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Planning board nixes Fillmore zoning changes

All sides have to see a win to make project work, one expert says

by Janel Davis and Agnes Jasinski | Staff Writers

Hurt feelings. Planning processes. Power struggles.

All have been cited in the aftermath of the Planning Board's rejection last week of zoning changes proposed by County Executive Isiah Leggett (D) as part of a plan to bring a Fillmore music hall to downtown Silver Spring.

The board, responsible for determining how projects are developed in the county, rejected Leggett's changes and will recommend that the County Council not approve them. The council, which oversees the Planning Board, has the final say.

Board members argue that the proposals would take away their authority and give some projects unfair advantages. Overall, they support the music hall project, but not Leggett's suggestions.

"There is a lot of frustration," said Councilwoman Nancy M. Floreen, a former Planning Board commissioner. "This is one of the times when the axiom 'Don't let the perfect be the enemy of the good' comes into play...."

"Our rules are so complicated that pretty soon you're going to have a regulation for anything ... That's not the way we want creative planning to operate," said Floreen (D-At large) of Garrett Park. "The question becomes: Is the process transparent? Is there community understanding and support? And is there political support? And the Planning Board doesn't get to decide everything and that seems to be the crux of the issue."

The disagreement between the board — led by Chairman Royce Hanson — and the Leggett administration follows a string of disputes over other projects including the Paul S. Sarbanes Silver Spring Transit Center, the Silver Spring Library and Park and Planning headquarters. In those projects, as with the Fillmore proposal, much of the contentiousness centered on control.

"There is a general concern that we've built over the years a strong planning process that is protected from political favoritism," Hanson said this week. "We don't want to get into a situation where a project can get anything it wants based on the decisions of an elected official."

Under current rules, the Planning Board may accept or reject public use space offered to the county as an amenity by developers at the end of a project in order to increase a project's density in central business districts. Under Leggett's proposal, the board would no longer have that discretion when the county executive accepts a property offer for arts or entertainment use. Also, the developer offering the land would receive project and site plan approvals for up to 15 years.

In the Fillmore deal, Lee Development Group, which owns the land on Colesville Road, would give the property to the county as an amenity before nearby land it owns would be developed.

“Of concern first is the circumvention of master plan requirements and almost all requirements in the central business district zones were abandoned, so that the treatment given to this project and to potentially other Bethesda, Wheaton and Silver Spring projects seemed unfair,” Hanson said. “Also given the way the proposal was structured, it would give them a minimum of 15 years protection and possibly 18 to 20 years.”

The Leggett administration and Lee Development Group said they expected the Planning Board's rejection.

“The Planning Board, unfortunately, gets caught up in their process,” said Bruce Lee, president of Lee Development Group. “But there is no process for this because no developer has ever delivered a public amenity before the project.”

Leggett maintains that his proposal is necessary to spur development.

“Our view is that this is a unique project. The space has been vacant because the way the Planning Board has things in place doesn't facilitate anything happening to it,” said Patrick K. Lacefield, Leggett's spokesman. “And if it continues into the future, nothing could happen to [the property] in another 18 years.”

The Planning Board has been willing to review alternatives to Leggett's proposal, including shortening the length of project approvals, Hanson said.

Leggett and Lee Development Group are pinning hopes on the County Council.

“I think there is a way to work this out, I'm just not sure how quickly and easily this happens,” said Councilman Marc Elrich (D-At large) of Takoma Park, a member of the council's Planning, Housing and Economic Development Committee, which will debate the proposal before the full nine-member council votes in the fall.

“I would hope the Lees understand that they are dealing with multiple parties,” he said.

“Just because you make a deal with the executive, that doesn’t mean the concerns of the planning staff have been met.”

On the other hand, Floreen, who also sits on the committee, warned, “I think we have to get on with it.”

But to get on with it, all the players have to find some kind of victory, said one expert. “More than anything, they have to figure out the gains to everyone in this partnership and agree to them,” said Debra Shapiro, a management professor and doctoral program director at the Robert H. Smith School of Business at the University of Maryland, College Park. “The only way they are going to is if they ultimately believe they benefit more by doing so than by not doing so. If they can’t agree to [the benefits], I don’t know how they can agree to this project.”

A public hearing on the proposals is scheduled for July 29. Worksessions are scheduled for September.