

"Federation Corner" column
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County Council risks humiliation and failure With ZTA 06-18

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Montgomery County is too effective at changing its zoning code with a legislative wave of the hand, sometimes greatly altering the master plans that communities worked long and carefully to create. This is often done to benefit one particular property owner, although it may apply to other properties. These are called "designer" Zoning Text Amendments, or ZTAs, because they are designed to benefit so few and include so few in the public process because they often move quickly and quietly through the approval process. Now there is designer ZTA 06-18, which has strong community support, but is one of the worst of such ZTAs because what it proposes would be an economic disaster for a number of existing small businesses and because the County Council could be at great risk of humiliation and failure.

This ZTA epitomizes good intentions run amok. The strange story behind it began when the County Council decided that the light industrial zone for government uses, which had been created decades ago at the end of the Red Line at Shady Grove, should be replaced with higher density to place thousands of new residents in a walkable town near public transportation. In the search for other light industrial zones to accommodate these county uses - including a school bus lot - the Webb Tract near the Montgomery County Airpark came under consideration. After nearby Montgomery Village residents organized to oppose the many buses that would have to travel congested Snouffer School Road, this was withdrawn as a use. Plans kept changing until the use went from an approved low rise light industrial use to a proposed high rise senior residential use just two months ago. This latest proposal and the ZTA pleases the newest owner of the Webb Tract and the nearby residents and presages a happy ending for all.

However, the moral of this story instead shows what happens when planning is done in a vacuum in this county. The County Council, ignoring the complaints about traffic, school and park congestion by nearby residents while it worked to transform Shady Grove, created the need for the Webb Tract as a logical replacement site. Then, listening to the complaints of those nearby Montgomery Village residents, they limited the uses and with this ZTA, would eliminate them, making the implementation of the Shady Grove Sector Plan much more difficult, something that, while pleasing those once-distraught Shady Grove residents, could make that plan a useless document for most future planning. Councilmember Knapp leads this ZTA effort, wanting to bring senior housing to his upcounty district.

Although nearby residents today may support an effort to replace light industrial uses with housing at the Airpark, nearby residents objected, in 1998, to plans for such a project that also included affordable housing. "A director for the Montgomery Village Citizen's Coalition, told the planning board Thursday, 'We see an intolerable noise factor for residents. Why should people who qualify for affordable housing have to put up with airport noise compounded by truck noise along Snouffer School Road?' This same resident also criticized a noise study, saying it 'minimizes the real effect noise incidents of jets landing and taking off at all hours really has on people who live nearby...'"

Nancy Floreen, then a private attorney representing some of the neighbors, argued in 1999 that " 'the location of the apartment complex is incompatible and inharmonious with its neighbors, particularly the Montgomery County Airpark, which has a runway that is at points about 1,000 feet from the proposed project. This disharmony would stem from noise from Airpark plane traffic,' Floreen said, 'which would peak on the weekends and the summer, the same time most residents would be outdoors. The productivity housing project could also infringe on the development of other commercial/low-industrial projects in the area,'

Floreen said." Those arguments are as true today for luxury highrise senior housing as they were for low rise affordable housing seven years ago.

The senior housing project allowed by this ZTA would also be built in the flight path of the Montgomery County Airpark, an instrument-rated general aviation commercial airport. Councilmember Knapp and his Council colleagues may want to anticipate that they could soon hit a "brick wall" known as the Federal Aviation Administration (FAA). The FAA does not tolerate obstructions, whether large or small, in the flight paths of airports. It forced the Airpark's owner, the Montgomery County Revenue Authority, to change management in 2002 and to make many other changes, including the likelihood of one day requiring part of a building that intrudes into the airport's flight path to be demolished. In 1997, \$2 million was spent to build a new runway, which included \$1.5 million from the FAA. Right now, the Airpark is in the midst of making acquisitions, getting easements, and removing obstructions "to air navigation and protect life and property on the ground." This massive \$40 million project is being 95% funded by the FAA.

If the FAA could not stop the construction of a 135-foot high senior housing building in the flight path of this airport, it might do what the Department of Agriculture did in 1965 when the Diggs Council upzoned the Upper Rock Creek as the Lake Needwood flood control dam was being constructed. It threatened not to pay for the dam if the master plan were not downzoned for the area above the dam to reduce the amount of sediment and flood waters that would flow into the lake. The FAA might be expected to stop funding the airport improvements and perhaps demand the return of payments since this ZTA would eventually bring about the end of commercial aviation at this airport, threatening the livelihood of hundreds of small aviation-related businesses as well as one of the most important operations run by the Revenue Authority.

This ZTA should either be withdrawn by the sponsor, or the language allowing senior highrise buildings next to this airport should be expunged. If now is the time to consider where planned senior housing projects should be allowed in this county, then potentially suitable 25-acre sites around the county should first be identified, and research done to determine if this use would actually be compatible. Then, a carefully-considered ZTA that took the results into consideration could then be written and debated. Although there is a growing need for such senior housing, there is also a great need for light industrial sites, few of which have vacancies. There would be "intended" negative economic consequences to allow suitable light industrial sites to be taken for senior housing.

The worst thing is for the County Council to rush through this ZTA and face the risk of a humiliating FAA rejection as well as being seen as anti-business, threatening a county government enterprise and all of the small businesses that rely on its continued presence.