




HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
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**Planning Board Recommendation
for ZRA-113**

To: Theodore Wimberly - Legislative Assistant
Howard County Council

From: Hannah L. Gardiner 
Division of Public Service and Zoning Administration

Date: October 9, 2009

Attached is the Planning Board Recommendation for ZRA-113. Should you have any questions, please contact me.

:hg

Attachment

cc: Robin Regner, Administrative Assistant to Zoning Board
William Mackey, Chief – DCCP

2009 OCT -9 A 11:34

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1 HON. MARY KAY SIGATY FOR * BEFORE THE
2 GENERAL GROWTH PROPERTIES, INC., * PLANNING BOARD OF
3 PETITIONER * HOWARD COUNTY, MARYLAND
4 ZRA 113 (REGULATION AMENDMENT) *

5 * * * * *

6 MOTION 1: *To recommend denial of the current proposed regulation amendment*
7 *portion of ZRA 113 only.*

8 ACTION: *Recommended Denial; Vote 5 to 0.*

9
10 MOTION 2: *To recommend that the County Council have County Staff revise the*
11 *regulation amendment portion of ZRA 113 based upon the final General*
12 *Plan Amendment portion, and resubmit the regulation amendment portion*
13 *through the standard public review process for Zoning Regulation*
14 *Amendment cases.*

15 ACTION: *Motion Approved; Vote 5 to 0.*

16 * * * * *

17 On October 1, 2008, the Hon. Mary Kay Sigaty on behalf of General Growth
18 Properties, Inc. (Petitioner) submitted to the County Council a proposed General Plan Amendment
19 (GPA) which included seven supplemental documents, dated September 2008, which was also
20 included a submission for proposed Zoning Regulations Amendment (ZRA) also known as ZRA 113
21 to facilitate the revitalization and redevelopment of Downtown Columbia as a sustainable, diverse,
22 pedestrian-friendly, mixed-use downtown.

23 On November 13, 2008, in response to the submittals, the Department of Planning & Zoning
24 (DPZ) released a Technical Staff Report (TSR) addressing both the proposed GPA and proposed
25 ZRA. The petition, the Department of Planning and Zoning Technical Staff Report and
26 Recommendation, and the comments of reviewing agencies, were presented to the Board for its
27 consideration. The Department of Planning and Zoning recommended approval of the ZRA
28 provided that multiple elements were revised in this complex proposal, as outlined in the November
29 13, 2008 Technical Staff Report.

1 **DPZ Presentation**

2 On December 11, 2008, the Board held a public meeting at which DPZ staff presented their
3 TSR regarding both the GPA and ZRA 113.

4 On January 8, 2009, per continuation of the December 11, 2008, the Board held a public
5 meeting where the petitioner presented their proposed original GPA and ZRA. The Petitioner did
6 present suggested changes to the ZRA in response to the TSR.

7 **Public Testimony**

8 On February 5 and March 5, 2009, the Board continued to hear and receive oral, written and
9 recorded video testimony by members of the public at public meetings on these dates.

10 On March 19, 2009, the Board received the last of the oral and written testimony and moved
11 to close the public record for receiving written testimony on April 2, 2009, at 5:00 PM. Following
12 the completion of the initial public meetings on this case, the subsequent Planning Board work
13 sessions were conducted solely in an examination of recommended revisions to the GPA Portion of
14 the submission. Beginning at the September 4th and continuing at its September 17th work session,
15 the Board discussed the ZRA.

16 **Work Session Deliberations**

17 Unanimous is the Board in its belief that the zoning regulations are the most important tool
18 for implementing the ultimate vision of the GPA. Repeatedly, the Board heard citizen after citizen,
19 community group after community group express their general concern for enforceability and
20 accountability regardless of what the vision entailed. Citizens were seeking to be assured that the
21 plan, whatever the form, will be legally binding, fully implemented, and that the promised amenities
22 will be built for the additional density that is being gained. This too was a major concern of the
23 Board, specifically as it relates to the ability of the County to require compliance by GGP or its
24 successors via a GPA. Since *General Plan 2000* is a policy document, not a regulatory tool, the
25 Board agrees that the ZRA must define a solid enforcement strategy based on an approved GPA.
26 Intense scrutiny of the ZRA and related documents is required to ensure such consistency. Without
27 it, loopholes, omissions, and unintended consequences will result. Absent a strong, thorough, and
28 forward looking ZRA, the citizens and the county will not receive the accountability and
29 enforceability they seek.

1 ***To recommend denial of the current proposed regulation amendment portion of ZRA 113.***

2 The Board's unanimous, 5-0 vote to recommend denial of the existing ZRA is based on the
3 following rationale.

4 **Board opposes the simultaneous submission of the GPA and ZRA**

5 Since the plan was first conceived to present the GPA and ZRA simultaneous, the Board has
6 opposed such an approach for several reasons. The GPA is a massive, visionary document that
7 requires focused attention and futuristic thinking to devise the best solution for Downtown Columbia
8 and Howard County. The ZRA is substantial in scope and detail and must implement the vision
9 fully. The ZRA's evaluation requires a pin-point focus that often necessitates word by word review
10 to ensure the GPA vision is being fully implemented. Absent an approved GPA, review of the
11 proposed ZRA is premature and any recommendation from the Board would be speculative.

12 Each document requires the utmost attention that when performed simultaneously results in
13 the public and others to focus on the vision at the expense of implementation or aspects of
14 implementation at the expense of the vision. This scenario was witnessed in the attempt to craft the
15 vision and regulations for the Village Centers simultaneously. Without extending the public input
16 process and adding another iteration (amendments receiving public hearing) it could not have been
17 accomplished.

