

"Federation Corner" column  
The Montgomery Sentinel - December 26, 2013

### **Floreen proposes "bait and switch" to CR zone**

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Several times during two rounds of worksessions on the Zoning Code Rewrite, PHED (Planning, Housing and Economic Development) Committee Chair Nancy Floreen stated that the purpose of the project was to reorganize and streamline the existing zoning code and not to make policy-based alterations to that code. But during their final meetings on the project in early December, with the rewrite within sight of the finish line, PHED Committee members offered widely differing proposals for fundamental changes to the CR (Commercial and Residential) mixed use zone, with the aim of encouraging provision of more MPDUs (Moderately Priced Dwelling Units) in the county.

The CR Zone was created and approved by the County Council in 2011, for initial use in the revision of the White Flint Sector Plan then underway. Since that time, Council has applied CR zoning to properties in seven other planning areas during revision of master plans for those areas.

As it currently exists in law, the CR Zone allows a rather small building to be constructed under Standard Method development, simply by pulling a Building Permit from the Department of Permitting Services. A larger building, up to the size and height limits assigned to each CR property, can be approved by the Planning Board under Optional Method development, if the developer agrees to provide a package of public benefits chosen from a list included in the law (e.g.; enhanced site or building design, historic resource protection, open space, and environmental protections). One of the benefits is the provision of MPDUs above the 12.5 percent required of all residential projects containing more than 20 total units.

During their December meetings, PHED members George Leventhal and Marc Elrich proposed deleting many of the public benefits from the existing CR Zone public benefits list, such as enhanced recreation facilities, provision of live/work units, and some environmental protections and enhancements, in order to push developers toward providing additional MPDUs in their CR Zone projects. Since two of the three members of the committee approved of this alteration to the CR Zone, it was adopted as an official committee recommendation. But committee Chair Nancy Floreen disagreed with this position, and insisted that an alternative proposal which she drafted also be sent to the full Council for consideration.

Under Council member Floreen's proposal, if a CR project contains more than the required 12.5 percent MPDUs, the building could exceed the height limit recommended in the master plan or allowed by the zone by the number of stories needed to accommodate all of the MPDUs. Also, for CR projects containing more than 12.5 percent MPDUs, the building could exceed the size limit (square footage) recommended in the master plan or allowed by the zone, to accommodate the additional MPDUs. And if a developer provides more than 15 percent MPDUs then none of the square footage for any MPDU would count against the building size limit.

PHED member Elrich responded to the Floreen proposal by opining that it was a kind of "bait and switch." Developers and county residents alike have been promised that the building height and size limits in the CR Zone could not be exceeded, and she is now proposing the equivalent of phantom square footage and height that would not count against zone limits. Elrich said this seemed unfair, to which Floreen responded that "life is unfair." This does not seem like a wise foundation on which to make decisions about the county zoning code, the basic tenets of which should be fairness, equity and a high degree of reliability.

There is already one payback existing in law for a developer of a CR property who provides more than 12.5 percent MPDUs in their project--it counts as a public benefit toward allowing the full size and height building planned for the site. Is it really necessary to provide a second incentive to developers under the Floreen proposal?

CR projects in eight planning areas are being designed or have been approved based on existing zone standards. Is it fair to alter the rules under which these developers have proceeded with their plans?

And is it fair to tell the residents and property owners in those eight areas, who accepted their revised master plans and approved of the height limits assigned to neighboring CR zoned properties, that the rules have changed and nearby buildings can now be higher?

Any alteration the Council rushes into at this time could have ripple effects and unintended and unforeseen consequences.

The issue of how to encourage provision of affordable housing is an important one, and one which we do not think should be hurried. Therefore, at their December 18 meeting, the members of the Civic Federation Executive Committee voted unanimously to oppose the Floreen proposal at this time. We did not take a formal position on the Leventhal/Elrich proposal to shorten the CR Zone public benefits list.

MCCF believes the wisest course the Council could take is to follow PHED Chair Nancy Floreen's advice, which we noted at the start of this piece, and use the zoning code rewrite effort to reorganize the existing code, not to make policy related changes to that code. The appropriate time for the Council to debate any new methods to encourage creation of affordable housing is when they consider the rewrite of the county Housing Policy later in 2014.

The full Council will hold worksessions to consider the new Zoning Code on January 14, 15 and 16 (and 21, if necessary), beginning at 9:30 a.m. The PHED Committee recommended version is now available online, on the Zoning Code Rewrite Project website, at [www.zoningmontgomery.org](http://www.zoningmontgomery.org)

*The views expressed in this column do not necessarily reflect formal positions adopted by the Federation. To submit an 800-1000 word column for consideration, send as an email attachment to the [montgomerycivic@yahoo.com](mailto:montgomerycivic@yahoo.com)*