



Howard County Citizens Association

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## CB-36 Establishing a Community Enhancement Floating Zone

### HCCA testimony before the Howard County Council

November 19, 2012

HCCA is in opposition to this bill at this time as there is too much wrong with it. We were aware when it was presented during the General Plan. I expressed my concern to Marsha and was told that ours would be carefully crafted so as to avoid the pitfalls that Baltimore County is having and that they would take their time to make sure that we got it right. I like the suggestions that Marsha gave in a recent email as possible CEF developments. I think that there are ways to allow those possibilities.

Unfortunately, we have a bill tonight that has huge problems, will change the way zoning is done in Howard County and it is seemingly being rushed through. We need to slow down and define what problem we are trying to solve and then go about solving it in ways that doesn't cause more problems as this bill does.

What are some of these problems?

1. First the inclusion of business districts, especially M-1 will result in too many commercial lands changing over to residential. This is because in today's economy residential property is worth so much more than commercial property. The market study that the county commissioned this year states:

<http://planhoward.org/Rt1SnowdenDobbinMarketAnalysisDec2011.pdf>

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Landowners have economic incentives to hold out for residential rezoning as opposed to upgrading existing office/flex or developing new office/flex – primarily because the difference in the returns on the land are as high as 30 times higher for residential than non-residential uses.

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**Recommendation:**

*Replace the TOD zoning with a PUD zone which will have a stronger residential focus than the TOD zone.*

**Recommendation:**

*Strengthen the TOD zoning by establishing minimum residential densities that better conform to*

*stick-built multifamily and multi-story product types.*

### *Residential Zoning and Housing Pressures*

As the market analysis has pointed out, the industrial/commercial land in the corridor is under pressure for conversion to residential use, which in many cases is more profitable and viable than industrial/commercial uses. For the County to retain its employment capacity on this corridor, particularly on the very few larger parcels remaining, it should limit and focus residential opportunities in this corridor.

The effect of the previous two recommendations will be to significantly increase the potential residential yield in the corridor and act as a “release valve”. The further erosion of employment redevelopment opportunities by residential rezoning in the corridor should be resisted.

The report only recommends allowing the CAC, TOD and remaining MXD districts to have the CEF overlay. There certainly isn't any mention of M-1, B-1 or B-2 being eligible for the CEF district. HCCA asks that M-1, B-1 and B-2 zones be removed from being able to request CEF overlay so that we don't hurt the future financial viability of the county, so that we can still provide jobs close to where people live, and so we don't create a domino effect of rezonings that I will address later. (or at the very least state that commercial districts can't become residential districts.)

(Pg 19 Planning and zoning for redevelopment and for public/private collaboration requires different tools and approaches, and while a PUD zone seems like an entirely appropriate tool for this period in the County's evolution, it should be considered against the value of other existing districts. This Report recommends removing the CE, CAC and TOD zoning districts and folding the CAC and TOD areas into the proposed PUD district. It also recommends folding the remaining MXD districts into the PUD category. Obviously, more careful study is needed around this idea.)

2. Likewise the residential zoning categories of R-20 and R-ED need to be removed from having CEF potential. Both of these zoning categories should have stability for the residents, not flexibility for the developer. Further, R-ED properties currently require at least 50% of the property to be open space along with other environmentally friendly requirements. Those environmentally sensitive requirements could too easily be set aside with a CEF proposal. Furthermore R-ED properties allow townhouses, so a CEF could potentially be placed in an otherwise stable residential community because it isn't surrounded by only single family detached dwellings.
3. There needs to be some requirement as to when the proffered amenity needs to be built and there definitely needs to be a requirement for bonding for the amenity to ensure that it does get built. Amenities were promised with the CAC zones nearly 10 years ago. There has been substantial building, but we are still waiting for the amenities. There need to be safeguards to ensure that the amenities get built.
4. This legislation as proposed gets rid of all predictability and planning-for many residential areas, for many commercial areas, for roads, for traffic studies, for school planning. There is no upper limit for residential units, so school planning becomes even harder to do. A business that once

planned on having other businesses as neighbors may now have to contend with a residential neighbor-and vice versa.