18 The Board rejects the argument that without bundling the GPA and ZRA together, the
19 citizens would be confused. On the contrary, bundling them together creates confusion and
20 increases the likelihood of critical elements being overlooked.

21 **It is premature to deliberate on a ZRA that does not reflect an adopted GPA**

22 The petitioner's ZRA is irrelevant and incapable of implementing the vision that the Board
23 believes should be in the GPA. When considering necessary changes to zoning regulations, the
24 process should begin with a ZRA that reflects an adopted GPA and not a ZRA that could possibly
25 reflect what the GPA may possibly include. Until the GPA is adopted, it is premature to draft a ZRA
26 based on speculation as to what should be included.

27 **Non-existent citizen input on ZRA**

28 Of great concern to the Board was the lack of citizen comment, suggestions, or support of the
29 ZRA. In the course of testimony, only one citizen and GGP commented specifically on the
30 sufficiency, adequacy, and enforceability of the ZRA. Historically, the Board has highly valued the
31 numerous and detailed suggestions and comments from Howard County's citizens as to how better

1 craft zoning regulations. However, this time, for the drafting of the most important regulations
2 facing the County yet, they were silent. The Board believes that because citizens were faced with
3 reviewing and understanding both the GPA and the ZRA simultaneously under a short deadline,
4 citizens made a choice to comment on the vision and not the details because the vision drives the
5 details. The Board considers it a great, missed opportunity not to have had their suggestions and
6 comments on a ZRA based on an approved GPA.

7 **Contrary to Board's standard practice of review**

8 Board practice has been to review any zoning regulation amendment for its linkage to and
9 support of implementing the vision set forth in the General Plan. Additionally, the Board conducts a
10 line-by-line, word-by-word review to ensure the proposed legislation implements the vision fully
11 without gaps. If any other zoning regulation amendment was substantially altered by the Board, the
12 Board has the authority to permit another round of public review before forwarding to the Council.

13 The Board in the case of ZRA 113, the Board could not follow the standard process for
14 evaluating regulations because an adopted GPA does not exist. It can not determine whether the
15 vision was truly being implemented by the proposed regulations or not because the vision has not
16 been established. Moreover, with citizen input missing, the Board could not readily determine what
17 the public voice was on these regulations. The Board would have been left to speculate as to what
18 citizen input would have been as it re-drafted the ZRA to reflect the Board's modifications to the
19 GPA.

20 If the proposed ZRA was re-drafted to reflect the Board's substantial GPA recommendations,
21 those changes would have been extensive. Furthermore, the Board would have not been able to
22 present these changes to the public for comment; thereby eliminating a step of public review
23 normally taken when substantial re-work is performed.

24 The Board strongly believes citizens of Howard County gain nothing if the Board drafts a
25 zoning regulation amendment that is not reflected of an adopted GPA. Additionally, forwarding
26 only generalized recommendations for a ZRA would be a disservice to the zoning regulation
27 amendment process that citizens and Council have come to rely on and expect from the Board.
28 Crafting a broad ZRA recommendation is of no utility because eventually a specific ZRA based on
29 the adopted GPA must be done.

1 **Substantial modifications and time required to re-draft the ZRA would delay the GPA**
2 **and further back up cases before the Board**

3 If the Board did engage in the review needed to develop a ZRA reflective of its
4 recommended GPA modifications, a significant amount of time would be necessary due to the
5 complexity, scope, and specificity required. Since the petitioner chose to submit both the GPA and
6 the ZRA together, they must proceed to the Council together. Therefore, taking the time needed to
7 re-draft the ZRA would further delay consideration, modification, and adoption of the GPA. The
8 Board believes the GPA should proceed and not be delayed by a proposed ZRA that the Board
9 thinks is premature. Moreover, a thorough yet speculative review would further increase the backlog
10 of Planning Board cases because of the amount of time necessary to fully review the extensive GPA.

11
12 *To recommend that the County Council have County Staff revise the regulation*
13 *amendment portion of ZRA 113 based upon the final General Plan Amendment portion,*
14 *and resubmit the regulation amendment portion through the standard public review*
15 *process for Zoning Regulation Amendment cases.*

16 **Council should direct the Board to review a revised ZRA which reflects the adopted**
17 **GPA**


18 The Board stated that the best, logical approach would be for the County Council to direct
19 staff to re-draft the ZRA to reflect the adopted GPA. Council could also direct the Planning Board
20 to reconsider the re-drafted ZRA under the standard public review process for Zoning Regulation
21 Amendment cases. The Board believes that a review of the re-drafted regulation amendment which
22 actually reflects the adopted GPA could be accomplish expeditiously given the Board's familiarity
23 with the subject.

24 **Opposing view**

25 One member expressed an opinion that the GPA and ZRA recommendations should be
26 submitted together as a single package because the GPA recommendations were thoroughly
27 developed and the ZRA recommendations should be consistent with the requirements outlined in the
28 GPA. If the Council makes changes to the GPA, they will also need to make changes to the ZRA.

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For the foregoing reasons, the Planning Board of Howard County, Maryland, on this 17th day of September, 2009, recommends that the current ZRA Portion of ZRA 113, as described above, be DENIED, and further recommends that the County Council also proceed in accordance with the second motion.


Paul Yelder

Marsha S. McLaughlin
Marsha S. McLaughlin, Executive Secretary