

McLean Citizens Association Board of Directors

Final Minutes, June 7, 2006

BOARD OF DIRECTORS

Officers (6)

Tom Brock	President	Present
Rob Jackson	First Vice President	Present
Jim Turner	Second Vice President	Present
William Denk	Treasurer	Present
Mark Zetts	Corresponding Secretary	Present
Desmond B. O'Rourke	Recording Secretary	Present

DIRECTORS REPRESENTING NEIGHBORHOOD ASSOCIATIONS (20)

John Adams	Georgetown Pike & Potomac River Assoc.	Present
Ted Alexander	Westberry HOA	Present
Brian Blood	Evermay Community Association	Absent (Excused)
Donald Borcharding	Brookhaven/Forest Villa Association	Present
Germaine Broussard	McLean Commons	Present
Steve DelBianco	Franklin Area Citizens Association; FCFCA	Present
Darren Ewing	Pimmit Hills Citizens Association	Present
Louis Freeman	McLean House North Council	Present
Lynn Bays Fuechsel	McLean County Estates	Present
Jane Greenstein	Chesterford Community Association	Present
Patricia Marks	Stoneleigh Residents Association	Present
Michelle Meehan	Greenway Heights Civic Association	Absent (Excused)
Robert (Bob) Philipp	Shouse Village Community Association	Present
James A. Robertson	Evans Mill Pond Owners Association	Absent (Excused)
Ed Saperstein	Glen Haven Farms	Present
John Schaefer	McLean Broyhill Estates	Present
Bill Stephens	Chesterbrook Woods Citizens Association	Present
Susan Turner	Summerwood	Present
Paul Wieland	McLean Hamlet Citizens Association	Present
Stephanie Weisbroth	West McLean Citizens Association	Present

AT-LARGE BOARD MEMBERS (14)

Robin Bates	Present
Mike Clancy	Present
Chris Cole	Present
Frank Crandall	Present
Dan DuVal	Present
Donald Finberg	Absent
Lawrence Glick	Absent
Stephen Keller	Present
Chris Monek	Absent (Excused)
Thomas (Tom) Moore	Absent (Excused)
Dale Murad	Present
Merrily Pierce	Present
Bob Nagel	Absent (Excused)
Wade Smith	Present

Guests whose presence was recorded by signing in or by being introduced:
John Foust MCA Planning Committee

Rosemary Ryan
Brian Trompeter
Aranya Tomseth
Tom Saduskas

Supervisor's Office
Sun Gazette
The Connection

CALL TO ORDER

President Tom Brock called the meeting to order at 8:05 p.m. at McLean Community Center, Community Hall (sections B & C).

INTRODUCTION OF SPECIAL GUESTS AND ANNOUNCEMENTS

President Brock invited all Directors, current and new, to introduce themselves to those present.

APPROVAL OF MINUTES

The Minutes of the MCA meeting of May 3 were taken as read and were approved as written.

TREASURER'S REPORT

The checking account contains roughly \$13,000 and there are three CDs totaling roughly \$12,000. The accounts are exempt from service charges.

REPORT OF PRESIDENT / EXECUTIVE COMMITTEE

President Brock reported that the Executive Committee had discussed the provision of a collection point for newspapers. He urged Directors to expand the MCA membership. Currently, membership is 962. He suggested representatives of individual HOAs could distribute membership forms. There is an electronic form accessible on the Association's website: www.mcleancitizens.org.

STANDING COMMITTEES

BUDGET AND TAXATION COMMITTEE

No resolution.

EDUCATION AND YOUTH COMMITTEE

No resolution.

PLANNING AND ZONING COMMITTEE

MCLEAN CITIZENS ASSOCIATION RESOLUTION

On a Proposed Fairfax County Zoning Ordinance Amendment Regarding the Reduction of Certain Yard Requirements and Clarification of Accessory Structure Height Measurement

1. **Whereas**, the **McLean Citizens Association (MCA)** emphatically supports the concept of a zoning ordinance in order to preserve communities and in order to safeguard the interests of neighbors, and believes that deviations from the **Fairfax County Zoning Ordinance (ZO)** should not be allowed merely because a property owner deems it inconvenient to have ZO rules apply to him, and

