

May 3, 2021

Ms. Lynda Eisenberg, Director  
Office of Planning  
Carroll County Government  
225 North Center Street  
Westminster, MD 21157

Subject: Proposed R-20,000 Zoning and Cluster Subdivision Regulations Text Amendments

Dear Ms. Eisenberg:

The Freedom District Citizens Association (FDCA) appreciates receipt of a summary table and notes from your office comparing existing and proposed zoning and subdivision regulations affecting the R-20,000 zoning district. Subsequently, FDCA communicated with Commissioner Rothstein that we would supplement our March 11, 2021 letter with this updated summary of our concerns.

The notes that accompanied the summary table comparison indicated MORE restrictive and LESS restrictive proposed regulations. FDCA appreciates the proposed regulations that are more restrictive towards potential R-20,000 District development, as they will help to limit high density, multifamily development proposals that would be incompatible with existing ½ acre minimum lot sizes in adjacent neighborhoods. However, we continue to oppose the less-restrictive regulations that would remove important neighborhood input during the development process by allowing Retirement Village townhome/two-family dwellings “by right”. This will shift neighborhood input to primarily the site plan process, and not allow meaningful discussion as to the potential compatibility of the use itself on a site-specific basis. FDCA also opposes proposed changes to the Cluster Subdivision regulations which eliminate the Conventional Plan submission and allow development density to be based solely on gross acreage, rather than the existing limits based on site-specific topographic and other conditions. Combined, FDCA believes that the proposed changes negate key Freedom Plan considerations that were incorporated into the Plan regarding neighborhood compatibility and development process input and would result in many more dwellings than current regulations allow.

The original County proposals for remaining large undeveloped R-40,000 (Low Density) parcels in the Freedom Plan was for R-10,000 (High Density) development. After many public input sessions, the Freedom Plan was adopted with these parcels being designated for R-20,000 (the County’s Medium Density, single family district). Key statements and recommendations were adopted in the Freedom Plan supporting the community’s desires for neighborhood compatibility considerations, including:

- Recommendation #3 (Page 3) - “...the government will not attempt to fundamentally transform communities against the will of existing homeowners and residents. Recognizing that Freedom is a suburban/rural area, government will respect the character of the community and its neighborhoods.”

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- Recommendation #4 (Page 3) (addressing the trend towards “generational housing”) – “Freedom should remain a place that will accommodate larger home sites that can accommodate additions of in-law suites or similar improvements that enable multiple generations of families to live together. Facilitate residential infill development consistent with the character of adjacent housing in Freedom’s existing established neighborhoods, recognizing the value that many citizens place on larger lot development.”
- Freedom Area Designated Growth Area Goals (Page 29):
  - o Goal 3 – “Approve housing types and densities as permitted under existing land use definitions and zoning. Any increases of residential densities and property types should be limited and should respect the fabric of existing communities.”
- Element 7: Land Use, Goals & Objectives (Page 77):
  - o Goal: Pursue policies that facilitate the implementation of the Plan Vision Statement, including: development in appropriate areas at densities not to exceed those that are consistent with the character of existing communities...”
  - o Goal: Promote appropriately timed and scaled development which supports, enhances, and reinforces the identity and character of the Freedom Community Planning Area (CPA)”
  - o Objective 1: Provide land use designations that protect the character and meet the needs of existing communities...”
- Recommendations within Element 7 (Land Use) (Page 95):
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  - o Recommendation #12 – “Residential infill, clustering, and redevelopment may be approved to the extent it is consistent with the fabric of existing communities and does not overburden available public facilities.”

It is precisely because there are other, contrary paragraphs and recommendations in the Freedom Plan that support goals of providing a variety of housing types at densities greater than the R-20,000’s 2.0 du’s/acre that FDCA believes it remains critical to include neighborhood input prior to approving potential proposed land uses on the remaining undeveloped Freedom parcels that may be in conflict with existing neighborhoods, depending on site-specific considerations. These concerns are the nature of our opposition to proposed Chapter 158 changes that make Retirement Villages a use-by-right in the R-20,000 district.

