

"Federation Corner" column
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"Designer legislation" process should be stopped

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Developers of a commercial property in downtown Bethesda decide they would rather build housing on their site, due to the high office vacancy rate in the area. They approach council members with a request to change the allowable land use, height, and density for the property. Another developer overbids on a large R-60 zoned property in a neighborhood of single-family detached homes and subsequently seeks permission to build townhouses on the property. These are only two examples of a growing trend in Montgomery County of developers seeking "designer legislation," changes in zoning ordinances in order to increase their profits.

The issue came to a head last week when the Planning Board held a hearing on a zoning text amendment (ZTA) to allow the height of buildings to be increased from 143 feet to 200 feet in the proposed Silver Spring Transit Center project. Oddly enough, the greater height is allowed under the current zoning for the properties, as long as the master plan for the area recommends the increase. However, the plan that was revised and approved in the year 2000 contains no such recommendation, while the Planning Board has decided the additional height is now desirable

Every area of the county has a master plan, a forecast of new construction over a twenty-year cycle, so that the county can plan for the roads, schools and services—police, fire and emergency medical—to accommodate the expected growth. The need to amend a master plan less than four years after its approval is unusual, but changes in growth patterns can occur quickly.

The solution sounds like a no-brainer. Under the law as it is written, the planning staff can engage in a limited master plan amendment process to recommend the 200 foot height for certain properties adjacent to the Silver Spring Metro. But instead of implementing the law as it is written, the Planning Board decided to rewrite the law by adding an amendment to a footnote in the zoning ordinance to allow buildings 200 feet in height, within 800 feet of the Silver Spring Metro, without master plan recommendation.

Advocates of the ZTA claim it supports "Smart Growth" by focusing development density in proximity to mass transit. But a limited master plan amendment process would have achieved the same goal without further complicating our zoning ordinance. A report by Clarion Associates, released by Park and Planning in February 2003, called the Montgomery County zoning ordinance "one of the most difficult to use and understand that the consultants have reviewed"—hard to navigate and poorly organized, in part because it has been updated and revised piecemeal over time. This new proposed ZTA, which adds an amendment to a footnote to a zone category building standard, will only further add to that problem.

Supporters of the ZTA also argued that a master plan amendment is a dangerous process, opening up a plan to all manner of changes. But it is an accepted practice for the planning staff, with the concurrence of the County Council, to limit the scope of a master plan amendment process. We Bethesdians know this is the case, because we are poised to undergo a master plan amendment that will be limited to changing the recommendations only for our Woodmont Triangle District.

Let us assume, for purpose of discussion, that a change has occurred in an area that makes a change in the allowable development in that area desirable. What is the difference between the master plan amendment and the ZTA process? Both take about nine months, and each can accomplish the goal of changing the building standards for property. The answer lies in the level of public participation allowed in each option.

A master plan amendment is a widely publicized and comprehensive process, similar to that used to create the original plan, involving residents, retailers, developers and planners. An advisory committee is engaged for lengthy discussion, seeking input from nearby property owners, and concluding with a vote to approve the amendment as drafted. By contrast, when a ZTA is introduced, it is announced in a classified ad, run one time in one local newspaper, containing an oblique reference to its purpose and information on the council hearing, at which individuals are given three minutes to testify (representatives of groups receive five minutes). The ad does not mention that, prior to the council hearing, the Planning Board also holds a hearing on ZTAs at which one may also testify for three minutes. It is left to the citizen to discover when that hearing will be held.

In addition to the ZTA process being less inclusive, approval of amendments to the zoning ordinance to accommodate developers' desires on a project-by-project basis is contributing to escalating land and housing prices in the county. Developers are emboldened to overbid on property beyond their ability to realize a profit within the zoning standards, confident that this council and Planning Board are receptive to legislative quick fixes offering additional height and density, changes in land use, decreased minimum setbacks and alternative building types.

Finally, a major concern for citizens should be the opportunity for mischief, or at least the possible appearance of conflict of interest, by allowing developers to seek "designer legislation" from our council members and paid county land use planners. We should not forget that in the 2002 election, six of the current council members received at least half (if not more) of their campaign funding from development interests, as did our County Executive. I urge readers to visit the Neighbors for a Better Montgomery website, www.neighborspac.org, to examine the data showing just how much influence this special interest group might wield over the manner in which our local government conducts its business.

There are certainly many good developers who provide a quality product, who are responsive to community concerns, and who build within the zoning standards for their properties. We must make certain they are not placed at a disadvantage by those developers who do ask for special treatment, who urge changes in zoning regulation to suit their projects, and who attempt to control our elections. Those efforts are not fair or ethical, and should not be tolerated.

The Sentinel Newspapers have offered the Montgomery County Civic Federation an opportunity to present the issues and opinions of affiliated community organizations. The viewpoints expressed may not necessarily be those adopted by the Federation. Any resident who would like to contribute to or respond to this column should contact Federation Delegate Alyce Ortuzar at (301)774-6617.