

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
THURSDAY, MAY 3, 2018**

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

ABSENT: None

//

The meeting was called to order at 7:31 p.m., by Chairman Peter F. Murphy, in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

//

COMMISSION MATTERS

Commissioner Clarke announced that on May 1, 2018, Supervisor Daniel G. Storck hosted an open house for former Commissioner Earl L. Flanagan. The open house celebrated former Commissioner Flanagan's time working with the Planning Commission.

//

Commissioner Ulfelder announced his intent to defer the public hearing for RZ 2017-DR-023, Tradition Homes, LLC, scheduled for May 17, 2018 to a date certain of June 14, 2018.

//

Commissioner Migliaccio announced the Planning Commission received minutes for February 2018, and he intended to move the approval of those minutes at the May 17, 2018 public hearing.

//

Commissioner Migliaccio announced the Land Use Process Review Committee met on May 9, 2018, in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035. The topic of discussion was the Zoning Modernization Project.

//

2232-M17-43 – COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA
(Decision Only) (Public Hearing on this application was held on April 26, 2018)

(Start Verbatim Transcript)

Commissioner Strandlie: Thank you, Mr. Chairman. We had a hearing – is there a staff that who can answer the follow-up question on this that Commissioner Hurley had from the previous? Regarding the contingent contract. Commissioner Hurley did – was your question answered?

Commissioner Hurley: Yes. The question was whether we issued 2232s to a private owner who doesn't have – does – has no contract to lease or sell a land – a piece of land to a public body.

Marianne Gardner, Director, Planning Division, Department of Planning and Zoning: I'm Marianne Gardner with the Department of Planning and Zoning, Planning Division. We did ask the County Attorney that question and the answer is that yes, we do. And, the examples given were, telecom facilities are on land not owned by that facility. So yes, we do have experience with that in the past.

Commissioner Strandlie: Thank you. On April 26th, 2018, the Planning Commission held a public hearing on SE 2017-MA-032, concurrent with 2232-M17-43. While the two applications are independent of one another, the public hearings were held concurrently because they relate to the same property. The Planning Commission voted to recommend approval of SE 2017-MA-032, but deferred its decision on 22-M17-43 [sic] until tonight. During this public hearing the Planning Commission also suggested that the Board of Supervisors hearing on SE 27 – 2017-MA-032 [sic] would be moved to May 15th, 2018. However, that date was not feasible for the Board. Therefore, on May 1st, 2018, the Board's public hearing on SE 2017-MA-032, was deferred to a date certain of June 5th, 2018 at 4:00 p.m. Now we will turn to the motion on the pending application on approval of the County Board of Arlington's request for a 2232 approval to construct a bus maintenance and repair facility. Mr. Chairman, I concur with the staff's conclusion that the proposal by the County Board of Arlington County, Virginia, to construct a bus maintenance and repair facility at 6701 Electronic Drive, Springfield, satisfies the criteria of location, character and extent as specified in *Virginia Code* Section 15.2-2232, as amended. Therefore, I MOVE THAT THE PLANNING COMMISSION APPROVE THE SUBJECT APPLICATION 2232-M17-43, AND FIND IT SUBSTANTIALLY IN ACCORD WITH PROVISIONS OF THE ADOPTED COMPREHENSIVE PLAN. I will also have a follow-on motion.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Ulfelder [sic]. Is there...I'm sorry you had a question?

Commissioner Ulfelder: I was not... Yeah, I'm gonna...

Chairman Murphy: Is there a second to the motion?

Commissioner Migliaccio: Second.

Chairman Murphy: Yeah, seconded by Mr. Migliaccio. Mr. Ulfelder.

Commissioner Ulfelder: Thank you, Mr. Chairman. At the hearing, I probed on the issue of whether Arlington County had in – had taken a hard look at sites within Arlington County, based on the premise that I thought that if a public body was seeking to locate a public facility outside its own jurisdiction, it first needed to do a thorough job of looking within its – within the bounds of its jurisdiction. Either for its – on its own property or an existing facility that they have in – in the County. I went back and reviewed the hearing and the original application and I'm still not convinced that Arlington County has done a complete job of considering locations within Arlington County for this. Therefore, I would not agree with – with the concurrence that it's in line with a particularly the location issue under 2232. That being said, I also believe that this 2232 was not necessary. Eighteen months ago, the County changed the definition of public use and made it clear that public facilities or public uses there – from other jurisdictions being located in Fairfax County, are not reviewed pursuant to 2232 but are handled under the Zoning Ordinance. As it turns out in this case, the Zoning Administrator has opined that this particular use, a bus maintenance facility, is a by-right use at this site, because it's an existing I-6 District. Therefore, in this case, I'm going to – because of the conflict in my position, on the one hand I don't think the 2232 was necessary, but I didn't think that they met the test of the 2232, I'm going to abstain.

Chairman Murphy: Further discussion of the motion. Yes, Ms. Hurley.

Commissioner Hurley: I'm going to abstain. I align myself with Commissioner Ulfelder's remarks.

Chairman Murphy: Further discussion of the motion.

Commissioner Hart: Mr. Chairman.

Chairman Murphy: Mr. Hart.

Commissioner Hart: Thank you. I'm gonna abstain. But I didn't watch the whole public hearing. Thank you.

Chairman Murphy: Anyone else.

Commissioner Sargeant: Mr. Chairman, I'm going to abstain as well. I was not present for the public hearing.

Chairman Murphy: Okay.

Commissioner Strandlie: Mr. Chairman, I would just like to say that this did come up as an issue and we did – I did raise those exact questions with the County as to whether or not a 2232 was required as well. And, after the vote on this I will have a follow-on motion to address that need.

Chairman Murphy: Further discussion? All those in favor of the motion to approve 2232-M17-43, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries with four abstentions. Mr. Ulfelder abstains, Mr. Sargeant abstains, Mr. Hart abstains and Ms. Hurley abstains. Motion carries.

Commissioner Strandlie: Okay.

Chairman Murphy: Ms. Strandlie.

Commissioner Strandlie: Thank you. Mr. Chairman, on – on October 18th, 2016, the Board of Supervisors adopted a Zoning Ordinance amendment that revised the definition of “public use” to clarify that a use controlled or sponsored by another local government is not deemed a public use for purposes of zoning. Other jurisdictions’ uses in this County are now subject to applicable zoning regulations for the proposed use. Despite this change to the Zoning Ordinance, the County’s 2232 review policy has not been revised since 2012, and still calls for the processing of other jurisdictions’ public facilities proposed to be located in Fairfax County as 2232 applications. In light of the apparent discrepancy between the zoning definition of “public use” and the County’s 2232 review policy, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT STAFF REVIEW THE CURRENT POLICY IN LIGHT OF THE CHANGES TO THE ZONING ORDINANCE, AND REVISE IT AS NECESSARY IN CONSULTATION WITH THE COUNTY ATTORNEY’S OFFICE.

Commissioner Ulfelder: Second.

Chairman Murphy: Seconded by Mr. Ulfelder. Is there a discussion of that motion? All those in favor of the motion as articulated by Ms. Strandlie, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. I take it there were no abstentions to that motion. Everybody sort of...

Commissioner Strandlie: Thank you.

The first motion carried by a vote of 8-0-4. Commissioners Ulfelder, Sargeant, Hart and Hurley abstained from the vote.

The second motion carried by a vote of 12-0.

(End Verbatim Transcript)

//

(Decision Only) (Public Hearing on these applications was held on April 19, 2018)

(Start Verbatim Transcript)

Commissioner Carter: So, what we have is...

Chairman Murphy: Mic.

Commissioner Carter: [Inaudible].

Commissioner Hart: Is his mic on?

Chairman Murphy: Mic.

Commissioner Carter: Thank you. PCA 91-H-001, RZ 2017-HM-019, SE 2017-HM-016, TH Holding Company, also known as Thompson Hotel. If you remember, this is a hotel inside the Lake Fairfax Business Center. It's a good use, there is office by-right and so what they're doing a hotel. A portion of the grid of streets would be constructed on site. There was a discussion from Commissioner Cortina about grid of streets going through a portion of Lake Fairfax, and I did get a chance to go over there and if you did that I think it would be equivalent to Key Bridge if you looked at that because the ravine is so deep over there. But this does not touch that so it really doesn't have anything to do that – do for that. It was deferred two weeks ago, because the applicant did not agree to pay the full transportation impact fee. The applicant is now seen the error of their ways. They have agreed to pay the full amount, just be advised that in paying the full amount they may ask for a credit later on roads that the build offsite, which is how we normally do things. It's actually good approach because that's how we get roads built. We don't necessarily need the money, we need the roads. It's about nine hundred thousand dollars on a fairly large project and the staff is now recommending approval. There is a public facility and a recreation fee. This was not an issue the last time. The applicant will agree to pay for the impact of a hotel, recognize there's more open space on site than would normally be required and the staff recommends approval of this. Also, to be concerned, doesn't have much to do with either the transportation or the recreation fee, but the proffers also include a unique internship program with the high schools in the area. So, unless there's more discussion, I will proceed with the motion. Okay. Mr. Chairman, I request that the applicant confirm for the record their agreement to the development conditions dated April 3rd, 2018.

Amanda R. Williams, Applicant's Agent, Cooley LLP: Amanda Williams, attorney with Cooley representing the applicant. And yes, I can confirm.

Commissioner Carter: Okay. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF PCA 79-C-090-02 AND PCA 91-H-001.

Commissioner Niedzielski-Eichner: Second.

Chairman Murphy: Seconded by Niedzielski-Eichner. Is there a discussion of that motion? All those in favor to approve PCA...

Commissioner Cortina: I do have a discussion item...

Chairman Murphy: Okay.

Commissioner Cortina: So, they are not actually proffering for the recreation and athletic fields?

Commissioner Carter: They are. It's the amount that pays for the impact of just the hotel. So, if you calculated for office it would be a little bit more. They want us to recognize that the open space on site is more than they usually would do.

Commissioner Cortina: Okay. Thank you for making that clarification.

Chairman Murphy: All those in favor of that motion PCA 79-C-090-02 and PCA 91-H-01-001 [sic], say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Sargeant: Mr. Chairman.

Chairman Murphy: Mr. Sargeant.

Commissioner Sargeant: Abstain not present for the public hearing.

Chairman Murphy: Mr. Sargeant abstains not present for the public hearing.

Commissioner Carter: Okay. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2017-HM-019, SUBJECT TO THE PROFFERS DATED MAY 2ND, 2018.

Commissioner Niedzielski-Eichner: Second.

Chairman Murphy: Seconded by Niedzielski – Mr. Niedzielski-Eichner. Is there a discussion of that motion? All those in favor of the motion to recommend to the Board of Supervisors that approve RZ 2017-HM-019, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Sargeant: Mr. Chairman.

Commissioner Carter: And finally...

Chairman Murphy: And one abstain – same abstention.

Commissioner Carter: Okay. Finally, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SE 2017-HM-16, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED APRIL 3RD, 2018 AND APPROVE A MODIFICATION OF THE LOADING SPACE REQUIREMENT OF THE ZONING ORDINANCE TO THAT SHOWN ON THE GDP/SE PLAT.

Commissioner Niedzielski-Eichner: Second.

Chairman Murphy: Seconded by Mr. Niedzielski-Eichner. Is there a discussion of that motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2017-HM-016, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Sargeant: Mr Chairman, abstain.

