

Falls Church City Council Surrenders Planning Authority to Real Estate Developers

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By W. Frederick Thompson

On Monday, August 7, 2023, the Falls Church City Council voted 5-2 to enact new rules for construction in the T-1 building district. The plan enacted relinquishes all “guardrails” and regulatory control of development to private real estate interests.

There are winners and losers. This is what the Council leaders who enacted this plan call “balance.”

The Losers

Citizens who want to provide entry pricing for middle income residents – The plan is engineered to achieve a specific price point—\$800,000. The Brookings Institution has defined the “missing middle” as a 3-person household with income between \$37,000 and \$147,000 ([Brookings Missing Middle Definition](#)). It’s pretty hard to imagine anyone in that income range with student debt and car payments and normal day-to-day expenses affording the \$800,000 condominium that the Council majority is targeting in its efforts.

On a related note, it’s hard to understand why the Council believes there is a shortage of condominiums and townhouses priced at or below \$800,000. A search of Redfin shows about 200 sales in this range in or near the City over the last 3 years. I’m not sure why City staff can only report 15 sales in their supporting staff report. One indication of a shortage would be dramatically increasing prices because of short supply and high demand. However, in the case of my own \$800,000-900,000 condo, it has only increased in value by 11% in 20 years. By contrast, a typical Falls Church private home has increased in value by 45% in just 15 years.

Citizens who want to create more affordable housing in the community – Six of the seven City Council members told me personally that they do not expect **any** affordable housing to be built as a result of the T-1 zoning amendments (I haven’t spoken about this to the seventh). Some say that it was **never** their goal. The primary way to get affordable housing would be if the builder requested a Special Use Permit (SUP). To get a large density increase, a developer would have to apply for a SUP. The permit would give them 5 more feet in height (to 50 feet) and 10% more lot coverage (to 70% total coverage). However, it would also subject them to significant review and public comment. The majority of the extra units that they got permission to build have to be low-margin affordable dwelling units (ADUs). It seems very unlikely that anyone would do that.

The staff report and first reading contained a novel plan that has never been reviewed by Council or citizen committees. This new twist on ADUs states that “by right,” a developer can add up to 4 additional affordable development units in exchange for 6 additional units and would then be allowed to increase unit size from an average of 1,500 square feet to 1,800 square feet. Since it is not specified, this could apply to townhouses, condominiums, or apartments. With the T-1 Zone being about 25 acres, this could mean up to 100 new affordable dwellings (which would be great!). However, does the City have a plan and a budget for funding and managing an ad hoc program of this size? This new provision takes only about 35 words in the code, but it will require Falls Church City to manage a potentially major program,

which is unplanned and unbudgeted and unpredictable and is triggered solely at the discretion of developers.

Citizens who have petitioned their government – We all understand that we have a representative democracy and not a direct democracy. Therefore, the only way the public can be heard on an issue is to sign a formal petition or to speak out at a public hearing. In this case, there was extensive public input. About 500 people signed petitions. Many more filed comments or spoke at public sessions. Nearly all spoke in opposition to this plan. The couple of dozen who spoke in favor of the plan did so because they supported affordable housing increases or more affordable housing for the “missing middle.” This proposal will achieve neither of those objectives. A representative democracy requires not only active and concerned citizens who express their views (that has happened even though the staff report makes no mention of it). It also requires elected representatives who listen to those views and are willing to adjust their positions to serve the public.

Citizens who believe that the Transition Zone should provide a transition between business and residential areas – Section 48-392 states, in part, that the basic intent of creating a transition district is: “Building and site design within the district should provide for **transition** [my emphasis] in building heights and intensity between commercial districts and single-family detached residential districts.” This proposal fails to satisfy the basic, fundamental requirement of significantly lower height and decreased density. One example:

- The Broadway is 54 feet in height—with a SUP, new adjacent structures can be 50 feet in height; the July 10 report also proposed “penthouse” structures that could add 10 feet—making the SUP building 60 feet in some areas.
- The Broadway contains 80 units on 1.58 acres. The Broadway’s density is 51 units per acre. The new staff report allows by-right development of new adjacent structures to have a density of 40 units per acre by-right and up to 60 units per acre through an SUP. The new density made possible by the T-1 amendments now **exceeds** the density allowed for the Broadway.
- Additionally, unless a building goes through the SUP process (and this is not required of any commercial building and is not required of residential buildings unless they seek minor height changes and significant density increases through an SUP), there is NO limitation on parcel consolidation or site size. Sites on N Washington Street could be consolidated to 5.7 acres and 6.5 acres (potentially 220 units in a single project at by-right 34 unit/acre levels—this is over four times as many units as are in the Broadway). These are very large sites, which could result in very large buildings with very large stormwater, traffic, and environmental impacts. The Council has abdicated the right to plan for appropriate uses.

In Council discussions after the Park Avenue Walking Tour, one Council Member mentioned “the scary box.” That is the exhibit that was on Line 84 of the July 10, 2023 Staff Report. It is missing from the current staff report. I guess if you don’t look at the box, you won’t find it scary. But this is exactly where the Council should have focused its attention. Look at worst case development and define the parameters of what is allowed so that the worst case will not be realized. Instead, the Council and staff meandered off in an attempt to achieve specific unit target prices through reverse engineering the requirements to achieve an outcome that they cannot control.