2. **Whereas**, notwithstanding its support for the concept of a zoning ordinance, the MCA recognizes that the ways people use their homes change with the times and with changes in their personal circumstances and the MCA therefore believes that some flexibility in the ZO beyond that allowable by variance today is necessary to allow for individual circumstances not contemplated by the ZO, and
3. **Whereas**, “[z]oning ordinances, of necessity, regulate land use uniformly within large districts.... [and i]t is impracticable to tailor such ordinances to meet the condition of each individual parcel within the district,” as the Virginia Supreme Court noted in [Cochran v. Fairfax County Board of Zoning Appeals](#), 267 Va. 756 (2004), and
4. **Whereas**, notwithstanding such impracticability, there are a large number of homes in Fairfax County which were constructed before major changes to the ZO were enacted in 1978, and many of these homes are subject to severe limitations on what changes can be made to them because they do not conform to requirements enacted after their construction, and
5. **Whereas**, prior to the *Cochran* decision, homeowners with houses which did not conform to the current ZO could generally obtain a variance from the county **Board of Zoning Appeals (BZA)** to get relief from zoning ordinance provisions which unreasonably restricted changes to their houses, and
6. **Whereas**, in *Cochran*, the Virginia Supreme Court ruled that variances can only be granted upon a showing of “undue hardship,” i.e., that, unless the effect of the zoning ordinance, would, in the absence of a variance, ‘interfere with all reasonable beneficial uses of...[a particular] property, taken as a whole,’ (thereby making variances unavailable in all but an extremely limited number of situations), and
7. **Whereas**, the **Board of Supervisors (BOS)** has “determined that it may be in the County’s best interest to allow some limited flexibility with regard to certain ZO provisions, such as minimum yard...requirements,”¹ through “the establishment of a new special permit to allow the BZA to grant yard reductions in certain limited circumstances,” which would apply only to existing structures,² and
8. **Whereas**, there is now before the county a proposal to amend the ZO to establish a new special permit that would allow the BZA to reduce certain yard requirements (hereafter referred to as the proposed Zoning Ordinance Amendment, or **proposed ZOA**) which is intended to satisfy the BOS’s concerns recounted in the previous whereas clause, and
9. **Whereas**, the cumulative effect of the increase of impervious surfaces around the county is a serious environmental concern which is not sufficiently addressed in the proposed ZOA by the inclusion of a gross floor area limitation or by a general requirement to consider stormwater runoff,³ and

¹ Staff Comment to Proposed Zoning Ordinance Changes Regarding the Reduction of Certain Yard Requirements and Clarification of Accessory Structure Height Measurement, now scheduled for consideration by the Planning Commission on June 1, 2006, and by the BOS on July 10, 2006 (“Staff Comment”).

² Staff Comment.

³ Nearby “Vienna limits impervious lot coverage to 25%,” Schanke, “McMansions pose challenges,” McLean Times, August 25, 2005 (p. A9). Also see Morello, “Vienna is Rated a Great Place to Stop—Permanently,” Washington Post, July 12, 2005 (p. B1), which states that Vienna “town zoning regulations permit no more than 25% of a lot to be covered by a house, patio and driveway.”

