

The People's Voice LLC

3205 B Corporate Court

Ellicott City MD 21042

March 31, 2019

Honorable Council Members

Re: Proposed Local Legislation

Dear Howard County Council Members,

As you know, The People's Voice (TPV) is a State civic and political organization, with thousands of members in Howard County. Our Board has worked for many years trying to get more community input into quality of life issues in Howard County. We propose the following issues be taken up by the Council and propose local legislation to address the following concerns.

I. Update of Zoning Board Procedures vs. Council Procedures –

For years, I have been asking the County and Office of Law to correct a procedural problem. According to the Howard County Charter, Article 202 (g), the Council is to decide on zoning map amendments (those that affect an individual parcel) and it says clearly with no gray area, in 202(g), that the Zoning Board can ONLY do that zoning when it is a piecemeal issue of change or mistake. Since CEF does not have to prove change or mistake, clearly the Zoning Board does not have the right to grant it.

The Council needs to be taking on CEF requests to follow the law. I assume developers prefer the Zoning Board decide these matters, as it is more difficult to oppose those cases, and one ends up in Circuit Court to appeal them, and cannot subject them to referendum. If it is desired for the ZB to retain CEF’s, the charter needs amending. I would imagine that any CEF not granted, and appealed, would include this issue.

II. Developer Rights and Responsibility Agreements (DRRA's)

In the past DRRA's have caused concern regarding their longevity, just how beneficial the trade-offs are to the County for what is being given to the developer, and tying the hands of future Council/Zoning Board members with freezing regulations. It was surprising to see very little limitation or requirements as to what a DRRA can do, when looking at the Howard County Code, Title 16, Subtitle 17 that addresses them. With impending further DRRA's on the horizon, we propose legislation right away to limit what they can do.

Frederick County has pending local legislation on this issue. Recently, I attended a meeting in Frederick, and learned of their legislation and the following excellent points were raised, which TPV strongly supports and hopes for your similar legislative action on DRRA's.

Limiting the duration of future DRRA's to five years, with an option for an additional five years, is reasonable. DRRA's do not need to last until the completion of a large development. They were intended to provide a degree of certainty to a developer until construction could begin. After that, long-established Maryland law provides substantial rights and protections.

Allowing DRRA's to span decades abrogates the rights and fiduciary responsibilities of dozens of future county elected officials by freezing certain local laws and regulations. It is important to codify that in DRRA's freezing can only be applied to laws, rules, and regulations contained within the Zoning Regulations, and those directly related to the use, density and intensity of the property. There should not be other promises made beyond those provisions such as those including the Adequate Public Facilities Ordinance (APFO), nor environmental provisions.

Frederick County's legislation includes limiting the availability of DRRA's to developments of at least 1,500 homes. Larger developments can be complex and time-consuming, requiring more investment in need of earlier vested rights. Larger developments are also more likely to be able to provide the enhanced benefit to the County that would warrant the agreement.

These enhanced benefits could be a new school site, a public facility, and/or public park. They must be in addition to any APFO required public improvements, as those would be offsetting the project's own impacts, not really serving the needs of the broader community. DRRA's should be required to define and document enhanced benefits conveyed to the County as a condition of the agreement, and those benefits should be meaningful and substantial to the scope and impact of the development, above and beyond what is already required through any normal review process.

As for the current DRRA before you, I believe the freezing of zoning regulations and laws for 25 years is not appropriate. Article I, section 1.2 allows “Chase” the right to apply any alteration on-going if they like it, or not allow a change if they don’t. They don’t have to abide by any moratorium, etc. This is too much control on one side of this agreement.

III. Addition of required training for Planning Board Members - Title 16, Subtitle 9

Over the years, and again recently, we have seen Planning Board proceedings cause great frustration regarding the Chair not enforcing the rules of procedure. A training class in zoning, legal regulations and rules of procedure should be required of all members prior to serving, with a refresher class regarding updates or addressing problems every year or two. Planning Board Members often have to make quasi-judicial decisions and thus, need to be qualified and consistently informed.

IV. Removal of County Council from Zoning Board duties.

There are many issues on both sides of whether or not you should serve as the Zoning Board. Some feel it is a good thing, so that you are beholden to your constituents to do a proper job. I think it is more important to allow you to represent your constituents without being curtailed by ex-parte communication rules. Most voters believe they elect their Council Members as legislative representatives, with whom they can speak on all matters before them. It is confusing to many, to wear another hat, that precludes transparency and communication.

If a separate Zoning Board is ever created, Members should be required to have training sessions, just like the Planning Board Members as proposed above, after being ELECTED. That way, the accountability concern is addressed, but constituents can speak to their Council Member on these issues.

V. Extension of CB56-2018 Watershed development moratorium

The timing of the lifetime of this Bill should be extended since the County has changed the timeline of the mitigation plans for these areas. More studies are planned, and thus, it is going to take longer until full implementation of significant flood mitigation can occur.

Thank you for addressing some of these concerns already, regarding updating procedural rules. Also, thank you for your thoughtful consideration of these issues, several of which we do know you are already researching.

Sincerely,

Lisa Markovitz

President, The People's Voice