

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
WEDNESDAY, JANUARY 10, 2024**

PRESENT: Phillip A. Niedzielski-Eichner, Chairman, Commissioner At-Large
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
John A. Carter, Hunter Mill District
Daniel G. Lagana, Franconia District
Peter F. Murphy, Springfield District
Walter C. Clarke, Mount Vernon District
Jeremy Hancock, Providence District
Candice Bennett, Commissioner At-Large

ABSENT: Daren Shumate, Mason District

OTHERS: Jill Cooper, Director, Department of Clerk Services (DCS)
Samantha Lawrence, Senior Deputy Clerk, DCS
Catherine Dushin, Deputy Clerk, DCS
Mary Dryer, Deputy Clerk, DCS
Sunny Yang, Zoning Evaluation Division, (ZED)
Department of Planning and Development (DPD)
William O'Donnell, ZED, DPD
Lily Yegazu, ZED, DPD
Casey Judge, Zoning Administrative Division (ZAD), DPD

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The meeting was called to order at 7:30 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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COMMISSION MATTERS

Chairman Niedzielski-Eichner welcomed the Commissioners and the public to the first meeting of 2024. He then announced the items to be considered during tonight's meeting, which included a deferral and the conduct of three public hearings.

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APPROVAL OF MINUTES

Commissioner Spain MOVED THAT THE PLANNING COMMISSION APPROVE THE FOLLOWING MEETING MINUTES:

- OCTOBER 4, 2023;
- OCTOBER 11, 2023; AND
- OCTOBER 18, 2023.

Commissioner Bennett seconded the motion, which was carried by a vote of 10-0. Commissioner Shumate was absent from the meeting and Commissioner Lagana was not present for the vote.

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Commissioner Spain announced that on January 4, 2024, Commissioners were emailed copies of the draft minutes for the November 2023 Planning Commission meetings. She then requested that Planning Commission members review the November meeting minutes and submit comments to staff no later than January 22, 2024. Commissioner Spain announced her intent to move approval of the November 2023 meeting minutes during the Planning Commission meeting on January 24, 2024.

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PCA-2011-PR-023-04/ CDPA-2011-PR-023-03/ FDP-2011-PR-023-06 – CITYLINE PARTNERS LLC

Commissioner Hancock MOVED THAT THE PLANNING COMMISSION DEFER THE PUBLIC HEARING FOR PCA 2011-PR-023-04, CDPA 2011-PR-023-03, AND FDP 2011-PR-023-06 TO A DATE CERTAIN OF FEBRUARY 28, 2024, AND RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT DEFER ITS PUBLIC HEARING FOR THE APPLICATIONS TO A DATE FOLLOWING THE PLANNING COMMISSION'S ACTION.

Chairman Niedzielski-Eichner, Commissioners Clarke and Murphy seconded the motion, which was carried by a vote of 10-0. Commissioner Shumate was absent from the meeting. Commissioner Lagana was not present for the vote.

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Commissioner Ulfelder announced that the Land Use Process Review Committee would meet on January 11, 2024, at 7:30 p.m. in Conference Room 11 of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035. This meeting would also be televised on Channel 16. He added that the committee would meet with staff from the Department of Planning and Development to continue discussions and collect feedback on updates to the Public Facilities section of the County's Comprehensive Plan.

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Chairman Niedzielski-Eichner announced that the Commission elected its officers annually at the third meeting of the year, and this year's election would occur place at the January 31, 2024, Planning Commission meeting. Chairman Niedzielski-Eichner added that an email was sent to Commissioners that outlined the election process.

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ORDER OF THE AGENDA

Secretary Spain established the following order of the agenda:

1. FDPA 94-H-011-03 (RZPA 2023-HM-00032) – MARILYN AND STEPHEN BRENNAN
2. ZONING ORDINANCE AMENDMENT – OUTDOOR DINING
3. SEA 89-S-072-02 – NORTHERN VIRGINIA ELECTRIC COOPERATIVE (Popes Head)

This order was accepted without objection.

Chairman Niedzielski-Eichner recited the rules for public testimony.

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FDPA 94-H-011-03 (RZPA 2023-HM-00032) – MARILYN AND STEPHEN BRENNAN - Appl. to amend the final development plan for RZ 94-H-011 to permit an addition 6.2 ft. from the rear lot line. Located at 2446 Artic Fox Way, Reston, 20191 on approx. 6,207 sq. ft. of land zoned PDH-4. Tax Map 25-2 ((17)) 35. HUNTER MILL DISTRICT. PUBLIC HEARING.

