

PLANNING BOARD TESTIMONY (4/14/16)
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Affordable Housing Proposals for Downtown Columbia

I. Background -- Let's remember how we got here

- 1. Howard County's basic inclusionary zoning requirement would be 15% MIHU for any zoning district of comparable density.**
- 2. Downtown Columbia Plan took a different approach in hopes of greater flexibility and providing deeper levels of affordability and established an affordable housing fund.**
- 3. Unfortunately, after a few years, it became clear that this more flexible approach was generating funds, but no viable way to turn those funds into affordable units in Downtown Columbia.**
- 4. In October 2014, the County Council unanimously approved Council Resolution 120-2014, which requested that the CDHC recommend legislative changes believed necessary and appropriate to ensure that the DCP's vision for a full spectrum of affordable housing can be achieved.**
- 5. Keep in mind that CDHC is the organization called for by the Downtown Columbia Plan to oversee affordable housing in Downtown Columbia, and its members include a broad range of expertise in affordable housing.**
- 6. In accordance with CR120-2014, CDHC undertook an extensive study of the issue, soliciting input from a wide range of stakeholders, including the Howard Hughes Corporation (HHC), and in February 2015, delivered a very thorough report including well-reasoned recommendations for legislative changes.**
- 7. Those recommendations from CDHC are what I have submitted to you in my proposed GPA and ZRA.**
- 8. Representatives of CDHC presented these recommendations to the County Council in April 2015, and in June 2015, the Howard Hughes Corporation (HHC) responded to CDHC's recommendations with a counter-proposal. HHC's counter-proposal was very different from CDHC's recommendations, and members of the Council asked CHDC and HHC to see if they could find common ground.**
- 9. After a few months of negotiating, representatives of HHC and CDHC returned to the Council in September 2015 with a draft joint agreement consisting of a very complex set of recommendations. Those recommendations form the basis of the Administration's proposal.**

- 10. I went back to CDHC's original recommendations because I could see the smoke and mirrors the developer had introduced to the process to get out of the requirement and to shift the burden onto the Housing Commission.**

- 11. Frankly, if I were crafting my own proposal from scratch it might be slightly different, but CDHC is the body of experts tasked with ensuring a full spectrum of housing in downtown Columbia. The county council asked for their best recommendation and that is what I have proposed.**
 - a. I might have asked for a higher percentage given the density. (maybe 20%)
 - b. Especially if we are going to count those at 80% HCAMI (which are in HHC's own words "Market Rate Affordable")
 - c. But that's neither here nor there because I'm proposing what CDHC recommended before they were asked to compromise with the developer.

II. Refuting Key points -- Now I'd like to take a few minutes to look at DPZ's comparison chart, and correct some of the information presented. (Page 9 of the staff report on my proposal)

A. On-going Developer Fees

- a. There are still on-going developer fees under my proposal because there is still the per sq. ft assessment on new commercial development.**
- b. Granted there will be less on-going developer fees paid under my proposal,**
- c. *But...* there will be significantly less need for the funding if the developer is required to deliver the units.**

B. Multiple Developers of Affordable Units

- a. While I don't understand exactly what this means , I can tell you that my proposal would require any developer of residential units to provide affordable units.**
- b. Under my proposal, the housing commission could still build the projects envisioned for Banneker fire station and the existing library site.**

C. Stakeholder Consensus (I will return to this later on but for now, I would note that)

- a. This is not truly a consensus**
- b. And we should not, for the sake of consensus, give the developer veto power over our public policy.**

D. Provides Land for LIHTC Projects

- a. County already owns much of the land being discussed**
- b. If the developer was providing enough units within each development, we wouldn't need additional land set aside to concentrate affordable units in low income tax credit projects.**

E. Provides for Housing Commission Ownership

- a. Housing Commission could develop the projects on County property anyway
- b. Again, we should be striving for affordable units to be integrated into every development
- c. Housing commission ownership is not necessarily our goal.

F. Imposing Phasing requirements for Affordable Units (???)

- a. I appreciate the Administrations concern for making sure that the development of affordable units keeps pace with the development of market rate units
- b. Frankly, that's what my proposal requires, but with much greater certainty.
- c. Also, the administration proposed phasing chart (which is in exhibit C attached to their amendment to the downtown Columbia plan) requires 5% of the units in Phase 1 and 10% of the units in Phase 2 to be affordable.
- d. My proposal on the other hand would require 15% of every development which yields a higher percentage of affordable units in each phase. [For example, 15% of remaining in Phase 1 = 222 or 9.7%]

G. Faster, sooner, and more guaranteed

- a. There is no certainty that affordable units come on any faster under their proposal versus mine.
- b. In both cases, it requires action of the administration of the housing commission.
- c. If the administration and the housing commission have the will to develop affordable housing in downtown, it can happen just as soon under my proposal as the Administration's.

