TOWN OF MIDDLEBURG
PLANNING COMMISSION
WORK SESSION AND REGULAR MEETING MINUTES

MONDAY, APRIL 27, 2026
PENDING APPROVAL

PRESENT: Morris "Bud" Jacobs, Chair
Donald Woodruff, Vice Chair (arrived late)
Kim Basinger, Member
Carolyn Hersh, Member
Paul "Drew" MacMahon, Member
Michael Rocconi, Member
Christopher Hersh, Councilmember

STAFF: William M. Moore, Deputy Town Manager
Rhonda S. North, MMC, Town Clerk
Amy Rogers, Planner

The Middleburg Planning Commission held their work session and regular monthly meeting on Monday, April 27, 2026 in the Town Hall Council Chambers. Chair Jacobs called the work session to order at 6:30 p.m. Town Clerk North called the roll.

Rooftop Dining

Deputy Town Manager Moore reported that the new owner of the Fun Shop property has appeared before the Historic District Review Committee (HDRC) on multiple occasions to review his proposed exterior changes to the property, one of which was the introduction of rooftop dining on top of the former Fun Shop storefront. He reported that the HDRC gave the owner conditional approval of his application; however, there were still details to be worked out in terms of what may or may not be seen from the public rights-of-way. Mr. Moore opined that the rooftop dining would probably go forward as a permitted use. He noted that the HDRC raised concerns over the compatibility of rooftop dining as a use in the Historic District; however, that did not fall under their purview. (Vice Chair Woodruff arrived at the meeting at 6:32 p.m.) Mr. Moore explained that they could only consider the aesthetics of what could be seen. He reported that during their strategic planning retreat, the Council identified this as one of their strategic initiatives for the coming year. Mr. Moore advised that he intended to present some options for regulating rooftop dining to the Council during their next meeting, which could include requiring a special use permit for rooftop dining; requiring a special use permit for all outdoor dining regardless of location; or, an outright prohibition on rooftop dining. He advised that he wanted to see if the Council had any strong feelings toward any of the options before sending this item to the Commission for their deliberation and recommendation since this was one of Council's strategic initiatives. Mr. Moore explained that he wanted to give the Commission a heads up that this was coming so they would not be surprised when it appeared on the May or June agenda to initiate a zoning text amendment.

Councilmember Hersh advised that the discussion during the Council's retreat centered around concerns that rooftop dining did not fit with the village; noise; the streetscape in terms of how it would look; and future requests and whether there should be a limit in some capacity.

In response to inquiries from the Commission, Deputy Town Manager Moore advised that he was not aware of any rooftop dining that had existed in Middleburg. He confirmed he has held several discussions with the Town Attorney, who was comfortable with any of the options being presented to the Council. Mr. Moore noted that those options had not yet been fully vetted and that the Town Attorney would need to see the full text.

Commissioner Hersh noted that in addition to rooftop dining, she had also heard that the owner was talking about having a bar on the roof. She opined that there was a huge difference between that and having people dining at table height tables with no music and no bar seating. Ms. Hersh noted that this was her concern. She reiterated that dining was different than bar seating with music.

In response to an inquiry from the Commission, Deputy Town Manager Moore advised that things like limitations on music were one of the particulars that would have to be worked out. He reported that the Town did not currently have regulations for restaurants, regardless of whether they were indoor or outdoor spaces, other than the Town's noise ordinance, which had overall sound level limitations during certain hours for restaurants.

Chair Jacobs noted that the rooftop activity this owner had for his hotel in Leesburg was a club that was not open to the public. He advised, however, that it was on the second floor, not the roof.

Deputy Town Manager Moore advised that the property owner had not yet submitted a zoning permit application clearly identifying the array of uses for the property. He noted that what he described to the HDRC, as well as to him during conversations, was that the club space would be on the second floor and the rooftop.

Vice Chair Woodruff noted that fifteen years ago, the Town experienced a number of bands that were playing at different locations that disturbed the residents to the point they had to contact the police to ask them to tone things down after 11:00 p.m. He suggested the need for restrictions on noise so the residents would not be disturbed after 11:00 p.m.

Chair Jacobs agreed. He opined that the four options that would be taken to the Council were good ones. He thanked the staff for taking this on.

Commissioner Basinger agreed with Commissioner Hersch and advised that her biggest concern was the possibility that this could include a bar. She expressed concern about setting that trend and opined that it felt like a different vibe than what Middleburg was. Ms. Basinger noted the proposed apartment units associated with this project and opined that if she was a tenant, she would not want a bar right next to her apartment. She noted that this did not even consider the other points about changing the view and how the downtown looked. Ms. Basinger reminded the Commission that the view coming in from the west was currently the church steeple and opined that this was part of what Middleburg was.

In response to an inquiry from the Commission, Deputy Town Manager Moore confirmed a special use permit would give the Commission the chance to review things like music and a bar. He advised that it would also give the Commission the ability to recommend, and the Council the ability to impose, conditions regardless of whether the applicant wanted them or not. Mr. Moore suggested the Commission could impose a condition that the applicant not have amplified music regardless of the noise ordinance, which would still be in effect.

In response to an inquiry from the Commission, Deputy Town Manager Moore advised that he believed a private club would affect the ABC (Alcohol & Beverage Control) requirements; however, he could not speak on behalf of the ABC Board. He opined that at least half of a restaurants' sales needed to come from food and suggested this may not apply to certain private organizations. Mr. Moore advised that he did not know whether that applied to the type of club the applicant was discussing and suggested he get more information.