Jorge R. Leon, Architect, Applicant’s Agent, reaffirmed the affidavit dated November 2, 2023.

There were no disclosures from the Commission.

Sunny Yang, Zoning Evaluation Division, Department of Planning and Development, presented the staff report, a copy of which is in the electronic date file. She noted that staff recommended approval of application FDPA 94-H-011-03.

Mr. Leon declined to give a presentation.

Chairman Niedzielski-Eichner called the first listed speaker.

Scott Smith had signed up to provide in person testimony, but he was not present.

Chairman Niedzielski-Eichner called for speakers from the audience but received no response; therefore, he noted that a rebuttal statement was not necessary. There were no further comments or questions from the Commission and staff had no closing remarks; therefore, Chairman Niedzielski-Eichner closed the public hearing and recognized Commissioner Carter for action on this application.

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Commissioner Carter MOVED THAT THE PLANNING COMMISSION APPROVE FDPA 94-H-011-03, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED JANUARY 10, 2024.

Commissioners Bennett and Murphy seconded the motion, which was carried by a vote of 11-0. Commissioner Shumate was absent from the meeting.

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ZONING ORDINANCE AMENDMENT – OUTDOOR DINING

To amend Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax, as follows (with advertised options in bold and parentheses). The following is a descriptive summary only and does not include every detail:

- (1) Permit outdoor dining in all zoning districts as an accessory use to approved food establishments including restaurant, carryout restaurant, restaurant with drive-through, craft beverage production establishment and any other similar use with a valid Nonresidential Use Permit and that has a food establishment permit, unless expressly prohibited by any applicable proffered condition, development condition, or special permit or special exception approval.
- (2) Add new regulation requiring that any single outdoor dining area may not exceed an area equal to 50 percent of the indoor dining floor area of the establishment (Option 1: no size limit on outdoor dining area; Option 2: a minimum of 250 square feet or a percentage of the indoor dining area (a range from 25 percent to 75 percent), whichever is greater; Option 3: when outdoor dining is in parking lots a range from 500 square feet to 1,000 square feet).
- (3) Add new regulation requiring that the hours of operation generally conform to the business hours of the principal use (no outdoor dining located directly adjacent to or abutting single-family residential development use may operate before 7:00 a.m. or 10:00 p.m. or as otherwise approved by the Board in conjunction with a rezoning or other action before the Board).
- (4) Add new regulation requiring that outdoor dining be located on impervious areas, such as existing patios or sidewalks of a private property, by right.
- (5) Add new regulation prohibiting outdoor dining, including any furniture, enclosure, or tent, from obstructing any fire equipment, building entrance or exit or any other area marked or designated

for emergency egress or ADA accessibility, or pedestrian passage on any trail or sidewalk.

(6) Add new regulation requiring that all tables, chairs, umbrellas, lighting, and other accessories be temporary and removeable, that the outdoor dining area must be kept free of trash and debris and that any extension cords associated with audio or video entertainment equipment may not create a trip hazard and meet all other County State and Federal Codes.

(7) Add new regulation requiring that outdoor dining located in a parking lot be permitted with limitations and with the issuance of an Administrative Permit by the Zoning Administrator, subject to a one-time application fee of \$205 (\$100 to \$205), as authorized by *Virginia Code 15.2-2286(A)(6)*.

(8) Add a new definition classifying outdoor dining as an accessory use and prohibiting permanent structures associated with the use.

(9) Amend the definition of carryout restaurant to clarify that seats provided as part of accessory outdoor dining are not included in the maximum indoor seat limitation. COUNTYWIDE. PUBLIC HEARING.

Lily Yegazu, Zoning Administration Division (ZAD), Department of Planning and Development (ZAD), presented the staff report, a copy of which is in the electronic data file. She noted that staff recommended approval of the Outdoor Dining Zoning Ordinance Amendment.

There was a discussion between Ms. Yegazu; Casey Judge, ZAD, DPD; and multiple Commissioners on the following issues:

- Clarification on how the proposed Zoning Ordinance Amendment would apply when leasing out parking spaces to food trucks or trailers with temporary outdoor tables and seating;
- Clarification on how staff would work with an applicant to determine whether a truck or trailer was permitted to have outdoor dining in unused parking lot spaces;
- The impact of eliminating restrictions on outdoor dining limitations, such as the size of outdoor dining area relative to indoor square-footage, operating hours, and proximity to single-family dwelling units;
- Concerns that, without outdoor dining size limits, new restaurants would potentially build for smaller capacities and then designate large outdoor areas without providing adequate fixtures;
- Clarification on the general outdoor noise impact of outdoor dining areas and how noise complaints would be addressed;
- The support for operating hours of outdoor dining areas to match the business hours of a restaurant establishment;

- How the proposed ordinance could potentially promote placemaking opportunities in plazas and streets;
- General concerns that placing excessive constraints and restrictions within the amendment would negatively impact current and future businesses;
- Clarification of the standards for principal use verses accessory use and verification that applicants were still required to meet all County Code requirements; and
- General concerns about the quality, consistency, uniformity, and aesthetics of temporary outdoor dining structures, as well as suggestions that future standards be evaluated.

