height in Table 4102.4.

4. Revise regulations for freestanding accessory structures, including: a. Revise height and location standards for accessory structures to consolidate regulations for freestanding accessory structures and allow structures up to 8.5 feet high with no setback in the side or rear yard,

up to 12 feet high with a 5-foot setback from side and rear lot lines, and over 12 feet if located a distance equal to the side setback from the side lot line and located a distance equal to the structure's height from the rear lot line; b. Add a maximum height of 20 feet for an enclosed accessory structure on a lot of 36,000 square feet or less with a single-family detached dwelling and allow an SP to increase height; c. Limit cumulative size of all enclosed accessory structures to 50 percent of the gross floor area of the principal dwelling on a lot of 36,000 square feet or less with a single-family detached dwelling and allow an SP to increase size; d. In a planned district, other than PRC, clarify the side yard setback is setback of the most similar conventional district or the minimum distance from the dwelling to the side lot line, whichever is less, when there are no proffered setbacks; in the PRC District, the minimum side setback is 8 feet; e. Revise setback for a basketball hoop in a front yard from current setback of 12 feet to also allow the distance equal to the minimum side setback, whichever is less, and delete limit on hours of use; f. Clarify front setback for gardening and basketball hoop located on a corner lot; g. Remove prohibition on solid waste and recycling containers located in a driveway; h. Clarify when a structure is considered part of a principal building and subject to principal building setbacks.

5. Add 10-foot maximum height for gateposts. Require that gates and gateposts taller than 4 feet not exceed 15 percent of the lot width.

6. Replace the current home occupation, home professional office, and barbershop or beauty parlor as a home occupation with the home-based business use and revise standards, including: a. Specify the allowed uses and standards that apply when allowed by administrative permit or SP; b. Add a reference to allowed yard signs; c. Add a maximum length of 28 feet for delivery vehicles; d. Add other regulations regarding customers, including hours of operation and parking; e. Prohibit outdoor display of goods; f. When allowed by administrative permit: (i) limit the size to 400 square feet; (ii) allow one nonresident employee in single-family detached dwellings and no employees in other dwelling unit types; (iii) allow up to 4 on-site students at a time and 8 in a day for instructional activities with a health and exercise facility or specialized instruction center, but no on-site customers when the business is co-located with a home day care facility; g. Include SP options for certain outdoor activities, a larger area, additional employees or customers (but no customers for general retail sales or small-scale production), and different work hours for employees; h. Add requirements relating to well and septic systems; i. Remove the BZA review and determination regarding nonresidential uses in the area.

7. Codify that up to 3 aged, infirmed, or handicapped adults may be cared for at a home day care facility.



8. Revise standards for the keeping of animals, including: a. Allow fewer than 5 pets not owned by the resident to be sheltered, fed, and watered for a fee, subject to limits based on minimum lot size; b. Provide that keeping for a fee more than 4 animals not owned by the resident is considered a kennel or animal shelter; c. Delete “commonly accepted pets” to allow the Department of Animal Sheltering to make companion and exotic animal determinations; d. Clarify that the BZA may not approve an SP for a rooster or to modify the types of animals allowed; e. Add animal shelter as an activity that may not be approved as an accessory use under the keeping of animals provisions.

9. Add standards for solar collection system, which must primarily meet on-site demands. Allow roof-mounted solar collection system to exceed the maximum building height of the district by 5 feet.

10. Codify that shipping containers are permitted accessory to a residential dwelling only when used for temporary storage on a lot with an active building permit. When located with nonresidential uses, they are subject to all other applicable regulations, including location standards and floor area ratio.

11. Specify standards for vehicle storage, including that vehicles covered by tarp are considered outdoor storage and, in residential areas, a maximum of 2 vehicles may be kept under fitted vehicle cover.

12. 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 any another use, limit the height of a flagpole to 60 feet; d. Establish a minimum front setback of 5 feet for flagpoles; e. Permit up to 3 flags per lot; f. Include SP option for increase in flagpole height. In Article 9, revise the definition of a flag, including adding “regardless of content” and deleting the references to being attached at the top and draped.

ix. Temporary Uses: 1. Revise standards for food trucks in conjunction with agritourism or farm winery, limited brewery, or limited distillery, and to allow food trucks at an approved nonresidential use in a residential zoning district and residential area of a planned district up to 12 times per year; 2. Change submission deadline for administrative permits for temporary uses from 21 days to 30 days before the event; 3. Broaden special event use to include other short-term events that fall outside other defined temporary uses; delete requirement that 21-day limit be applied consecutively and delete limit of 14 days within a 3-month period; delete requirement for sponsor’s principal offices to be located in the County; delete required determination that the owner of a circus, fair, or carnival be of good repute; remove requirement of nonprofit sponsorship for certain activities; and require application for special event SP to be submitted 120 days in advance.