H. Zoning Code versus Housing Code

- a. In response to the staff report concern about whether certain requirements belong in the zoning regs or in the County's Housing code,

- b. First of all, the *requirement* to provide affordable units must at least be in the zoning**
- c. Beyond that, I'm happy to work with Office of Law, DPZ, and Housing on how best to structure the details of implementation.**
- d. What you are here tonight to make a recommendation on is whether to stick with inclusionary zoning as the focus of Howard County's Housing policy. Once that is decided, I'm confident we can work out the minor details of legislative implementation.**

I. TOBY'S

- a. I want to take a just a moment to address one other argument I've heard in support of the Administration's proposal, and that argument is "We have to do it for Toby's."**
- b. Toby's is a Columbia institution...one that has to be preserved and rebuilt for the future.**
- c. I support a new facility for Toby's; I support the concept of a new arts center; and I support the partnership with the Housing Commission to help make it a reality.**
- d. I cannot, however, support allowing Howard Hughes to hold the Toby's project hostage in order to get its way on a decreased affordable housing requirement.**
- e. I would hope that Howard Hughes would take its role as "community developer" seriously enough to be a willing partner in the success of the plans for Toby's site regardless of the outcome of this question of affordable housing regulations.**
- f. But if it turns out that they are not, we cannot allow that to be a defeat for Toby's. We cannot allow Howard Hughes to make this an either/or-all-or-nothing decision on Toby's and CCTA. If Howard Hughes will not allow the plan to move forward as envisioned on the**

current site, then the County must play a more a prominent role in seeing that vision become reality.

- g. Howard Hughes has carefully guided the development of one plan based on its own terms. We cannot allow ourselves to believe that is the only option, and if we must pursue another option, we must commit to ensuring that Toby's and CCTA remain a part of Columbia's cultural life. It's time. *Toby's can't wait any longer.*

III. Precedent : I am deeply concerned that the Administration's proposal sets dangerous precedents in numerous areas. I want to highlight the 3 that strike me as the most glaring.

A. Consensus – The case for the Administration's proposal places a strong emphasis on the value of consensus. As both an attorney and a mediator, I have a deep appreciation for the value of consensus, but let me raise two important points for you to keep in mind:

- 1. First, the "consensus" (and for the record, I am putting consensus in air quotes) referred to is certainly not complete – the County Council was not part of these negotiations, and neither were other stakeholders (i.e., the surrounding community, other housing advocates). It was just HHC, CDHC, and the Administration.**
- 2. Secondly, consensus is not necessarily the most appropriate means of decision-making for every situation... We must remember that we are here to set public policy for Howard County, not to make a deal with the Howard Hughes Corporation.**
 - a. Our purpose in setting this policy should be promoting the best interest of our community, not the best corporate interests of Howard Hughes.**
 - b. Howard Hughes is definitely an important stakeholder, but they do not have veto power over our policy decisions, and we must not give it to them...doing so sets an incredibly dangerous precedent.**
 - c. Howard Hughes' fiduciary responsibility is to its shareholders, not to the current or future residents of Columbia.**
 - d. Howard Hughes' job is to make money, and that's good – I want their investment in Columbia to be successful for them.**
 - e. But OUR responsibility is to the people of Howard County, and it's our job is to make sure that Howard Hughes' success doesn't come at the expense of our community.**
 - f. Finally, let me be clear ... I am *not opposed* in any way to helping Howard Hughes increase their profits, *as long as there is a mutual benefit to the community*. Unfortunately, this is where the Administration's proposal falls woefully short.**

B. Density -- The second dangerous precedent I see is in how this proposal treats density

1. This should be a Separate Conversation

- a. Setting the policy of what density is appropriate for a certain area and setting the policy of what affordable housing requirements should apply to developments in a certain area are two separate policy decisions.
- b. Unfortunately, the Administration has accepted Howard Hughes' transactional approach of bartering density for affordable housing. These distinct policy issues should not be intertwined that way.
- c. Frankly, I am concerned that the general public may not realize we are here discussing the potential of adding almost 1000 units to downtown. Tonight's hearing has been publicized as being about affordable housing, not increasing density in downtown.

2. Density bonuses should include a bonus for the community as well

- a. I am not fundamentally opposed to the concept of a density bonus if a developer is providing *something extra*...something above and beyond the normal expectations and requirements...some added benefit to the community.
- b. In fact, that was the basic framework of the Downtown Columbia Plan. The Downtown Columbia Plan was essentially a 5,500 unit density bonus for which the developer agreed to provide a wide range of community enhancements.
- c. And part of what the plan called for, part of what merited the original 5,500 unit density bonus, was providing a full spectrum of affordable housing. We shouldn't be giving the developer an additional density bonus, just to deliver what was already expected as the basis of their first density bonus.

3. Density Bonuses should not be given for units priced at 80% of HC AMI.

- a. I don't see any reason to provide a density bonus for units priced at 80% of HC AMI.
- b. Even Howard Hughes in its affordable housing proposal to the county, referred to units at 80% HCAMI as "Market Rate Affordable"
- c. And, in fact, current market rates for 1 bedroom apartments in Downtown Columbia align quite closely with the 80%.

4. Density should never be unlimited

- d. If you look closely, the Administration's proposal doesn't just increase the density Downtown by 900 affordable units. It actually increases the density indefinitely as long as the additional units are affordable.