Chairman Murphy: And one abstention.

Commissioner Carter: That's it.

Chairman Murphy: Thank you very much.

Each motion carried by a vote of 11-0-1. Commissioner Sargeant abstained.

(End Verbatim Transcript)

//

ZONING ORDINANCE AMENDMENT – ARTICLES 8, 10, 18 AND APPENDIX 2 - MINIMUM REQUIRED REAR YARD COVERAGE LIMITATIONS FOR SINGLE FAMILY DETACHED DWELLINGS

(Decision Only) (Public Hearing on this amendment was held on April 18, 2018)

(Start Verbatim Transcript)

Commissioner Hart: Thank you, Mr. Chairman. On April 18, the Commission had a public hearing on a Zoning Ordinance Amendment for minimum rear yard coverage for single family detached dwellings, and deferred decision until tonight. I want to thank our staff team, particularly Casey Judge, Drew Hushour, Ellie Coddling, Randy Bartlett and the Zoning Administrator, Leslie Johnson, and also David Stoner in the County Attorney's office, for their fine work on this project, including extensive community outreach. I also want to thank the citizens and groups who testified and submitted written comments. I also want to thank my colleagues who have weighed in, and there once again is a spectrum of opinions as to the details. This amendment was originally intended to address a couple recurring problems, the lack of flexibility for homeowners in a couple unfortunate P district subdivisions to install patios, decks and porches in the minimum rear yard without filing an FCPA – FDPA, excuse me. This is what

happens when – when I’m the typist. Sometimes referred to as the Kingstowne problem, and the dilemma for innocent homeowners purchasing an existing home with a rear yard swimming pool who receive a violation for minimum rear yard coverage, having bought the zoning violation along with their new home, without having done anything. With a single-family home, with an existing swimming pool, concrete deck and a small pump house, the homeowner may instantly be in violation, and may be stuck between ripping out the pool and concrete deck, or obtaining a variance, for which the standards are very severe. The Board has wanted to accommodate more flexibility for homeowners in both these scenarios. This amendment also addresses some other desired clarifications. At the same time, the desire for homeowner flexibility may conflict with other objectives in the ordinance, particularly environmental concerns, tree cover and stormwater management issues. We’ve received some pushback from citizen groups, and from EQAC, about the scope of the amendment. I agree that perhaps we may have gone further towards flexibility than was necessary, at the expense of our environmental objectives. I will therefore be moving that we recommend to the Board of Supervisors a slightly modified version of the original staff recommendation, including Option D in the most recent handout, which will require re-advertising before the Board of Supervisors public hearing, but as I understand it will not require the Commission to have another public hearing. I believe that compromise adequately addresses the concerns of both sides. As to R district lots, I am supporting the staff recommendation of retaining the current thirty percent by-right maximum coverage, but allowing homeowner applications for a special permit, rather than a variance, on a case-by-case basis, to increase coverage up to sixty percent, which I believe is more than sufficient to address most of the situations presented. That case-by-case review will require notice and a public hearing, and may result in appropriate development conditions to address any impacts generated. That also is the approach supported by EQAC for R districts. As to P district lots, my conclusion is somewhat more complicated. It’s very difficult to come up with a “one size fits all” recommendation. As to Option B, I believe that a fifty percent by right figure across the board, on the one hand is likely too low for the smallest P district lots, for which a patio or deck may more typically approach the sixty percent figure. I also believe that the larger P district lots do not need anything like fifty percent, and that we would be unnecessarily sacrificing pervious surface and tree cover for simplicity. For the smaller lots, I have concluded that a seventy-five percent maximum is more than generous, and that even sixty percent should be sufficient for a large patio or deck, leaving some remaining green space. As to the issue of an exemption for the P district lots under 5,000 square feet, I have concluded, based in part on some of the pushback we have received, that goes too far. I do not believe that a one hundred percent by right minimum yard coverage on a detached single family lot is necessary or appropriate, simply to facilitate homeowner flexibility, especially in view of our water quality and Chesapeake Bay objectives. I also believe that the other possible approach, the Option C sliding scale for the smaller lots, is way too complicated and arbitrary, and will not easily be administered by the citizens and contractors trying to figure it out, and will not easily be enforced by staff. The sliding scale approach also seems entirely contrary to our ZMOD objectives to streamline and simplify this type of regulation. Nevertheless, because the amendment will be readvertised to facilitate the Board’s consideration of Option D, I see no harm in including Option C in the readvertising, for the Board’s consideration, with the stipulation that we’re recommending against Option C. Where does this leave us? On the R districts, we would retain the current...

Chairman Murphy: I think that’s a rhetorical question.

Commissioner Hart: Well, I'm trying to sum up here...

Commissioner Sargeant: Wait, he's getting to the end.

Commissioner Hart: On the R districts, we would retain the current percentage, but allow homeowners a more realistic procedural path to go above the thirty percent maximum, with the safeguards of a public hearing and case by case review with development conditions. For the P districts, with Option D we are still accommodating much greater homeowner flexibility to deal with the Kingstowne patio and deck problem, but by capping the smaller lots at seventy-five percent rather than a total one hundred percent exemption, we are still retaining some pervious surface and preserving some vegetated separation. We have to draw the line somewhere, and at the same time, a hundred percent is too much. I believe this package, including Option D, is an appropriate recommendation, given the universe of comments received, and my judgment as to an appropriate compromise. Finally, following the public hearing, staff is also recommending one additional change, which also will require readvertising to allow the Board to consider it. And I agree with staff's recommendation on this. For P district lots, that are not subject to proffered yards where the homeowner wants permission to go above the fifty percent or seventy-five percent maximum, staff is now recommending that the homeowner also have the option to proceed by special permit application, rather than only by final development plan application. This optional procedure will still require notice and a public hearing with the Board of Zoning Appeals, and an opportunity for imposition of appropriate development conditions to mitigate impacts. This also is consistent with the approach recommended for R district lots, is consistent with the other types of yard cases heard by the BZA, and will not burden the Planning Commission with additional unwanted cases in this category. I support staff's modified recommendation in this regard, and will be including that issue in the follow-on motion. Therefore, first, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS ADOPTION OF THE PROPOSED ZONING ORDINANCE AMENDMENT REGARDING THE MINIMUM REQUIRED REAR YARD COVERAGE LIMITATIONS FOR SINGLE FAMILY DETACHED DWELLINGS, TO INCLUDE THE FOLLOWING AS DISCUSSED IN THE STAFF REPORT, STAFF'S MEMORANDUM DATED APRIL 26, 2018, AND ITS PROPOSED TEXT INCLUDING:

- A MAXIMUM PERMITTED COVERAGE OF THIRTY PERCENT IN THE MINIMUM REQUIRED REAR YARD OF R DISTRICT LOTS;
- A MAXIMUM PERMITTED COVERAGE OF FIFTY PERCENT IN THE MINIMUM REQUIRED REAR YARD OF P DISTRICT LOTS IN EXCESS OF 5,000 SQUARE FEET IN LAND AREA; AND
- WITH REGARD TO LOTS OF NO MORE THAN 5,000 SQUARE FEET IN LAND AREA IN P DISTRICTS, OPTION D AS SHOWN IN THE APRIL 26, 2018, PROPOSED TEXT, WHICH ALLOWS A MAXIMUM PERMITTED COVERAGE OF SEVENTY-FIVE PERCENT OF THE MINIMUM REQUIRED REAR YARD, UNLESS OTHERWISE SPECIFIED ON AN APPROVED DEVELOPMENT PLAN OR IN A PROFFERED OR DEVELOPMENT CONDITION;

- I ALSO MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE AMENDMENT BECOME EFFECTIVE AT 12:01 A.M. THE DAY FOLLOWING ADOPTION.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of the...and yes?

Commissioner Cortina: [Inaudible].

Chairman Murphy: Discussion. Okay I thought you were seconding also. Is there a discussion?
Ms. Cortina.

Commissioner Cortina: Yes. Thank you, Mr. Chairman. I am concerned as are several organizations like EQAC and the Tree Commissioners, that allowing the P districts to include by-right up to seventy-five percent is – is going too far. And, I would recommend that we stick with Option B which has already been advertised for the lots that are less than 5,000 square feet. Because the Kingstowne problem is going to become the Fairfax County problem and the Chesapeake Bay problem. We really don't even know the full extent of the problem if accumulatively we start to allow all kinds of impervious surface in these lots. So, I would – I plan to abstain. Thank you.

Chairman Murphy: Further discussion of the motion. Mr. Ulfelder.

Commissioner Ulfelder: Thank you, Mr. Chairman. The Dranesville District doesn't have much in the way of P district, has a lot in connection with the R district. And I know there are some folks there who wanted to stick very strictly to the thirty percent but also to allowing only the use of a variance to go beyond the thirty percent. And, I feel that that's a little too rigid, I'm gonna support the amendment that sticks with the by-right thirty percent but allows up to sixty percent with the special permit in the R district. And I think that the BZA review – the staff review and the BZA review in the process can very effectively address some of the concerns about coverage, about impact on neighbors, about steps that need to be taken in order to avoid problems with runoff on neighboring properties. And it's all in the context of a public hearing as well, with notice to the neighbors who could come in and discuss exactly why they think it would have a negative impact on – on their adjacent property. So, I do plan to vote for the motion under consideration.

Chairman Murphy: Okay. Further discussion of the motion? All those in favor of the motion on the Zoning Ordinance Amendment Rear Yard coverage as articulated by Commissioner Hart, say aye.

Commissioners: Aye.

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

Commissioner Hart: Mr. Chairman.

Chairman Murphy: Yes, Mr. Hart.

Commissioner Hart: Yes. Secondly, as a follow-on motion, I MOVE THAT THE PLANNING COMMISSION DIRECT STAFF TO ADVERTISE – I GUESS IT’S RE-ADVERTISE, FOR THE BOARD’S CONSIDERATION THE FOUR OPTIONS CONCERNING P DISTRICT LOTS, AS WELL AS STAFF’S RECOMMENDATION THAT A SPECIAL PERMIT OPTION BE MADE AVAILABLE TO INCREASE THE PERCENTAGE OF MINIMUM REAR YARD COVERAGE FOR LOTS IN THE P DISTRICT THAT ARE NOT SUBJECT TO PROFFERED YARDS, AS OUTLINED IN STAFF’S MEMORANDUM DATED APRIL 26, 2018, AND SHOWN IN ITS ATTACHED PROPOSED TEXT.

Commissioner Sargeant: Second.

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

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Cortina: Abstained.

Chairman Murphy: Ms. Cortina abstains.

Commissioner Hart: Thank you.

Each motion carried by a vote of 11-0-1. Commissioner Cortina abstained from the vote.

(End Verbatim Transcript)

//

RZ/FDP 2017-SP-029 – CHRISTOPHER LAND, LLC

(Decision Only) (Public Hearing on this application was held on April 19, 2018; Decision Only from April 26, 2018)

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

(Start Verbatim Transcript)

Commissioner Murphy: Thank you. Mr. Chairman, before we do that, this was a public hearing we held on April 19th, RZ/FDP 2017-SP-029, Christopher Land, LLC. Before I go into the rationale on the motions, I’d like Mr. Regan to please come forward, identify himself for the record.