(7) Article 5: (a) Delete provision allowing rezoning of adjacent land in I or R district in certain circumstances on a parcel less than the minimum district size without a Board motion or SE; (b) Revise uses and zoning districts where the Board may exceed maximum building height by SE approval; (c) Replace the affordable dwelling unit example calculations with new examples and include stacked townhouse dwellings; (d) For future construction, delete the allowance for a carport to extend 5 feet into a minimum side setback; (e) Replace the minimum 50-foot dimension for cluster subdivision open space with a requirement to provide usable open space; (f) Delete the allowance for the rear setback to equal the side setback for corner lots in R-E through R8 (not applicable to existing structures or additions to existing structures); (g) Allow attached decks to have certain modifications above and below the structure, including elements that extend up 8.5 feet from the deck floor and not more than 3 feet wide; (h) Allow an attached or detached deck or patio that is no more than 8 inches above ground level to encroach into a side or rear setback; (i) Clarify the 15-foot floodplain setback applies even if there is a property line between the floodplain and the dwelling and the 18-inch vertical separation (freeboard) requirement applies in a floodplain and to any lot with a floodplain or a lot abutting a lot where a floodplain is located, unless modified for a lot outside the floodplain; (j) Permit accessory uses and structures in a floodplain when accessory to stacked townhouse dwellings and manufactured homes; (k) Replace landscaping strip standard with reference to Public Facility Manual requirements; (l) Exempt signs from maximum correlated color temperature; (m) Codify interpretation permitting Zoning Ordinance requirements to be met over a single site plan; (n) Allow setbacks for additions to single-family dwellings in planned districts (other than PRC) without proffers to be based on the lesser of the cluster setbacks for the most similar conventional district or the existing distance to the lot line established by the dwelling (also applicable to dwellings damaged or destroyed by natural disaster); (o) Apply 200-foot setback from interstates, the Dulles Toll Road, and railroad tracks to all principal buildings, not just those on lots directly abutting; (p) Add an SP option and standards for accessory structures on through lots; (q) Update transitional screening and barrier matrix based on new and consolidated uses; (r) Revise standards, including those addressing vegetation and impervious surface, for SE waiver of minimum lot size; (s) Add provision prohibiting the BZA from modifying location regulations for an error in building location SP that would result in a detached accessory structure in a front yard; (t) Replace the heading “Light Poles” with “Light Fixtures” in 5109.3.C; (u) Increase the maximum allowed footcandles (fc) for recreational tennis courts from 40 to 50 fc.

(8) Article 6: (a) Assign parking rates for new and consolidated uses based on the currently used or most similar rate; (b) Assign parking rate to new stacked townhouse use; (c) Reference required parking for group household use approved by SP; (d) Clarify farm winery, limited brewery, and limited distillery parking rates; (e) Clarify the type of materials that apply to surfaced area in the front yard in the R-1 through R-4 Districts.

(9) Article 7: Define residential development as a minimum of 3 dwelling units where active construction project signage may be posted.

