

## **Minutes of the Fairfax County Consumer Protection Commission**

December 17, 2019

7:30 PM  
Government Center, Conference 8  
12000 Government Center Parkway  
Fairfax, Virginia 22035  
Chairman Fee, presiding

Attendance:

Commissioners: Belkowitz, Callender Fee,  
Gulakowski, Hargraves, Hine, Kratovil, Kirk,  
Lynch, Roark, Rosier

Absent:

Commissioners: Javed, Omeish

Staff:

Michael S. Liberman, Director  
Cable and Consumer Services  
Rebecca L. Makely, Director  
Consumer Services Division  
Susan C. Jones, Branch Chief  
Consumer Affairs Branch  
Carl Newcomb, Manager  
Regulation and Licensing Branch  
John W. Burton, Assistant County Attorney  
Office of the County Attorney

The meeting was called to order at 7:31 PM by Chairman Fee.

### **Minutes**

The minutes for the September 17, 2019, meeting were approved.

### **Report of the Chairman**

Chairman Fee congratulated Commissioner Omeish on her election to the Fairfax County School Board.

### **Report of the Director**

Director Liberman mentioned the Board of Supervisors (Board) Inauguration ceremony on Monday, December 16, 2019. The new Board will take office on January 1, 2020.

Director Liberman stated the Fairfax County Strategic Plan is currently under review and will be presented by the County Executive during his budget presentation in February 2020.

Director Makely, Consumer Services Division, stated a public hearing was held by the Board on November 19, 2019, on Shared Mobility Devices. There were two speakers in attendance at the meeting in support of the new ordinance. The Board adopted Chapter 86, relating to Shared Mobility Devices. Staff will report out to the Board in the spring of 2021.

## **Commission Matters**

Commissioner Lynch spoke about an experience his wife had at a local massage establishment and inaccurate reviews posted online.

Commissioner Kirk spoke about car break-ins in the Bailey Crossroad area.

Chairman Fee spoke about the process to get a Real ID from the Virginia Department of Motor Vehicles. He also mentioned a power outage in his neighborhood that caused problems with his cable boxes and Echo Dot. Chairman Fee also received notice that the fee for sewer line replacement with Dominion Energy had doubled since Dominion sold that service to another company.

Commissioner Gulakowski received an Apple iPhone scam call and mentioned all the articles on porch package theft.

Commissioner Hine mentioned Consumer Affairs is addressing a complaint filed by his father-in-law.

Commissioner Hargraves mentioned that Dominion Energy is working with his neighborhood to get the power outage solution addressed.

Commissioner Callender read an article about the reduction of sales at retail stores.

Commissioner Rosier had no matters to bring before the Commission.

Commissioner Belkowitz had no matters to bring before the Commission.

Commissioner Kratovil mentioned he canceled service with American Disposal Trash Company for poor service.

Commissioner Roark had no matters to bring before the Commission.

## **Old Business**

There was no old business before the Commission.

## **New Business**

**1. Massage Therapist Appeal Hearing.** Present: Appellant Isabel Middleton, attorney Barry Schneiderman, and translator.

Chairman Fee read the following statement of Commission Responsibility. *All hearings or other public proceedings conducted by the Commission shall be conducted in an informal manner. The Commission shall have the discretion to admit all evidence which may be of probative value even if that evidence is not in accord with formal rules of legal practice and procedure. Applicants and appellants may appear, either by personal appearance, legal counsel, or other representation, to present argument and evidence on their behalf. In addition, the Commission may establish rules of procedure for the conduct of hearings which are consistent with law. Any interested party may record all public proceedings of any hearing in any manner which will not impede the orderly conduct of the hearing.*

Mr. Schneiderman spoke on behalf of his client, Isabel Middleton. He went through the series of events that led to the conviction in Arlington County. Mr. Schneiderman stated that Ms. Middleton has been licensed for 10 years and had never been convicted of a crime until now. He also stated Ms. Middleton was licensed in Fairfax County since 2011, and that massage therapy was Ms. Middleton's sole source of income.

Mr. Schneiderman went through a series of questions about Ms. Middleton's massage therapist license and the process, business where she worked, owner and employees, events that led up to the arrest, and current employment.

Witnesses present were Isabel Middleton's husband, Thomas Middleton and friend, Jenny Kim. Mr. Middleton stated they were married on April 7, 2006 and she went to school to get her massage therapist license. She is a great person and did not engage in any illegal activity. Ms. Kim has been friend for 10 years and stated Ms. Middleton was very friendly and always willing to help people.

Carl Newcomb, Manager, Regulation and Licensing Branch, delivered the County's presentation. On September 6, 2019, Isabel Middleton filed an application with Regulation and Licensing to renew her massage therapist permit. On the application where the applicant is asked to list all criminal convictions from any federal, state, or local jurisdiction in the past ten years, Ms. Middleton checked none. Pursuant to Fairfax County Code Section 28.1-2-2, the completed application shall contain, among other items, the applicant's criminal record and consent to allow the Department to obtain a search of the Central Criminal Records Exchange. When determining the issuance or denial of Ms. Middleton's massage therapist permit, staff deferred to Fairfax County Code Section 28.1-2-3(c) which states:

*"If the Director determines from the information contained in the permit application and from the Director's investigation that the applicant has committed one or more disqualifying offenses or is otherwise unqualified under this Chapter to administer massage therapy in the County, the Director shall deny the application."*