10. **Whereas**, the County has asked whether the proposed ZOA should address setback provisions applicable to all types of zoning, or just residential zoning, notwithstanding the absence of any demonstrated need to create an avenue for extraordinary relief in commercial and other nonresidential situations, and
11. **Whereas**, the proposed ZOA lacks sufficient “threshold ” provisions, i.e. provisions restricting the consideration of applications to those which show extraordinary circumstances that do not rise to the level of “undue hardship,”⁴ but which, nonetheless are severe enough to warrant relief, and
12. **Whereas**, notwithstanding the need for limited flexibility in the ZO (as the facts of the McLean case that gave rise to the *Cochran* decision make clear), the MCA believes that the granting of exemptions from the ZO was being abused before that decision was issued, and
13. **Whereas**, the BOS agreed that the difficulties the homeowner encountered in the McLean case that gave rise to the *Cochran* decision were not so egregious as to support the relief granted by the BZA in that case (as evidenced by the fact that the BOS intervened in the case on the side seeking to overturn BZA’s decision to grant the homeowner a variance), and
14. **Whereas**, the MCA believes that the facts of the McLean case that gave rise to the *Cochran* decision make it clear that any flexibility in granting relief from provisions of the ZO must be strictly circumscribed to insure that such flexibility not be abused, and
15. **Whereas** (as noted by the Virginia Supreme Court in the *Cochran* decision), while the BZA only acts in an administrative capacity when it hears applications for variances, when the BZA considers applications for special exceptions or special use permits, the BZA acts in a legislative capacity and the decision of the BZA must be sustained by a court if the record shows the issue to be “fairly debatable,”
16. **Whereas**, the BOS is the county’s legislative body, and
17. **Whereas**, in light of the deference due to the BZA when it acts in a legislative capacity, the decision of the Virginia Supreme Court in the *Cochran* case (to reverse the BZA’s decision to grant a variance) might well have been different if the variance application were submitted as a special permit application under the proposed ZOA, and
18. **Now, therefore, be it resolved**, that, in principle, the MCA supports amendment of the ZO to add limited flexibility to the ZO, and
19. **Be it further resolved**, that any amendment to the ZO should contain the following threshold provisions:
 - a. That strict application of the ZO would severely and unfairly restrict the property owner’s use of the property,
 - b. That the difficulties of the applicant are not of his own making;
 - c. That the condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;

⁴We note that currently there are some threshold provisions included in the proposed ZOA in the form of criteria for decision-making, rather than in the form of threshold issues which must be satisfied before the application is even considered. Examples of these are the requirements that the property contain an existing structure and that the property not be subject to an existing special permit plat. Lacking, however, are “affirmative” threshold provisions which distinguish those applicants who simply want to fashion their own personal zoning ordinance from those who truly need relief.

- d. That there be no reasonable alternative to relief from provisions in the ZO, and
- 20. **Be it further resolved**, that the MCA does not support delegation by the BOS of its legislative authority to an unelected body which will be entitled to special deference in making legislative decisions,
- 21. **Be it further resolved**, that the MCA would support one of the following:
 - a. a ZOA similar to that proposed which permits the BOS to grant special exceptions under Article 9 of the ZO in lieu of permitting the BZA to grant special permits, or
 - b. a ZOA similar to that proposed which permits the BZA to act as a gatekeeper by evaluating applications in accordance with threshold requirements, i.e. requirements which would allow an applicant to proceed, under the special exception process, to apply to the BOS for legislative relief from the ZO only after the BZA finds, under the threshold requirements, that legislative relief is warranted, and
- 22. **Be it further resolved**, that the MCA believes that Fairfax County should limit the availability of relief so that impervious lot coverage is no more than 25% of the lot, as the Town of Vienna already does in all situations, and
- 23. **Be it further resolved**, that the MCA agrees with the BOS's preference that any proposed ZOA not be applicable to vacant land, and
- 24. **Be it further resolved**, that the MCA opposes application of the proposed ZOA to nonresidential properties.

cc:

Fairfax County Board of Supervisors
 Fairfax County Planning Commissioners

The resolution was introduced by P & Z Co-chair Dale Murad. Due to the fact that the P & Z met on May 30 and the Planning Committees's meeting was to take place on June 1, the resolution, after discussion regarding the language, was approved at Executive Committee level and distributed to the BOS and the planning commissioners in time for the Planning Commission's meeting.

TRANSPORTATION COMMITTEE

**Mc LEAN CITIZENS ASSOCIATION RESOLUTION
 RZ2004-PR-044
 Tysons Corner Holdings, LLC**

- (1) **WHEREAS** Tysons Corner Holdings, LLC (the "Applicant") has filed an application for rezoning of the property known as Tysons Corner Center, Fairfax County Tax Map parcels 29-4 ((1)) 35A and 35C and 39-2 ((1)) 2, 4, and 5 (the "Tysons Corner Center Property") that is currently zoned C-4 (High Intensity Office District) and C-7 (Regional Retail Commercial District) and the Applicant has asked that the Property be re-zoned to PDC (Planned Development Commercial); and,
- (2) **WHEREAS** the Tysons Corner Center Property is approximately 78.64 acres, is currently developed with 2,517,057 square feet in the Tysons Corner Center shopping mall and is being proposed by the Applicant to be expanded by the removal of 42,922 square feet of the existing shopping mall and the addition of 3,493,100 square feet of gross floor space to the development, including 1,376,000 square feet of "office", 1,640,900 square feet of "multi-family residential units", 274,500 square feet of "hotel", and 201,700 square feet of "new retail"; and,