E. John Regan, Jr., Applicant’s Agent, Christopher Land, LLC: John Regan, Christopher Land, LLC.

Commissioner Murphy: Mr Regan during the course of tonight's proceedings on Christopher Land, LLC, RZ/FDP 2017-SP-029, has the locality or anyone acting on behalf of the locality suggested, requested or required a proffer? And more generally, has anyone acting on behalf of the locality at any time, suggested, requested or required any proffer with regard to this application?

Mr. Regan: No, they have not.

Commissioner Murphy: And do you further affirm that all the proffers conform to the requirements of Virginia Code Section 15.2-2303.4?

Mr. Regan: Yes. Correct.

Commissioner Murphy: This is no time to hesitate. Okay, thank you very much. Mr. Chairman, On April 19th, 2018, we held a public hearing on Christopher Land, LLC, RZ/FDP 2017-SP-029. These applications request a rezoning from the R-1 District to the PDH-3 District and seek approval of – and seek approval of a final development plan. The rezoning application, if approved, would allow the property to be – to be developed with seven new single-family dwelling units at a density of 2.88 dwelling units per acre. At the close of the hearing, I moved to defer decision so I could carefully consider all the testimony and materials submitted for the record. Several community members testified at the Planning Commission public hearing, submitted letters or both, and some also attended the Springfield Land Use Committee's meeting. The applicant and the community have also met directly to discuss the application. The community's engagement during the land development process is important, and I'd like to thank the applicant and the community members for their involvement. Before proceeding to the motion, I would first like to detail some of the grounds for the motion. To provide some context for this application, I note that the 2.43-acre parcel has been owned by the same family since 1949. When the adjacent Whisperwood subdivision was rezoned to the R-3 District in 1989, this property was not part of the consolidation. Instead, it has remained developed with only one house since 1971, and the neighborhood has grown up around it. It is now surrounded on three sides by property zoned R-3 and developed with single-family dwellings and open space. In considering this rezoning application, I turned to the applicable Comprehensive Plan language in Area III, Pohick Planning District, Middle Run Community Planning Sector. That plan language provides that infill development should be of a compatible use, type and intensity in accordance with the Policy Plan. Despite some community members voicing concern about compatibility, I agree with staff's conclusion that this proposal is compatible with the adjacent parcels in terms of layout and type of development. Single-family detached dwellings are in predominant – are the predominant use in the area, and this application proposes development consistent with that pattern. The adjacent Whisperwood subdivision is zoned R-3 cluster and developed at a density of 2.6 dwelling units per acre with twenty-three percent open space. While this application proposes a slightly greater density, 2.88 dwelling units per acre, it will retain thirty percent open space, ten percent more than is required by the Zoning Ordinance. This proposed density is consistent with the Plan language allowing 2-3 dwelling units per acre for this site. I also find that this application provides sufficient measures to mitigate adverse impacts of development. The applicant has proffered contributions to the County parks and schools that will be used to expand capacity of those facilities in a manner that corresponds with the needs generated by the additional dwelling units beyond what could be developed by right. Some citizens raised

concerns about this development's potential impacts on the environment, particularly as it relates to runoff and drainage issues. In response, I note that the applicant will comply with County stormwater regulations and the Public Facilities Manual to implement techniques that control the quality and quantity of runoff from the property. The applicant's proposed facilities will create – will carefully be reviewed and must be approved by the staff in the Land Development Services before development can occur. In terms of environmentally sensitive areas, the Resource Protection Area was already mapped and in place before this application, but the Environmental Quality Corridor was delineated here for the first time during this process. The applicant's EQC line is consistent with Comprehensive Plan guidance encouraging preservation of steep slopes, streams, and wetlands. The applicant has also committed to provide thirty percent open space, including a tree preservation area in the EQC and the RPA. This application does propose lots that are generally smaller than those of adjacent development, but this design is what allows the applicant to preserve environmentally sensitive areas. I agree with staff's assessment that the applicant has provided a reasonable lot layout, especially given all of its environmental preservation efforts. Further, in my opinion, this application meets the purpose and intent of the PDH district and satisfies the planned development general and design standards. In my view, the development under – under a conventional zoning district would not have afforded the applicant nearly as much flexibility to protect the environment or provide open space. I further note that the applicant seeks only one waiver or modification with this application, which is to waive the trail requirement due to topography, a matter to be addressed at subdivision. At the request of the staff and myself the applicant has removed previous Proffers 1 for substantial conformance with the CDP/FDP, Proffer 4 for on-site recreation and Proffer 12 for stormwater management. These proffers merely repeat requirements that are already imposed by the Zoning Ordinance and Public Facilities Manual. However, because I find it important for the public to understand that these commitments will still be met in the FDP conditions – the FDP conditions rather, have been revised to commit the applicant to developing in substantial conformance with plans provide – with the plans, provide on-site recreation and adequate stormwater management. In sum, I find the rezoning and FDP applications in harmony with the Comprehensive Plan and find that they satisfy all applicable zoning requirements. Further, I find the proffers fully conform to Virginia Code 15.2-2303.4, and I appreciate the applicant's confirmation of that on the record. I request the applicant confirm for the record their agreement to FDP conditions dated April 25th, 2018.

Mr. Regan: I do so.

Commissioner Murphy: Thank you very much. Therefore, I MOVE THAT THE PLANNING COMMISSION, MR. CHAIRMAN, RECOMMEND TO THE BOARD OF SUPERVISORS TO APPROVE RZ 2017-SP-029 AND THE ASSOCIATED CONCEPTUAL DEVELOPMENT PLAN, SUBJECT TO THE PROFFERS DATED APRIL 26TH, 2018.

Commissioner Migliaccio: Second.

Vice Chairman Hart: Motion has been seconded by Commissioner Migliaccio. Is there any discussion?

Commissioner Niedzielski-Eichner: Mr. Chairman.

Vice Chairman Hart: Commissioner Niedzielski-Eichner.

Commissioner Niedzielski-Eichner: I just want to make that known to my colleagues that it's my intent to abstain from this matter – according to this matter.

Vice Chairman Hart: Thank you. Any further discussion?

Commissioner Sargeant: Mr. Chairman, I wish to abstain.

Vice Chairman Hart: Mr. Sargeant.

Commissioner Sargeant: I will be abstaining due to – I was not present for the public hearing.

Vice Chairman Hart: Any further discussion? Seeing none, we'll move to a vote. All those in favor of the motion as articulated by Commissioner Murphy, please say aye.

Commissioners: Aye.

Vice Chairman Hart: Those opposed? Abstentions? That motion carries. Thank you.

Commissioner Murphy: Thank you very much. I MOVE THE PLANNING COMMISSION APPROVE FDP 2017-SP-029, SUBJECT TO CONDITIONS DATED APRIL 25TH, 2018.

Commissioner Migliaccio: Second.

Vice Chairman Hart: Oh, is there a second?

Commissioner Migliaccio: Second.

Vice Chairman Hart: Second by Commissioner Migliaccio. Any discussion? Seeing none, we'll move to a vote. All those in favor, please say aye.

Commissioners: Aye.

Vice Chairman Hart: Those opposed? Abstentions?

Commissioner Sargeant: [Inaudible].

Vice Chairman Hart: Same abstentions. That motion carries.

Commissioner Murphy: Thank you very much. Before I turn back to our business at hand, I'd like to also add that this application received the unanimous support to recommend approval from the Springfield District Land Use Committee. Now I want to thank the citizens who attended the land use committee meeting, testified to the public hearing and attended the community meetings on site and for their participation in this process. I also wanna to thank Bill Mayland, Tracy Strunk and Laura Gori for their wonderful assistance in this matter. Sometimes we need this assistance as we go forward. And also, as always, I'd like to thank Marlae Schnare in Supervisor Herrity's office for her assistance in all these matters as she always does. So, thank you very much. Appreciate it.

Each motion carried by a vote of 10-0-2. Commissioners Sargeant and Niedzielski-Eichner abstained.

(End Verbatim Transcript)

//

Chairman Murphy resumed the Chair.

//

ORDER OF THE AGENDA

Chairman Murphy established the following order of the agenda and called the only case scheduled for the public hearing:

1. **ZONING ORDINANCE AMENDMENT – SHORT TERM LODGING - Articles 10, 18 and 20 of the Zoning Ordinance and Chapter 4 of the Code of Fairfax County Regarding Short-Term Lodging (Residential Owner/Renter Operated Dwellings Only)**

This order was accepted without objection.

//

ZONING ORDINANCE AMENDMENT – SHORT TERM LODGING – Articles 10, 18 and 20 of the Zoning Ordinance and Chapter 4 of the Code of Fairfax County Regarding Short-Term Lodging (Residential Owner/Renter Operated Dwellings Only) COUNTYWIDE. PUBLIC HEARING.

Proposed Zoning Ordinance Amendments

The proposed regulations are intended to allow limited STL operations, balancing the interests of residents in protecting the character of their neighborhoods with the interest of residents who want to operate STLs in their residences. In crafting the restrictions on STL use, staff took into consideration the particular concerns citizens and stakeholders voiced during the outreach process. A summary of how the proposed amendments specifically address these concerns follows.

Neighborhood character *Staff received multiple comments during the public outreach efforts from residents who had concerns related to the impacts of STLs on the existing neighborhood character and residential feel of their community. Residents indicated that a neighborhood made up of owners or long-term tenants has a very different character than a neighborhood frequented by short-term or transient occupants who may not have a vested interest in maintaining the quality of life of their neighbors. Residents consistently expressed that they did not want investors acquiring multiple properties to operate full-time, hotel-type commercial uses within residential neighborhoods. Staff believe the ordinance addresses preserving neighborhood character in a number of ways:*

- ***Accessory use:*** *The proposed amendment adds Short-Term Lodging as a permitted accessory use in any zoning district that permits residential uses, and in any type of dwelling or in a mobile home, except that STLs may not be conducted in workforce or affordable housing units, detached*

accessory structures, accessory dwelling units, or temporary family health care structures. These excluded structures are specifically intended for other purposes, such as an onsite unit for an aged parent or a unit equipped for providing medical care to a family member. In the case of a detached accessory structure, staff believes the use of such structures for lodging purposes could easily convert these structures into permanent second dwelling units, which is not generally permitted. Staff believes the operation of STLs within the main structure of the principal building on the property will help limit the impacts of the use on surrounding properties.

- ***Permanent residents as STL Operators:*** *STL uses are proposed to be operated by a permanent resident of a dwelling or mobile home to dispel the concern that non-resident operators could negatively impact neighborhood character by having little or no interaction with the community and by not being consistently present to address issues of community concern. Two forms of verification—like a driver’s license, vehicle registration, passport, or utility bill—are required to demonstrate permanent residency. This information will be reviewed and noted by staff at the time of application, but sensitive information will not be retained in the public records for security reasons.*

- ***Operator Presence/Authorized Agent:*** *Having the operator on-site may decrease the likelihood of issues arising with the STL use. Research and community input indicate, however, that many STLs operate without the operator present, e.g., an owner may offer their home while away on vacation for a week. To address the absence concern, the proposed amendments require that the STL operator identify an Authorized Agent to be available and responsible to respond to issues or emergencies in the absence of the STL Operator. (The amendment has been advertised to also allow consideration of requiring the STL Operator to be on-site. The requirement for the Authorized Agent is not contingent on operator presence.)*

- ***Limitation on number of nights a STL use is permitted:*** *To keep the use truly accessory, staff proposes a maximum of 90 calendar days for STL use per year, or approximately 25% of a year. (The amendment has been advertised to allow consideration of a maximum number of rental nights of up to 180 without an operator present or unlimited nights with an operator present.)*

- ***Occupancy limitations:*** *The proposed amendment recommends not more than six adults per dwelling per night. This allows for families or groups of friends or colleagues to rent an STL and is consistent with other jurisdictions that have adopted provisions for an occupancy limit. Staff considered establishing a maximum number of persons per bedroom, but such a restriction would be virtually impossible to enforce, as it requires specific observation of the number of people in a bedroom. The Virginia Uniform Statewide Building Code further limits occupancy: as the proposed amendments reflect, it may impose stricter limits depending on the space being offered.*

(The amendment is advertised to allow for any limit on occupancy, up to the maximums the Virginia Uniform Statewide Building Code imposes.)