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Regarding the proposed Cluster Subdivision (Chapter 155) text amendments, the removal of the Conventional Plan submission requirement and the allowance of using gross acreage as the only determining factor in calculating Cluster Subdivision density/lot yield, instead of first removing undevelopable land (topography, streams, wetlands, etc.) is problematic and goes against Freedom Plan recommendations and goals:

- Recommendation #13 (Page 4) – “Conserve sensitive area lands through existing policies and programs and minimize the impact of development upon sensitive areas.”
- Freedom Area Designated Growth Area Goals (Page 29): Goal 9 – “Continue to protect and maintain the recognized environmental resources and natural ecosystems in the Freedom area by administering land use practices that are in balance with, and minimize the effects on, the designated conservation areas.”

Whether single family or age-restricted housing, the proposed Cluster Subdivision regulations will greatly benefit landowners/developers by allowing more lot yield than might otherwise be developable, to the potential detriment of environmentally sensitive areas, the community, and the County’s ability to keep up with improvements needed to offset development impacts.

One example of our concern could be applied to the Wolf property on Oklahoma Road. Based on existing Cluster Subdivision regulations, a draft Conventional Plan layout was developed by requiring the calculation of the maximum number of houses (yield) to respect the parcel’s topography, streams, etc., resulting in **103 homes** allowed on 71 acres (approximately **1.45 du’s/acre**). The ensuing Cluster Plan was REQUIRED by the existing regulations to maintain no more than 103 homes based on the Conventional Plan maximum lot yield. If the regulations for Clustering is changed as proposed, the following scenarios MAY be available to the landowner:

- Without a Conventional Plan requirement, a new single family development, based on gross acreage, could yield **142 homes (2.0 du’s/acre)** with a minimum lot size of 10,000 sq. ft.
- Without a Conventional Plan requirement, a new Retirement Village development, based on gross acreage and the proposed use-by-right status for Retirement Villages at an allowable density of **3.5 units/acre** could yield as many as **248 townhome/two-family dwellings**.

The granting to developers of additional housing units than would otherwise be supported through evaluation of a Conventional Plan is questionable. What community benefit is served by automatically allowing more yield than a parcel can support? And why would the County support landowner or developer bonuses when it continues to have difficulty funding infrastructure improvement needs in the Community Investment Plan for the current development inventory? The proposed Chapter 155 regulations appear contrary to the Freedom Plan’s Recommendation #19 (Page 4) – “Ensure approved development does not outpace the County’s ability to provide public facilities in a timely manner.”

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We foresee that the proposed zoning and subdivision regulations changes could unintentionally transform undeveloped R-20,000 properties in the County from single family to age-restricted townhouse/two-family dwellings (to avoid school impacts) without the ability to counter the use-by-right status. Also, not enough has been taken into account regarding proposed Sykesville developments that are planned to add a large amount of townhouse and multifamily development – this development will also add to the Freedom Area’s lack of adequate facilities, and by themselves, may accommodate what the County had in mind for providing a variety of housing types.

We are also aware of County comments made regarding the asserted necessity of developing all remaining Freedom undeveloped land at a density required to achieve or maintain Priority Funding Area (PFA) status. We have not heard any rationale for this position, nor are we aware of any potential PFA projects that would not occur if the remaining Freedom parcels were not developed with an overall 3.5 du’s/acre density. We also have not heard of specific projects potentially stemming from proposed development that would be needed to warrant State of Maryland PFA funding. On the contrary, our understanding is that the existing state-acknowledged PFA provides the means necessary to achieve PFA funding in the future for major projects, based on historically limited state funding capabilities.

We urge the County to honor adopted Freedom Plan recommendations and goals that support the public input of existing adjacent communities when considering development on remaining undeveloped land by not granting Retirement Villages use-by-right status in the R-20,000 District. We urge the County to not change Cluster Subdivision regulations that unconditionally grant lot yield to developers over and above that which would be allowed under existing regulations to the detriment of the existing community and its environment and the County’s ability to fund improvements to offset future development impacts.

We thank you for the opportunity to comment and look forward to participating in upcoming discussions. We will make ourselves available if you would like to discuss the above FDCA recommendations.

Sincerely,

Timothy Passarello, President

FDCA

Cc: County Commissioners  
FDCA Board of Directors  
FDCA Trustees  
FDCA Public Website

Board of County Commissioners  
Edward C. Rothstein, President  
C. Richard Weaver, Vice President  
C. Eric Bouchat  
Dennis E. Frazier  
Stephen A. Wantz

**Carroll County**  
ECONOMIC DEVELOPMENT  
Right Place, Right Time

John T. "Jack" Lyburn  
Director

February 23, 2021

Ms. Cynthia Cheatwood, Chair  
Carroll County Planning Commission  
225 N. Center Street  
Westminster, MD 21157

Dear Ms. Cheatwood:

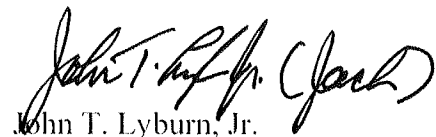
As you are aware Carroll County is in the process of revising and updating its zoning code. This has been a tremendous task and I appreciate the time that the Planning Commission has committed to this massive undertaking.