(10) Article 8: (a) Remove submission requirements for ALUs to document a disability; (b) Require the BZA clerk to notify the Court and the Board 60 days before a BZA member's term expires; (c) Remove provision allowing delayed development plan submission concurrent with rezoning or PCA application and remove provision allowing an application to retain its hearing date if it is amended 40 days or less before a hearing; (d) Consolidate and modify certain submission requirements for appeals and applications, including i. reducing the number of copies required for submission; and ii. requiring all existing utility easements and the preliminary location of new or relocated utilities to be shown on a plan or plat; (e) Carry forward fees, except the following are new or changed, as authorized by Virginia Code 15.2-2286(A)(6): i. waiver of certain sign regulations SE: \$8,260; ii. ALU administrative permit and renewal: \$200 and \$70; and ALU SP renewal: \$70; iii. home-based business administrative permit and SP: \$100 and \$435; iv. adult day support center: \$1,100 (fewer than 100 adults) and \$11,025 (100 or more adults); v. alternative use of historic building SE: \$8,180; vi. congregate living facility SE: \$8,180; vii. quasi-public park, playground, or athletic field SE: \$8,180; viii. SE for an addition to or replacement of existing single-family detached dwelling in floodplain: \$8,180; ix. amendment of previous approval for deletion of land area only: ¼ of prevailing fee; x. increase in flagpole height SP: \$435; xi. increase in height of a freestanding accessory structure, increase in cumulative square footage of freestanding accessory structures, and accessory structures on through lots SPs: \$910; xii. special event SP: \$4,090; xiii. agritourism tier 4 administrative permit: \$205 and renewal: \$50; xiv. agritourism SE: \$4,090; (f) Delete the provisions relating to the establishment and duties of the Tree Commission and the Geotechnical Review Board; (g) Delete prohibition on rehearing SE and SP applications within 12 months of withdrawal or denial; (h) Clarify that minor modifications also apply to a PRC plan; (i) Add requirements that minor site plan be certified by a professional, show landscaping, and when the project involves changes to topography, those changes in

topography must be shown; (j) Allow the Zoning Administrator or Director to modify submission requirements, except for the application form, legal description, affidavit, and application fee, when a requirement is not necessary for application review; (k) Require PTC rezoning application to identify any development within 1/3 mile of Metro station entrance; (l) Allow Zoning Administrator to modify zoning requirements by making reasonable accommodation decisions; (m) Allow restoration of nonconforming structure that is not so damaged or structurally unsafe as to make collapse likely; (n) Require bonded decommissioning agreement for solar power facilities subject to Virginia Code 15.2-2232 review; (o) Change rezoning hearing and decision timeframes from “must” to “should”; (p) Modify specific variance application submission requirements, change BZA decision timeframe from “must” to “should,” and clarify that a variance is not permitted when SE or SP option is available; (q) Add refund provisions for applications not accepted or administratively withdrawn; (r) Clarify that for a Zoning Ordinance amendment, the Board is the final decision-making body after public hearings and it may adopt provisions relating to previous approvals; (s) Supplement appeal procedures to follow the Virginia Code; (u) Remove the Tree Commission and Geotechnical Review Board from the Zoning Ordinance because they were incorporated into Chapters 122 and 107 of the Fairfax County Code; (t) Add provisions for the ARB to review proposed subdivisions; (u) Modify certain provisions pertaining to decision-making bodies to reflect current practice, including the following: modify provisions to codify when the Planning Commission meetings are held and when it will elect officers; update provisions to require advance notice to the Circuit Court and the Board 60 days before expiration of a BZA member’s term; require the BZA to adopt a meeting schedule before the start of each year; and update the number of Health Care Advisory Board members.

(11) Article 9: (a) Define all land uses, add new non-use definitions, and revise certain existing definitions; (b) Delete definitions that are no longer needed; (c) Add list of abbreviations; (d) Specify that the definition of building height applies to principal buildings; (e) Delete “and public streets” from the definition of setback; (f) Add providing residential and nonresidential use permits, if requested, to the definition of a zoning compliance letter; (g) Revise the definition of a lot to specify that it must be a contiguous parcel(s) of land; (h) Revise the provisions for an agricultural operation to specify that the use includes housing of livestock; (i) Include recreation and exercise areas for dogs and other small domestic animals operated for a fee in the definition of a kennel.. COUNTYWIDE. PUBLIC HEARING.

Casey Judge, ZAD), (DPD), gave the first presentation of the staff report, a copy is in the electronic date file. She stated that staff recommended the readoption of the amendment.

Carmen Bishop, ZAD, DPD, gave the second presentation of the staff report, a copy is in the electronic date file. She stated that staff recommended the readoption of the amendment.

There was a discussion between Ms. Bishop, Ms. Strunk, Ms. Johnson, and multiple Commissioners regarding the following:

- Clarification on the Zoning Ordinance Work Program and what it entailed;
- Clarification on whether the Land Use Process Review Committee, Zoning Ordinance Work Program, scheduled to meet on Thursday, June 8, 2023, was open for public comment and would include public outreach;
- Clarification on whether the Zoning Ordinance Agritourism amendment and related changes was considered separate from zMOD;
- Clarification on whether there was a pending Zoning Ordinance Amendment that addressed signs;
- Confirmation that policies regarding environmental preservation and stormwater management would be reviewed during the Zoning Ordinance Work Program;
- Clarification on the districts that permitted or restricted the development of data centers , was based under guidance from the County's 1978 Zoning Ordinance or zMOD;
- The total number of data centers located in Fairfax County;
- The total number of data centers approved under zMOD prior to the Virginia Supreme Court's decision;
- Clarification of the various sizes of the data centers located in Fairfax County; and
- The total number of complaints received from citizens for data centers currently in operation.