Commissioner Ulfelder asked if staff had reviewed comments submitted by Great Falls Citizen’s Association, which included the following:

- A recommendation to change instances of “should” to “shall” to ensure compliance; and
- Concerns whether there were sufficient County resources to ensure compliance with existing health and safety standards at restaurants establishments.

In response to Commissioner Ulfelder, staff confirmed that they worked closely with the Office of the County Attorney to address these concerns and explained the following:

- Instances of “shall” was not sufficiently legally binding and staff utilized “must” and “should” for mandatory items and “may” for optional items; and
- Staff was not proposing that non-residential use permits be issued for outdoor dining zoning amendment and would work with the Fairfax County Department of Health to educate the public so that they could come into compliance with new standards.

Chairman Niedzielski-Eichner called for speakers from the audience, but received no response; therefore, he stated that closing remarks from staff were not necessary. There were no further comments or questions from the Commission; therefore, Chairman Niedzielski-Eichner closed the public hearing and recognized Commissioner Bennett for action on this application.

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Commissioner Bennett MOVED THAT THE PLANNING COMMISSION RECOMMEND TO BOARD OF SUPERVISORS ADOPTION OF THE COMPOSED ZONING ORDINANCE AMENDMENT FOR OUTDOOR DINING WITH THE STAFF RECOMMENDED OPTIONS AS SET FORTH IN THE STAFF REPORT DATED DECEMBER 15, 2023, AND THAT THE AMENDMENT BECOME EFFECTIVE AT 12:01 A.M. THE DAY FOLLOWING ADOPTION WITH A GRACE PERIOD ALLOWING EXISTING OUTDOOR DINING SETUPS TO COME INTO COMPLIANCE WITH THE NEW STANDARDS UNTIL APRIL 30, 2024.

Commissioners Cortina, Sergeant, and Murphy seconded the motion.

Commissioner Carter MOTIONED THAT THERE BE NO LIMIT TO THE SIZE OF THE OUTDOOR DINING.

Commissioner Lagana seconded the motion, which was carried by a vote of 8-2-1. Commissioners Spain and Sargeant opposed the motion. Murphy abstained from the vote. Commissioner Shumate was absent from the meeting.

Commissioner Carter MOVED TO AMEND THE MOTION TO SUPPORT THE OPTION TO PERMIT OUTDOOR DINING AREA TO OPERATE WITH THE SAME HOURS OF THOSE UTILIZED BY THE RESTAURANT ESTABLISHMENT.

The amendment was accepted.

Chairman Niedzielski-Eichner then called for a vote on the main motion as amended, which was carried by a vote of 11-0. Commissioner Shumate was absent from the meeting.

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SEA 89-S-072-02 – NORTHERN VIRGINIA ELECTRIC COOPERATIVE (Popes Head) - Appl. to amend SE 89-S-072
previously approved for electric substation and telecommunications facility to permit a new 95-foot-tall transmission pole with attached facilities within the existing equipment compound area and associated modifications to site design and development conditions. Located at 12700 Popes Head Rd., Clifton, 20124 on approx. 4.80 ac. of land zoned R-C and WS. Tax Map 66-4 ((3)) 1. SPRINGFIELD DISTRICT. PUBLIC HEARING.

Gifford R. Hampshire, Applicant's Agent, reaffirmed the affidavit dated July 5, 2023.

There were no disclosures from the Commission.

William O'Donnell, Zoning Evaluation Division (ZED), Department of Planning and Development (DPD) presented the staff report, a copy of which is in the electronic date file. He noted that staff recommended approval of application SEA 89-S-072-02.

Mr. Hampshire gave a presentation on the subject application.

Chairman Niedzielski-Eichner asked Commissioners if they had any questions.

Commissioner Cortina stated that bamboo was not allowed under the Zoning Ordinance and asked if staff spoke with the applicant about removal. Mr. Hampshire responded that they had not. Mr. O'Donnell stated that staff could add a development condition to require that the applicant agree to remove the bamboo from the site.

