



**HCCA**

**Howard County Citizens Association**

*Since 1961...*

*The Voice Of The People of Howard County*

To Members of the Zoning Board,

When the HCCA decided to engage on this petition, we did so with very little confidence that the quasi-judicial hearing would be conducted in a fair and impartial way. We were even less confident that the outcome would reflect the interests of the county's taxpayers.

Unfortunately, our first fear has come to fruition. And yet, despite our expectation of the outcome, we are hereby submitting our closing argument.

We commend councilmembers Liz Walsh and Deb Jung who so far have discharged their responsibilities as Zoning Board members and continue to demonstrate time and again their fidelity to the rule of law and respecting the county's zoning and land-use laws.

Over the past several hearings, we have been appalled by the level to which the county's rule of law was violated. Witnesses were prevented from appearing to answer questions and preliminary motions were not heard and decided upon in a timely manner – a violation of due process of law.

Chairpersons Opel Jones and Christiana Rigby failed to act on preliminary motions. Delaying the action is an inherently prejudicial act. Not acting on a preliminary motion that would lead to the dismissal of the petition – even without prejudice – robs the party of due process.

After the Zoning Board voted to hear from two county administration employees, the county executive declined to produce the witnesses thereby defying a co-equal branch of government. Instead of demanding that the witnesses appear before the Board, Chairperson Jones abrogated his role.

We are also appalled that some Zoning Board members consider community members a nuisance. You work for us; not for the special

interests. Community members have every right to ensure that our taxpayer dollars are not misappropriated and protected. The concerns raised during these hearings by community members are shared by many and Zoning Board members should treat every community member with the deference they deserve.

The Petitioner's closing argument is filled with convoluted legal arguments that fail to withstand simple logical reasoning.

On the one hand, the Petitioner relies on the "Excluded Uses" list in Section 121.0.C to persuade the Board that, when the CEF zone was created, the County Council consciously left out the sale of gasoline on a CEF zone. The Petitioner goes on to say that, if the Board is not persuaded by that argument (it should not be), it should rely on what "new" and "innovative" mean in the context of the timing of the passage of CB46-2016, which is later than 2012.

Besides the ridiculous reasoning of the later argument, CB46-2016 explicitly amends Residential -Mobile Home, Business: Rural, Shopping Center, Commercial Redevelopment Overlay, and Mixed Use Districts. So one should ask, why did the Council leave out the CEF district from this bill? The answer is simple, the CEF district is not intended for such a use.

The Petitioner has failed to demonstrate that the proposed development is proportionate to the increase in development intensity and impacts associated with the CEF rezoning compared to the previously existing zoning. The Petitioner seeks to get out of meeting this requirement by stating that "Intensity is not density."

Individual words can be distorted. In the context of 121.0.G the relevant phrases are "development intensity or intensity of development" and "development impact or impact of development." Read this way, it is clear that the CEF criteria's call for proportionality is in reference to the density. Furthermore, while the Petitioner seeks to redefine and create a smokescreen on the definition of "development impact" through an arbitrary visual "balloon test" at the end of the day the impact that the Petitioner is trying to mitigate is economic impact. As the Petitioner accurately states, the

zoning board is not concerned with “visual harm.” It is concerned with externalities and mitigating actual harm.

In the context of externalities the most fundamental metric to determine proportionality is money. To this end, what is the economic impact (cost/benefit) to the county of the proposed enhancements? How do these enhancements compare to the development intensity? What would it cost the county to provide the proposed enhancements without relying on the developer? Which of the enhancements really enhancement and which are mere improvements to mitigate the impact of the development intensity?

The Petitioner failed to answer any of these questions. In fact, the Petitioner obstructed our attempts at getting to determine this impact by objecting to questions related to quantifying proportionality.

The Petitioner attempts to dismiss our fiscal impact analysis by minimizing the net annual fiscal loss to the county of \$180,000 and suggests that it is improper to allocate the cost of running the county among the county residents. Furthermore, the Petitioner points to the testimony by Mr. Templin to refute the cost of \$680,000 in paratransit services to the county. This argument is fundamentally flawed for three reasons.

First, Mr. Templin presented an inappropriate comparison of a CCRC in a different jurisdiction to the proposed project in Howard County. In doing so the Petitioner glosses over a component of the internal memo included in the DPZ technical staff report that stated that the American with Disability Act mandates that fixed route transit services provide paratransit services to origins and destinations within  $\frac{3}{4}$  mile of a fixed route. The Petitioner neglected to point out this key omission, which was the basis for the 1,134 paratransit trips a month costing \$680,000.

Second, the Petitioner assumes that there are two economies in Howard County. An economy for CCRCs and an economy for the rest of the county. It is unrealistic to decouple the county’s economic engine – the school system – from the county’s other budget. Decline in the school system leads to decline in all other services as the tax base flees to other jurisdictions. Therefore it is improper to decouple the school budget from the rest of the county budget.

Lastly, the Petitioner's failure to properly evaluate the project's internal rate of return from the county's perspective is unsurprising. The project's net fiscal loss of \$180,000 leads to a negative net present value over the life of the project. Most private companies that undertake projects with negative net present value ultimately get bought out, declare bankruptcy, or both.

The Petitioner asserts that "no one questioned [the traffic engineer's] analysis." That is not true. We did. Our initial testimony outlines the numerous issues we raised during our questioning of the traffic engineer. We find it incredulous that the Petitioner's closing argument simultaneously claims that the CCRC would be the county's 13<sup>th</sup> largest employer and would have "no increased development impact."

The HCCA reiterates that it would be a disservice to Howard County to accept the proposal containing omissions, unanswered questions, a deceptive fiscal analysis, a failure to provide 10% MIHUS, a failure to provide an essential traffic study, and no credible projections of benefits to seniors and Howard County. Instead, of meeting its burden of proof Petitioner's proposal suggests that approval would create far worse, and long lasting budget and economic problems for Howard County.

Approving this project will not help provide affordable housing to Howard County's older adults. It will not provide them quality transportation. It will not improve road conditions. It will just add to the county debt.

Hiruy Hadgu

HCCA Board of Directors