2026 Legislative Update

Planner Rogers reported that the 2026 session of the General Assembly had wrapped up and advised that some of the bills were sent back to the Governor for action. She advised that the staff had identified four bills that would affect local zoning and planning, the first of which was Senate Bill 531, which requires localities to adopt an Accessory Dwelling Unit (ADU) ordinance. Ms. Rogers noted that if one was not adopted by July 1, 2027, the regulations would be what the State Code said. She explained that the bill required all localities to permit ADUs in single-family residential zoning districts and noted that they were prohibited from requiring they be special uses or that a family

member live in them. Ms. Rogers noted that such units would be available for rent; however, the bill did allow localities to require a lease of more than thirty days, meaning they could not be used for short-term rentals. She advised that under the bill, localities could not require setbacks any larger than the primary dwelling or an accessory dwelling or accessory unit; therefore, the Town would be required to allow them to be five feet from the property line based on the Town's ordinance. Ms. Rogers advised that the locality also could not be more restrictive in the regulation of height, lot size, or frontage from any dwelling unit on the property. She noted that it was also capped as to the amount of the fee that it could charge. Ms. Rogers noted that this was problematic in that an accessory dwelling unit could be taller than a single-family home in some instances because the bill did not require it be the lesser height. She reiterated that it would require an ADU to be closer to the property line than the Town would prefer a dwelling unit to be. Ms. Rogers noted that the bill did not go into effect until July 1, 2027 and expressed hope that the General Assembly would make some changes to it next year. She opined that the Town would need to look at adopting an ADU ordinance next year.

In response to inquiries from the Commission, Planner Rogers confirmed the Town could require a minimum floor area as low as 500 square feet for lots greater than 2,500 square feet or 350 square feet for lots that were less than 2,500 square feet. She opined that the units could basically be 20x24 feet or 480 square feet in size. Ms. Rogers advised that as to the question of whether a restriction could be imposed that this same square footage in the primary house could only be used for ADU purposes, the Town was uncertain due to the statement in the bill that localities could not be more restrictive. She noted that this was something the staff would discuss with the Town Attorney.

Commissioner Hersh opined that such a restriction would help from the perspective of water and pervious surfaces.

Planner Rogers noted that the bill allowed localities to regulate parking; therefore, the Town could require parking for the ADU, as well as require the property owner to replace any parking that went away because of the ADU.

In response to an inquiry from the Commission, Planner Rogers confirmed the owner had to occupy either the ADU or the primary dwelling at the time of application; however, not afterward.

Deputy Town Manager Moore noted that every year, municipalities battled to maintain local zoning control and advised that this was the greatest example of having it completely ripped away by the State. He noted that the State had essentially said that localities could not have single-family dwelling districts and that it must allow accessory dwelling units no matter what. Mr. Moore opined that while there was good intent to provide more affordable housing opportunities, it was not a good way to achieve affordable housing.

Chair Jacobs noted that a lot of times, proposed bills did not make it through the legislative process; however, some did if people were not paying attention, which 99% of the time people did not. He cited other proposed bills from the past that would have taken away local tax collection and zoning controls that did not pass.

Planner Rogers reported that a bill was passed by the General Assembly that allowed certain non-profit or religious organizations to build mixed-use or residential housing on their property by-right, regardless of the zoning of the property. She noted that the locality could only require administrative approval and could not require a special use permit or a rezoning. Ms. Rogers advised that the application would be deemed approved if the locality did not act on it within ninety days. She reported that it would allow for building heights of up to 45 feet, setbacks of 10 feet and a density of up to 20 units per acre. Ms. Rogers noted that they must have an affordable housing component. She reported that the Governor did amend the bill to restrict the building height if the property was in a historic district, and to make the application automatically approved and in substantial conformance with the comprehensive plan regardless of what that plan said. Ms. Rogers opined that this bill would not affect Middleburg because the non-profit or religious organization must have owned the property for five years before they could apply and could not buy a property to use the bill to their advantage. She advised that in looking at the non-profit and religious organizations in town, they could not act under this bill unless they were to build on a cemetery. Ms. Rogers noted that the bill contained a five-year sunset clause, which meant it would expire in 2031.

In response to an inquiry from the Commission regarding what would happen if an application was approved but the building was not built when the legislation expired, Planner Rogers advised that the staff was not sure. She reminded the members that with zoning, once something was approved, it was approved for five years. She opined that the application could be approved in the last year of the legislation and the applicant would still have five years to build it.

Commissioner Rocconi noted that one of the Council's strategic initiatives was to work with non-profits on developing affordable housing. He opined that if the Town found that a church or non-profit wanted to do something like this, it may be worthwhile to work with them to make sure it fit with the surroundings.

Planner Rogers reported that legislation was adopted related to cannabis; however, the Senate rejected the Governor's amendments and returned it to her. She noted that the Governor had thirty days to act on the legislation by either vetoing it or not signing it, in which case it would just become law. Ms. Rogers advised that depending on what she did, there could be a framework for retail cannabis in the Commonwealth of Virginia that would be administered by the Virginia Cannabis Control Authority. She noted that the bill provided that there be no retail sales prior to January 1, 2027. Ms. Rogers advised that effective January 1, 2027, the hemp market that had THC levels above what was now regulated would be folded under this. She reported that a locality could not adopt an ordinance that prohibited the cultivation, processing, distribution or sale of marijuana or marijuana products; therefore, the Town would have to adopt an ordinance to regular retail marijuana within the town limits. Ms. Rogers advised that the Town could regulate zoning, land use and hours of operation; however, it had to be reasonable. She noted the need to look at the zoning districts to determine where this would be appropriate. Ms. Rogers reported that the State licensing board may refuse to grant a license within 1,000 feet of a hospital, school, or daycare center; therefore, the Town could include this in its regulations. She advised that while the staff was unsure of the direction this legislation would take, they felt it was likely the Town would see it within the next year.