- (3) **WHEREAS** the Applicant maintains that its rezoning application is consistent with the County's Comprehensive Plan and, therefore, that the Applicant does not require a Comprehensive Plan Amendment to seek rezoning of the Tysons Corner Center Property; and,
- (4) **WHEREAS** to the contrary, the Policy Plan, Land Use and the Transportation sections of the **Fairfax County Comprehensive Plan** recognize the inter-relationship of land-use planning and transportation planning and contain a number of references that contradict the Applicant's statement, such as:

The overall Policy Plan of the Fairfax County Comprehensive Plan provides, in part, that:

- "land use must be balanced with the supporting transportation infrastructure";
- the County should "limit development intensity to that which can be accommodated at acceptable levels of service with consideration of the cumulative, long term impacts of development on the adequacy of public facilities and transportation systems";
- the County should "influence the timing of development to coincide with the provision of transportation and other necessary public improvements"

In the Comprehensive Plan for the Tysons Corner urban center, the section entitled "Transportation Policies Underlying the Land Use Concept" states that "the transportation system required to support the (Tysons Corner Urban Center) development concept includes many assumptions regarding future travel behavior and rests upon several important policies adopted for Tysons Corner"

The Comprehensive Plan for the Tysons Corner Urban Center provides, in part:

- "one of the basic tenets of the Tysons Corner Plan is that an adequate transportation system composed of highways, rail and other transit enhancements as well as the transportation demand management (TDM) program is essential to achieve the vision of the Tysons Corner Urban Center";
- "the Tysons Corner Urban Center land use concept is based on the complete build out of the planned transportation system in and around the Tysons corner area", including: (a) "approximately 18 additional lanes of freeway and arterial roadway capacity" and widening the Capital Beltway to "at least 10 lanes including an HOV facility", (b) widening of the Capital Beltway, the Dulles Toll Road, Route 7, Route 123, Gallows Road, Spring Hill Road, International Drive, and Magarity Road, (c) constructing new grade-separated interchanges at (i) Route 7, Westpark Drive, and Magarity Road, (ii) Route 7, Gallows Road, and International Drive, and (iii) Route 123 and International Drive, (d) constructing improvements to interchanges at (i) the Capital Beltway, Dulles Toll Road, and the Airport Access Road, (ii) the Capital Beltway and Route 123, (iii) the Capital Beltway and Route 7, (iv) Route 7 and Route 123, (v) Route 7 and the Dulles Toll Road, and (vi) Route 123 and the Dulles Airport Access Road;
- "if the planned [transportation] capacity improvements are not implemented in a timely manner, failing traffic conditions could be manifest throughout the area";
- "if development occurs in accordance with the land use recommendations of the Plan and if transportation recommendations remain unfulfilled, it will be impossible to preserve Level of Service E on the roads of Tysons Corner"; and

- (5) **WHEREAS** the road widening, grade-separated interchanges and interchange transportation improvements – on which the land use concept for the Tysons Corner Urban Center is based – have not been constructed, which the Comprehensive Plan requires for the Tysons Corner Urban Center before the densities requested by the Applicant can be approved, and