- ***Limited contracts:*** *Staff propose restricting STL use to one contract; all persons lodging in the dwelling at one time must be associated with the same rental contract. This does not preclude a group of related/associated individuals from working out individual payment plans or having different durations of stay, but it will preclude the STL Operator from making the home available to multiple, unrelated/associated individuals, which would make the STL use more like a traditional hotel/motel. Additionally, parking, traffic on local streets, and the potential for negative interaction among lodgers are all issues that could be exacerbated by allowing multiple, unrelated groups or individuals to lodge at the same time. (The amendment is*

advertised to allow flexibility to consider 1 to 5 contracts per night, with staff recommending one.)

Safety

Safety measures to protect lodgers are important, as they would not be particularly familiar with the layout or safety features of a dwelling/mobile home in the event of an emergency. The proposed amendments require that dwellings used for STLs meet all applicable requirements related to building code or manufactured home safety regulations. The age of the structure generally determines what provisions are applicable.

- **Sleeping rooms:** Converting basements or other non-traditional spaces to sleeping rooms requires compliance with the most current building code, which would require a second means of egress from the room, such as an emergency egress window in an existing basement.
- **Safety Equipment:** The amendment proposes that a working fire extinguisher, interconnected smoke detectors, and interconnected carbon monoxide detectors (if there is a fireplace and/or gas service is provided to the home) must be present in every dwelling offering STL use. If these features are not present in the home due to the age of the structure, they must be added before beginning an STL operation.
- **Exit plan:** Like hotels, STLs must have an exit plan posted on the door to each bedroom or sleeping space to outline a pathway out of the home in the event of an emergency.

Commercial event use

It is the Zoning Administrator's longstanding position that hosting events (e.g., parties, weddings, catered dinners) at a dwelling is prohibited except when the activity is directly hosted by the principal residents of the dwelling. For example, an owner could host a backyard wedding for their son or daughter, but could not make the property available as a wedding venue. The provisions prohibit all events and activities for persons other than authorized lodgers staying in the dwelling regardless of whether there is direct or indirect compensation for the event or activity.

Parking

Citizens claimed STL users often park vehicles in reserved spaces, block access to driveways and mailboxes, or use all the available public parking. In evaluating whether the ordinance should therefore require STL operators to provide parking, staff considered that home child care, home offices, and a variety of other home occupations are currently permitted under the Zoning Ordinance without a requirement for an additional off-street parking space. Staff also recognized that many visitors may opt to use public transport, taxis or ride-sharing services and would not need a parking space. In addition, staff could not draft the ordinance to place a blanket limitation on otherwise publicly available parking. Accordingly, staff does not currently believe a designated parking space is warranted. To ensure that parking is managed appropriately, however, the amendment proposes to require all advertisements for STLs to indicate if and where on-site parking is available for the dwelling offering STL. If there is no on-site parking available, the advertisements must so state. This information will help lodgers manage their expectations and plan for their transportation needs.

Impact on Property Owners Associations

Staff understands the concerns of communities who, collectively, do not want STL operations in their development. However, Virginia Code § 15.2-110 prohibits the County from requiring consent from an HOA/COA prior to the issuance of any permit, certificate or license. HOA/COA covenants, bylaws and other regulations remain intact, even when a Zoning Ordinance has been amended, so if there is a current provision in an association's documents that would restrict the

use of any homes for STL purposes, the proposed amendments will not negate those restrictions. The proposed amendments expressly state that they do not abrogate, nullify or invalidate any provisions applicable to the structure or use of the property. The STL operator is therefore on notice that his or her STL operation must comply with any restrictive covenants on his or her property.

Enforcement

Because this is a use that operates within a home, enforcement will pose difficulties particularly regarding the 90-night limit and 6-lodger limitations. Staff believes the proposed regulations have been crafted in a way to minimize (but not eliminate) enforcement challenges. The following tools and requirements will assist compliance staff with complaint investigations:

- **Permit:** STL operations will require a permit issued by the Zoning Administrator and valid for a period of two years. Home occupation uses generally require only an initial permit; however, staff believes requiring permit renewal will ensure STLs are operating in conformance with the use limitations. To help the Code Compliance Inspectors determine which STLs may be illegally operating, STL Operators will be required to include their permit number in their online listings. The Zoning Administrator may revoke a permit for failure to comply with the STL regulations. (Advertised to allow a one- or two-year period of permit validity.)*
- **Guest Log:** STL Operators must maintain a record of lodgers and lodgers' contact information, and make available upon request to appropriate County staff. This will help staff ensure compliance with the limitations on number of nights of use and occupancy, as well as allow staff to contact lodgers if that becomes necessary during a complaint investigation.*
- **Owner Consent:** The proposed amendment requires consent of the property owner if the STL Operator is a long-term tenant. Because property owners are ultimately responsible for any violations occurring on property they own and for any fines or penalties associated with those violations, staff considers this a critical requirement.*
- **Outside Consultant:** To enhance enforcement efforts, staff proposes to use the services of an outside consultant. Other Virginia jurisdictions have contracted with Host Compliance LLC, which can track the exact address and rental activity of STLs across multiple online platforms, as well as provide screenshots of listings and contact information for operators. The County can enter into a purchase order based on the existing contract with the other Virginia jurisdictions for the next year or two.*
- **Inspection:** Oftentimes, the biggest hurdle for DCC is the inability to gain access to a property to investigate a complaint of noncompliance. The proposed provisions are intended to eliminate that hurdle by requiring STL Operators to consent to inspection by County personnel during reasonable hours.*

Changes and Additions to Ordinance Definitions

As noted, the Zoning Ordinance currently does not define transient occupancy or STL. The proposed regulations will introduce these as new definitions and will modify the "Dwelling" and "Dwelling, Mobile Home" definitions in Chapter 20 to accommodate the STL use. In addition, the proposed amendments introduce and define the STL-use specific terms "Authorized Agent," "Permanent Resident," and "Short-Term Lodging Operator," which apply only to STL use provisions.

Proposed Fees

Virginia Code § 15.2-2286(A)(6) provides that a Zoning Ordinance may include reasonable provisions for the collection of fees to cover the costs of making inspections, issuing permits,

advertising notices, and other expenses incident to its administration. To keep fees in line with other permits/certifications staff proposes a \$200/2-year permit application fee for STLs. As part of this amendment, staff also proposes to reduce the special exception application fee for Bed and Breakfast use by 50%, from \$16,375 to \$8,180, but will advertise a fee ranging from \$4,085 to the current fee of \$16,375. Staff believes the high application fee may account for the fact that there are no approved Bed and Breakfasts currently operating in the County. The only Bed and Breakfast approved in the last two decades ceased operating. Unlike the STLs, Bed and Breakfasts may be operated by non-permanent residents and may be operated year-round. Staff believes that the Bed and Breakfast provisions may offer an additional business opportunity for some of the County's lodging entrepreneurs. No other changes are proposed to the Bed and Breakfast provisions regarding their location and other use limitations.

Fiscal Impacts and Tax Provisions of the County Code

The operation of STL in the County constitutes a transient occupancy use that is subject to a Transient Occupancy Tax or TOT. It is estimated that there are approximately 1,500 active listings in the County based on research and specific data provided by a third-party data collection company who provided information related to Airbnb listings. Airbnb representatives have confirmed this approximate number. The estimates obtained from the third-party data collection company also indicate that the average days of rental in the County are 64 days and the average income per night for the STL Operator is \$72. Using these average assumptions of 64 rentals per year per STL Operator and a \$72 per night, staff estimates collecting \$428,268 in annual Transient occupancy Tax (TOT) revenue. The total TOT in Fairfax County is calculated at the rate of 6 percent (2 percent for general transient occupancy tax + 2 percent for tourism + 2 percent for regional transportation) on the gross room rental charged for overnight stays related to transient occupancy. As required by state legislation, of the revenue generated by the 2 percent for tourism, one quarter is designated to the Fairfax County Convention and Visitors' Center, and the rest is used by the County to promote tourism. As a result, of the total projected \$428,268, \$142,756 will be allocated for regional transportation, \$35,689 to Fairfax County Convention and Visitors' Center, and \$249,823 to the County's General Fund. Additionally, based on the proposed \$200 STL permit fee, estimated revenue of approximately \$150,000 could be generated annually. Given these average rental night and rate figures, the revenue from the Business, Professional, and Occupations License tax (BPOL) is not likely to result in meaningful revenue, since gross receipts under \$100,000 per year are subject to a license/tax of \$50 or less and in instances of revenue of less than \$10,000 the BPOL is zero. The average annual income for an STL host is estimated at less than \$5,000 per year, and BPOL is not applicable at this level. As such, staff does not believe that a significant amount of income will be derived from the BPOL.

This amendment includes a companion amendment to Chapter 4 of the County Code. Those changes are set forth and described in an attachment to the Board Item.

Implementation of Proposed Changes

Staff is developing an implementation plan to assist with the smooth initiation of the STL permit process. While not part of the Zoning Ordinance text, a new permit application form and STL permit will be developed in conjunction with this amendment. If the proposed amendment is adopted, staff is considering sending notification letters to the owners of addresses identified by the third-party data collection company as currently advertising the availability of an STL in the County. Such notice would provide the new regulations and advise of the permit requirement and process. Staff also believes that the volume of potential STL applications that could be received warrants a delayed implementation to allow operators to obtain approval. This is similar to the

grace period that was granted when the home child care amendment was adopted, in which existing operators were given a period of time to come into compliance by obtaining the require approval. Delayed implementation is also warranted because of the change in TOT remittance from a quarterly option to a monthly requirement. This change will impact current hotel operators as well as the new STLs and a delayed implementation will allow those hotels that currently remit the tax on a quarterly basis time to prepare for a monthly remittance process. Staff is recommending an effective date of October 1, 2018, which is the first day after the July quarter. The proposed regulations are intended to achieve a balance between allowing STLs while maintaining the overall character of residential neighborhoods. As such, staff recommends approval of the proposed amendments with an effective date of 12:01 a.m. on the day following adoption, provided, however that STL Operators will have a grace period of between 90 and 120 days from the date of adoption to obtain approval of an STL permit.

Conclusion

The changes staff propose are intended to facilitate a limited STL use for the County's entrepreneurs, while preserving the character of the County's communities and safety of its residents. Because STL regulation is relatively new, not only in Fairfax County but nationwide, staff believe it appropriate to revisit these regulations in eighteen months and make any necessary regulatory changes. This, of course, does not limit the Board's ability to revisit this amendment sooner, should it see fit to do so.

