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Proposed Changes in the Zoning Regulations

By JOHN W. NEUMANN, General Counsel, Suburban Maryland Builders Association

In the October issue of the Potomac Valley Architect there appeared an article by Ray V. Murphy, concerning planning in the Washington Suburban area of Maryland, and an editorial on "Contingent Zoning". Mr. Murphy, with his usual clarity of thought and expression, gave an excellent digest of the planning situation, particularly with respect to zoning, and the editorial included some worthy ideas on the possibility of improving the zoning process in our area. After reading these two expositions, however, it occurred to me that the architects and their friends might also like to know about a few of the planning and zoning improvement projects that are now underway so that they could have the best possible basis for exercising their very considerable influence on the course of planning, zoning and development in suburban Maryland.

One of these is the minimum-average lot size device which Mr. Murphy mentions. Legislation to amend the Montgomery County zoning ordinance to incorporate this device into the zoning process is now before the Montgomery County Council, which has already held a public hearing on it and has spent many hours discussing its adoption. The Council has already tentatively agreed that the average minimum concept should be applied to the RR size lots in one manner or another, probably as an automatic provision where sewer and water are available.

In addition, the County Council has asked its Committee on Open Spaces, chairmanned by Blair Lee III, to prepare and submit to it a draft of legislation providing for planned community group zoning. This Committee was the instrument through which the minimum-average lot size proposals were formulated and submitted to the Council, and it is expected that the Committee will be in a position to make recommendations to

the County Council on planned community groups by the end of the year. In short, there is every evidence that the County Council is aware of the need for new zoning approaches and that the existing laws in this regard are not completely responsive to the present day demands. The Park and Planning Commissioners are also aware of the necessity for changes in existing approach, and recently have shown their willingness to consider and recommend new proposals in this regard.

In the articles that appeared in the October issue, both Mr. Murphy and the editorial writer urged the adoption of laws permitting "conditional zoning", which is zoning reclassification granted on the basis of the fulfilling of some extra-legal condition by the property owner, such as architectural design or the placing of structures on the property in a certain manner. It is probably impossible to achieve this directly, even with amendment of the enabling legislation. In a number of decisions the

Court of Appeals of Maryland has held that this kind of zoning cannot be permitted and will be stricken down by the Courts when it is attempted. The most recent of these decisions was a case arising in Prince Georges County (Carole Highlands Citizens Association v. Board of Co. Comms. of P.G. Co. 158 A 2d 663, decided March 16, 1960). In a case decided February 18, 1959, the Court of Appeals stated that the reason for this position is that it is beyond the power of a zoning body, exercising a delegation of the State's police powers, to make agreements which inhibit those police powers by means of what amounts to a contract concerning the conditions to be imposed. The statements in the long line of cases, both in this jurisdiction and in other states concerning this concept, are so strong that there seems little doubt but that the Courts will continue to prohibit an out-and-out conditional zoning proposition. In my opinion, this is a desirable long-range result

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Wheaton House, Wheaton, Md., garden apartments featuring balconies and a landscaped center court. Cohen, Haft and Associates, Architects.

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Appointments to the Planning Commission

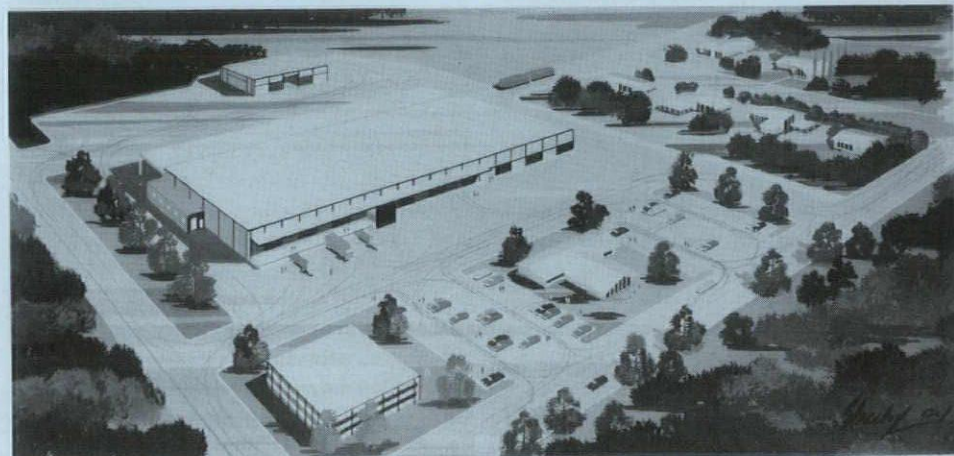
When considering appointments to public agencies, such as the Maryland-National Capital Park and Planning Commission, it is reasonable for the public to expect that those persons under consideration shall be respected and qualified citizens of the community, with a demonstrated interest in civic affairs and the general welfare. Beyond this, we expect of members of such commissions the qualities of sound, practical sense, independence of action without regard to private interest, and that most necessary quality, vision.

Reliance upon the technical staff of the commission perhaps makes unessential specific qualification as planners for commission members, and enables a broad community of viewpoint to be represented. It is with regard to anticipation of the needs of the community and the appreciation of the various possibilities of development that the commission as presently constituted is most open to challenge. We have not had imaginative, creative planning; in short we have not had the benefit of vision. It is highly desirable that commission members represent a variety of backgrounds and various professions; one is most struck by the fact that there is no representative of two of the professions most closely concerned with planning on the creative level. Why have we no architects or land planners as members of the commission?

The needs of the counties in the area of planning demands the imagination and training of skilled and dedicated professionals at the policy level. Responsive popular government should know where to find them.

