

Critique of ZTA 19-01

by David Lublin:

David Lublin is Professor of Government in the School of Public Affairs at American University and the former Mayor of the Town of Chevy Chase. Opinions are those of the post author.

The links provided take the reader directly to his blog. The material below is copied directly from that blog.

<http://www.theseventhstate.com/?p=11984>

RIEMER'S PROPOSED ZONING CHANGES WILL HAVE MAJOR IMPACT & NEED SERIOUS WORK (PART I)

FEBRUARY 11, 2019 DAVID LUBLIN

Montgomery County Councilmember Hans Riemer, now in his third council term, thinks that not enough residential units are being built in the county and has been peppering his email list recipients with arguments about how we need to build more.

Interestingly, Hans has reached these conclusions not long after the previous council completely revised and simplified the zoning code in a sharply pro-development direction that gives developers increased flexibility to pursue their plans. Master Plan revisions have also added millions of developable square feet in areas such as Bethesda and White Flint.

Hans's New Dream: Accessory Dwelling Units

Even after all of these changes, Hans now has offered a zoning text amendment (ZTA) that would increase development possibilities in single-family home neighborhoods around the county. He wants to make it easier to build separate apartments or buildings, known as accessory dwelling units (ADUs) on the same single-family home property. The core idea is that they are autonomous living units with their own entrances.

Hans sees this as a way of creating more affordable housing in Montgomery. New smaller units would be more affordable. Building a rental unit might allow people to buy into Montgomery and help make the mortgage payment. Under Riemer's proposal, the units could be up to 50% of the size of the main home and he would reduce or eliminate requirements for additional off-street parking. **Only two people** No more than two adults but an unlimited number of children could live in them.

It would facilitate multigenerational living and aging in place by allowing parents and adult children to live on separate residences on the same property. (Alternatively, that possibility may

discourage many parents and children.) Older residents could also supplement fixed incomes by renting out the unit or the original home.

Planning Board Chair Casey Anderson and Planner Lisa Govoni attended and provided supportive information and commentary at a forum organized by Hans that presented only positive information. Several attendees of the public also shared anecdotes about how the proposal might meaningfully help them. I should also mention that Hans was unfailingly polite to the few dissenting voices, though I disagree with his belief that county residents widely hold negative views about renters.

Serious Problems

But Hans's proposal is not nearly ready for prime time. The proposal itself has serious problems in terms of its workability in terms of its own goals and lack of an iota of information on how it will impact the county budget or infrastructure. Tomorrow, I begin to explore why.

<http://www.theseventhstate.com/?p=11990>

THE OPPOSITE OF INTENDED: HOW RIEMER'S ZONING PROPOSAL WILL INCREASE HOUSING COSTS (PART II)

FEBRUARY 12, 2019 DAVID LUBLIN

Yesterday, I introduced [Councilmember Hans Riemer's proposal](#) to make it much easier to build accessory dwelling units (ADUs) in single-family home neighborhoods around the county. Today, I begin to explore why the current proposal may well exacerbate the problem it is designed to solve while further burdening county infrastructure.

Affordable or More Expensive Housing?

While sold as a means of advancing affordable housing, Hans's proposal to make it much easier to build ADUs could have precisely the opposite effect. As Hans pointed out at his forum on the idea, over 30% of Montgomeryites already are house poor and devote a disproportionate share of their incomes to housing. Will banks be willing to lend to people who already have trouble making ends meet to construct new units?

Even worse, housing values on properties amenable to additional units will rise. After all, property becomes more expensive the more income you can generate. This is why developers always press for more density. Instead of making MoCo affordable, Hans's legislation will contribute to the problem it aims to solve by making existing homes more expensive.

Property taxes will go up with rising land values. While incomes have been stagnating, taxes continue to rise—not least because the county hiked them by 9% before the last election. Increasing values further will result in higher taxes that many residents, even those not house poor, will not find it easy fit into their budgets. Again, banks are unlikely to lend even more money for the construction of ADUs to the already financially stretched.

Poor Housing Code Enforcement

As several forum attendees highlighted, county housing law enforcement is a joke. One woman explained how she has tried fruitlessly to get rules enforced on her block for over 15 years, including by contacting Councilmembers Hans Riemer and Nancy Navarro.

Hans didn't disagree but touted that the county wanted to address the issue, citing repeatedly an additional \$1 million allocated to housing code enforcement and the keenness of the new county executive to fix this problem.

But enforcement is often not systematic let alone muscular. Riemer's bill limits ADU occupancy to two adults. If the county isn't even enforcing rules people support regarding overcrowding and parking that protect both tenants and neighbors, does anyone think that the county is going to kick out a kid when she turns 18 or needs to come home at an older age? What about other relatives or friends who needs a place to stay for more than just a few days?