Lily Yegazu, Zoning Administration Division (ZAD), Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. She stated that staff recommended adoption of the Zoning Ordinance Amendment – Short Term Lodging.

Commissioner Hart asked whether short-term rentals were prohibited under the current Zoning Ordinance and under what circumstances would they be allowed. Ms. Yegazu stated the current Zoning Ordinance did not allow transient occupancy of a dwelling. Transient occupancy was interpreted as less than 30 consecutive days a year. Commissioner Hart asked whether the Board of Supervisors' authorization was based on the advertised amendment for the public hearing, and whether anything beyond the scope of the advertising would be required for Board consideration. Donna Pesto, ZAD, DPZ stated in order to address any recommendations or changes from the Planning Commission, the advertisement would have to be changed prior to the Board of Supervisors public hearing. Commissioner Hart asked if the amendment was deferred for two weeks, would adequate time be allowed for advertisement. Ms. Pesto stated staff was allowed until noon, the day after Planning Commission's decision. Commissioner Hart stated there were concerns entrepreneurs would purchase vacant homes and later convert them into motels. He asked staff to confirm this would not be allowed under the proposed amendment. Ms. Yegazu stated the proposed ordinance had two limitations and said scenario would not be allowed. The operator had to be the primary resident. Primary residency was established by living in the home a minimum of 185 days a year. The limitation on the number of days and standard of living operation permitted was 90 days per year. The home could not be used nor rented for 365 days. Commissioner Hart asked whether the ability of a homeowners association (HOA) to enforce covenants be altered. Ms. Yegazu said the proposed ordinance would not supersede any restrictions or prohibitions of an HOA or condominium association. Commissioner Hart asked if covenants or rules were affected, would Fairfax County intervene on behalf of the HOA or the resident. Ms. Yegazu stated this would occur to the extent the rules were more restrictive than those of the ordinance. The proposed rules would still be applicable. Commissioner Hart

inquired about the fire safety requirements and compliance. John Walser, Fire Prevention Division, Fairfax County Fire and Rescue stated the fire safety provisions were similar to those of home childcare restrictions and single family dwellings. Commissioner Hart asked how fire safety requirements were enforced. Mr. Walser stated he advocated for upfront inspections, however at this point did not have the staff to undertake 1,500 occupancies. Commissioner Hart asked whether administering an additional fee was feasible. Mr. Walser stated the department was short staffed. Commissioner Hart made reference to a neighboring County that conducted third-party inspection procedures. He inquired about requirements and drawbacks. Ms. Yegazu stated staff researched other jurisdictions within the State of Virginia and could not find counties with said requirements. Florida and Texas required either upfront or third-party inspections prior to issuance of a permit. They also had a detailed checklist for issuance of a Certificate of Occupancy. Discussions continued with Commissioner Hart and Ms. Yegazu regarding third party certifications and advertising. Sarah Hensley, Office of the County Attorney, stated there were no other home occupation permits where third parties were permitted to do Fairfax County inspections. Ms. Hensley also stated the County did not have an established vetted list of inspectors or an established procedure for third party inspections. Commissioner Hart inquired about parking spaces, staff's recommendation for the number of spaces and parties responsible for monitoring advertised parking. In response Ms. Yegazu stated there would be a list of rental activity and addresses of listings received from a third-party data mining company. The County would obtain a dashboard that would provide a screenshot of each listing and advertising. Ms. Pesto added the County would be on a responsive basis, should there be a complaint filed against a property. This complaint would trigger an investigation. The Fairfax County Department of Code Compliance (DCC) conducted those investigations. Commissioner Hart inquired about the process of general enforcement procedures and violations. In response, Ms. Pesto stated the process was under review. She stated there would be some reasons for immediate revocation in cases where DCC was denied access to a property. Other cases would be the Zoning Ordinance violations where a complaint would be made to DCC, followed by an inspection and attempt to bring into compliance. Commissioner Hart made reference to the proposed Zoning Ordinance Amendment 10-105 5.C. permit requirement, he asked whether there were other procedures. Ms. Pesto stated revocation would follow the normal zoning violation process. She added if any of the proposed regulations were adopted and were violated, a notice would be issued. Charles Fitzhugh, DCC stated a notice of violation would be issued, to discontinue the use of the site. Commissioner Hart asked why the short-term lodging filing fee was \$200 and not \$250. Ms. Pesto stated the fee was for a two-year permit and would average \$100 a year. She added the short-term lodging permit application was a little more involved than the regular home occupation permit.

Commissioner Migliaccio asked how the violations and cancellation process was determined. Ms. Hensley stated the Office of the County Attorney had not determined revocation. The Office of the County Attorney staff discussed handling those violations as regular notices of violation. The notice would be issued, followed by a period for compliance or appeal to the Board of Zoning Appeals, and if necessary, a higher court. Ms. Hensley added the legal period for an immediate revocation had not been determined. Commissioner Migliaccio stated bad practices with short-term lodging drove the opposition to short-term lodging. The period for permit revocation was important and should be determined.

Commissioner Sargeant asked for the estimated growth number for the number of short-term lodging in Fairfax County. Ms. Yegazu stated a growth number was not available. Commissioner Sargeant asked whether issues with detached structures were the same with basement dwelling units becoming permanent dwelling units. Ms. Pesto stated short-term lodging would not permit a second home on a property unless there was a permit for an accessory dwelling unit. Commissioner Sargeant inquired about safety regulations, emergency exits and whether a window would suffice as a second form of egress. Mr. Fitzhugh stated the building code allowed emergency egress recue openings in a basement area and was not specific to a sliding door or regular door. Commissioner Sargeant inquired about Americans with Disabilities Act (ADA) requirements for short-term lodging. In response, Ms. Pesto stated ADA requirements applied to a private dwelling. Dan Willham, Code Development and Compliance Division, Land Development Services stated there were no specific regulations to ADA requirements for single family dwellings. Transient occupancy may need to be in compliance with accessibility requirements. ADA was aligned with the building code's accessibility requirements. Commissioner Sargeant asked when would the 90-day window take effect for the ADA requirements. Mr. Willham stated the 90-day window depended upon the type of dwelling unit. Apartments were considered residential occupancy, and fell under the commercial building code regulation. The accessibility requirements would be applied. Commissioner Sargeant suggested short-term lodging ADA compliance be clarified. Commissioner Sargeant asked whether HOA covenants were being predominated and the possibility of enactment after the law. Ms. Hensley stated they could be. Commissioner Sargeant inquired about parking regulations for short-term lodging. Ms. Pesto stated the advertised amendment allowed for up to two parking spaces. There was no language or regulation beyond the scope of the advertisement. Ms. Pesto added the Planning Commission could suggest additional language for regulation. Ms. Hensley added neighborhoods that experienced parking issues could apply for restricted parking.

Commissioner Strandlie asked whether a safety threat triggered a revocation of a permit. Mr. Fitzhugh stated revocation would be discussed after a certain period. He reverberated Ms. Pesto's comments regarding steps taken to bring a property into compliance. Commissioner Strandlie suggested staff research ways to deal with potential life threatening issues. Commissioner Strandlie requested ADA requirements be added to the amendment. Ms. Hensley stated the Office of the County Attorney would review the request. Commissioner Strandlie stated it was brought to her attention the Federal Housing Administration required homeowners associations to certify there were no short term-rentals in their development. Short-term lodging would impede or prevent homeowners from financing or refinancing their home. Commissioner Strandlie asked whether staff was aware. Ms. Pesto stated staff had not looked into the inquiry within the scope of a zoning provision. Under the terms of the Zoning Ordinance, staff could not respond nor regulate. Commissioner Strandlie inquired about the role of the short-term lodging platform in compliance with state and local jurisdictional law. Ms. Hensley stated the Office of the County Attorney would provide follow-up. Commissioner Strandlie asked whether staff met with or contacted representatives of Airbnb regarding the restriction of online postings for short-term rentals within Fairfax County. Ms. Pesto stated staff met with Airbnb representatives. The goal with the amendment was to regulate what an owner could do in their home under the Zoning Ordinance. The Zoning Ordinance could not regulate advertising platforms online. Online advertising was outside the scope of what was allowed. Commissioner Strandlie asked how staff arrived at 185 days out of the calendar year for the establishment of a dwelling unit from that of a primary residence. Ms. Pesto stated the number of days was more than half and

was consistent with other jurisdictions. One principal domicile address was allowed. Commissioner Strandlie suggested the of number of days a person occupied a primary dwelling as a permanent resident, should be increased. Commissioner Strandlie inquired about short-term lodging that addressed commercial properties in higher density areas and managed by commercial entities. Ms. Pesto stated two phases were being reviewed. One was a lease-up with new multi-family buildings. This would allow them to provide some of the units as temporary hotels. The second was multi-family buildings in transit station areas that would have a certain limited number of short-term lodging and ran by a corporate entity.

Commissioner Hurley stated the average deployment could vary. She added military families would need short-term lodging income while during periods of deployment. Commissioner Hurley stated her concern with only allowing short-term lodging from May to September and tourism implications as a result of the leasing period. Commissioner Hurley inquired about ADA compliance in for single family homes. Ms. Pesto stated under the terms of the Zoning Ordinance, any requirement would be based on the building code. A change of use would require modifications. Mr. Fitzhugh stated certain threshold requirements for accessibility should be met. Commissioner Hurley inquired about parking and ways to regulate the number of vehicles for short-term lodging. Ms. Pesto restated her comments regarding parking advertisement requirements. She added street parking was available for additional parking. Street parking was public parking and was not regulated. Commissioner Hurley asked if an area was covered by an HOA and short-term lodging was not allowed, would the County issue a permit and have the HOA resolve through the legal channels. Ms. Hensley stated under the *Virginia Code* the County could not make it a requirement the HOA sign off of permits. In such a scenario, the permit would be issued by the County. Ms. Hensley added the County was very limited by the *Virginia Code*.

Commissioner Niedzielski-Eichner stated the Zoning Ordinance should be amended. He aligned himself with the members of the Commission regarding parking and permit revocation. Commissioner Niedzielski-Eichner stated he was concerned how short-term lodging would be executed and implemented. He stated cost would be a key factor and was not confident the fee structure would provide the revenues to support compliance requirements. Commissioner Niedzielski-Eichner recommended a third-party inspection be conducted on the front end and the applicant should assume that cost. The third-party inspection should also be certified by the Fairfax County Department of Code Compliance.

Commissioner Tanner asked if an application went forward without the HOA's approval, went through the application process and was denied, would the fee be required by the applicant. Ms. Pesto stated the applicant would be responsible for the required fees. The permit process was extensive. Should the Planning Commission and Board of Supervisors adopt an authorized agent requirement, three signatures would be required. Ms. Pesto added there would also be a tax implication and a requirement where the applicant would confer with the homeowners. All requirements would be visible on the application. Other than changing the by-laws, Commissioner Tanner asked whether there were ways to simplify the process for the HOAs who rejected short-term lodging. Ms. Hensley stated that would be a question for the General Assembly; it exceeded the local authority. She added, to be a short-term lodging operator, the operator would assume responsibility for determining they were in compliance, before starting on the process.