As defined in Fairfax County Code Section 28.1-1-3, *Disqualifying offenses means offenses which disqualify an applicant from obtaining a permit pursuant to this Chapter or, if the offender already holds a permit, which mandate revocation of the permit.* Disqualifying offenses are:

- (1) Conviction, plea of nolo contendere or a forfeiture on a charge of violating any provision of §§ 18.2-346, 18.2-347 through 18.2-349, 18.2-355 through 18.2-358, 18.2-361, 18.2-368, 18.2-370, 18.2-370.1, 18.2-371, 18.2-386.1 or 18.2-387 of the Code of Virginia, which laws relate to sexual offenses, or any provision of an ordinance of the County or a law or ordinance of another jurisdiction which prohibits the same conduct, within the past ten (10) years.*
- (2) Conviction, plea of nolo contendere or a forfeiture on a charge of violating any provision of this Chapter, or on a charge of violating a similar law in any other jurisdiction, within the past five (5) years.*
- (3) Making a false statement on a permit application.*

The Virginia State Police records on Ms. Middleton, obtained through the Central Criminal Records Exchange as part of the criminal background check process performed by Regulation and Licensing, found a criminal conviction in Arlington County General District Court on October 5, 2018, of the Code of Virginia §18.2-347: Misdemeanor, Prostitution: Keep/Reside in Bawdy Place. Ms. Middleton plead guilty to the charge and received a sentence of sixty (60) days, suspended. This is a violation of Chapter 28.1-1-3(1) which states:

- (1) *Conviction, plea of nolo contendere or a forfeiture on a charge of violating any provision of §§ 18.2-346, 18.2-347 through 18.2-349, 18.2-355 through 18.2-358, 18.2-361, 18.2-368, 18.2-370, 18.2-370.1, 18.2-371, 18.2-386.1 or 18.2-387 of the Code of Virginia, which laws relate to sexual offenses, or any provision of an ordinance of the County or a law or ordinance of another jurisdiction which prohibits the same conduct, within the past ten (10) years.*

As a result of the information contained in the permit application and from the Director's investigation, the applicant had committed one or more disqualifying offenses. Pursuant to Fairfax County Code Section 28.1-2-3(c), the Director denied the application.

On September 30, 2019, via Certified Mail Return Receipt Requested, County staff notified Ms. Middleton that based on the disqualifying offense her application was denied.

On October 21, 2019, Ms. Middleton's legal counsel, Barry A. Schneiderman of Kincheloe & Schneiderman Attorneys at Law, filed a Notice of Appeal and Request for Hearing.

On October 31, 2019, Fairfax County sent Mr. Schneiderman and Ms. Middleton a letter confirming the appeal hearing.

In preparation for the appeal hearing, County staff reviewed the Arlington County Police Report. Ms. Middleton's conviction in Arlington County stems from charges which were placed against her by Arlington County Police on August 23, 2018. Ms. Middleton's arrest and subsequent conviction was the result of several complaints filed by citizens against Healing Bodyworks massage parlor, located at 5133 Lee Highway, Arlington, Virginia. Acting on those complaints, two detectives with the Arlington County Police Department Organized Crime Unit, both undercover and both wired for sound, made contact with Isabel Middleton, the lone worker at the business at the time. Ms. Middleton seated the two undercover detectives in separate rooms, each room with a massage table. Ms. Middleton instructed one of the undercover detectives to wait about 20 minutes while she attended to the other undercover detective. Ms. Middleton's actions, as outlined in the police report, resulted in her arrest. Further Ms. Middleton was the individual associated with the business license on file with Arlington County Government for Healing Bodyworks.

Given the conviction of Code of Virginia §18.2-347, which relates to sexual offenses, and Ms. Middleton's immediately related business, staff reconfirmed the denial of Ms. Middleton's application due to the disqualifying offense and in the interest of the health, safety, and welfare of the public.

Commission questions ensued on the criminal activity, detectives confirmation of the events, Arlington County's licensing process, guilty plea to avoid jail, appellant's understanding at the court hearing, was a translator present, Code Section 18.2-347 clarification, business license and owner, denial of license for 10 years, current employment, statement inconsistencies, discretion by the Commission, and modification of the application terms.

Closing Statements:

Mr. Schneiderman appealed on behalf of his client for discretion by the Commission to allow Ms. Middleton the opportunity to work as a massage therapist as she has been for the last 10 years. He stated her State license is in good standing and the conduct was not egregious.

Carl Newcomb recommended the Commission uphold the denial of Ms. Middleton's Massage Therapist permit.

Public Hearing ended 9:16 PM.

Vice Chairman Gulakowski made the motion to accept staff's recommendation to uphold the denial of Ms. Middleton's Massage Therapist permit. Commissioner Kirk seconded the motion.

A discussion ensued on support of the denial, extenuating circumstances, penalty of 10 years, credibility, statements on the application, and modification of the code.

Commissioner Kirk made the motion to call the vote. Commissioner Hine seconded the motion. Six Commissioners voted in favor to call the vote; five Commissioners opposed. Motion passed.

Motion was made to uphold staff's recommendation. Nine Commissioners voted in favor; two Commissioners voted against. Motion passed.

Commissioner Kirk made the motion that the CPC will uphold staff decision for one year from today. Commissioner Hargraves seconded the motion. Nine Commissioners voted in favor; two Commissioners voted against. Motion passed.

Chairman Fee made the motion to adjourn. Commissioner Hine seconded the motion.

The meeting adjourned at 9:54 PM.