Citizens who believe in open and transparent government – Without a Council Work Session or Public Meeting on T-Zones and therefore without any guidance from Council, the new staff report issued during the evening of August 3, made fundamental changes. This is yet one more example of an ongoing

pattern of making major changes to the proposal without analysis and without adequate time for the public or the Council to consider them. Examples of the latest changes are:

- Building heights were increased from 40 feet to 45 feet by-right
- Buildings heights were increased from 3 stories to 4 stories by-right
- Maximum average unit sizes were decreased from 1,850 square feet to 1,500 square feet
- New formulas were created for affordable housing, including adding 6 units by-right and creating an entirely new SUP table, which goes from allowing a 30% density increase tied to affordable housing to one allowing a 50% total project density increase
- By-right maximum density per acre was increased from 30 units to up to 40 units at builder discretion

Additionally, references to N Washington Steet and S Washington Street in prior staff reports suggested that those areas should be subject to rezoning into B-1 categories. Citizens would have had a voice on this change and would have been able to participate in discussing it. Now, they are lumped into the T-1 zone and are immediately (after the second reading next month) available for construction. Residents and the public were misled by the limitation of the walking tour to two blocks of Park Avenue. It turns out that this change affects all T-1 zoned properties.

By contrast, Fairfax County recently launched a major townhouse development in Reston. There were 17 months of community meetings and engagement before the issue ever came to the Planning Commission. Planning staff and the Planning Commission thoroughly vetted all relevant issues before the item was brought to the County Board of Supervisors for action.

Making major changes in proposal scope and impact and allowing the public only one business day before beginning to enact them into law is **not** good governance. It does not give the public or the Council adequate time to consider the consequences of these changes. Additionally, having a continuing roller coaster of changes and presenting a different plan to the public than the one voted on in public session (as occurred in the Planning Commission on February 15, 2023) is **not** good governance.

Citizens who support protections for trees and the environment -- The Environmental Sustainability Council made excellent suggestions to the Planning Commission in December, 2022. These recommendations covered a range of issues, including stormwater control, EV charging, solar power readiness, appliance efficiency, etc., in new developments. At that time, it was felt that all of these issues could be considered under the broad authority to authorize any residential structure under an SUP. In that original proposal, an SUP was the only way residential development of any scope beyond a quadplex could be built. The Planning Commission shared these perspectives with the Council. As a result of moving nearly all residential development out of the SUP process, the ESC's recommendations have been eviscerated.

Citizens and local businesses that depend on local street parking – Requiring only one parking space per unit will invariably move more cars onto City public streets. Units can be 1,500 to 1,800 square feet on average. We should assume that units of this size will typically appeal to two-person families or larger. That means (typically) two or more cars. Additionally, there will be guests and there will be service vehicles. The amendments make no provision for either. The overflow parking (over 30 extra cars per acre or more without dedicated parking) will empty into surrounding streets. Since T-1 zones abut business areas, this will not only impact suburban neighbors, but it will also reduce available parking for the customers of local businesses.

Local property owners who wish to build townhouses befitting our community – The maximum unit sizes and numbers in the amendments that were passed are clearly trying to drive developers away from townhouse development and toward condominium and apartment development. Thirty-four to 60 (with SUP) townhouses per acre is absurd. The unit numbers and square foot limitations described in the T-1 amendments are not appropriate for townhouse development and demonstrate the folly of one-size-fits-all zoning rules. Adding an extra floor and an extra 5-foot height and reducing the average size of units from 2,000 square feet to 1,500 square feet is clearly not aimed at promoting the construction of quality townhouses.

Citizens who are expecting major revenue increases through development – The latest August 7, 2023, staff report doesn't even try to guess what the fiscal impact of development might be. The statement on line 373 basically states that "possible assessed values" are based upon 34 units per acre at \$800,000 per unit (\$27,200,000 per acre, although this number does not appear in the chart). It provides no evidence or assumptions related to when, where, or how often this will occur or how this might be offset by lower real estate assessments on surrounding properties. It is a totally inadequate analysis to base a business decision on. To even call the single paragraph and the nine numbers it references a "fiscal analysis" is laughable.

Winners

Real estate developers -- They get to build large residential and commercial buildings by-right without City oversight. Large multi-family buildings in the target price range have previously been built in Falls Church. The Broadway, the Byron, and the Spectrum all have units in the Council-desired price ranges. Developers can use existing Business District Special Exception authorities to build more residential buildings of this type along the City's main business corridors. Using that authority has yielded good results and good profits for developers, and it has worked for the City. The City has gotten significant stormwater improvements. It has gotten public spaces that all residents in the City can use. It has gotten buried utility lines, sidewalk improvements, and crosswalk and stoplight contributions. It has also gotten restaurants, retail shops, and offices that add to the dynamic look and feel of the city. The T-1 build-by-right approach would not be subject to the Special Exception process. It will bring the City none of these benefits. Real estate developers will be able to build large residential and commercial buildings without making contributions to better the City.

The Days Ahead

The Economic Development Committee of the City Council is made up of Council members and real estate developers who serve on the Economic Development Authority. They originally launched this effort as a way to make speedy change with minimal public input and participation. The effort started with a legislative first reading of a law in May 2022. This has not proven to be quick or easy.

Nonetheless, with a new first reading, the Council majority is on the path to final enactment. The next step is Planning Commission review and endorsement. This is likely to be quick and is scheduled for the next few weeks in August. There is little point in the Planning Commission making substantive comments that the Council majority has already rejected and that would trigger a new first reading the Council majority clearly opposes. All along the way, affected citizens have tried to be heard and have made proposals to build sustainable compromises to improve the City. They have been channeled back into

formal, arms-length comment processes, which constitute little more than scream therapy. This will be the law. It will just not be a good law.