



City of Falls Church Village Preservation and Improvement Society
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May 21, 2008

Mr. Gary Fuller
City Hall
City of Falls Church
Falls Church, Va. 22046

SUBJ: Proposed Zoning Code Change “Diagnosis/Annotated Outline”

Dear Mr. Fuller:

The Falls Church Village Preservation and Improvement Society (VPIS) would like to commend the City for initiating a process to review and upgrade the City Zoning Code and developing the “Diagnosis/Annotated Outline” document addressing proposed Code changes. VPIS believes that major changes are needed in City zoning practices and that changes are needed both to the current laws and to the enforcement of these laws. We look forward to working with you and others to accomplish this important goal.

Citizen Advisory Committee Recommendations

VPIS has reviewed the comments developed by the Zoning Ordinance Advisory Committee (ZOAC) posted on the City website. VPIS finds the Committee’s comments to be sound and very well reasoned. Although VPIS may not endorse every specific recommendation in the extensive set of comments, we do endorse the major comments and the directions suggested in this package.

In addition, we are disappointed that the City and the consultants chose not to reflect any of these very thoughtful comments, developed by a Committee created by the City *specifically* for the purpose of guiding the staff and consultants, in the initial materials presented to the public. In addition, posting the Committee’s detailed comments on the website, while not including any of the comments in the public review document, suggests that the City staff and consultants have concluded that the comments are wrong or inappropriate. There is no statement explaining why the Committee’s detailed recommendations have not been included at this important stage or at what stage in the process these comments will be considered. Given the amount of work volunteered by the citizens on this Committee, the City owes the Committee members and the public a much clearer statement of the expected role of the Committee and a vote of confidence in its recommendations.

The Village Preservation and Improvement Society, founded in 1885, is a nonprofit citizen volunteer organization in the City of Falls Church, Virginia. The Society is comprised of concerned citizens who address many important issues that face our community. The Society works to preserve our natural and built environment, historic structures and landmarks, and promotes cultural activities. Members are primarily residents of the City of Falls Church and former residents or neighbors who have an interest in Falls Church City. Members are of all political persuasions and are bonded by their interest in and a commitment to improving the City of Falls Church.

VPIS recommends that the Council direct the staff and consultants to consider the Committee's recommendations and, in the event that a public hearing is held as requested below, to give the Committee an opportunity to present their recommendations.

Lack of Public Hearings

VPIS is also concerned that there will not be any public hearings on this "Diagnosis/Annotated Outline" and that there are *no* public hearings contemplated until July 2009. Given that the staff memo on the website indicates that the document "serves as a basis to frame community discussion" the City needs to do more to actually foster this discussion and public hearing are essential to this end.

VPIS recommends that a public hearing be held on the "Diagnosis/ Annotated Outline" prior to detailed drafting beginning in July and that additional public hearings be scheduled as draft stages are completed.

Shorten Process and Make Critical Changes First

VPIS recognizes that the development of comprehensive amendments to the zoning provisions of the City code is complex. At the same time, the process outlined by the consultants lasting several years seems unnecessarily long, resulting in extended controversy and expense. At the same time, several provisions of the Code, such as the substandard lot provisions, are now resulting in very poor development patterns and are in critical need of prompt attention. VPIS believes that these provisions of the Code will be equally controversial whether they are addressed sooner in the process or as part of a later, more comprehensive set of changes.

Given the damage now occurring, VPIS believes it is essential that the zoning code revision process be conducted more quickly and that it allow for selected, critical changes to be made expeditiously and on a schedule ahead of the wide range of other less critical changes being proposed.

Additional Comments

Comments on issues in the public review document of special concern to VPIS are described below. Many of the recommendations are included in the recommendations of the Zoning Ordinance Advisory Committee.

1) **Do Not Over-reach for "Unified" Development Ordinance:** VPIS shares the reservations of the Committee with respect to the need to focus revision efforts on Chapter 38 of the Code and to avoid attempting to address a range of other chapters of the Code in a "unified" ordinance at this time. Including all these other issues may make the process unnecessarily long and controversial and prevent giving sufficient attention to the many core zoning issues in Chapter 38. If the City does decide to attempt a "unified" revision, it is even more necessary to address selected critical issues immediately.

2) **Clarify Authority for Mixed-Use Development:** VPIS agrees that the current use of the Special Exception ordinance has significant problems and notes that the November draft "Diagnosis" prepared by the consultants proposed to repeal this provision while the public review draft (December) does not. We believe a good case can be made for eliminating "special exceptions" and the complex, always evolving, exchanges of vaguely defined "proffers" for waivers of otherwise sound zoning restrictions (i.e. height limits) or other requirements (i.e. affordable housing). As we found in the Atlantic Realty proposal, the process of rolling bids and counter-bids inherently undermines meaningful public involvement. At a minimum, the recommendations of the Committee with respect to using a "rezoning" process and requiring concurrent approval of a site plan should be adopted.

3) **Correct Limits on Substandard Lots:** VPIS believes that the current mis-interpretation of the Code with respect to the phrase “may reasonably be combined” needs immediate attention. The proposal to shift to a policy requiring consolidation of adjacent lots “under common ownership” prior to issuing a demolition permit for an “existing” building that straddles two substandard lots is a step in the right direction. This proposal, however, does not address the common practice, cited in the “Diagnosis,” of avoiding the common ownership provisions of the law through creation of false corporate entities allowing a single owner to avoid lot consolidation by appearing to be one owner. It also does not address the prospect of demolition of a building straddling a lot prior to the effective date of the proposed changes over two years from now. This proposal needs to be amended to prevent actions to evade the “common ownership” requirement or the “existing building” elements of the proposal. This could be accomplished by defining an “existing” building to include a building “that, at any time since May 10, 2008, was under common ownership and existing”.

