

January 11, 2024

Charles County Board of Commissioners,
Reuben Collins II, President
Ralph Patterson, Vice President, District 4
Gilbert Bowling III, District 1
Thomasina Coates, District 2
Amanda Stewart, District 3

RE: Public Hearing ZTA #22-173

I would like to thank PGM staff for providing easy access to all of the associated documents related to this ZTA, including links to Planning Commission videos. However, there is a factual error in the Planning Commissions Letter of Recommendation that states that there was no public testimony at the public hearing held on June 26, 2023. I was one of three people who testified in person, and there was a fourth who testified remotely. All opposed this ZTA.

I would also like to correct an error I made in my testimony before the Planning Commission when I misidentified the stream that crosses the property as a tier 1 stream. The streams on this parcel run through an area identified as Tier 2 Extremely Significant for Biodiversity Conservation.

I have included two images with this testimony:

The first image is of the applicant's property, outlined in black. It was downloaded from the states Green Print GIS maps. A LIDAR topographic map is the basemap, with the BioNet overlay layer turned on. You may recognize this BioNet overlay as it is used in the Bryans Road Sub area Plan. This overlay uses colors to identify the BioNet Tiers, and the purple area is Tier 2, and covers the streams and steep slopes on the property.

Approximately 1/3 of the applicant's parcel is mapped Tier 2, extremely significant, with most of the remainder mapped Tier 4, moderately significant for Biodiversity.

This property shares a boundary with the Pomonkey Forest conservation easement, and most of this boundary is defined by the two converging streams. The second image shows a pile of concrete rubble and debris dumped on the Star of the Sea side of the stream.

I want you to see these images because, when presenting this ZTA to the Planning Commission, none of the applicant's representatives appeared to be aware of the sensitive environmental features of the property, its proximity to the Mattawoman Creek, or the callous treatment of a fragile Mattawoman Creek tributary by the property owner.

As I am sure you know, the Appellate Court of Maryland recently, found that when approving two site development plans, the Charles County Planning Commission had “failed to articulate adequately the basis for its decisions”, vacated the decisions, and remanded the cases back to the PC for further proceeding consistent with the Courts opinion.

In the introduction of this Opinion, the Court noted: In 1974, this court commented that “[t]he [Supreme Court of Maryland] in recent years has shown increasing impatience with the failure of administrative boards, whether or not required by statute, to accompany their decisions by specific findings of fact.” *Gough v. Board of Zoning Appeals for Calvert County, Maryland*, 21 Md. App. 697,702 (1974) The primary question for our determination is whether adequate factual findings accompanied these dual SDP approvals. In other words, were the bases for the approvals sufficiently articulated?” This opinion also quoted from an earlier case “Courts require specific findings and well-articulated conclusions because citizens are entitled to something more than [a] boilerplate resolution.”

During the Planning Commission’s two work sessions on this ZTA, Staff alerted the PC members that this ZTA is in direct conflict with the goals and objectives of the Comp Plan codified in the WCD. Additionally, because the ZTA is so narrowly crafted to the benefit of the applicant, it might be considered “spot zoning”.

In their recommendation of this ZTA to the BoCC, the Planning Commission noted that a motion was made “with a strong recommendation for approval because this amendment will further the goals of the Comprehensive Plan.” The Planning Commission did *not* provide findings of fact or a well-articulated conclusion to determine that the applicant’s vision to provide affordable senior housing on this site justified the PC’s irregular application of zoning law and procedure.

It is commendable that the applicant would like to develop an Independent Senior Housing Complex on their property. Unfortunately, that property is located in an area that cannot support development of that density and intensity.

It is easy to understand why the PC is eager to approve this ZTA as they have failed to achieve any of the goals and policies listed in the Comp Plan concerning affordable housing.

But let’s be clear. While the Comp Plan has a list of Goals and Objectives, concerning affordable housing, the only Comp Plan directive, the only time the word *shall* is used in Chapter 10 of the plan, is a requirement to amend the Zoning Ordinance to include provisions to provide MPDU’s specifically tied to *new subdivisions* of 20 or more units.

If the PC is serious about using the zoning ordinance to provide affordable housing, they should work to codify this directive with an ordinance that will provide for far more affordable housing than this ZTA can. No matter how noble the intent, the Comp Plan does not support this proposed use in the WCD.

If you decide that the death by a thousand cuts of the Mattawoman Creek is okay, then you owe it to the public to articulate those findings of fact and provide the well-articulated conclusion that the Planning Commission failed to provide. Failing that, you have no choice but to turn down this this ill-conceived, and possibly illegal, ZTA.

Respectfully submitted,
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