In response to inquiries from the Commission, Planner Rogers confirmed the Town could not hold a referendum on whether it wanted to allow the commercial sales of marijuana. She further confirmed that this was not for marijuana that was just for medical use and applied to what was for recreational use. Ms. Rogers reiterated that the staff anticipated this bill would be signed into law and that the Town would have until January 1, 2027 to put regulations in place as to where this use could go within the town limits. She advised that they had to be allowed somewhere and noted the need to identify where. Ms. Rogers advised that the number of retail licenses would be limited state-wide and opined that the number was 200, with additional licenses being released in 2029. She noted that the legislation contained vague language about the need to space the locations out over the population and advised that this would be driven by the State licensing board. Ms. Rogers confirmed there were taxing provisions in the bill.

Deputy Town Manager Moore noted that the staff had not focused on the taxing aspect of this; however, there were provisions that allowed for some taxing authority of between 1-3.5%.

Planner Rogers reported that House Bill 888, which regulates minimum off-street parking requirements in certain areas, no longer applied to Middleburg as the Governor proposed an amendment that changed the definition of a "designated area" to a parcel located within a half a mile of a mass transit station or facility. She noted that this was good because the original bill would have stripped a locality's ability to regulate off-street parking for residential properties.

In response to an inquiry from the Commission, Planner Rogers opined that the original intent of the bill was to limit a locality's ability to provide parking around areas of mass transit, as they wanted people to walk to the mass transit and to discourage people from owning cars.

Deputy Town Manager Moore noted that before the amendment, localities would have been stripped of their ability to regulated off-street parking almost anywhere. He opined that there was a coalition of people who believed parking was also an obstacle to affordable housing because developers had to provide x number of spaces per unit; however, he reminded the Commission that people still had to park somewhere unless they lived in a city that had mass transit that served the entirety of the city. Mr. Moore noted that those places were few and far between in America. He suggested the need for the Commission to keep this in mind and noted that the Town's off-street parking requirements, which were developed years ago, may not have good data and good reasoning behind them at times. Mr. Moore cited as an

example, shopping centers that had hundreds of empty parking spaces even when they contained popular large stores. He opined that it was incumbent upon the Commission to make sure the parking standards were reasonable when developing them.

Comprehensive Plan Review

Deputy Town Manager Moore reported that the staff was awaiting the report on the 2026 business licenses; therefore, it did not have the data to update the final chapter for the Commission's initial review. He advised that the staff was in the process of taking the Commission's comments and incorporating them into the chapters that were previously reviewed so they could bring a clean version to them in the coming months. Mr. Moore reported that the staff was beginning to work on the graphics and maps that would go along with the language. He noted that he previously reported that he was negotiating with an outside consultant to update the document for the Town; however, the proposed cost was not something the staff could agree to. Mr. Moore suggested the Town may or may not use an outside consultant for this purpose. He advised that the conversations were still ongoing.

Chair Jacobs closed the work session and called the regular meeting to order at 7:07 p.m.

Disclosure of Meetings with Applicants

No meetings were reported with applicants.

Public Comment

Kim Shelly, of Marshall Street, opined that the retail sales of cannabis and drinking on a rooftop bar were not good things for Middleburg. She opined that someone could throw something off the roof or someone could try to climb down off it. Ms. Shelly suggested noise would be an issue.

Approval of Meeting Minutes

Vice Chair Woodruff moved, seconded by Commissioner Hersh, that the Planning Commission accept the March 23, 2026 Work Session & Regular Meeting Minutes as presented.

Vote: Yes – Commissioners Hersh, Basinger, MacMahon, Rocconi and Woodruff and Councilmember Hersh
No – N/A
Abstain – N/A
Absent – N/A
(Chair Jacobs only votes in the case of a tie.)

Council Representative Report

Councilmember Hersh noted that the two issues that were discussed related to the Council's Strategic Planning Retreat were important. He expressed appreciation that the Commission would take the time to go over them in the coming months. Mr. Hersh opined that the Middleburg 250 Trivia Night event was great, as was the Arbor Day celebration during which two Middleburg residents were honored. He advised that Wellness Day was well attended and was a success. Mr. Hersh announced that Ali MacIntyre had resigned as Middleburg's Director of Business Development & Community Partnerships in order to take a job with the YMCA. He further announced that Danny Davis had resigned as Middleburg's Town Manager to take a position with Loudoun County. Mr. Hersh noted that the Town would be searching for a new Town Manager, as well as someone to fill Ms. MacIntyre's position, the latter of which was just posted.

Chair Jacobs opined that the Town was going to have a difficult time finding someone of Ms. MacIntyre's caliber. He noted that while he did not see the economic development part, she did a brilliant job and would be missed.

Quorum for May Meeting

Due to the conflict with the Memorial Day holiday, the Commission agreed to reschedule their meeting to May 18th.

There being no further business, Chair Jacobs adjourned the meeting at 7:13 p.m.