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Chairman Niedzielski-Eichner announced that relative to the June 8, 2023 consideration of the Zoning Ordinance Work Program, a Land Use Process Review Committee would be held. He added that all committee meetings were advertised and open to the public. Chairman Niedzielski-Eichner added that all committee meetings were televised.

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The discussion continued between Ms. Bishop, Ms. Strunk, and multiple Commissioners regarding the following:

- Whether data centers should be added to the Zoning Ordinance Work Program;
- Clarification on whether a public component for data centers was part of staff's analysis for the work program;
- Should staff recommend amendments to the Zoning Ordinance and those changes were approved by the Board of Supervisors, would the amendment be advertised for public hearing, before the Planning Commission and the Board of Supervisors;
- The demand for data in this current environment was for large data centers;
- The demand for large data centers was driven by many economic, planning, and regulatory factors; and
- Confirmation that zMOD in its current form allowed for small to medium size data centers by-right and was vetted through the County's zoning process and met the floor-area ratio and setback requirements.

Chairman Niedzielski-Eichner called the first listed speaker.

Adrienne Whyte, 6704 West Falls Way, Great Falls, representing Reclaim Fairfax County, opposed the amendment and stated the following:

- zMOD was presented as a project that would transform the Zoning Ordinance into a modern document that was easy to read, understand, cross reference, removed gaps and inconsistencies, and would create a streamlined user-friendly document;
- Changes were made to the Zoning Ordinance that would transform the life, quality, and character of established residential neighborhoods;
- The Zoning Ordinance should not be a vehicle for social engineering;
- The provisions that undermined private property rights, along with a wide range of housing types, schools, a diverse population, increased entertainment, shopping, and dining options, negatively impacted the County's popularity;
- zMOD would destabilize the predictability of stable residential development and safe neighborhoods;
- The County was reported to have lost very small numbers of its population, largely due to an escalating tax burden;
- There was opposition on positions that substituted administrative processes, notices, and public hearings for applications that bypassed the process for public input on Accessory

Living Units (ALUs) and Home-Based Businesses (HBB) uses in single family residential neighborhoods;

- Controversial bills that eliminated single family residential zoning had failed in many other states;
- The Virginia General Assembly rejected radical zoning changes but agreed in their last session to study those issues;
- zMOD endangered single family neighborhoods;
- There were outstanding infrastructure problems in residential neighborhoods;
- Rental ALUs would be priced at market rates unless they were built for families;
- zMOD would increase the density of zoning districts without changes to the Comprehensive Plan;
- zMOD provisions around ALUs and HBB would be difficult to enforce;
- Enforcement of a cap on all ALUs occupancy might violate the Virginia Fair Housing Act, as cited by James Hart's January 26, 2021 letter to the Planning Commission;
- Enforcement of a cap on the number of customers did not accurately address the intensity of use and impacts on communities;
- zMOD did not address the cumulative impact of delivery traffic and noise;
- Excess delivery traffic might damage the character of quiet residential communities;
- An opposition to the unlimited number of accessory structures with a combined area of up to 50 percent of the gross floor area of the principal structure and a height of 20 feet;
- An opposition to encroachment of commercial uses into neighborhoods with by-right business signage with one or more signs; and
- Citizen engagement in land use should remain a higher priority.

Jennifer Falcone, 10323 Georgetown Pike, Great Falls, representing Great Falls Citizens Association, addressed the association's concerns regarding the proposed amendment. A copy of Ms. Falcone's YouTube testimony can be viewed by contacting the Fairfax County Cable and Consumer Services, Channel 16.

Cynthia Shang, 15121 Elk Run Road, Chantilly, opposed the amendment. A copy of Ms. Shang's statement is in the date file.