Chairman Niedzielski-Eichner asked for clarification on Development Condition Number 1a. Mr. Hampshire responded that the development condition was not appropriate for existing sites with natural vegetation. Mr. O'Donnell clarified that the applicant raised a concern about this development condition, which pertained to sustainable elements and planting techniques that

were usually applied to a mixed-use redevelopment. He added that the Department of Urban Forestry agreed that the provision was not appropriate as a development condition.

Chairman Niedzielski-Eichner called the first listed speaker.

William Lukaczyk, 12710 Popes Head Road, spoke in opposition of the subject application because of concerns regarding inadequate screening, security issues, light pollution, noise impact, and radio frequency interference. He explained that the proposed second radio tower was part of a smart meter system that would allow the applicant to perform variable rate electricity billing. He then listed the following issues with the site:

- The existing radio tower was not adequately camouflaged;
- The applicant had extended the fence and removed plants without replacing important screening plants;
- The applicant had removed other critical screening plants that had been included in previous SEA applications;
- The applicant allowed landscape contractors to park trucks at site;
- The applicant frequently left entry gate open, which was a security hazard;
- The applicant had not adequately demonstrated the need for the proposed tower;
- The applicant's proposed lighting fixtures were not compliant with the County's Dark Sky initiative; and
- The applicant had not adequately responded to concerns regarding the noise impact on new homes being built to the north of the property.

A copy of Mr. Lukaczyk's statement is in the date file.

There was a discussion between Mr. O'Donnell, Mr. Hampshire, Mr. Lukaczyk, and multiple Commissioners regarding the following issues:

- The driveway gate is usually unlocked;
- Tree trucks are frequently parked in the vicinity;
- Lighting standards on the site compliance with the Dark Sky initiative; and
- Whether plants had been removed and not replenished by the applicant.

Chairman Niedzielski-Eichner called for speakers from the audience.

Aaron Edlow spoke in opposition to the subject application, echoing concerns from Mr. Lukaczyk. He further explained that camouflage would not likely be addressed until February 2024, and the applicant had not yet explained how issues relating to lighting and screening issues would be addressed.

There being no more speakers, Chairman Niedzielski-Eichner called for a rebuttal statement from Mr. Hampshire.

Mr. Hampshire responded to the speaker testimony as follows:

- The applicant coordinated with Crown Castle to implement appropriate changes for screening and foliage, which was expected to be complete prior to the Board of Supervisors public hearing;
- The transformers and lighting fixtures were compliant with the noise and lighting standards prescribed by the Zoning Ordinance;
- The images shown by Mr. Lukaczyk were from Popes Head Road and not from the adjoining properties;
- The applicant's efforts to improve the screening provisions on the site were consistent with the standards prescribed by the County; and
- The scope of the subject application was limited to installing a transmission pole with attached facilities and addressing issues unrelated to that feature was beyond the purview of the application.

There was a final discussion between Mr. O'Donnell and multiple Commissioners on the following items:

- The applicant's effort to respond to the concerns that have been addressed;
- The incentive for the applicant to adequately comply with the standards of the previously-approved special exception and the standards prescribed in the subject application;
- The extent to which the applicant had met its responsibilities and commitments;
- The considerations for deferring consideration of the subject application, which would warrant scheduling a second public hearing;
- Confirmation that a Board of Supervisors public hearing date had not been finalized; and
- Explanation of the issues that would be addressed if consideration of the subject application were deferred.

There were no further comments or questions from the Commission and staff had no closing remarks; therefore, Chairman Niedzielski-Eichner closed the public hearing and recognized Commissioner Murphy for a motion.

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Commissioner Murphy MOVED THAT THE PLANNING COMMISSION DEFER CONSIDERATION OF SEA 89-S-072-02 FOR AN ADDITIONAL PUBLIC HEARING ON FEBRUARY 28. ANY TESTIMONY THAT WAS PROVIDED AT THE JANUARY 10, 2024, PUBLIC HEARING WOULD BE INCLUDED AS PART OF THE RECORD. ALL PERSONS WHO TESTIFIED AT THE FIRST HEARING WERE ALREADY ON RECORD AND DID NOT NEED TO TESTIFY AGAIN AT THE ADDITIONAL HEARING.

Commissioner Clarke seconded the motion, which was carried by a vote of 11-0. Commissioner Shumate was absent from the meeting.

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The meeting was adjourned at 9:23 p.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, Virginia 22035.

Minutes by: Mary Dryer
Approved on: March 20, 2024

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 26 day of March 2024, by

[Handwritten Signature]
Signature of Notary

Notary registration number: 7114113

Commission expiration: January 31, 2028