Further, a new plan needs to “be sensitive to existing land uses in the vicinity of the site in terms of providing a transitional use”.

(23 6. A CEF DEVELOPMENT AT THE PROPOSED LOCATION **WILL BE SENSITIVE TO**  
**24 EXISTING LAND USES IN THE VICINITY OF THE SITE** IN TERMS OF PROVIDING A  
25 TRANSITIONAL USE BETWEEN DIFFERENT ZONING DISTRICTS AND/OR LAND  
26 USES AND THE SCALE, HEIGHT, MASS, AND ARCHITECTURAL DETAIL OF  
27 PROPOSED STRUCTURES.)

What does that mean? Is that the kind of thing that you will know it when you see it? I can guarantee you that a neighboring business or resident will have a different definition than the developer proposing the CEF. I am sure that each of you will have a different definition as well. And I pity the community that tries to appeal a decision to the courts on the basis that the new development “wasn’t sensitive” to their property.

5. Our last concern may be our biggest and for me is the real deal breaker in being able to support this legislation even if all the above amendments were added. The concern is what I will call the domino effect. Let’s say that a transition property comes in with a wonderful proposal. They offer a great amenity and receive a large increase in density (or change in use from say business to high density residential). Everyone is happy. Now, what can/will prevent another adjoining property owner coming in later and requesting a similar change to their property – but now they don’t need to offer an amenity. They can request this new zoning based on the fact that the now adjoining CEF property has been changed. (change or mistake) So that rezoning is a slam dunk. And then the property next to it comes in for a rezoning, etc. Unless there is a legal way to prevent this domino effect, this bill needs to be set aside and the issue approached in a different way.

Some lesser (but still important) tweaks

1. Under section **L. MINOR MODIFICATIONS TO THE DEVELOPMENT CONCEPT PLAN**

We would request that the definition for a minor modification be changed from 10% to 5%. 10% could be a rather large modification.

2. We would request that the requirement for a presubmission community meeting should be added to the proposed process. We would also request that the minutes of the presubmission community meeting be included in the packages to all the board members for all the various hearings (DAP, PB and ZB).

3. Please consider the following changes:

**G. ENHANCEMENTS 15**

THE CEF DEVELOPMENT MUST CONTAIN ONE OR MORE DESIGN FEATURES OR

16 AMENITIES WHICH ARE BENEFICIAL TO THE ~~COMMUNITY~~ GENERAL PUBLIC AS DELINEATED IN

17 ACCORDANCE WITH SECTION 121.J.4.B AND THAT EXCEED MINIMUM STANDARDS

18 REQUIRED BY COUNTY REGULATIONS, EXCLUDING BULK REGULATIONS. SUCH

19 FEATURES OR AMENITIES MUST BE PROPORTIONATE TO THE SIZE AND SCOPE OF THE

20 CEF DEVELOPMENT. FEATURES OR AMENITIES MAY BE PROVIDED ON A VICINAL

21 SITE WITHIN THE DELINEATED COMMUNITY PURSUANT TO EVALUATION ON A CASE

22 BY CASE BASIS. ENHANCEMENTS MAY INCLUDE:

23 1. COMMUNITY PARKS OR GATHERING SPACES, PLAYGROUNDS, DOG PARKS , OR

24 FREE RECREATION FACILITIES THAT ARE OPEN TO THE ~~SURROUNDING-GENERAL~~ COMMUNITY PUBLIC

Our rationale for the above changes are to make it clear that the amenity is for the general public, not just for the community that lives on the property. Adding the word “free” to the recreation facilities will preclude a CEF having a for-profit gym and saying that that is their amenity.

In conclusion, HCCA asks that you send this legislation back to the drawing board, carefully define what problem we are trying to solve, and then sit down with citizens, business owners and developers to come up with a fair and mutually agreeable solution.