Jeff Flading, 16780 Sudley Road, Centreville, representing Fairfax National Estates (FNE) HOA, opposed the amendment and stated the following:

- FNE represented a community of 60 homes that were built on septic systems;
- FNE was adjacent to the Sudley Farm community with 60 homes that were built on septic systems;
- FNE bordered the Occoquan Watershed;
- A County resource protective stream ran through the FNE neighborhood;
- Concurred with the speakers who voiced concerns regarding the intent of the zMOD project;
- Concerns raised that septic systems could not accommodate the impact of certain HBB uses;
- Research conducted on the number of septic systems located in Fairfax County;
- A recommendation was made that HBB built on septic systems without a public hearing be denied; and
- Approval of HBB uses on septic systems would damage the health of citizens.

Mr. Flading's testimony was followed by a discussion between Ms. Judge, Mr. Flading, and Chairman Niedzielski-Eichner regarding the County's requirements for applications for HBB built on septic systems, the health department's permitting review process, and the health concerns of citizens.

Steve DelBianco, 1920 Virginia Avenue, representing McLean Citizens Association, opposed the amendment. A copy of Mr. DelBianco statement on behalf of the association is in the date file.

Mr. DelBianco's testimony was followed by a discussion between Ms. Judge and Commissioner Cortina regarding the number of customers allowed at HBB. Ms. Judge stated that there was an advertised range in the original zMOD consideration. The adopted amendment by the Board of Supervisors provided for instructional activities with four individuals at a time and a total of eight per day. For all other administratively approved uses, no customers were allowed.

Aaron Wilkowitz, 6800 Walnut Street, Falls Church, representing Yes In My Back Yards of Northern Virginia, supported the amendment. A copy of Mr. Wilkowitz's YouTube testimony can be viewed by contacting the Fairfax County Cable and Consumer Services, Channel 16. A copy of Mr. Wilkowitz's supporting statement is also in the date file.



Clyde Miller, 3436 Skyview Terrace, Falls Church, representing Holmes Valley Run Citizens Association, opposed the amendment. A copy of Mr. Miller's statement is in the date file.

Lynne Mulston, 11472 Links Drive, Reston, representing Reston Citizens Association, opposed the amendment. A copy of Ms. Mulston's statement is in the date file.

Ms. Mulston's statement was followed by a discussion between Ms. Bishop and Chairman Niedzielski-Eichner regarding mandatory language such as "shall" or "will". Ms. Bishop stated that replacing shall with more active language was done throughout the Zoning Ordinance. Staff kept the interpretation language where shall and must were mandatory because shall was used in some old proffers. Ms. Bishop added that throughout the Zoning Ordinance and other parts of the County Code, the term shall would be replaced with must. She added that the confidence level of such mandatory language was based on vetting approval from the Office of the County Attorney. Ms. Bishop provided clarification for concerns that addressed stacked townhomes under the proposed zMOD amendment.

James Hart, 6504 Trillium House Lane, Centreville, opposed the amendment. A copy of Mr. Hart's statement is in the date file.

Mr. Hart's statement was followed by a discussion between multiple Commissioners regarding clarification on the total number of data centers approved in Fairfax County and the total number approved since implementation of the approved March 2021 zMOD provisions.

Debbie Smith, 3127 Juniper Lane, Falls Church, representing Mason District Council of Community Associations, opposed the amendment and stated the following:

- The previously approved zMOD standards allowed for the insertion of major changes for ALUs, HBB, and accessory structures which bypassed focused attention by the public on these controversial land use issues;
- The approved March 2021 zMOD provisions removed the special permit public notice process and public hearings, that deprived residents the opportunity to voice concerns;
- The amendment had the capacity to change the nature of the County's stable single family community;
- Each zMOD amendment demanded a traditional and dedicated Zoning Amendment process, complete with analysis, review, a staff report, and a public hearing;
- The changes to the amendment were not community driven, nor were they supported by the community;
- ALUs approved administratively would transform single family into duplexes;
- There would be an increase in the number of deliveries to HBB;

- There was a potential for two HBB on each property with one ALU;
- Regulation to changes HBB and ALUs would be difficult for the County to enforce; and
- The Mason District Council of Community Associations requested the removal of ALUs, HBB, and accessory structure amendments included in the zMOD project.

Mark Crawford, 4604 Monterey Drive, Annandale, opposed the amendment and addressed concerns regarding damage to the integrity of neighborhoods, financial damage to homeowners, the quality of life for its residents, removal of accessory dwelling regulations for disabled persons and those aged 55 and older, and the elimination of public hearings for approval of ALUs. He added that the by-right option for ALUs should not be allowed.