Commissioner Cortina stated there were two areas of concern. One was with the authorized agent. She referenced the District of Columbia's law regarding authorized agents not being corporate agents. Commissioner Cortina asked why similar information was not added to the amendment. Ms. Pesto asked Commissioner Cortina to clarify what the District of Columbia's law implied regarding corporate agents. Commissioner Cortina stated they were trying to prevent a situation where the neighboring property was purchased by another entity and had a renter in the property who operated a short-term rental. In response, Ms. Pesto stated under the provisions of the amendment, it would not matter who owned the home. The occupier who lived in the home and obtained the short-term lodging permit, would have to be the permanent resident. The permanent resident of the home would need the signature of the owner of the property to obtain the permit. There would also be a designated authorized agent to act on their behalf. Commissioner Cortina stated she was concerned about loopholes that would allow a non-owner occupied property to have a short-term rental that was not an agent of a corporation. Ms. Hensley added the operator would have to be a permanent resident. A permanent resident was defined as the individual who lived in the home for more than 185 days, with the intention of living there permanently. In addition, an authorized agent would be responsible for the property. Ms. Hensley added, the Board of Supervisors requested that the advertisement be expanded to allow for considerations to be placed on the authorized agent. A temporal or physical proximity to the property was also discussed. Commissioner Cortina inquired about the data from the hosting compliance company, the 90 days per year of enforcement and types of data collected. Ms. Yegazu stated Host Compliance LLC was not a platform that allowed short-term rental advertising on their website. Data was collected online from more than twenty-five hosting platforms. This data was aggregated to obtain the address information of each operator. The rental activity was also compiled and would be provided to the County. In addition to the information obtained from Host Compliance LLC, the County would require a log of all guests be maintained by the operator. Ms. Pesto added the County had not specified how the log would be kept. If there was a listing on an Airbnb website, a report of the rental activity could be provided and would suffice as a log. A guest sign-in log would also be adequate.

Commissioner Clarke stated enforcement would be a challenge. If the proposed amendment was approved, the County should enforce those laws. Commissioner Clarke referenced the estimated 1,500 short-term lodging listings in the County. He suggested the County review the current and future projections. Commissioner Clarke noted the Proposed Amendment, Attachment A, Page 14, item 4. D. which referenced the events and activities that were prohibited. He stated the number of adults were part of the discussion; however, no reference was made to teenagers and organizations. Commissioner Clarke suggested language be added to reflect same.

Commissioner Strandlie clarified her concern regarding limiting the short-term lodging period. She addressed Commissioner's Hurley's statement regarding tourism. Commissioner Strandlie stated short-term rentals were not used to promote tourism. She added her question was geared towards the preservation of established neighborhoods.

Commissioner Ulfelder asked if the Board of Supervisors made no changes to the current Zoning Ordinance, how would enforcement occur. Ms. Pesto stated the County would continue to operate on a complaint basis. Should the complaint involve short-term lodging, a notice of violation would be issued, followed by the normal process. Commissioner Ulfelder asked what would be the nature of the complaint. He stated short-term rental violations would be hard to

prove under the current Zoning Ordinance. In response, Ms. Pesto stated the County did not have the authority to enter a property where access was not granted. The short-term lodging permit would grant the County authorized access to the property, to investigate a complaint.

Commissioner Migliaccio asked whether the County had the ability to limit the number of permits in a specific area. Ms. Hensley stated the advertisement did not contemplate limiting the number of permits. She added the Office of the County Attorney would look into the matter. Commissioner Migliaccio asked if parking could also be used to limit the number of permits. Ms. Hensley stated the County could not restrict public street parking. Commissioner Migliaccio asked if a permit was revoked, how long would the revocation last before the operator could reapply. Ms. Hensley stated the Office of the County Attorney would look into the matter. She added the permits were personal to the operator and not the property.

Commissioner Sargeant inquired about the expectation of rights for visitors of short-term lodging. Ms. Hensley stated the Office of the County Attorney would look into the matter. The Zoning Ordinance did not contain language that compromised the rights of visitors. The County could only enter a property upon reasonable notice and with permission. Ms. Hensley added, the owner would determine what would be allowed. Commissioner Sargeant stated publicizing the rights of the visitor versus that of the property owner should be clarified.

The Commission went into recess at 9:36 p.m. and reconvened in the Board Auditorium at 9:53 p.m.

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

William Lecos, 6324 Beachway Drive, Falls Church, opposed the amendment. Mr. Lecos stated the following:

- Lake Barcroft was a private single home community which included 140 acres of swimmable lake. There were 5 common beach areas, picnic and garden areas;
- Restricted access to the private community, in particular the water areas, was essential to maintaining access to the liability insurance markets. Should a transient occupant of a community residence be involved in an accident on the common property, which included the beaches and lake, this would undermine the community's ability to maintain critical access to insurance markets;
- Unfettered access would not be provided to property owners. The time of day usage was restricted to property owners and guests;
- Short-term lodging in particular whole-house rentals when residents were not present, posed a threat to the community. It was difficult to regulate the use in the Lake Barcroft community and would be almost impossible to regulate the proposed use. There should be reasonable zoning restrictions that distinguished between whole-house and single room short-term rentals;

- The community should be protected. Conditions under which individuals could live and enjoy a productive life, should be maintained. Residential areas with healthy surroundings for family life should be provided. The maintenance of various conditions was the reason for the community’s nearly unanimous objection to the practice of short-term rental, in particular whole-house rentals;
- Short-term rental concerns ranged from parking, noise level, the lack of respect for time constraints of a residential community and forms of entertainment that were inconsistent with the neighborhood. These all had an effect on the neighbors and in most cases, were disruptive;
- Short-term lodging should not be a “one-size fits all.” The owner of the home should also be a permanent resident, residing in the home during the short-term or whole-house rental period;
- A permit should be required. A permit should be made public and trackable. Fees and taxes collected from the short-term lodging should pay for enforcement. Enforcement should extend to weekends; and
- The maximum allowable days for the short-term rentals should be considered. Transient occupancy occurred year-round, and tourism was skewed towards the more pleasant months of the year. The allowable 90 days per year was not an accessory use and could be considered a bed-and-breakfast. Accessory use should be restricted to 21 days.

Commissioner Niedzielski-Eichner asked Mr. Lecos to clarify his position on maintaining the status quo versus changes to the proposed amendment. In response Mr. Lecos stated the General Assembly was more likely to make changes to the void than they were against reasonable regulation.

Don Hinman, 5904 Mount Eagle Drive, Alexandria, opposed the amendment. Mr. Hinman stated the following:

- Fairfax County Federation of Citizens Association lobbied for the Richmond’s newly-stamped short-term rental bylaw, that restricted property owners from solely purchasing a home for the purpose of short-term lodging;
- Liability insurance was not addressed in the proposed amendment and should be added;
- Reasonable Airbnb operations should be in place and neighborhoods safeguarded;
- A strong permit and registry system should be in place with the authority to revoke if necessary;
- The fee for a two-year permit should be doubled. Financial resources should be required for the short-term lodging management process and enforcement should be included;

- Fairfax County Federation of Citizens Association supported the state law and Zoning Ordinance which addressed covenants and by-laws;
- The resident of the dwelling should be a permanent resident with a residency of 185 days a year or more. The preference would be that the operator be present on a daily basis;
- The maximum allowed rental period should be 90 days;
- The short-term lodging agreement should be restricted to one contract with a maximum of 6 adults;
- Parking should be advertised and regulated; and
- There should be safety inspections. Safety codes should be adhered to. Fire detectors should be installed, there should be a fire extinguisher and visible exits.

Ronald Bleeker, P.O. Box 273, McLean, supported the amendment. Mr. Bleeker stated the following:

- Supported the amendment for two reasons. One, the enactment of state legislation allowed the localities the ability to establish a registry. Second, short-term lodgings were becoming frequent in Fairfax County;
- Short-term rentals should not be free of regulation. The McLean Citizens Association (MCA) favored a more careful and gradual approach in the implementation of the regulations. Impacts to the proposed amendment should be assessed;
- MCA supported staff's recommendation of an 18-month trial period and short-term lodging during this period should be monitored, and reports submitted to the Planning Commission and Board of Supervisors;
- MCA supported limiting the number of nights to 90 nights a year with a smaller number more preferable;
- The use of short-term rentals in the absence of the property owner was a major concern. The proposed amendment placed no limit on the number of nights at which the permanent resident was present. The proposed amendment required there be an appointed authorized agent in the absence of the owner operator. The permanent resident should be absent for no more than 30 of the permitted 90 days during the initial trial period;
- The definition of a permanent resident should be limited to the owner of the property. Renters should be excluded. Large property management companies could see this amendment as a loophole which could be used to create rental arrangements;

- Parking was a major concern of residents and specific language that addressed that concern should be added to the amendment. MCA recommended at least one parking space be provided by the operator for each occupied sleeping room; and
- MCA was concerned about the ability to enforce the provisions of the proposed amendment. Adequate resources should be available for enforcement and penalties for non-compliance.

Fran Wallingford, 3311 Mantua Drive, Fairfax, supported a balanced approach to the proposed amendment. Ms. Wallingford stated the following:

- The Mantua Citizens' Association was concerned about the impact the proposed amendment would have on stable residential neighborhoods;
- The cost of legally establishing a short-term lodging should be increased. There was no significant increase in short-term lodging revenue to the County;
- Covenants should be addressed in broader context under the proposed amendment;
- The number of uses should be determined and better explained. A limit on the number of allowable uses in a property should be addressed. There may be unintended consequences and impacts to the number of multiple uses;
- Parking would be a major issue and should be addressed and regulated; and
- The Planning Commission should take some additional time to address the community's concerns regarding the proposed amendment.

Norman Schweizer, 7800 Windy Point Court, Springfield, opposed the amendment. Mr. Schweizer stated the following:

- Opposed the idea of having to wake up with vehicles parked in front of residence or blocking driveways;
- There were two illegal Airbnb operators in Windy Point Court community. A complaint was made to the Fairfax County Department of Code Compliance (DCC). That complaint included the Airbnb ad. Was informed by DCC they could not move forward with enforcement due to the State's enactment of the *Virginia Code*;
- The staff report dated March 20, 2018 was skewed with the delivery of information. Key issues were not addressed, primarily the analysis of the relationship between Airbnb rentals and crime. A googled link between crime and Airbnb produced information regarding crime assaults. The Planning Commission should require an independent assessment of the expected crime rate increase as a result of the proposed amendment. The Fairfax County Police Department and their role pertaining to enforcement should be part of the proposed amendment; and

- The appropriate due diligence regarding short-term lodging had not been accomplished. The proposed amendment should not be advanced.

Commissioner Strandlie asked for the status of enforcement of the existing Zoning Ordinance. Mr. Fitzhugh stated all cases were inspected, investigated and staff was instructed to write notices of violation. Commissioner Strandlie asked that staff follow-up with Mr. Schweizer regarding his complaint.

