



May 17, 2011

MCCF Testimony to County Council on ZTA 11-01, CR Zones Amendments

I am Jim Humphrey, delivering the testimony of the Montgomery County Civic Federation as Chair of their Planning and Land Use Committee. First, we want to thank the Planning Commissioners for their hard work on this ZTA, and for allowing civic community representatives a place at the table to participate during Board drafting worksessions. The following position was adopted by unanimous vote of the delegates at the May 9 MCCF meeting.

CR Neighborhood Zone - We believe CRN is a low density, mixed use zone that will be applied at the edges of agricultural areas or single-family residential neighborhoods, or will be employed as a transitional buffer between such areas or neighborhoods and nearby medium to high density commercial or mixed use areas. Therefore, we:

- urge a maximum building height limit of 45 feet, not the proposed 65 feet, in order to insure compatibility with the allowed height of nearby single-family homes;
- urge a maximum density of 1.0 FAR, not the proposed 1.5 FAR, in order to insure compatibility with the mass of nearby single-family homes;
- urge Site Plan approval be required for **any** development on a CRN zoned property that is adjacent to a property in a single-family residential or agricultural zone, or one separated from such property only by a right-of-way of a primary, secondary or tertiary residential street; and,
- urge that those CRN uses marked as Limited with an "L" on the Land Uses chart (see ZTA lines 305-314) which are currently allowed as Special Exceptions in the R-60 and R-90 Zones require Special Exception approval in the CRN Zone also, and all other CRN Limited uses be disallowed on properties adjacent to or confronting a property in a single-family residential or agricultural zone*. This will prevent any possible negative impact on nearby homes and agricultural uses from the Planning Board's imposition of vague "mitigating factors" for CRN Limited Uses (see ZTA lines 332-335), factors which have no clear standards defined in this legislation.

CR Town Zone - CRT is proposed as a medium density mixed use zone with a maximum density of 4.0 FAR and building height limit of 150 feet and, therefore, we believe this zone should never be applied to a property adjacent to a property in a single-family residential or agricultural zone, or one separated from such a property only by a right-of-way of a primary, secondary or tertiary residential street, due to incompatibility of scale of CRT allowed buildings with single-family homes.

* see Attachment A--"Recommended Disposition of CRN Zone Limited Land Uses"

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In addition, we recommend the "Maximum Total Density" for Standard Method development in the CRT Zones be the same as that existing for the CR Zones--"the greater of 0.5 FAR or 10,000 gross square feet of floor area" (see line 187), not the proposed 1.0 FAR or 10,000 gsf.

Finally, as MCCF noted in our testimony to the Council on legislation creating the CR Zone, the absence of dwelling-unit-per-acre limits in CR zones means that the number of housing units in any project will not be known until Planning Board approval. This prevents the county government from doing accurate, fiscally sound long-range infrastructure planning. [see Attachment B--Federation Corner column entitled "New zoning makes infrastructure planning impossible," published in The Montgomery Sentinel on July 1, 2010]

We might also submit additional detailed comments on specific issues that arise during Council PHED Committee worksessions. Thank you.

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RECOMMENDED DISPOSITION OF PROPOSED CRN ZONE "LIMITED" LAND USES

MCCF recommends these proposed CRN "Limited" Land Uses instead **should be allowed under Special Exception** in the CRN Zone:

Group homes, large
Hospice care facilities
Clinic
Charitable and philanthropic institutions
Day care facilities with over 30 users
Educational institutions, private
Private clubs and service organizations

MCCF suggests insertion of an asterisk next to the "L" for these "Limited" Uses in the CRN Land Use chart, with a footnote that reads "**Disallowed on a CRN property that is adjacent to or confronting a property in a single-family residential or agricultural zone**":

Farm and country markets
Ambulance or rescue squads, private
Automobile sales, indoors
Eating and drinking establishments
Health clubs and gyms
Hotels and motels
Recreational facilities, participatory
Retail trades, businesses, and services of a general commercial nature with each tenant footprint between 5,000sf and 15,000sf
Cultural institutions

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"Federation Corner" column
Montgomery Sentinel - July 1, 2010

New zoning makes infrastructure planning impossible
by Jim Humphrey, Chair, MCCF Planning and Land Use Committee

Until recently, there were limits in residential zoning that capped the number of housing units allowed per acre, setting a maximum number of units that could be built on a property. This aided public school officials in predicting the number of added desks needed in local schools if residential properties in an area were developed. Commercial zoning limited the amount of square footage allowed, and predictions were made of the number of new jobs that could be created on a property based on the use (for example, the number of jobs created in 40,000 square foot of retail space is different than for the same amount of office space). The county Department of Transportation used jobs predictions and housing numbers to calculate the amount of added roads and transit capacity needed if new development occurred in an area. But infrastructure planning didn't always work this way.