Joshua Booth, 6232 Shackelford Terrace, Alexandria, supported the readoption of the amendment. A copy of Mr. Booth's YouTube testimony can be viewed by contacting the Fairfax County Cable and Consumer Services, Channel 16.

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The Commission went into recess at 9:42 p.m. and reconvened in the Board Auditorium at 10:02 p.m.

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Chairman Niedzielski-Eichner called the subsequent listed speaker.

Jeffery Parnes, 3153 Ramesses Court, Herndon, representing Sully District Council of Citizens Associations, opposed the amendment. A copy of Mr. Parnes' statement is in the date file.

Brian Sterling, 6186 Veneto Terrace, Alexandria, representing Ben Pointe Homeowners Association, opposed the amendment. The association's joint statement is in the date file.

Michael Graham, 15101 Bernadette Court, Chantilly, opposed the amendment. A copy of Mr. Graham's statement is in the date file.

Mac Cummins, 12001 Sunrise Valley Drive, Reston, representing the Reston Association, addressed the association's concerns. A copy of the association's statement is in the date file.

Michael Cregge, 5315 Birds View Lane, Alexandria, representing Overlook Fountain, opposed the amendment. The organization's joint statement is in the date file.

Mr. Cregge's statement was followed by a discussion between Ms. Bishop and Chairman Niedzielski-Eichner on whether the noise control standards in the Zoning Ordinance applied to by-right developments in the I-4, I-5, and I-6 Districts. Ms. Bishop stated that the zMOD Ordinance had the added requirement for the cooling ventilated, power, and generator equipment

to be enclosed. That requirement did not apply in the I-4, I-5, and I-6 Districts based on a consideration of the other types of industrial uses that were allowed in those districts, some of which had high noise levels. She added that the County had a noise ordinance that applied to such uses. Those standards also applied in industrial districts that permitted uses by-right. Ms. Bishop added that if additional review of data center uses took place under the Zoning Ordinance Work Program, those standards could be reconsidered.

Amy Gould 7718 Lafayette Forest Drive, Annandale, opposed the amendment and addressed concerns regarding exclusion of the public from the public hearing process for permitting ALUs, water quality impacts from HBB on septic systems, the removal of mature trees, parking, and street signage. She expressed concerns regarding data centers being allowed by-right due daily water usage, impacts to the environment from the use of forever chemicals, climate change, and noise impact to nearby residents.

Ms. Gould's statement was followed by a discussion between Ms. Judge, Ms. Gould, and Chairman Niedzielski-Eichner regarding beauty shops approved administratively and potential impacts from runoff from forever chemicals into septic systems. Ms. Judge clarified that a special permit would be required for the operation of a beauty shop as a HBB. The special permit would also have a public notice process. Regarding the health department's process in the review of HBB, Ms. Judge stated that both the administrative and the special permit would require the health department's review and approval. The County had a standard that applied to all HBB that prohibited the use and storage of flammable or combustible liquids, explosives, or hazardous substances in accordance with Chapter 62 of the *County Code*.

Theodore Troscianecki, 6618 Smiths Terrace, Centreville, representing Virginia Run Homeowners Association and Western Fairfax Citizens Association, opposed the amendment. A copy of the association's statement is in the date file.

Benjamin van Zyl, 5432 Edsall Ridge Place, Alexandria, representing Ridges at Edsall HOA, opposed the amendment. A copy of the association's joint statement is in the date file.

Katheryn Kulick, P. O. Box 400, Catharpin, representing HOA Roundtable of Northern Virginia, opposed the amendment. A copy of the organization's joint statement is in the date file.

Ann Bennett, 3901 Sandalwood Court, Fairfax, representing Sierra Club of Great Falls Group, addressed concerns regarding the amendment. A copy of the association's statement is in the date file.

There was a discussion between Ms. Bennett and Chairman Niedzielski-Eichner on whether her organization coordinated with the health department to address the septic system concerns. Ms. Bennett confirmed that the Sierra Club of Great Falls Group had not engaged with the health department and would be happy to do so.

Renee Grebe, 5706 Evergreen Knoll Court, Alexandria, representing Nature Forward, addressed concerns regarding the amendment. A copy of the organization's statement is in the date file.