Eric Terry, 5101 Monument Avenue, Suite 206, Richmond opposed the amendment. Mr. Terry stated the following:

- Was a member of the Study Commission appointed by the General Assembly in 2016, to put forward the current legislation;
- There were approximately 1,500 illegal short-term lodging units in Fairfax County. A penalty was recommended for those platforms. Many communities have applied a penalty for listing unlicensed or non-permit users;
- There were less than 70% of the listings and new platforms were developed daily;
- Hotel members were not opposed to Airbnb rentals, but rather a leveled playing field between those industries. Hotels complied with all requirements, as should short-term lodging. The laws and taxes have been avoided under the current platform;
- The current illegal short-term lodging units were multi-unit operators. Host Compliance LLC, the market provider for short-term rental unit data, provided detailed reports that would reflect same. The Planning Commission should also consider commercial operators;
- Airbnb and short-term lodging were “parasites” on the tourism industry because they provided no contributions to the market nor taxes; and
- Encouraged the Planning Commission to move forward with the amendment to begin the regulation process of the 1,500 illegal short-term lodging units. There should also be opportunities to address future changes.

Commission Hart asked whether there was a list of jurisdictions in the State of Virginia that penalized short-term lodging platforms. In response, Mr. Terry stated most of the penalties that were enforced and had regulatory structures were in New York, San Francisco, California and one was recently implemented in Los Angeles, California. He stated Loudon County, Virginia may be assessing penalties. Commission Hart asked whether fire safety and compliance was part of the Study Committee’s discussion. Mr. Terry stated the Study Committee received testimony from the state’s fire department and they expressed concerns regarding those issues. There were no formal conclusions. Local jurisdictions were allowed to review regulatory fire safety structures.

Clyde Miller, 3436 Skyview Terrace, Falls Church, opposed the amendment. Mr. Miller also stated the following:

- Holmes Run Valley Citizens Association considered the question of short-term lodging in its November meeting and unanimously adopted a resolution where they were prohibited;
- Short-term lodging regulations would not protect residential communities. The proposed regulations were both insufficient for protecting the communities and unenforceable. The proposed parking regulation would not protect communities from an influx of parked cars;
- Some of the arguments allowed to advance short-term lodging discussion in terms of a new economy, income opportunity or a fact of life in Fairfax County, were based on misinformation;
- The General Assembly's 2017 short-term lodging legislation did not alter the localities' authority. Localities could regulate and prohibit short-term lodging through their land use and zoning authority. Localities were given the authority to regulate and prohibit short-term lodging in their jurisdictions;
- Short-term lodging benefited apartment building developers. Developers were allowed to operate new buildings as short-term lodging hotels while advertising for long-term tenants;
- One argument that has not been offered for short-term rentals was how they benefited the Fairfax County community;
- Fairfax County should continue to prohibit short-term lodging rentals. This would put the law on the side of all communities. Should short-term lodging be approved, the burden should be placed on operators to comply with neighborhood norms, or risk shutdown; and
- The question and discussion of regulation and allowing short-term rentals should be separated.

Christopher Revere, 3311 Wessynton Way, Alexandria, opposed the amendment. Mr. Revere also stated the following:

- Should short-term lodging be permitted in Fairfax County, they would be more attractive to potential renters in the Wessynton Homes community. There were currently 11 homes in the community that were rented to long-term renters who had resided in the community for many years. Renters' moving was due to work assignments or military service;
- Many HOA communities were led to believe if you had in your covenants existing rules or restrictions against short-term lodging, those covenants would be upheld and County ordinance could not override. For the benefit of all HOAs, the Office of the County

Attorney should provide clarity on their analysis for allowing an operator to obtain a permit;

- The proposed short-term lodging amendment was a disruptive business model to the hospitality industry and to public policy. An analysis of what's working in the County should be conducted. That analysis should include the unintended consequences of the land use industry, economic, safety, liability and enforcement;
- There was a 21st century disruptive model for enforcement, in particular land use and code enforcement and 19th century tools were used to enforce compliance. There should be more coordination beyond land use. There should be coordination with law enforcement and transportation. That coordination should go beyond Fairfax County and other state agencies should be involved;
- The margin of flexibility allowed by Zoning Administrator for short-term lodging violations, should be determined. Operator violations of HOA covenants and restrictions should be made part of record;
- The Wessynton Homes community conducted a poll. The results amounted to a 60% opposition to short-term lodging in residential communities; and
- Should the Planning Commission and Board of Supervisors adopt the proposed amendment, the Wessynton Homes community would like to continue working with the Commission and the Board to produce a practical and enforceable solution. The Planning Commission should take its time in considering the proposed amendment.

David L Fenimore, 9320 Ludgate Drive, Alexandria, opposed the amendment. Mr. Fenimore also stated the following:

- The proposed amendment was flawed and required additional work;
- Short-term rentals were disruptive to communities. Purchased a home in the R-2 zoned community located in the Mount Vernon District. Resided with spouse and two children. The average occupancy of the 45 homes in the community were 3 persons per household. The nearest visible commercial activity was a 7-Eleven convenience store 2 ½ miles away. The home was purchased because of the peaceful residential community and the safe character of the neighborhood. The community was affected by Airbnb rentals where as many as 12 individuals occupied properties with as many as 6 vehicles. This count did not include Uber and taxi service drop-offs;
- The proposed amendment did not address the effect short-term lodging had on home values. No analysis was provided regarding impact. The proposed amendment did not address economic studies that suggested short-term rentals drove lower income residents out of neighborhoods;

- The proposed amendment did not address several jurisdictions that adopted short-term lodging regulations and due to unintended consequences, were now reconsidering those regulations. Staff's recommendations were based in part on a survey that had no controls and could have been manipulated. Caution should be placed on survey results;
 - The proposed amendment left loopholes that would allow short-term rental operators to disrupt the residential character of the neighborhoods;
 - The staff report's recommendation of 6 adults would be an invitation for abuse. This would also create parking issues; and
 - The lack of an enforcement mechanism should be a red flag for the proposed amendment.
- James Goen, 7221 Calamo Street, Springfield, supported the amendment. Mr. Goen also stated the following:

- Had a unique six-bedroom home at the end of an outlet. The back of the home was the front yard and vice versa. There was limited impact on the neighborhood;
- Rented home for three years. Researched Fairfax County's restrictions and codes to follow regarding short-term rentals. This information was nonexistent. Proceeded with short-term lodging of home as if there were no restrictions in place;
- Became aware there was an issue with short-term lodging from a Nextdoor survey;
- Had a good relationship with the neighbors and there were no issues or concerns;
- Many key life events occurred at the home. Four to five families who buried loved ones at the Arlington National Cemetery wanted to stay together. One couple celebrated their 50th wedding anniversary and wanted a location that accommodated them and their adult children. Families required additional space and occupied the home for Christmas and New Year's gatherings. Those families all provided services to the community; and
- Creating policies that would only accommodate 6 adults in a home would be difficult to enforce and would not accomplish the main goal of short-term rentals. There should be more focus on safety.

Commissioner Migliaccio asked Mr. Goen whether he occupied the home during the rental period. Mr. Goen stated he occupied the home on some occasions and on other occasions was in the area. He added there were open communications with neighbors during his absence.

Sarah Teagle, 11516 Hickory Cluster, Reston, supported the amendment. Ms. Teagle also stated the following:

- Was not a current participant of short-term lodging; however, was previously part of the Airbnb platform and would consider other platforms. Lodging stays were limited to 30 nights;

- The HOAs in the community do not support short-term rentals;
- Short-term lodging was great for the community and offered lodging assistance to many families and was a financial boon for the middle class. As a single mother, hosted a short-term rental as a means of additional income. Addition income allowed for the payment of son's year-long medical treatment;
- There were misconceptions about the types of people who frequented short-term lodging. Had visitors from Spain, Ireland, the Netherlands, Germany, local artists, doctors and nurses. The experience was rewarding; and
- Homes in communities with long-term rentals and absentee landlords, were obvious. Short-term lodging would not disrupt property values.

Commissioner Hart inquired about the ratio of people to cars. Ms. Teagle stated almost none of the renters had cars because they came from the airport. Guests were allotted one slot out of the home's two parking spaces. Commissioner Hart asked if there were requirements in place for a dedicated parking space, would those requirements impede on the second assigned space. Ms. Teagle stated there were two spots available for use. Commissioner Hart asked whether inspection requirements for smoke detectors and fire exits were problematic. In response, Ms. Teagle stated smoke detectors and fire existed in the home. She added, Airbnb provided safety information which was available online.

Commissioner Niedzielski-Eichner asked Ms. Teagle whether she had any bad experiences with short-term rentals. Ms. Teagle stated there were no bad experiences. She added she imposed her own safety restrictions and took precautionary measures, because she was a single female who occupied the property.

Rosanna Montequin, 4806 Apple Tree Drive, Alexandria, supported the amendment. Ms. Montequin also stated the following:

- None of the represented families participated in the mentioned survey;
- Recently learned about the zoning review process. Considered hosting home for short-term lodging as a means for family to retain home;
- Short-term lodging proved to be profitable and successful;
- Went to the County's website to obtain information regarding necessary requirements;
- Community's civic association did not support short-term lodging;
- There were homeowners in the community who hosted short-term lodging;
- Contacted the County's Small Business Commission, the Economic Development Authority, Department of Tax Administration, Department of Planning and Zoning, the

Internal Revenue Service and other Airbnb operators, to obtain information regarding their business model, concerns voiced, actions taken and proposed results; and

- Opposition to short-term lodging was regarding neighborhood safety, character, parking and privacy.

Commissioner Clarke asked for the number of homes in Ms. Montequin's neighborhood and whether the community had an HOA and covenants. In response, Ms. Montequin reiterated the community's civic association did not support short-term lodging. She added she lived in an older community with about 700 homes.

Sara Ratcliff, 3320 Grass Hill Terrace, Falls Church, supported the amendment. Ms. Ratcliff also stated the following:

- Supported a rigorous study of the proposed amendment as it contained multiple Dillon Rule conflicts;
- The proposed ordinance had a 6-person cap which violated the *Code of Virginia* occupancy standards for residential dwelling units. The proposed ordinance violated the Fair Housing Law, the Virginia Fair Housing Occupancy Standards and the Virginia Uniform Statewide Building Code;
- The proposed ordinance's mandatory universal registration defined the *Code of Virginia* as the creation of registry for short-term rental of a property;
- The General Assembly excluded four categories of state residents not required to register;
- The proposed ordinance's new definition of transient occupancy changed the statutory attributes and violated the *Code of Virginia*, Section 58.1-0319 and Chapter 4, Article 13 of the Code of the County of Fairfax;
- The proposed ordinance's new transient occupancy definition made Fairfax County residents, who did not occupy their home 30 days in a month, transient occupants. Any guests who did not stay more than 30 days, would also be considered transient occupants and would be subjected to the transient occupancy tax;
- The proposed ordinance's inspections violated the Virginia Maintenance Code, Section 103.4, that referenced inspections of homeowner occupied residential rental dwelling units;
- The Virginia Constitution guaranteed property owner's rights which included using one's property to generate revenue, defending the property, and transferring the property;
- Many of the proposed regulations were unenforceable and required operators to read HOA covenants, keeping a log of guests not required of hotels, motels or other facilities renting space to transient visitors, monitored the number of guests in a home without a warrant to do so, and violation the tenant's rights to privacy; and

- Fairfax County Zoning Ordinance was out of step with the wishes of the citizens. Too much deference was given to a minority of 12 percent of residents who opposed short-term lodging and failed to create a positive ordinance for the 82 percent who supported the proposed amendment. The operator's onsite requirement should be removed from the proposed amendment and a cap on guests should be eliminated.

