

"Federation Corner" column
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Sound public policy or political payback?

by Jim Humphrey
MCCF 1st Vice President for District One

Whose interests does legislation to increase building height limits throughout Montgomery County represent? During the last County Council session before the August recess Councilwoman Nancy Floreen, at the urging of Council Vice President Steve Silverman, introduced legislation to increase the building height limits on residential development in the County's central business districts (CBDs), such as Bethesda, Wheaton, and Silver Spring.

Developers of high-rise residential projects claim that the high cost of construction in CBD areas strains their ability to make a profit, when they are forced to provide a percentage of units as Moderately Priced Dwelling Units (MPDUs--affordable housing). Developments with 25 or more units are required by law to include 12.5% of all those units as MPDUs.

The issue of profitability was raised because Council Members Andrews and Perez have introduced their own legislation to stop developers from buying out of providing MPDUs. This buyout provision, for a cost to developers estimated to be between \$16,000 and \$21,000, was written into the MPDU law in the early 1980s, predicated on the notion that developers should have a reasonable expectation of profit.

The history of this provision and the degree to which it is also a political pay back for campaign contributions from developers merits further investigation. These pay back provisions can include increased density, sewers instead of septic in order to achieve the increased number of homes, and waivers of environmental requirements and considerations, which a majority of the residents usually oppose.

The County's Department of Housing and Community Affairs is empowered to allow developers to buy out of some or all of the MPDUs required by law in so-called exceptional circumstances, such as when high-rise construction costs or land prices sharply diminish their profitability.

So, despite a severe affordable housing shortage in the County, developers last year opted and bought out of providing over half of the MPDUs they had originally agreed to provide in exchange for preferential treatment and county giveaways, prompting the effort by Perez and Andrews to end the buyouts.

The Floreen (and Silverman) proposal may seem reasonable until the MPDU program is more closely scrutinized, especially the bonuses that developers received and kept in exchange for the MPDUs that they ultimately did not build. Many zoning categories provide "optional method" development in the form of relaxed building standards, bonus density, decreased minimum setbacks, and approval of alternative building types, such as townhouses on property zoned for single-family detached homes (R-60), and tax abatement under the Payment in Lieu of Taxes (PILOT) program.

Another very troubling aspect of this issue is that developers have refused to share their financial data with the Council, making it impossible to verify their claims not only of diminished profitability, but that the estimated profits are in fact fiscally harmful to the developers. (It is certainly fair to assume that if building in this County was not profitable, this discussion would not be taking place.)

No corporation in this country would do business the way the County Council is by recommending a major program change without having any data to justify the change. Why is our County Council operating in such a manner? This increased height allowance is not a minor change, as some have characterized it, but a significant alteration of the approved master plans that guide development in our CBDs.

Having served on the Planning Board, Ms. Floreen well knows how much time and energy residents put into meticulously designing their master plans, which take years to write (although developers have managed to get the Council and Park and Planning to undermine and thwart the visions and efforts of residents in many parts of the County).

Building heights are established in relation to existing and future road capacity. And residential density is formulated in relation to enrollment capacity of local schools. So at the same time that Council members such as Silverman characterize themselves as supporting education, their track record of supporting development despite local opposition and crowded conditions is undermining and trashing the very education system they purport to represent, as the County pulls services and resources from one area in order to provide services for the residents of these new developments.

When the Council passed the new Potomac Master Plan last year, Council Member Howard Denis likened it to an arch, saying he would be afraid to alter or remove any portion of it for fear the entire plan would collapse. In attempting to raise CBD building height limits in a blanket fashion, they risk just such a disaster in Bethesda, Wheaton, and Silver Spring.

Absent any data to back up the claim of diminished and insufficient profits, and risking the irreversible violation of our master plan process, why would any Council member propose increasing CBD building height limits? The instruction that Deep Throat gave to Woodward and Bernstein during the Watergate debacle comes to mind, "Follow the money."

In the last election, developers gave over \$1.5 million to Council Members Floreen, Silverman, and their fellow candidates on the End Gridlock slate. Political pay backs to developers at the expense of quality of life of current residents have no place in the establishment of sound public policy.