Chairman Niedzielski-Eichner called for speakers from the audience.

Keith Elliott, 15003 Jarski Court, Centerville, opposed the amendment due to concerns regarding rent prices for ALUs and HBB, the associated costs of such uses, and the parking, traffic, pedestrian safety, and other conflicts that may arise for homeowners associations.

Warner Selle, 4403 Silas Hutchinson Drive, Chantilly, addressed concerns regarding the by-right use of data centers without a public hearing process. Mr. Selle also addressed concerns about the number of data centers in the County.

Chairman Niedzielski-Eichner informed Mr. Salle the Commission understood his concerns regarding data centers allowed by-right, and for the opportunity to address those concerns.

Laura Duff, 4403 Silas Hutchinson Drive, Chantilly, reiterated Mr. Selle's concerns regarding the by-right uses of data centers. She also addressed concerns regarding the increase of impervious surfaces under zMOD, specifically surrounding data centers and the hydrological studies provided for the area. Ms. Duff addressed safety concerns homeowners in those areas faced on a regular basis.

Julie Strandlie, 4566 Shetland Green Drive, Alexandria, addressed the following concerns:

- The Pinecrest Community Association's letter dated February 21, 2023 opposing changes to the Zoning Ordinance standards for ALUs and HBB;
- The community received a notice from Pinecrest Community Association that secured the passage of the proposed amendment;
- The association and community have not had the opportunity to respond to the notice received;
- The association and community were led to believe this notice was a formality;
- The public hearing process should continue for HBB;
- The ALU changes did not only allow a kitchen and that language should be removed from the County's materials;
- ALUs and other impacts were accessible from side and back entrances, which included newly dug basement steps;
- Concerns regarding the privacy of neighboring properties while accessing ALUs;
- A suggestion was made for the steps leading to ALUs be placed at the rear of a property to avoid some impact on the neighboring properties; and

- Ms. Strandlie read excerpts from her statement before the Commission conducted its vote on the previously approved zMOD amendment.

Chairman Niedzielski-Eichner called for closing comments from staff, but there were none.

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

- Visuals presented to the Commission that referenced ALU and HBB implementation process;
- Clarification on the number of ALU complaints that led to the approval or denial of applications;
- Clarification on the number of complaints that led to approved HBB applications;
- A suggestion was made to add the types of uses permitted on septic systems to the work program;
- The health department's authority in the review process of chemicals at HBB and what that review entailed;
- Concerns regarding the quality of water in the septic systems for HBB;
- Clarification on the health department's regulatory authority in the review of septic systems for HBB operational permits;
- Correspondence received by the Planning Commission that addressed concerns regarding agritourism, recommendations for accessible parking spaces, and high density attendance for those events was referenced;
- Clarification on the reasons why data centers were allowed by-right in the I-4 through I-6 Districts;
- Clarification on whether data centers allowed by-right were required to meet all other requirements applied in the Zoning Ordinance;
- Clarification on the permitting requirements in place under the noise ordinance that would mitigate noise levels at the property line for data centers, prior to development;
- Clarification on the operational standards in the noise ordinance for day and night timeframes;
- The differences between continuous versus impulsive noise for data centers;

- Clarification on whether the noise ordinance accounted for 24/7 continuous noise at a certain noise level;
- Clarification on whether the data collected from ALUs, HBB, and agritourism in the two year span since the implementation of zMOD provided an adequate analysis of those uses; and
- Clarification on whether the data collected from ALUs, HBB, and agritourism referenced staff's initial recommendations, or suggested that appropriate changes be made to accommodate provisions that were not anticipated.

There were no additional questions from the Commission therefore, Chairman Niedzielski-Eichner closed the public hearing and recognized Commissioner Bennett for action on this amendment.