4) **Avoid Expanded Administrative Waivers:** VPIS has written to the Council on several occasions to express our strong concern that existing code provisions are not being addressed and fully enforced by the City. Many of the poor development cases of recent years might have been avoided by simple enforcement of current Code. For example, the consultants recommend averaging of front yard setbacks and this is now required but not occurring. We believe this is now an intolerable situation and that the proposed expansion of administrative authority to grant waivers or “adjustments” is a terrible idea that will make an already bad situation much worse.

5) **Maintain Park Land:** VPIS is *strongly* opposed to the proposal to rezone all parks into the new “TRO” (transitional office use) district. {NOTE: This is an excellent example of the kind of bad idea that should never have been sent to public review and would have been eliminated had the Committee recommendations be incorporated.}

6) **Expand Open Space:** VPIS agrees with the Committee recommendation to make clear that “open space” in development projects should not include “private” space available only to some City residents. VPIS also believes that current set-asides for open space are too small but is concerned that the proposed cash contribution in lieu of open space will simply result in developers buying their way out of compliance with this key criterion.

7) **Strengthen Environmental/LEED Provisions:** VPIS strongly supports the goal of strengthening the “sustainability” elements of the Code. We are concerned, however, about the idea of trading core requirements for important “sustainable” features of new development. Sustainable features, such as commercial project compliance with LEED standards, should be required and non-negotiable. We agree with the Committee that stronger environmental standards for commercial development are needed.

8) **Strengthen Affordable Housing:** VPIS supports affordable housing and believes that the City needs to expect more from developers with respect to affordable housing. The proposed changes, however, appear to weaken existing requirements (e.g. reducing the percentage of units expected to be “affordable” in projects from 12% to 6%). The Committee makes a strong case against using Code revisions to address affordable housing needs and for shifting from the confusing density bonus to parking reductions. The Code revisions should either strengthen affordable housing requirements or not address this important issue in favor of a separate process that could strengthen affordable housing in the City.

In addition, VPIS supports both “workforce housing” and “affordable housing” but recommends that goals and procedures for these two different concepts be clearly stated and not overlap. VPIS also has reservations about the significant increase proposed for income levels for

eligibility for affordable housing (from 50 – 10% of median income to 110%) and lack of reference to housing for persons with intellectual disabilities.

9) **Clarify City Center Overlay District:** Some of the elements of the newly defined City Center overlay district (e.g. lot consolidation incentives) are worth considering, but new authority to increase by-right height limits and to specifically allow 10 story building are a mistake. The recently approved Atlantic project includes building within the City Center that are too tall. The Council recently adopted new guidelines for the remained of City Center that guide development in a different, more appropriately scaled direction. The proposed zoning changes concerning height are inconsistent with that new vision and should be dropped.

10) **Avoid “Incidental” Residential in Business Zones:** VPIS is opposed to the proposal to allow “incidental” residential uses in business districts by right, based on the consultants statement that this might be up to 49% residential use. If incidental residential use is to be allowed in these cases, it should be truly “incidental” and be defined as a very small percentage of use.

11) **Green Streetscapes:** VPIS recognizes the City goal of bringing commercial district building forward to the street to avoid parking lots between main streets and buildings. At the same time, the application of this policy has been flawed and tall buildings now crowd Broad Street. A better balance is needed between assuring pedestrian access to buildings while still allowing for comfortable sidewalks, protection from traffic, sidewalk interest (e.g. outdoor cafes), and most of all, the space for mature trees that will grow tall enough to provide real greenery and shade.

12) **Public Involvement:** VPIS has on many occasions expressed to the City concern for the process leading to approval of residential and major developments. Citizens feel that they only learn of a project late in the process and that their comments are not considered in approvals. As noted above, this feeling is often compounded by concerns that obvious elements of the Code are not enforced or are interpreted in favor of developers rather than neighbors. VPIS strongly supports the proposal to include “neighborhood meetings” as a key step in the design process of major projects and recognizes that the proposed reformatting of the Code may make it easier for everyone to understand. The “meetings” however, are simply advisory and the Code needs to include much stronger provisions for early notification of neighbors and others nearby at the initiation of the full range of projects in residential neighborhoods and notification of the public at large for major City projects.

13) **Avoid Politicization of Zoning Process:** VPIS joins the Committee in opposing the suggestion in the “Diagnosis” that the City adopt new authority to allow any landowner who feels that the zoning law is resulting in a “taking” to appeal to the City Council prior to taking a case to court. The legal interpretation of “takings” is complex and changing and the Council is not qualified to function as a court in making rulings on this topic. This addition, this provision would endorse frivolous appeals to the Council in the hopes of a case-by-case exemption from the City code and undermine the fair and equitable application of the zoning laws.

Thank you for this opportunity to comment on the important issues related to improving the zoning provisions of the City Code. VPIS looks forward to working with you on this project over the next several years.

Sincerely,

A rectangular box containing a handwritten signature in cursive script, which appears to read "Jeff Peterson".

Jeff Peterson, President, VPIS

cc:

City Manager
City Council Members
City Attorney
Planning Commission Members
Zoning Ordinance Advisory Committee
Nader Baroukh
Lawrence Webb