RESPECTFULLY SUBMITTED:

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Rhonda S. North, MMC, Town Clerk

(Note: This is a transcript prepared by a Town contractor based on the video of the meeting. It may not be entirely accurate. For greater accuracy, we encourage you to review the video that is on the Town's website – www.middleburgva.gov)

Bud Jacobs: Call the work session. [off mic] Rhonda, would you read our roll?

Rhonda North: Chair Jacobs.

Bud Jacobs: Here.

Rhonda North: Vice Chair Woodruff is absent. Commissioner Basinger.

Kim Basinger: Here.

Rhonda North: Commissioner Hersh.

Carolyn Hersh: Here.

Rhonda North: Commissioner MacMahon.

Drew MacMahon: Here.

Rhonda North: Commissioner Rocconi.

Michael Rocconi: Here.

Rhonda North: Council Member Hersh.

Chris Hersh: Here.

Bud Jacobs: Thank you very much. Will has a couple of easy and interesting discussion items for us. So, I'm going to kick it over to Will to do his thing.

Will Moore: Thank you, Mr. Chairman. We'll start out with the topic of rooftop dining. You have the memo. Just a quick background. I think you're all at least tangentially familiar with the Fun Shop property. The fact that that ownership entity has fairly recently changed for the property. And the new owner has been before the Historic District Review Committee on a few occasions to review his proposed exterior changes to the property. One of those changes would be the introduction of a rooftop dining space on top of the old Fun Shop storefront. So, when you're looking at the property, what's referred to as Mr. Allen's Studio, the kind of smaller structures on the right, but the main storefront of the former Fun Shop on the left or East Side he would propose putting an outdoor dining space on top of that two-story building. The Historic District Review Committee has given him conditional approval. There are still some details to work out with what elements may or may not be able to be seen from the public rights of way from street level. But that outdoor dining space will, on the rooftop will probably go forward as a permitted use currently. But with the deliberations over that and some of the concerns that the HDRC expressed over the compatibility of rooftop dining as a use, which HDRC doesn't technically have purview over use. They have purview over the

aesthetics of what can be seen. The topic of it was made its way to the ears of Mayor and Council and during a strategic planning retreat that they held just recently, they identified this topic as one of their strategic initiatives for the coming year. And you have a copy of their full strategic plan in your packet as well. It also references, by the way, the update of the Comprehensive Plan that we're currently working on. So, in terms of process and we make reference to it in the memo here, we intend to go back to Council at their upcoming May 7th meeting and present them a few different options for potentially regulating rooftop dining. We outlined what some of those might be in the memo, which could include requiring a Special Use Permit for rooftop dining, requiring a Special Use Permit for all outdoor dining, regardless of whether it's ground level or rooftop or just an outright prohibition on rooftop dining. And we're going to present a few of those options a little more refined than that to the Council to see if they have any strong feelings on one of those paths before sending it to you for your deliberation and recommendation. Or they may simply say, take all the options to the Commission, and let you work through them, but we'll take that direction from Council since it is one of their strategic initiatives. But we wanted to give you a heads up on this if you hadn't picked up on the chatter about rooftop dining as it is, so that you would not be caught by surprise when we bring it to you, either at your May meeting or June meeting to potentially kick off a Zoning Text Amendment related to the use. Happy to gather any input from you at this point or answer any questions you might have.

Bud Jacobs: May I ask our Council Liaison to talk to us about what Council was saying about all this during the retreat?

Chris Hersh: Sure. At the retreat, the discussion was along the lines of people concerned about one, in a federal village, is rooftop dining something that fits with the federal village? Second were sound concerns. Third was streetscape. Streetscape in terms of how it looks. And then also the fourth I would say would be with this one, is there any concern of others and do we limit number in some capacity? Those would be the four issues that I think were the main things at the retreat.

Bud Jacobs: That's really helpful. Thank you. Anyone have any comments reactions that you'd care to share?

Don Woodruff: My question is has there ever been any rooftop dining in Middleburg to your best of your knowledge?

Will Moore: Not that I'm aware of.

Don Woodruff: Okay, I didn't think so. I wonder why this suddenly cropped up other than maximizing the use of the building, which I guess is what Clay Construction would like to do. Thank you.

Bud Jacobs: Anyone else?

Chris Hersh: Mr. Chairman.

Bud Jacobs: Please.

Chris Hersh: Any input from the Town Attorney as to this at this point?

Will Moore: We've discussed several options with him. Any of the options that we present to Council for consideration they're not fully vetted because we don't have the full text, but he's comfortable with any of the potential options in concept, but he would need to see the full text of how the regulations might read.

Chris Hersh: Thank you.

Bud Jacobs: Ms. Hersh.

Carolyn Hersh: I guess my comment would be is I've heard rooftop dining, but I also heard that they were talking about a bar. And to me, there's a huge difference between having people up there dining at table height tables with no music and no bar kind of seating. Just so that we're on the same page as the applicant that's my concern. Dining, to me is a whole different ballgame than bar seating with music and. Anyway.

Don Woodruff: Will, would there be any limitations on music, for instance?

Will Moore: Again, these are particulars that we would have to work out. Currently we don't have any music specific regulations for restaurants and either they're indoor or outdoor spaces. Other than we have a noise ordinance that in particular identifies restaurants and has limitations on the overall sound level at certain hours.

Bud Jacobs: I do know that the rooftop activity that he has on his hotel in Leesburg is, as I understand it, is actually a club. So, it's not open to the public. And I don't know how many members there are, but it's apparently, it's allegedly a club.

Don Woodruff: Isn't the second floor going to be a private club? That's what I read. Members only.