Blake Ratcliff, 3320 Grass Hill Terrace, Falls Church, supported the amendment. Mr. Ratcliff also stated the following:

- The presence of operators should not be required for short-term lodging and there should not be a cap limit of 6 individuals;
- About 82 percent of residents in Fairfax County support short-term lodging;
- Short-term lodging hosts in Arlington, Virginia, earned an average of \$31,250 a year, which in turn created \$25,000,000 for the lodging industry and an additional \$1,500,000 in tax revenue. Homestays in Arlington generated an average of \$642. That amount equated to \$22,940,000 for local businesses in Arlington and an additional \$1,380,000 of tax revenue;
- The National Bureau of Economic Research found that roughly half of all Airbnb stays in 2014, would not have resulted in hotel stays, had short-term rentals not being an option. Additional research showed homestay guests spent 42 percent more in local businesses than hotel guests;
- Airbnb data showed 60 percent of homestays were for whole house rentals. Fairfax County's requirement for operators to be onsite during rentals would limit home sharing and would curtail spending in local businesses;
- ZAD underestimated the number of current home sharing hosts in the County. That number did not include other platforms already in operation where VRBO, Homeaway and Craigslist platforms were used. The proposed amendment would negatively impact small business revenue and sales tax; and
- In order to restore confidence in elected officials, the County Tax Administrator, Economic Development Office and Office of Human Rights and Equity Programs should be part of the conversation.

Debbie Smith, 3127 Juniper Lane, Falls Church, opposed the amendment. Ms. Smith also stated the following:

- The Mason District Council Board (MDC) believed the proposed amendment was not required. The Board of Supervisors asked staff to conduct an analysis of short-term lodgings in Fairfax County and to provide a recommendation of possible changes to the

Zoning Ordinance. The community saw no said analysis. Staff concluded short-term lodging should be allowed and proposed regulations that would allow the use;

- Community and MDC's meetings showed no support nor interest for short-term lodging, but rather a high level of opposition;
- The proposed amendment did not reflect the views of Fairfax County residents;
- The staff report indicated that in Fairfax County, there was less than half percent of total housing units that hosted short-term rentals;
- Under current zoning laws, month-to-month rentals were legal. This was an avenue for additional income. This law maintained the stable residential character of neighborhoods;
- The Comprehensive Plan set an objective in its land use policy. This policy encouraged a land use pattern that protected, enhanced and maintained stability in established residential neighborhoods;
- Short-term rentals were associated with widely reported negative impact on communities. This impact included parking, disorderly conduct, overcrowding, vandalism, accumulation of trash, increased noise and the overall deterioration of a neighborhood's residential character and quality;
- Short-term rentals removed housing stock that could otherwise be available for long-term rental or for sale to families and individuals in search of permanent housing;
- Residents who lived near short-term lodgings were vocal of how disruptive they were. Residents deserved the quiet enjoyment of their property;
- The consequences of allowing short-term lodging were emerging. Many places were limiting short-term lodging to commercial districts and some were prohibited in surrounding residential districts;
- Short-term lodging did not provide a windfall in tax revenues for the County;
- The proposed amendment would harm the hotel industry and employment of local residents. The hospitality industry suffered when visitors stayed in short-term lodgings; and
- Enforcement would be a challenge and would be difficult for proposed regulations to be enforced.

Kristin Yohannan Moore, 9409 Ludgate Drive, Alexandria, opposed the amendment. Ms. Moore also stated the following:

- There was an illegal Airbnb in the community and was cited by Fairfax County. The County requested the Airbnb cease all operations. The operator went through the appeals process and litigation;
- The proposed amendment did not provide a mechanism for enforcement. The number of short-term lodging days could not be enforced or regulated;
- There was a homeowner in the community who owned their current residence and the next-door property. The second home was a rental property; and
- Sara Ratcliff and Blake Ratcliff misrepresented the 82 percent of Fairfax County residents in favor of short-term lodging. Less than 8,000 people responded to a survey. There were over 3,000,000 people who lived in Fairfax County.

John A. McEwan, 9401 Ludgate Drive, Alexandria, supported the amendment. Mr. McEwan also stated the following:

- Mr. McEwan confirmed he owned the two properties Ms. Moore referenced;
- The response rate of the survey was 7,000 individuals out of 1,300,000 residents and not 3,000,000 residents;
- Fire and safety regulations should not apply only to short-term rentals but also to long-term rentals;
- The proposed amendment should be compared to other jurisdictions other than the State of Maryland and the District of Columbia, who supported short-term lodging. The State of Virginia was considered a property state;
- The 90-day restriction mirrored \$16,000 the County charged for a bed-and-breakfast. As a result of the cost, there were no bed-and-breakfast facilities in the County;
- An allowance should be given to someone living next to a short-term lodging, if limits were placed on a property; and
- The Zoning Administrator should not be allowed to take the term short-term lodging, its limitations on dwelling units, and apply to single family detached dwelling units. There were no limitations in the Zoning Ordinance for dwelling use in an R-2 district. Reference was made to the Supreme Court's 2007 decision, William D. Scott, et al v. Donald F. Walker, et al. Record Number 061410.

Andrea Podeschi, 3322 Grass Hill Terrace, Falls Church, opposed the amendment. Ms. Podeschi stated there were 1,500 illegal short-term lodgings in the County and would be more with the proposed amendment. With close proximity to the Nation's Capital, short-term lodgings posed a financial burden on businesses in Fairfax County and would change the residential character of

neighborhoods. Whole house rentals were part of the equation and should not be allowed. Ramifications to the proposed amendment should be considered.

Marcus Jackson, 1505 Trail Edge Lane, Reston, opposed the amendment. Mr. Jackson also stated the following:

- Lived in a community where there were 17 homes on a street. The neighbors were aware an illegal short-term lodging was being hosted;
- There was an incident where a guest of a short-term lodging harassed a young lady, who mowed the lawn in the neighborhood. The guest followed the young lady into her back yard. That incident became problematic for the neighborhood. The operator was confronted about the incident and he provided no information about the guest. Law enforcement was contacted and was not aware of short-term lodgings in the neighborhood;
- Enforcement should be one of the primary focuses of the amendment. Proposed fees did not equate to the amount of enforcement required; and
- Short-term lodging would affect home values and tax revenues would be impacted.

Nick Ploutis, 8016 Packline Court, Springfield supported the amendment. Mr. Ploutis also stated the following:

- With hard times, due to the economy, Airbnb was an added benefit;
- Had a rental home and hosed Airbnb for the past 1½ years. Rented the entire house out to guests;
- Fairfax County should not take the side of the minority who opposed short-term lodging. Thousands of individuals hosted short-term lodging;
- Military families were hosted. Those families either buried their loved ones at Arlington National Cemetery, stayed temporarily while on work assignments, or needed a place to stay while seeking permanent housing. One of those families hosted were four sisters. One of those sisters lost her son in the Iraq War. They were invited to a gold star mother's event at the White House, hosted by the President of the United States and First Lady. Those were all good people and contributed one way or another to their community. Families were being discriminated against;
- The survey conducted in 2017, question Number 7 asked "Should Fairfax County require that short-term rental operators be present in the short-term rental while it being used?" The results drew 7,340 responses. The results showed 3,712 people answered "no." Fifty percent of those individuals had no issues with short-term lodging. The results also showed 2,838 people answered "yes;"

- Corporations should not be represented over the tax paying residents; and
- The positives of short-term lodging outweighed the negatives.

John Clarke, 7227 Auburn Street, Annandale, opposed the amendment. Mr. Clarke also stated the following:

- Mason District Council library had hours of videos of meeting that addressed short-term lodging;
- There was an eight-minute video by Senator Bill Stanley of Virginia's 20th Senate District, that addressed short-term lodging;
- Enforcement requirements would exceed the proposed resources and fees; and
- There were many important discussions regarding the rights and protections of homeowners associations. Protections for civic associations had not been addressed.

Commissioner Strandlie acknowledged Mr. Clarke's post of Senator Bill Stanley's video. She stated the video was submitted for the record.

Commissioner Niedzielski-Eichner asked whether a no-action alternative analysis was conducted. In response, Ms. Pesto stated other than the terms of the Zoning Ordinance, a no-action analysis was not conducted. If no action was taken on the amendment, the Zoning Ordinance regulations would remain in effect. Those regulations stated a short-term lodging stay less than 30 days, could not be operated in a dwelling.

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

//

(Start Verbatim Transcript)

Commissioner Hart: I was gonna say we have boy scouts or whoever coming for I guess merit badge or something to see government hearings.

Chairman Murphy: In action.

Commissioner Hart: Yeah, but most of the time they're here for, you know twenty minutes or something and this – this young man had the patience to sit here until, you know it's after midnight and we're – we're still talking. But I think he gets the prize for the longest attendance this year. We've heard a lot tonight, we've gotten a lot of e-mails and letters and I'm sure we'll get some more. I wanna thank first of all, all the people who came out tonight. All the people who have sent us things and I'm gonna recommend we leave the record open. We have a lot to think about and I wanna thank also our team of staff and others who have come – who came

today to help. It's – this is a complicated subject. We're being pulled in several different directions, but I think we're making progress.

Commissioner Ulfelder: [Inaudible].

Commissioner Hart: I hope we are. We'll talk – I'd say we'll talk tomorrow but actually we'll talk later today is how it has worked out. Mr. Chairman, I MOVE TO DEFER THE PLANNING COMMISSION'S DECISION ON THE PROPOSED ZONING ORDINANCE AMENDMENT REGARDING SHORT-TERM LODGING RESIDENTIAL OWNER RENTER OPERATED DWELLINGS ONLY TO MAY 17, 2018, WITH THE RECORD REMAINING OPEN FOR WRITTEN AND ELECTRONIC COMMENTS.

Commissioners Sargeant and Ulfelder: Second.

Chairman Murphy: Seconded by Mr. Sargeant and Mr. Ulfelder. Discussion? All those in favor of the motion to defer decision only on this amendment to a date certain of May 17th, with the record remaining open for comments, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. And on behalf of all of us I'd like to have you pass on to all our heroes in the Fire and Rescue Department what a great job they did yesterday. That was probably the busiest day the Fire Department has ever had in Fairfax. I can't – I can't remember any day that must have been as busy as hectic as – as yesterday was and you did an outstanding job. You're our heroes and we appreciate all you do. And I wanna thank our staff. No matter what side of the issue you fall on, the people who spoke always complemented this group of staff folks who have gone around the County doing yeoman's duty to present this issue to our citizens. And we really appreciate that because that is high praise indeed. Even those folks who don't agree with you, respect what you're doing and we do too. So, thanks a lot.

The motion carried by a vote of 12-0.

(End Verbatim Transcript)

//

CLOSING

May 3, 2018

The meeting was adjourned at 12:08 a.m.
Peter F. Murphy, Chairman
James T. Migliaccio, Secretary

Audio and video recordings of this meeting are available at the Planning Commission Office,
12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Samantha Lawrence

Approved on: September 13, 2018

Toni Michele Denson
NOTARY PUBLIC
Howard County, Maryland
My Commission Expires 6/14/2022



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

Toni Michele Denson
NOTARY PUBLIC
Howard County, Maryland
My Commission Expires 6/14/2022

Toni Michele Denson

NOTARY PUBLIC
Howard County, Maryland
My Commission Expires 01/15/23

Toni Michele Denson
NOTARY PUBLIC
Howard County, Maryland
My Commission Expires 01/15/23