No Idea of Infrastructure Cost

Speaking of those kids, how many additional entrants will the public schools need to accommodate and how much will it cost? Hans opened his forum by lamenting that young families can't afford MoCo. Presumably, if his proposal works, MCPS will get more students.

I asked Hans if he had any idea of the impact on the county budget due to the need for not just schools but more police and so forth, and he doesn't know but "doesn't think it will have a big impact." I can't say I will have much faith in any belated estimates generated by people already squarely behind the idea. My head is still spinning from the idea that lack of knowledge of the cost or the impact was apparently no barrier to county planners expressing so much support at the forum.

Hans suggested, however, that the impact would be minimal. He imagines that the number built here will fall between the 40-50 per year built now and the over 500 per year built in Portland, Oregon. Except that is almost surely an under-guesstimate. The City of Portland has only two-thirds the population of MoCo and more live in apartment buildings, so it has a lot fewer homes where you could construct an ADU.

Moreover, Portland is a terrific city, but it's not exactly a model for affordable housing. [Prices have risen rapidly](#) in recent years and there is no sign that ADUs have altered that trend. Ironically, Montgomery and Portland share a major driver of high housing costs: green belts off limits to new construction that export sprawl and raise prices inside the belt.

Next Up: Breaking Trust with Residents

Tomorrow's post looks at why Hans's proposed zoning change breaks trust with residents and how it is open to abuses that the county won't be able to stop despite Hans's laudable efforts to prevent them.

<http://www.theseventhstate.com/?p=11994>

RIEMER'S ZONING PROPOSAL BREAKS TRUST AND WILL BE ABUSED (PART III)

FEBRUARY 13, 2019 DAVID LUBLIN

Councilmember Hans Riemer has proposed making much easier to build additional accessory dwelling units (ADUs) with the best of intentions. Yesterday's post looked at why [it will likely raise housing costs](#), even though it is intended to do the opposite, and burden county infrastructure. Today, I look at why the proposal breaks trust with residents and remains open to serious abuses.

Breaking Trust with Residents

The county literally just finished revising its entire zoning code in a pro-development direction. We also just revised the rules on ADUs only a few years ago. Yet here we are once again revising the code in a major way. And the changes are all uni-directional to allow more. Always.

In a single stroke, Hans's legislation undermines all of the county master plans by drastically increasing the number of potential units in any area. In Bethesda, we just finished the process and already upped the existing density considerably. Is it any wonder so many county residents are mistrustful of planning processes and county government?

Homeowners value stability in neighborhoods. After all, buying a home is the single largest and more personally important investment most people will ever make. While some will welcome the changes, others will feel that they've just been cheated. As one resident articulated at the forum, not everyone wants to live on a congested street next to an AirBnB.

Why We Can't Have Nice Things

"Never assume a good motive when a bad motive will do" is not the most positive outlook on life but a very good approach when thinking about how some people will do their best to stretch and to misuse new rules.

While ADUs may help some achieve the positive goals emphasized by Hans, one can easily imagine how these rules will be abused despite Hans's commendable attempt to build in protections. The law requires that ADUs can only be built by people on their principal home's property. In theory, this should prevent a developer from buying a home, tearing it down and building either a duplex (in apartment or attached townhouse form) or two detached houses with one twice the size of the other.

Except that it won't. Someone who flips houses can just buy it, say he plans to move into it, tear it down, build a duplex or two detached houses, sell, and repeat. Alternatively, I imagine developers could construct contracts with existing homeowners that pre-arrange the sale to maintain the fiction that the new duplex or second house is the idea of the existing homeowner. As often occurs in such situations, county planners will determine that it complies with the letter of the law and have no choice but to approve the plans.

I bet someone with more knowledge of housing law could come up with even more ways to accomplish the same goal without breaking a sweat. Heck, by the time that [lawyers for developers](#) are done, we'll be thanking them for only building two units.

Making it possible to build more will make the land more valuable, and thus less affordable. Existing residents who can't afford the higher property taxes will have to sell. Others will leave because they thought they were living in a neighborhood but found themselves in a construction zone. Either way, the hiked prices render the Montgomery dream out of reach for many more families—all in the name of affordable housing.

It could well result in tearing down entire neighborhoods to build pricey duplexes. Why not make a killing doing something its supporters have labelled building affordable housing? Some would undoubtedly cheer and call it "smart growth" but that's not how it's being sold. Moreover, there is no guarantee that the new homes won't be placed far from transit.