Bud Jacobs: Second Floor. Not roof.

Don Woodruff: Not roof.

Bud Jacobs: Oh.

Don Woodruff: So maybe it would include the roof. That's the question.

Will Moore: The only way I can really answer that question right now is I don't know because he has not submitted zoning permit applications, clearly identifying the different proposed array of uses. However, what he described to the HDRC, what he has described to me in conversations, was that the club space would be the second floor and the rooftop.

Bud Jacobs: Okay.

Don Woodruff: My last query goes back to about 15 years ago when we had a number of bands, let's say, who played at different places, and they just disturbed the people of Middleburg to the degree that they contacted the police to get them to tone down at 11:00 at night. So that, you know, you have to have restrictions on those things because there are people who live in Middleburg, and I think that they don't want to be disturbed at 11:00 at night by you know, the Beatles or whatever, whoever they have. [laughter] No comment over there.

Bud Jacobs: That's a really good point, Vice Chairman Woodruff. I don't have anything more. Let me just speak for me and then you guys can chime in. But the four options that you laid out here and that whole approach is fine with me. It's a good idea. Thank you so much for taking it on. Anyone else?

Kim Basinger: I just want to agree with Commissioner Hersh that I think the biggest thing for me is I heard about the possibility was if it was going to be a bar that was concerning to me, not only from setting a trend of that, because that just felt more like a different kind of vibe than what I think Middleburg is. But also, for

me, if I'm renting one of the seven units, I think it's seven units that are going to be there. I wouldn't want to be renting that and having a bar right next to me. So that was something that I was thinking, and that's just not even considering the other points that were made about changing the view, the way it looks downtown. I do think, you know, just the idea that of how it might look coming in, especially from the West, knowing that you see the church steeple as the highest thing in the town. I think that's part of what Middleburg is.

Bud Jacobs: Please.

Michael Rocconi: Question for Will, I think. Would requiring a Special Use Permit, give us a chance to review things like whether there would be music or a bar or things like would that be the mechanism for that?

Will Moore: Yes. So, it would give you that chance. It would also give you the ability to recommend and Council the ability to impose conditions whether they were wanted by an applicant or not. So, you could specifically impose a condition that says regardless of noise ordinance, noise ordinance is still in effect, but you cannot have any amplified music, live or otherwise as just an example.

Michael Rocconi: Thank you.

Chris Hersh: Mr. Chairman.

Bud Jacobs: Please.

Chris Hersh: And again, a question for Will. In terms of a private club, does that change any safety requirements ABC permit requirements? Any of those kind of things?

Will Moore: I believe it, I believe it affects ABC requirements, but I don't want to speak on behalf of ABC. But I know there are certain types of fraternal clubs which do not have many of the same ABC requirements that a typical restaurant would have in terms of needing to have a certain percentage of your gross receipts be from food sales, for example, like if you have a mixed beverage in addition to beer and wine license, I believe you have to have at least 50% of your sales has to be coming from food. With certain types of private organizations that does not apply. I'm not sure if that's the case with the type of club Mr. Ash operates, but I can get some more information on that.

Bud Jacobs: Anyone else? I think we can move on if you've got what you need, Will.

Will Moore: Okay, so moving on. Next. Miss Rogers is going to walk you through some of the genius of the Virginia General Assembly from this year.

Amy Rogers: So, the 2026 General Assembly is wrapping up. It wrapped up last week, but still some bills are unsigned, as you'll find, and some were sent back to the governor. We highlighted four bills that affect local zoning and planning for you to look at. The first one is Senate Bill 531 which requires a locality to adopt Accessory Dwelling Unit Ordinance. Doesn't require them to adopt them, but if they don't, it would revert to what the law says one's not adopted by July 1st of 2027. It requires all localities permit ADU's in single family residential zoning districts. So, it's not a type of unit, for example, detached housing. It doesn't say that it's a zoning district. So, if there's a single-family detached district, ADU's would be required to be in that district. We're prohibited from requiring special uses for those types of ADU's. We can't mandate that a family member lives in the ADU. So, it would be available for rent. The one good thing that the bill does, it allows localities to require a lease of more than 30 days, which means that it cannot be a short-term rental. So, it would be a rental that is for rental purposes or again, for a family to live there for free if someone

wanted them to. We can't require setbacks that are any larger than the primary dwelling or an accessory dwelling, accessory unit or of some kind like a garage or a shed. So, we'd be required to allow them to be five feet from the property line based on our ordinance. We also can't be more restrictive in height or setback or lot size or frontage from any dwelling unit that's on the property and we're capped with our fees. This is somewhat problematic because again, you can require, you can have an accessory dwelling that could be taller than your single-family home in some instances, because it doesn't require to be at a lesser height than your dwelling. And again, it also requires them to be closer to the property line than we prefer a dwelling to be. This doesn't go into effect until July 1st of 2027. We can always hope that next year they make some tweaks to it, that we get a little bit more leeway with it, but it looks like we'll be looking at an Accessory Dwelling Unit ordinance sometime in the next year. Any questions about Accessory Dwelling Units?

Bud Jacobs: That was very helpful. Thank you very much. Appreciate the timeline.

Amy Rogers: Certainly.

Michael Rocconi: Mr. Chairman.

Bud Jacobs: Please.

Michael Rocconi: I just had one question. I did read this bill, and it looked like one of our controls. Was that we could require we could require a minimum floor area of as low as 500ft².

Amy Rogers: Correct.

Michael Rocconi: Okay.