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Commissioner Bennett MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THE FOLLOWING ACTIONS:

- REPEAL CHAPTER 112 OF THE *COUNTY CODE* AND ADOPT THE NEW AND MODERNIZED ZONING ORDINANCE AS CHAPTER 112.2, AS SET FORTH IN THE STAFF REPORT DATED APRIL 14, 2023, TO INCLUDE THE FOLLOWING CHANGES:
  - WHEREVER THE PROPOSED TEXT REFERS TO CHAPTER 112.1, REVISE IT TO SAY CHAPTER 112.2;
  - WITH RESPECT TO PREVIOUS APPROVALS, AS SET FORTH IN APPENDIX 1 OF THE PROPOSED ZONING ORDINANCE, MAKE THE FOLLOWING CHANGES TO APPENDIX 1, AS PREVIOUSLY DISTRIBUTED TO THE COMMISSION:
    - REPLACE ALL REFERENCES TO JULY 1, 2021, WITH THE NEW EFFECTIVE DATE OF THE ZONING ORDINANCE; AND
    - RELOCATE SUBSECTION 2.B(1) REGARDING THE HOLLIN HILLS HISTORIC OVERLAY DISTRICT TO SUBSECTION 1.H AND DELETE THE REFERENCE TO THE AMENDMENT NUMBER, ZO 112.1-2022-6, AND REPLACE THE EFFECTIVE DATE WITH MARCH 9, 2022.
- THAT REPEAL OF CHAPTER 112 AND THE ADOPTION OF CHAPTER 112.2 BECOME EFFECTIVE AT 12:01 A.M., THE DAY FOLLOWING ADOPTION; AND

- IF CHAPTER 112.1 IS ULTIMATELY VALIDATED, THE BOARD PROVIDE FOR CHAPTER 112.1 TO SUPERSEDE CHAPTER 112.2 AND FOR CHAPTER 112.2 TO SUNSET OR BE REPEALED.

Commissioner Bennett MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THE FOLLOWING ACTIONS:

- STAFF BE DIRECTED TO BRING THE FOLLOWING TOPICS FORWARD FOR FURTHER DISCUSSION AND REVIEW AS PART OF THE ZONING ORDINANCE WORK PROGRAM THAT IS SCHEDULED TO BE DISCUSSED BY THE PLANNING COMMISSION'S LAND USE PROCESS REVIEW COMMITTEE ON JUNE 8, 2023, AND BY THE BOARD'S LAND USE POLICY COMMITTEE ON JULY 18, 2023:
  - DATA CENTERS: REVIEW, AS A TIER 1 TOPIC, THE POTENTIAL ENVIRONMENTAL AND OTHER IMPACTS, AND CONSIDER REVISIONS TO STANDARDS;
  - PLANNED RESIDENTIAL COMMUNITY (PRC) PLAN: REVIEW THE EXCEPTIONS FOR WHEN A PRC PLAN IS REQUIRED IN SUBSECTION 8100.2.F(3)(C) TO EXPAND THE PERMITTED MINOR IMPROVEMENTS THAT WOULD NOT REQUIRE A PRC PLAN. THESE EXCEPTIONS COULD INCLUDE UPDATING EXISTING RECREATION FEATURES, COMMUNITY FACILITIES, AND PLACEMENT OF MINOR STRUCTURES ABOVE THE CURRENT LIMITATIONS, PARTICULARLY AS THEY RELATE TO OPEN SPACE AND COMMUNITY FACILITIES; AND
  - EDITORIAL REVISIONS: COMPILE EDITORIAL REVISIONS, INCLUDING THOSE NEEDED TO COMPLY WITH THE *CODE OF VIRGINIA*, AND TO RECOGNIZE THAT THE BOARD OF ZONING APPEALS MAY HAVE UP TO THREE ALTERNATE MEMBERS.

Commissioner Ulfelder seconded the first, second, and third motions, which was carried by a vote of 12-0.

Commissioners Jimenez, Murphy, Lagana, and Ulfelder seconded the follow-on motions, which was carried by a vote of 12-0.

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The meeting was adjourned at 12:26 a.m.  
Phillip A. Niedzielski-Eichner, Chairman  
Evelyn S. Spain, Secretary

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

Minutes by: Samantha Lawrence

Approved on: July 26, 2023

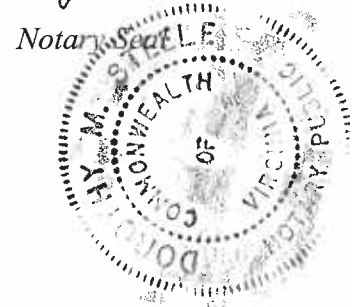
*Jacob L. Caporaletti*

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

County of Fairfax  
Commonwealth of Virginia

The foregoing instrument was acknowledged before me this 4 day of August 2023, by

*[Handwritten Signature]*  
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Signature of Notary



Notary registration number: 7114113

Commission expiration: January 31, 2024