



June 9, 2009

MCCF Testimony to County Council on Bill 22-09, Notice of Violations - Appeals

I am Jim Humphrey, testifying on behalf of the Montgomery County Civic Federation as Chair of the Planning and Land Use Committee. We ask that Council members consider the following concerns of the Federation regarding new restrictions on appeals rights which are included in Bill 22-09.

- We understand the value in eliminating the right to appeal the issuance of a Notice of Violation. At the same time we believe that residents, especially adjacent neighbors of a home construction site, should retain the right to challenge, in the Board of Appeals, a decision by DPS not to issue a Notice of Violation.
- We are concerned by the elimination of the current 30 day waiting period, after DPS issuance of a Notice of Violation, before the Department may issue a citation which may impose fines or other remedies. While the speeded-up issuance of a citation and imposing of fines and other remedies allowed by this legislation may result in a faster resolution to unsafe or unhealthful situations, we are concerned that the elimination of the waiting period will not allow builders or homeowners sufficient time to correct a violation before imposition of fines can occur.
- We strongly oppose the provision in the bill that would eliminate the right to appeal a decision by DPS not to issue a Stop Work Order, or to lift a Stop Work Order. At the same time, just as in the case with the Notice of Violation issue (see first bullet item above), we understand the value in eliminating the right to appeal the issuance of a Stop Work Order since such appeal could delay the cessation and remedy of an unlawful or unsafe condition.
- Although it is not specifically addressed in the legislation, we recommend that the right to appeal a Building Permit Revision be specifically authorized in the County Code, just as the right to appeal DPS issuance or failure to issue a Building Permit is now authorized. Although the neighbors or affected neighborhood association may not have concerns regarding the initial issuance of a Building Permit, they may wish to challenge DPS approval of a revision to a Building Permit which they believe may have a negative impact.
- Finally, in your consideration of Bill 22-09, please keep in mind that the right of county residents to file appeals of administrative actions before the Board of Appeals, a citizen body composed also of county residents, guarantees an affordable avenue of redress for actions considered unwise or unlawful. If such appeals are relegated to Circuit Court or District Court, the court costs and necessity to hire an attorney make such appeals unaffordable to most county residents.

As always, the Federation stands ready to assist Council members in your consideration of this legislation. Thank you.