Amy Rogers: Correct. Yeah. Minimum 500ft² for lots greater than 2500ft². If it's less than 2,500, the minimum was 350ft². So, yeah, you could make it as small as that inclusive of everything.

Michael Rocconi: So that would be a pretty I mean, that, to me, that looks like the strongest control we would have right now is the.

Amy Rogers: Basically 20 by 24 is 480ft². So, it'd be about that size.

Michael Rocconi: Thank you.

Amy Rogers: Correct.

Bud Jacobs: Now that's a really good point. [off mic] Please.

Carolyn Hersh: Does it also can we put it under the square footage of the primary house can only use so much of the square footage of the lot or is that?

Amy Rogers: So? There was a statement in the bill that basically said we couldn't be more restrictive. So, we're uncertain at this point whether or not we can do that. And that's something that we're going to be talking with the town attorney about to see if, you know, we can use those caps that we have and include the ADU under those caps.

Carolyn Hersh: Okay because it seems like that could.

Amy Rogers: It would help.

Carolyn Hersh: That would help. It would help even from a water perspective and a pervious.

Amy Rogers: The one thing I didn't mention was that it does allow us to require parking. Earlier versions of the bill did not allow us to control the parking on the lot, so we can require parking for the ADU, as well as if the parking goes away because of the ADU replace it and add parking. So that's something that was added.

Bud Jacobs: Okay.

Chris Hersh: Mr. Chairman.

Bud Jacobs: Please.

Chris Hersh: A quick question. In terms of owner occupancy reading through the bill, it sounds like only at the time of application is submitted.

Amy Rogers: Correct.

Chris Hersh: That the owner has to either be in the ADU or in the primary dwelling. And after that, that's not the case. Am I reading that correctly? Okay. Thank you.

Amy Rogers: Okay.

Bud Jacobs: Well, Will this is fun. [laughter]

Will Moore: Not to be dramatic, but this is probably, you know, every year there are battles to do the best we can to maintain local zoning control. And this is probably the greatest example in recent times of it just being completely ripped away by having the state come in and say, you can't have essentially single-family dwelling districts, you have to allow for these accessory units no matter what. And, you know, it's, there's good intent there. There's an intent to try to provide for more affordable housing opportunities. This is not a good way to achieve affordable housing. But again, that's my editorial comments.

Bud Jacobs: The road to hell. [laughter] I'm going to comment too. A lot of times the stuff doesn't make it through the legislative process. And if you weren't paying attention, which is 99% of the people, you wouldn't know that a couple three years ago, the state Assembly decided they were going to centralize the collection of the occupancy tax and create a facility in Richmond or wherever to handle the distribution of the receipts all through the Commonwealth of Virginia. [laughter] Fortunately, it didn't go anywhere. And there was another one of similar cast about taking away local authorities. Something about zoning. Do you remember that, Will? Didn't they? They wanted to impose sort of no zoning rules for affordable housing for a while there, and that I don't think that one had much steam. But still, it was interesting. What do you got next?

Amy Rogers: The next one is kind of similar to you were saying. No rules if you're a religious organization or a nonprofit tax-exempt property. This legislation would allow certain nonprofit organizations or religious organizations to build by right mixed use or residential housing on their property, regardless of the zoning on the property. And they would only require administrative approval. So, no Special Use Permit, no rezoning. You can build it. They'd be deemed approved if we didn't act on it within 90 days. And it would allow for heights up to 45ft, setbacks of ten feet and density of up to 20 units per acre. They did have an affordable housing component of them. The governor did make amendments to this bill, which were actually helpful to

us in that it allowed the Historic District to regulate the height on the property. So, prior to that, it didn't matter whether the Historic District or not, it could go up to 45ft. But again, there's no discretionary or SUP process in this one. And the governor also deemed it automatically approved and in substantial conformance with the comprehensive plan, regardless of what the comprehensive plan said. The one thing I can say about this bill is that while it seems like it would affect us, I don't believe it will. And I say that because the religious organization or nonprofit would have to own the property for five years before they could apply. So, no one can come in and buy a property to use this bill to their advantage. And looking at the religious properties we have in the nonprofit properties, it doesn't appear that there's really unless there are going to be a cemetery somewhere to do this. So, we're not we're optimistic that this will not affect us the way it's drafted currently. It does have a sunset clause where it dies in 2031. So, five years from now it will go away. Any questions about this one?

Bud Jacobs: If you're going to impose something like this, why does it have an expiration date? What do you do if it doesn't get renewed? All those decisions.

Amy Rogers: That came up in a legislative call earlier today about what would happen. They're not really sure. But, you know, with zoning, if it is approved, it's technically approved for five years. And, you know, unless you don't build on it, so it still could be approved on the fifth year and have five more years to be built technically, so.

Bud Jacobs: Anybody questions?

Michael Rocconi: So, we do have one of our top nine strategic goals, I guess it is, is to work something like working with nonprofits to develop affordable housing. So I'm only saying this because if we do find ourselves in a situation where a church or other organization wants to do something like this and use their property for this, it might be worth trying to work with them to make sure, we can do what we can to make sure it fits with the surroundings and, and whatnot, since it is one of our strategic goals. Thank you.

Bud Jacobs: That's a great comment. Will and his folks are legends in their own minds because of the soft glove treatment they give our citizens, which is a really delightful thing.

Will Moore: Fun fact before moving on to the next one, we've all heard of the acronym NIMBY, not in my Backyard that everyone referred to this one because of the religious link as the YIMBY, which was, yes, in God's Backyard. [laughter]

Drew MacMahon: Oh, my goodness.