Up to the mid-1980s, county government budgeted for additional classrooms or added road or transit capacity to support new development as projects were approved. But it often took longer for the county to fund and provide school or road improvements than it took a developer to finish a project, so the government was always playing catch-up in providing infrastructure needed to support growth.

Then civic activists challenged Planning Board approval of residential projects where local schools were shown to have inadequate classroom capacity to handle the number of school aged children expected to move into the project. Also, it was determined that some areas of the county had too few jobs for the number of dwelling units, requiring residents to commute to work elsewhere and increasing traffic congestion (the target is 1.6 jobs per household).

Over the past 25 years infrastructure planning improved and, up until 2003, areas were identified in which no more development could be approved until additional infrastructure was budgeted. Sure, the County Council played tricks with the schools calculation by allowing classroom capacity to be borrowed on paper from one cluster to another--a process they've now stopped. They also allowed higher levels of traffic congestion in Metro station communities than anywhere else in the county--a process still in place. But, in general, the ability of our government to plan for the public facilities needed to accommodate development has steadily improved. And with "fixed amount" zoning, the jobs-to-housing imbalance in specific areas could be adjusted, too.

The new mixed-use CR (Commercial-Residential) zone changed all that. Approved by the County Council on March 22 this year, the CR zone established more flexible standards for mixed-use projects that blend commercial space with residential use.

For example, the CR zoning for a property might allow a building with no more than 50 percent commercial space, and no more than 75 percent residential space. It will be up to the developer, with Planning Board approval, to decide the exact ratio of residential to commercial space within those parameters. Under this zoning, then, a building planned with

200,000 square feet of usable space might have 100,000 square feet each of residential and commercial space, or 150,000 square feet of residential with 50,000 square feet of retail and office use, or anything in between.

The CR zone gives developers flexibility to respond to market demands. If retail and office vacancies are up they can plan more housing, or if the housing market is flat they can build more commercial space. And by defining residential use in square feet instead of a maximum number of units per acre, the CR zone gives developers the ability to respond to current trends. They can propose three-bedroom units (to respond to demand for family sized dwellings) or they can plan "micro-efficiencies" (350 square foot units marketed to singles and empty-nesters--couples whose children have left home).

Let's go back to that hypothetical 200,000 square foot building referred to earlier. Under the CR zoning we mentioned, that building could have from 100 to 150 three-bedroom housing units, which would generate school aged children to attend local schools but not house many rush-hour commuters. Or the same amount of space could be used for 300 to 450 "micro-efficiencies" in which virtually no school aged children would live, but which would generate triple the number of rush-hour commuter trips. There is similar uncertainty regarding the impact from a variable amount of commercial space. Until the project is approved, officials will not know how much added schools, road and transit capacity might be needed.

Multiply this problem by the thousands of properties planned to have CR zoning assigned to them and you see the magnitude of the problem. The CR Zone is intended to replace all current commercial zones, as well as the CBD (Central Business District), TSR and TSM (Transit Station zones), MXTC (Mixed Use Town Center), and TOMX (Transit Oriented Mixed Use) zones. The flaw in the flexibility of CR zoning is that it renders long-range facilities planning by the county government impossible, taking us in the opposite direction from making more accurate calculations of the amount of infrastructure needed to handle growth.

Under the new CR zoning, the county will regress to the ineffective process in place decades ago of waiting until development is approved and then rushing to try and provide the needed supportive infrastructure in a timely fashion. Planning Department staff has brushed aside this concern in their push for mixed-use development throughout the county. And it appears that no official in the County Council or Executive Office buildings in Rockville has the foresight or political will to address this problem before it smacks us in the face, or to see that more certainty in our zoning laws, not less, will result in better long-range infrastructure and fiscal planning.

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