- e. Under the Administration's plan, there would no longer be any density limit at all for Downtown Columbia, and that is extremely disconcerting from my perspective. Columbia is a planned community. We should not be throwing out one of the most fundamental zoning principles to create a residential free for all.

C. The Administration's proposal sets another dangerous precedent which could undermine our existing inclusionary zoning policy.

1. **Inclusionary zoning requirements are the most proven and effective way to provide affordable housing options without an ongoing reliance on subsidies [vouchers or other rent subsidies]**
 - a. For years, we have been advancing Howard County's housing policy on the basis of inclusionary zoning to ensure both permanent affordability and integration of affordable units throughout new development to avoid the concentration of affordable units.
2. **Concentration**
 - a. Concentration of affordable housing contributes to the stigma associated with affordable housing and can contribute to significant challenges in our communities and schools.
 - b. The Administration is proposing concentrating the majority of Downtown's affordable units in Low Income Housing Tax Credit projects that will be 50% or 100% affordable.
3. **Shifting responsibility & burden from the developer to the public**
 - a. Of the 900 affordable units in this proposal, the developer is only expected to provide 400 units. For the remaining 500 units, that responsibility and the financial burden fall to the Housing Commission, mainly through reliance on Low Income Housing Tax Credits.
 - b. When I raised questions about shifting the financial burden of developing so many of the affordable units from Howard Hughes to the Howard County taxpayers, the Administration was quick to point out that their proposal doesn't call for any County dollars to go into the tax credit units. Their answer wasn't technically incorrect, but it missed the point. Because Low Income Housing Tax Credits are federal tax credits, the cost to Howard County taxpayers is somewhat indirect, but let's make no mistake: this is using a public subsidy to relieve the developer of its responsibility to provide the affordable units.
 - c. Those unrealized federal tax dollars could have been available to help pay for Bridge Columbia, or to help pay for the third interchange that will be needed on Route 29, or perhaps most importantly, to provide additional Housing Choice Vouchers for

some of the more than 5000 Howard County families who have been left on our waiting list for far too long.

- d. Now, let me be clear, I support the Low Income Housing Tax Credit program; and I support the developer's ability to leverage the Low Income Housing Tax Credit program as one of the tools available to help the developer *meet* its affordable housing requirement; but I cannot support the County agreeing to let the Housing Commission use the Low Income Housing Tax Credit program to *absolve* the developer of its affordable housing requirement.
- e. The Commission already has the ability to do Low Income Housing Tax Credit projects. *It sets a very dangerous precedent to give a private developer credit for units the Commission could deliver on its own.*

IV. Parking

A. While the primary focus of these proposals is affordable housing, we must not overlook the Administration's very concerning proposal to reduce the residential parking requirements.

1. The problems of insufficient residential parking are real.
2. Experience with constituents in existing communities (townhouse, condo, apartment)
 - a. Neighbor conflicts as a result
 - b. Very difficult and often impossible to provide meaningful solutions because there simply is no more space to add parking
3. Also, lack of affordable housing sometimes means more people living together to save money -- roommates, adult children living with their parents because they can't afford a place of their own -- all these situations lead to more cars than projected

B. It's really too late to fix the problem once a project is built

1. Unfortunately, we won't really know whether the reduced parking rates are sufficient or insufficient until after the project is built and occupied.
2. And at that point, if there is a problem, it's too late to fix it for that project.
3. Our only hope at that point would be to adjust the regs so we don't create the same problem in the next project. Except...

C. The DRRA would lock in the zoning, eliminating our ability to come back and correct the problem for future projects

1. This is **CRAZY** to give up the County's only recourse if over time we see that these reduced parking requirements turn out to be insufficient.

D. Note, this is also a huge financial gift to HHC.

1. According to the value analysis, the value of lowering the parking requirement for Howard Hughes is 8 million. Some estimates, however, are even higher.
2. For example, a truer apples-to-apples comparison shows a savings of 18 million.
3. What does the community get in return other than the risk of decades of irrevocable parking conflicts?

V. Simplicity

- A. As I said before, inclusionary zoning is the most proven and effective way to provide affordable housing options without an ongoing reliance on subsidies.**
1. Why stray from what works? Inclusionary zoning is simple, straightforward, and effective, and it is consistent with our housing policy throughout the County.
 2. The CDHC recommendations which I have proposed also include quite a bit of flexibility, but they do so:
 - a. within a simple framework, and
 - b. by keeping the responsibility for delivering affordable units with the developer.
- B. Again, I would note that we are here to *set public policy* for Howard County, not to make a deal with the Howard Hughes Corporation. There is no need for us to make policy decisions on their terms. As trite as it may be, there is something to be said for the old adage, “Keep it simple, stupid.”**
- C. What the Administration and the developer are proposing is an overly-complicated system which transfers legal requirements to a contractual agreement; uses smoke and mirrors to create the appearance of a larger contribution on the part of the developer; diffuses the developer’s responsibility for affordable housing; and ultimately will make it more difficult to hold the developer accountable.**
- D. I see no reason jump down that rabbit hole when we have a very straightforward, well-reasoned, and perfectly effective alternative.**