Bud Jacobs: Well, you better keep laughing. Let's talk about cannabis.

Amy Rogers: Cannabis, well, we're not exactly sure where cannabis is right now because the Senate rejected the governor's changes and sent them back to her desk. So, which means it relies on the bill that they passed and not the changes that she made. She has 30 days to act, either veto it or not sign it, or if she doesn't sign it, then it just becomes law. After 30 days, we're not sure where it's going to be, but there may be a framework for retail cannabis very shortly in the Commonwealth administered by the Virginia Cannabis Control Authority. The bill provides that no retail sales may occur prior to January 1st of 2027. And effective January 21st of 2027. The hemp market that has THC above the levels will now be regulated under that as well. So, the hemp market will be folded under that. So, with this, that the locality cannot, cannot, adopt an ordinance that regulates or prohibits the cultivation, processing, distribution, sale of marijuana, marijuana products. And there's a lot of other verbs that go with that. I just did the high level one of those. So that means we'll have to, again, adopt an ordinance of some fashion to be able to regulate retail marijuana within

the town limits. We can regulate zoning land use. And the bill specifically allows us to regulate hours of operation so we can you know, say 12 to 12:30 is the only time you can set up. We were joking about that the other day. They get a half an hour that they can sell during the day. But we have to be reasonable. We can't just do it that way. [laughter]

Bud Jacobs: Customers would be late.

Amy Rogers: Yeah, but so we'll have to look at zoning districts where that this may be appropriate. The one thing is that the licensing board may refuse to grant a license or within 1000ft of a hospital, public private, parochial school, higher institution, or child day care program. So as a locality, we can also put a restriction from those that can't be more than 1,000ft when we're looking at this, but we're still unsure of which direction this is going to go in. But we will likely be seeing this in the next year as well.

Bud Jacobs: On this bill, I guess a previous version had a provision allowing for localities to hold referenda on whether they wanted commercial sales.

Amy Rogers: That's not, no longer in there.

Bud Jacobs: That's gone. Okay. Please.

Carolyn Hersh: So, are we discussing is this medical marijuana use? This is just purely recreational that we have now.

Amy Rogers: It has not been again signed into law yet, but we're anticipating it will be. So, when that happens, we will have until January 1st of 2027 to have something in place that we can regulate where it would go within the town limits if. We have to allow it somewhere. So, we'll have to figure that out. Thank you.

Bud Jacobs: Yeah. We may find our one-mile radius interesting in this context, if people can't build in town, they may try to set something up in a pasture somewhere.

Amy Rogers: So, the number of retail licenses is limited statewide. I believe the number right now is around 200. And then in, I think it's 2029, they'll release additional licenses. There's some vague language in the legislation that basically says that there's supposed to be spaced out appropriately for the population, so the location of them will, of course, be driven by the licensing board at the state level.

Chris Hersh: Mr. Chairman.

Bud Jacobs: Please. Yes.

Chris Hersh: Are there any taxing provisions within the bill for localities or just state level?

Amy Rogers: I believe there are taxing provisions that from this morning when I was remembering what we heard. Yes.

Will Moore: Yes. We've not focused on that aspect of it to this point, but there are some provisions. In fact, I think based on the call this morning, there's a requirement not. Right. Something like between 1 and 3.5% or something like that. So, there will be some taxing authorities built in.

Bud Jacobs: Others. Thank you, Amy.

Amy Rogers: Okay. We have one more and that's House Bill 888, which regulated minimum off street parking requirements in certain areas. It provided that a locality should not require conditional zoning approval, minimum parking for residential multi-family, mixed use developments within a designated area. The original bill defined designated areas very broadly and included any parcel within a zoning district classification that permits residential, multi-family or mixed-use developments and authorizes a floor area ratio of 1.0 or greater, or an equivalent density based upon units per acre. The amendment proposed by the governor changed the definition of designated area to a parcel within a half a mile of a mass transit station or facility. Which was great because the original bill, as written, stripped the locality's ability to regulate off street parking on residential properties. So once the definition changed, we are no longer affected by this bill, that actually happened the day we were writing the memo. So, that's why it still remains on the memo for today. So, that's all we had for you on that one. If you have any questions on that.

Bud Jacobs: Please. Yes.

Carolyn Hersh: What's the goal of this?

Amy Rogers: So, I believe originally what they were trying to do is say in areas around mass transit that to limit the locale's ability to provide parking because you want people to walk to the mass transit to, I think, to discourage people from owning cars, maybe so that they would walk and commute to work. That's what I was kind of getting out of it when I was reading it. [laughter]

Will Moore: Yeah. But before that became the definition of the designated area, the stripping of your ability to regulate it almost anywhere. Again, there's a coalition of folks out there who believe that parking is also an obstacle to provision of affordable housing, because someone wants to come in and build an apartment building, and they're told that you have to go along with that you have to have X number of spaces per unit. And then that can be an inhibitor of the building of the affordable units. Most people still got to park somewhere, you know, unless you're in an actual city like New York that has mass transit, that serves the entirety of the locality. And those places are few and far between in America. So, but yeah, so the, you know, there was that intention of just removing that. I will say in fairness, it's something that we need to keep in mind though. Off street parking requirements that have been developed over the years haven't always been developed with maybe good data, good reasoning behind them sometimes. So, you know, this is why you see shopping centers that have a, you know, a home improvement store in them that are still very popular and being shopped at that still have, you know, 2-300 spaces empty at any one time. So, you know, it's incumbent on us when we develop parking standards to make sure, they're reasonable.

