

December 19, 2011

Fairfax County Board of Supervisors  
12000 Government Center Parkway  
Suite 533  
Fairfax, VA 22035

Subject: Re-zoning from R to PDH for the purpose of increasing density by circumventing lot-width requirements

Dear Chairman and Supervisors:

On December 15, 2011, the Membership of the Fairfax County Federation of Citizens Associations voted unanimously to recommend that re-zoning from R to P-type zoning be denied for infill projects unless certain conditions be met, as indicated in the enclosed resolution.

In 2007 the County was considering adopting an ordinance allowing residential lot width waivers as "special exceptions" because it felt the rigorous standards of the variance process<sup>1</sup> required by state law could not be met by many people.<sup>2</sup>

In a letter dated January 31, 2007, the Federation requested<sup>3</sup> that lot width waivers in applications involving the subdivision of lots should not be granted if the result would increase the yield of allowable dwelling units on the subject property. The letter requested that waivers not be granted if the resulting lot width was less than 75% of the minimum lot width requirement. The Federation warned of a proliferation of pipe-stem subdivisions, which permanently impair the character and quality of existing neighborhoods. We were concerned that developers desiring to create small subdivisions that could not be built "by right" with a cul-de-sac would take advantage of this "loophole" and thus double their lot yield over what the current zoning would allow. Despite our concerns, the county passed Section 9-610 of the zoning ordinance to allow residential lot width waivers as special exceptions.<sup>4</sup>

Our fears were soon realized, as we expressed again in a letter dated May 25, 2009, concerning SE 2007-DR-025 (Nadimi lot width waiver). In this case, the County allowed a pipe-stem subdivision of the property such that the number of dwelling units on the property was increased<sup>5</sup>. Allowing the SE allowed the density to increase in an established neighborhood.

<sup>1</sup> <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2309>

<sup>2</sup> Staff Report, Proposed Zoning Ordinance Amendment, "Waiver of Residential Minimum Lot Width Requirement," December 4, 2006, page 1. (See Note 4)

<sup>3</sup> <http://www.fairfaxfederation.org/committees/Landuse/LotWaiverLetter070225.html>

<sup>4</sup> Adoption of an Amendment to Chapter 112 (Zoning) of the 1976 Code of the County of Fairfax, Monday, February 26, 2007, Sect. 9-610, Provisions for Waiving Minimum Lot Size Requirements (see <http://www.fairfaxcounty.gov/dpz/zoningordinance/articles/art09.pdf>)

<sup>5</sup> <http://www.fairfaxcounty.gov/bosclerk/summary/2009/09-07-13.pdf>

The most recent lot width waiver request involving a pipe-stem, 2009-MA-015 (Cornejo), was approved by the County on March 23, 2010. The County granted the Applicant a four-lot subdivision with one lot 15-feet wide and another lot 18-feet wide, whereas the current zoning, R-2, requires each lot to be 100 feet wide. The Applicant had no “by right” ability to develop its combined narrow lots to have four houses built on them. The Applicant used the lot-width waiver as a “loophole” to increase lot yield so that four homes could be built on the property.

The neighbors challenged the validity of Section 9-610. On April 12, 2011, Judge Leslie Alden of the Nineteenth Judicial Circuit of Virginia ruled that “The County exceeded the enabling authority and violated Dillon’s Rule by granting lot width waivers without meeting the requirements for granting a variance. Section 9-610 as it pertains to waiving minimum lot-width requirements by special exceptions is null and void, and the Cornejo special exception is declared invalid.”<sup>6</sup> If SE 2007-DR-025 had been challenged in court, it similarly would have been ruled invalid.

We now find that the judge’s ruling can be circumvented if a re-zoning is allowed, from an R zoning to a PDH zoning, which has no minimum lot width requirement.<sup>7</sup> The result will be exactly what we objected to in the January 2007 letter: a proliferation of pipe-stem subdivisions that increase development density, thereby changing the character of the neighborhood. The proliferation is especially egregious with small parcels, such as the Cornejo’s property of slightly more than two acres. These PDH pipe-stem subdivisions will likely result in an infill of small lots adjacent to existing large lots, frequently with expensive homes on them. The Cornejo proposed PDH-2 re-zoning is a prime example, with proposed lot sizes of 0.16 acre, 0.21 acre, and 0.23 acre. These proposed lots are surrounded on all sides by lots in excess of 0.5 acres.<sup>8</sup>

We respectfully reiterate our request to limit lot widths, including by denying re-zoning from R to PDH, for infill projects except under the conditions listed in the enclosed resolution.

Thank you for giving weight to the position of the Federation in your decision on this important residential infill zoning issue.

Sincerely,



Tania Hossain  
President

Frederick A. Costello  
Chair, Land Use Committee

---

<sup>6</sup> Blakeley v. Board of Supervisors of Fairfax County, Virginia, pages 4-5, ( April 12, 2011 Letter Opinion, Judge Alden), 2011 Va. Cir Lexis 62.

<http://www.lexisone.com/lx1/caselaw/freecaselaw?action=OCLGetCaseDetail&format=FULL&sourceID=bdjcca&searchTerm=fddj.jGSb.GaeN.facS&searchFlag=y&11loc=FLOW>

<sup>7</sup> See Fairfax County Zoning Ordinance, Section 6-107

<sup>8</sup> See Sheet 3 of 6, Cornejo Properties Conceptual Development Plan, RZ 2011-0193 filed with Rezoning Application RZ-2011-MA-28

**RESOLUTION**

**RE-ZONING FROM R- TO P-TYPE ZONING FOR INFILL PROPERTIES**

**(Approved by the Federation's General Membership on December 15, 2011)**

WHEREAS existing neighborhoods might consist of a majority of property owners who value the character and ambiance of their neighborhoods and therefore desire to keep the neighborhoods stable,

WHEREAS there might be a desire of a minority of property owners in a neighborhood to profit by increasing the number of dwelling units on their properties,

WHEREAS such increase in the number of dwelling units can denigrate the character and ambiance of an existing neighborhood,

WHEREAS re-zoning from R-type to P-type zones, including PDH, does not sufficiently protect the stability of existing neighborhoods,

BE IT RESOLVED that re-zoning from R to P-type zoning, including PDH, be denied for all infill projects, if not approved by the majority of neighbors, unless (1) the property can be otherwise developed to the same number of dwelling units "by right" under the current zoning; (2) the re-zoning to P-type zoning would not cause an increase in the yield of allowable dwelling units on the subject property; and (3) the resulting lot widths would be no less than 75% of the minimum lot width requirement of the current zoning.