We have been assured, as witnessed by Mr. Neumann's response to Ray Murphy's article in the October issue of the Potomac Valley Architect, that the Montgomery County Council and the Park and Planning Commissioners are eager to receive advice and ideas. Mr. Murphy's plea for more detailed planning of proposed commercial, apartment and industrial zones points to the most glaring weakness of the schemes put forth by the Planning Commission. Perhaps there is a lack of understanding of what is meant by detailed plans and a lack of appreciation of the need for this kind of planning on the part of public officials, the existing technical staff, and most certainly on the part of the business and real estate people. The general public is only aware of the after effects of helter-skelter, catch as catch can development. The more articulate among them voice dissatisfaction with the inconvenience, the ugliness, and the raw monotony that has been thrust upon them.

On the technical staff planning needs the applied talents of trained civic designers, who would propose specific uses for tracts based upon projected and immediate needs. At the planning level they should be able to encourage good architectural and landscape design, and act as an influence to coordinate and harmonize development. We need the services of people specifically trained in the art of civic design, supported by commissioners and the general public, and removed from the influences of politics and the pressure of influential land-holders. hal



Barber and Ross Industrial Plant, Leesburg, Virginia. Bartley-Davis and Associates, Architects.



Mount Airy

A little while ago I went with a party to visit the stately old house Mount Airy, which from high ground overlooks the Rappahannock, at a point some forty miles below Fredericksburg. It is of especial interest to architects, not only because of its restrained Georgian design, but because it was and is the home of the Tayloe family, whose town house was at one time the Octagon in Washington. Mount Airy House was built by Colonel John Tayloe. Several dates have been set down for it—1747, 1750, 1758. This may possibly be because it is actually three buildings—the main house; the two flanking buildings, to the side and somewhat in front of the main structure; and the two quarter-circle connecting wings in the Mount Vernon manner. The dates may thus refer to partial and to full completion.

There is an impressive approach terrace before the main entrance to the house, extending between two lovely stone urns. One of the curved connecting passages used to be an orangery, a very posh thing in early days, so much so that when one of the Tayloe ladies married a Lloyd of the Eastern Shore, one of the first things she did was to persuade them to build an orangery, as an adjunct to the Lloyd Wye House near Easton.

The son of John Tayloe, Benjamin Ogle Tayloe, felt the need of a town house as well, and in 1800 he built the Octagon House, now proudly A.I.A. headquarters.

The country house is well named Mount Airy, since it is on high ground overlooking the river and surrounding countryside. The road from the little town of Tappahannock runs directly toward Mount Airy house, turning to curve to the left to sweep around the Tayloe land. In fact, it is the belief that Colonel Tayloe persuaded the authorities to swing the road around so that he could have the house for his estate.

The great Tayloe estate is still generally intact and is operated as a farm, a cheering fact since few of the old stately houses can be maintained except by the very rich. Actually, Mount Airy has been helped by a generous grant from Mr. Rockefeller, which has helped to keep the house in repair.

Unfortunately in 1850 one of the slaves, embittered, set fire to the house, which was saved, but the interior finish destroyed. Jack Stenhouse speaks of another occasion when the house again faced probable destruction. A company of Confederate soldiers during the war entered the house, presumably with sabotage in mind. But there was a mechanical organ in the house and, when one of the soldiers put it in motion, it burst forth with the strains of Yankee Doodle. The soldiers apparently felt that this was a Heaven-sent omen. At any rate the detachment departed in solemn mood, without defacing or destroying the house.

Edwin Bateman Morris FAIA

Zoning Regulations

(continued from page one)

as it accords with our basic governmental philosophy that all persons in the same situation are to be treated alike, with no more given or required of one than another.

There are means, however, whereby the result can be achieved without the use of conditional zoning as such. The Maryland Court of Appeals in a lengthy opinion rendered in June, 1957 (*Huff v. Balto. County*, 214 Md 48, 133 A 2d 83) pointed out one possibility. This case upheld a provision of the Baltimore County ordinance whereby one of the manufacturing zones could be approved by the Zoning Commissioner for any parcel of land more than ten acres in size and having some other stated char-

acteristics, provided that certain conditions to be imposed by the Commissioner were met. The Court said that this amounted to a grant of something in the nature of a special exception. The device used in the Baltimore County ordinance, since it has the sanction of the Courts, should be examined for possible use in our area.

Perhaps an even better method to get at the results that are claimed would be achieved by conditional zoning, is use of the planned community device, which as stated above is now under consideration. A "planned community" would include in it a variety of uses and types of dwelling units designed to complement each other and to provide a self-contained community area to suit the needs of all who would live in it, both as to housing, open spaces, services, and where possible, employment. Communities elsewhere, especially around Toronto, Canada, have been built just this way.

The grant of zoning reclassification to permit the development of a planned community would require that the community be built in the manner proposed by the applicant at the time of his application for the zoning. The land owner would be bound by his proposal to the zoning body, and building permits would only be issued if the buildings to be erected would be in substantial conformity with those shown in evidence at the hearing on the zoning application. Such a zone would have to be optional with the land owner, who would have the right to elect to apply for other zones that now exist in the zoning ordinance if he so desired. Once having been granted the planned community group zoning, and having done anything at all on the land to commence the development of the planned community, the land from that time on would be subject to the conditions voluntarily assumed at the time of the application by the land owner.

Some of these things mentioned above, and many of those mentioned by Mr. Murphy, if proposed five years ago, may have met with either active opposition, or at least lack of interest, by the governing officials. Today both the County Council and the Park and Planning Commissioners are eager to receive advice and ideas. My guess is that the zoning regulations will change more in the next five years than they have in the last thirty years.

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