- (5.1) **WHEREAS** there are approximately 20 nominations pending for amendments to the plan for the Tysons Corner Urban Center which seek dramatically increased density; and
- (6) **WHEREAS**, in May 2005, the County Board of Supervisors established the **Tysons Corner Coordinating Committee** (the “Tysons Committee”) to update the Comprehensive Plan for the Tysons Corner Urban Center and defined the Tysons Committee’s scope to include: (a) focusing on transit nodes; (b) folding the APR nominations into this process, of which approximately twenty have been deferred by the County Board of Supervisors pending the results of the Tysons Committee’s study; (c) ensuring that transportation impacts are addressed; and (d) helping define the future of Tysons Corner:
- the Tysons Committee’s efforts are ongoing and include significant community outreach efforts and public involvement;
 - the Tysons Committee is encouraging and receiving substantial input from the public regarding the types and densities of development that should be encouraged in the Tysons Corner Urban Center;
 - the Initial Community Outreach Findings (the “Community Findings”), dated March 8, 2006, that were presented to the Tysons Committee reported on the results of 20 community dialogues and web-based inputs conducted as the initial phase of the community outreach for the Tysons Committee;
 - the Community Findings identified, among numerous others, the following themes and values expressed by the community for the future of Tysons Corner: (a) enhance ability to travel to and from Tysons Corner from surrounding areas; (b) ensure that infrastructure and public facilities are sufficient to meet any increases in density; (c) decrease traffic in general; and (d) improve the flow of traffic within and through Tysons Corner; and,
- (6.1) **WHEREAS** the Tysons Corner Center Property should be included within the Tysons Committee’s study area, as established by the County Board of Supervisors, and subject to the planning criteria ultimately adopted as a result of the Tysons Committee’s efforts; and,
- (7) **WHEREAS** the Tysons Corner Center Property is within a transit node, adjacent to a proposed Metrorail station and in the Tysons Corner Urban Center and is critical to the character, function, and future of the Tysons Corner Urban Center; and,
- (8) **WHEREAS** Fairfax County is about to make a huge investment to provide Metrorail service to and through Tysons Corner; and,
- (9) **WHEREAS** Fairfax County is entitled to receive the benefits that can be derived from the concept usually referred to as “transit-oriented development” and on May 4, 2006, the County Planning Commission formed the **Transit-Oriented Development Committee** to serve on a short-term basis to sponsor an open and visible process for gathering input on a consensus vision and guidance on Fairfax County Transit-Oriented Development and that:
- by November 2006, the Transit-Oriented Development Committee intends to recommend language to the Board of Supervisors and County staff for use in a future Policy Plan Amendment that provides a standardized definition and set of guiding principles for Transit-Oriented Development in Fairfax County and, therefore,
 - the proposed Transit-Oriented Development of the Tysons Corner Center Property should be subject to the planning criteria ultimately adopted as a result of the Transit-Oriented Development Committee; and,
- (10) **WHEREAS** the MCA wrote to the Applicant on January 6, 2006, and asked the Applicant (a) to explain why it would not be in the best interest of Tysons Corner and the

public to defer the re-zoning application and include the Tysons Corner Center in the Tysons Study; (b) to explain how it is consistent with the Comprehensive Plan for the Tysons Corner Urban Center to dramatically increase densities on the Tysons Corner Center Property before the planned transportation improvements in the Tysons Corner Urban Center are in place; and (c) to provide an analysis of the financial costs and benefits to County taxpayers as a result of the rezoning, to which it has not responded, other than to refer the MCA to the Applicant's draft proffers; and,

(11) **WHEREAS** the Applicant is not entitled to the requested Rezoning as a "matter of right"; and,

(12) **WHEREAS** the Applicant has indicated to the McLean Citizens Association that it will

not defer or withhold the rezoning application until the County Board of Supervisors has acted on the recommendations of the Tysons Committee and the Transit Oriented Development Committee, and the Comprehensive Plan is either complied with or amended.

NOW, THEREFORE, BE IT RESOLVED that the McLean Citizens Association opposes the rezoning application at this time and, if the Applicant will not so defer or withdraw the application, the McLean Citizens Association recommends that the County Planning Commission reject the Application on the grounds that:

- a) the Rezoning cannot be approved because the transportation network in the Tysons Corner Urban Center is already overburdened and is inadequate to support the traffic that will be generated by the significantly increased densities requested by the Applicant, and
- b) the Rezoning cannot be approved without an amendment to the Comprehensive Plan for the Tysons Corner Urban Center.
- c) the Rezoning should not go forward until the Board of Supervisors can evaluate the results of the Tysons Corner Land Use Task Force & the Transit Oriented Development Committee.

cc: Fairfax County Board of Supervisors
Fairfax County Planning Commission
Mr. Peter Braham, Planning Staff
Mr. Antonio Calabrese, Cooly Godward, LLP
Mr. Jim Scott, Tysons Corner Coordination Committee

President Brock invited MCA Planning Committee Chairman John Foust to introduce the Resolution. After discussion, the resolution was passed with two abstentions (Frank Crandall, Wade Smith).