Bud Jacobs: You want to give us a quick bite of Comprehensive Plan, Will?

Will Moore: Certainly, so we were not able to get as I put in, I think my email to you, we were not able to get a draft of the final chapter that requires your at least initial review which is the economy chapter because we're still working to get update on the newest round of business licenses. So, we can have that data incorporated. But we're going to start incorporating the edits that came from the reviews of the previous chapters into the actual document now, so we can start getting clean versions together to bring back to you in the coming months. And we're going to start working on a number of the graphics and maps, mapping updates that we will need to go along with that. We may or may not be utilizing an outside consultant at this point. I think I informed you at the last meeting we intended to, but the cost of the proposal, considering the scope that was being provided was not one that we could agree to right away, but those conversations are still ongoing.

Bud Jacobs: Well, I'm going to close the discussion period and call our meeting to order. And we're going to start with going around and asking for disclosure information.

Rhonda North: Chair Jacobs.

Bud Jacobs: I've had no conversations or meeting with anyone with any matter before this board.

Rhonda North: Vice Chair Woodruff.

Don Woodruff: I've had no such meetings either.

Rhonda North: Commissioner Basinger.

Kim Basinger: I've had no such meetings.

Rhonda North: Commissioner Hersh.

Carolyn Hersh: I've had no such meetings.

Rhonda North: Commissioner McMahon.

Drew MacMahon: I've had no such meetings.

Rhonda North: Commissioner Rocconi.

Michael Rocconi: I've had no such meetings.

Rhonda North: Council Member Hersh.

Chris Hersh: I've had no such meetings.

Bud Jacobs: No public comment tonight, I guess. Do you have anybody? We don't do online anymore, do we? I mean, on the phone. Okay. Alrighty.

Kim Shelly: I'd like to say something.

Bud Jacobs: Oh. Well. I'm sorry. [laughter] Get up there before the podium.

Kim Shelly: I want to see [off mic] in action. I'm going to tell you a story about when he was a young. No, I'm not. I think that the cannabis and the drinking on a rooftop bar is not a good thing. And, you know, somebody could throw something off of there. Somebody could climb over. And I think the noise would not be, you know, would not be taken well, so.

Bud Jacobs: Well, I appreciate that. Thank you. You didn't state your name and address.

Kim Shelly: Oh, Kim Shelly. I live on Marshall Street, Suite 2B.

Bud Jacobs: Suite 2B. Thank you. Thank you very much. [laughter] Alrighty. Would anyone care to make a motion to approve the minutes from our last meeting?

Don Woodruff: I move that the minutes of the last meeting be approved as presented.

Bud Jacobs: Is there a second?

Carolyn Hersh: Second?

Bud Jacobs: Second. All in favor?

All of the Committee: Aye.

Bud Jacobs: Opposed? Abstained? Okay. Good. We now come to the Council Members report.

Chris Hersh: Thank you, Chair. So, the strategic retreat, the two issues that were discussed earlier are important. And appreciate the Committee time the Commission's time on going over those in the upcoming weeks and months. The trivia night. If you hadn't been at trivia night this past week was great. Arbor Day had a nice ceremony with honoring two of our citizens. And the artwork of the children with the awards was a fun thing to watch. And then Middleburg Wellness Day was well attended and had a lot of fun booths available. And it seemed like a success. Items of interest also would be that Ali, if you're not aware, Ali in economic development and kind of fun planning is moving on to, has moved on to the YMCA and then Danny is taking a job with Loudoun County. So, we'll be in the searching for a new Town Manager as well as Ali's position, it was actually just posted today I noticed. That's it.

Bud Jacobs: We're going to have a hard time finding somebody of the caliber of Ali. She was terrific. And have to say, I was initially wrong. I'm not sure she. I misunderstood the job. I guess I didn't see the economic development part, but she did it all brilliantly. And we're going to miss her. And I'm not even going to talk about Danny. Thank you very much. Are there any? [laughter] Yeah, I called today and he answered the phone, and I asked if he had been demoted as a result of his resignation. [laughter] Oh my God. Alrighty. Any discussion items? I have none. Anyone else have anything? Everybody happy? Contented?

Don Woodruff: Well, I don't know about that.

Bud Jacobs: I didn't really include you in the question as I was asking it.

Don Woodruff: In my putting. [off mic]

Bud Jacobs: You're putting. I don't want to talk about it. We have, I guess, an option for our next meeting, Will either the 18th of May or June 1st.

Will Moore: Yes, so whatever works best for the Commission. So, this is typical for May that we don't meet on the fourth Monday because that's always Memorial Day. So, meeting either the Monday before or the Monday after would be acceptable to us, so whatever works best for the most. I will say that depending on the direction that comes out of Council regarding the rooftop dining, it might be helpful for staff to have the extra week rather than one week shy of normal. However, we'll make either date work whatever works for the majority of the Commission Members.

Bud Jacobs: I'm willing to give you six weeks or even eight. For me, the better date is May 18th. I might not be able to do June 1st. My youngest daughter is having a child around that date, so. What do we say, 18th June 18th? May?

Don Woodruff: May.

Bud Jacobs: May 18th. May. Yeah. All works. Works, works, works? Can we do it 18th of May? Yes. Perfect. Thank you so much. And with that. God, I love hitting that thing.

Rhonda North: Mr. Chair.

Bud Jacobs: Adjourned. Yes.