

"Federation Corner" column
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Simplicity lacking in new zoning laws

by Jim Humphrey
MCCF Planning and Land Use Chair

Montgomery officials have claimed a need to rewrite the county zoning laws for at least the last twenty years. The most often stated rationale for the revision is the need to simplify a zoning code that has become overly complex, due to frequent amending by the County Council.

Finally, nearly five years ago, the rewrite effort began in earnest with the drafting of the mixed use Commercial-Residential, or CR, Zone. The CR Zone was approved in April 2010, and was initially created for use in the 2010 revision of the master plan for the White Flint area. It has since been applied to properties in the Great Seneca Science Corridor, Wheaton, Kensington and Langley Park area master plans approved by Council. And the CR Zone will likely be used in future revision of the master plans for most, if not all, other areas of the county.

As applied to any individual property, the CR Zone "formula" contains four parts: the limit on size of allowed buildings, or Floor Area Ratio (FAR is the maximum square footage allowed in buildings constructed on a lot, expressed as a multiple of the square foot size of the lot); the maximum FAR that can be used for commercial use; the maximum FAR that can be used for residential use; and the maximum building height.

Since the first legislation passed, the Council has added two other size categories to the CR Zone--the CR Town Zone for medium size mixed use buildings in less urban areas, and the CR Neighborhood Zone for small mixed use buildings adjacent to residential neighborhoods. There are also more than 60 commercial uses allowed in at least one of the three CR size categories.

The most interesting quality of the CR Zone is that there are, according to an estimate from Royce Hanson who chaired the Planning Board when the zone was created, perhaps 43,000 possible permutations of the "formula" defining maximum building mass, height, etc. It replaced a handful of previously existing mixed use zones...so much for simplifying the zoning code.

After creation of the CR Zone three years ago, the staff of the Planning Department and the members of the appointed, all volunteer Zoning Advisory Panel began work on revising the remaining zoning categories--the residential, agricultural, and industrial zones. However, Planning officials and Council members decided that proposed changes in standards for accessory apartments would be so contentious that they should be pulled out of the rest of the zoning code rewrite effort and heard separately by Council, before the rest of the rewrite project was considered.

On February 5th of this year, County Council members enacted new standards for accessory apartments. They also enacted a process by which some accessory apartments could be licensed "by right" by the Department of Housing and Community Affairs (DHCA) Director, under certain circumstances. Other accessory apartment applications will require a decision from a Hearing Examiner.

In the past, all accessory apartment applications went through the same Special Exception process: the specifics of each individual case were compiled by a Hearing Examiner, and the case was decided by the Board of Appeals. All accessory apartment approvals had been defined as Special Exceptions because they allowed more than one dwelling unit per lot in neighborhoods where properties have "single-family" zoning, and permitted a greater density of dwelling units per acre than the zoning allowed.

Previously, in order to approve an application for an accessory apartment the Board of Appeals had to find that a few simple standards had been met, and that the approval would not create an undue concentration of Special Exception uses in the immediate neighborhood (such as other existing accessory apartments, or professional offices, or in-home businesses) and not have a negative impact on local traffic. The Board heard an average of perhaps twelve to fifteen such applications a year.

Beginning on May 20 of this year, the DHCA Director can issue a license for accessory apartments, under certain circumstances. In the R-60 Zone (in which law requires new lots be a minimum 6,000 square foot in size) and R-90 Zone (requiring new lots be 9,000 square feet in size), an accessory apartment will be allowed "by right" if it is located at least 300 feet from another such unit, as measured in a line from side lot line to side lot line along the same block face. In the RE-1 (minimum one acre lot size), RE-2 and RE-2C (minimum two acre lot size) Zones, an accessory apartment will be allowed "by right" if it is located at least 500 feet from another such unit.

Within five days after an application for an accessory apartment license is received by the DHCA Director, the applicant must post a sign on the property proposed for the unit. The Director must inspect the property and complete a Report on any repairs or improvements needed to approve the application, and post such Report on the DHCA website with 30 days after application was accepted. And the Director must approve or deny the application within 30 days after issuance of the Director's Report, unless a timely objection is filed or improvements to the property are required before approval can be made.

If a timely objection is made regarding an accessory apartment application, then the case will be heard and the decision regarding approval will be made by a Hearing Examiner. A Hearing Examiner will also consider petitions from applicants seeking to deviate from any permitted use standard, such as minimum distance from any other accessory apartment.

So, now there will be two different approval processes for new accessory apartments in the county, applied under varying sets of circumstances. And I have not begun to explain the details of the other standards the Council now requires such units meet...again, so much for simplifying the zoning code.

None of this gives me much hope that the rest of the zoning code rewrite, expected to be sent by the Planning Board to the Council by the middle of this year, will achieve the simplicity that anyone hoped it would.

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 montgomerycivic@yahoo.com