ENVIRONMENT, PARKS AND RECREATION COMMITTEE

MCLEAN CITIZENS ASSOCIATION RESOLUTION

Regarding the Design of Additional Parking Spaces and Improved Traffic Flow in Spring Hill District Park

Whereas, the Fairfax County Park Authority (FCPA) held a public hearing on September 4, 2003 "to present a proposal for the Master Plan Revision at Spring Hill Park in McLean"; and

Whereas, the Master Plan Amendment for Spring Hill Park was approved by the FCPA Board with amendments on December 10, 2003; and

Whereas, the Master Plan Amendment calls for increasing the total number of parking spaces at Spring Hill Park from 283 to 532, a net increase of 249 spaces, including a “new, interim 64-space lot adjacent to the RECenter”; and

Whereas, the 2004 Park Authority bond passed by the voters of Fairfax County provides \$65 million from the bond for the FCPA to fund improvements, projects and acquisitions; and

Whereas, the FCPA 2004 Park Bond Program allocates \$3.21 million for Infrastructure Renovation and specifies that “Spring Hill RECenter parking would be expanded and traffic flow improved”; and

Whereas, the FCPA 2005-2009 Project Development Schedule, approved on January 12, 2005, shows an estimate of \$675,000 for “Spring Hill RECenter – 200 additional parking spaces” under “Group III, Infrastructure Renovation”; and

Whereas, the schedule also shows that Group III Infrastructure Renovation design will be conducted from the 3rd quarter of 2006 through the 3rd quarter of 2007, followed by the start of construction in the 4th quarter of 2007; and

Whereas, the figure of 200 additional parking spaces was used only for general planning estimates; and

Whereas, the planned new, interim 64-space lot occupies the area designated for the expansion of the RECenter, including a gymnasium; and

Whereas, the Master Plan Amendment also states, “In the future, the expansion of the RECenter will displace interim parking”; and

Whereas, interest in near-term construction of the gymnasium apparently has increased, and potential sources of funding for the gymnasium reportedly are being investigated; and

Whereas, nearly four years have gone by since data regarding use of the Park’s facilities and the need and location of additional parking spaces was collected and analyzed; and

Whereas, the neighbors and users of Spring Hill Park who contributed valuable observational data to the conceptual design for parking and traffic flow improvements at Spring Hill Park could also provide valuable input to decisions on prioritizing the locations for construction of new parking; and

Whereas, priorities for the neighborhoods surrounding Spring Hill Park are to insure sufficient legal parking on park grounds and to minimize the loss of mature trees; now therefore

Be it resolved, that the McLean Citizens Association urges the FCPA to refrain from designing interim parking on the site adjacent to the RECenter planned for a gymnasium; and

Be it further resolved, that the McLean Citizens Association urges that the FCPA work closely with the McLean Citizens Association, the Lewinsville Coalition, and other appropriate stakeholders to create the final design for the expenditure of the estimated \$675,000 for expanded parking and traffic flow improvements at Spring Hill Park.

Distribution:

Supervisor Joan DuBois
Board of Supervisors
Kevin Fay, Dranesville Representative, FCPA Board
Michael Kane, Director, FCPA
Lewinsville Coalition

The Resolution was passed unanimously.

REPRESENTATIVES/DELEGATES TO OTHER ORGANIZATIONS

MCLEAN PLANNING COMMITTEE

See above resolution on Tysons Corner Rezoning.

MCLEAN REVITALIZATION CORPORATION

Dan DuVal stated that bus shelters will be place in areas where landowners will accept them.

FAIRFAX COUNTY FEDERATION OF CITIZENS ASSOCIATIONS

Steve Del Bianco reported that it is envisaged in the ZO amendment on the agenda of the Board of Supervisors' July 10 meeting that impervious surfaces will be restricted to no more than 25% of the surface area of lots in Fairfax County. Commercial vehicles will be banned from residential districts. The Board of Supervisors will likely decide to cut the space requirement for side yards in half.

OLD BUSINESS

None.

NEW BUSINESS

None.

ADJOURNMENT

President Brock adjourned the meeting at 9:50 p.m.

Respectfully submitted,
Desmond B. O'Rourke, Recording Secretary