I understand the Planning Commission is currently reviewing changes to the residential districts. One of the changes proposed is to make private schools a conditional use in the R-40 district. Being labeled a "non-conforming use" is problematic and this would have a detrimental impact on the Gerstell Academy in Finksburg. A non-conforming use must apply for permission if it wishes to expand its footprint or rebuild if a fire or other natural disaster should occur. This additional step in the review process introduces a substantial amount of risk and adds uncertainty. As a result, financial institutions are wary to finance projects that are not an outright permitted use.

I propose that the Planning Commission carefully consider this change. In the least, I would ask that existing private schools be "grandfathered" in the new zoning code as a principal permitted use. That would allow existing entities that have already invested into their location to continue to benefit from the rights of a principal permitted use.

Thank you for your consideration.

Sincerely,



John T. Lyburn, Jr.  
Director

c: Lynda Eisenberg, Director of Planning

**DATE:** March 11, 2021  
**TO:** Carroll County Planning and Zoning Commission  
**FROM:** Tim Passarello – President, Freedom District Citizens Association (FDCA)  
**CC:** Board of County Commissioners  
Ms. Lynda Eisenberg, Director of Planning  
FDCA Board and Trustees  
**RE:** Proposed “Cluster Subdivisions” Subdivision Regulations Text Amendments  
(Chapter 155.095)

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The FDCA is opposed to the proposed elimination of the Conventional Plan requirement in the subdivision regulations regarding cluster subdivisions (Chapter 155.095). We are also opposed to removing a key provision of the existing regulations (155.095, division (A)(1)) that requires the maximum number of lots and dwelling units to not exceed that which would be permitted if the area were developed in conformance with its topographic characteristics. Retaining the Conventional Plan and qualifying density limitation paragraph would importantly assure that the Planning and Zoning Commission retains the ability to select a Conventional Plan layout, if site conditions and/or neighborhood compatibility concerns warrant, and would help avoid granting a density bonus to a developer if site conditions would otherwise limit development.

The proposed text amendments establish minimum lot sizes in the R-40,000, R-20,000, and R-10,000 zoning districts that are essentially one-half the size of existing zoning district requirements. For R-20,000 zones, our main concern is the potential incompatibility of new development that has ¼ acre lot sizes vs. existing ½ acre lots, which has a potential for very different housing products. Combined with the proposed text amendments to Chapter 158 establishing Retirement Villages and introducing townhouse development and hospitals to the R-20,000 District, we believe that the loss of a Conventional Plan and density limitation will result in developers simply targeting the permitted minimum lot size, leaving the community unable to provide a regulatory basis and/or meaningful input into important neighborhood compatibility concerns that are currently supported by 2018 Freedom Community Comprehensive Plan recommendations and the current development review process.

While we understand potential financial benefits to the developer and County of building and maintaining reduced impervious area from roadway pavements and utility systems, the current Conventional Plan is an informative tool that allows the community and county to gauge a proposed development’s compatibility with the surrounding neighborhood. Eliminating the Conventional Plan opens up more potential that the housing products and lot sizes of the proposed development could be considerably out of sync with existing surrounding neighborhoods, and this goes specifically against recommendations #1 and #3 of the 2018 Freedom Community Comprehensive Plan (Page 3 of the 2018 Freedom Plan), as follows:

1. ***Recommendation #1 - “Any increases in land use densities will be generally limited in order to mitigate the impact on traffic and existing infrastructure.”*** While the developer is responsible for improving the proposed subdivision’s internal roadways, approving a density greater than that would normally be allowed due to topographic and other environmental constraints

allows the developer to exceed the parcel yield that would otherwise be achievable (at no fault of the community). The additional homes that generate external roadway, school, water and sewer service capacity impacts become financial burdens that area citizens will bear, essentially resulting in community subsidy of the developer.

- 2. Recommendation #3 - "Recognizing that many citizens came to the Freedom Area to escape the trappings of urbanization in surrounding counties, the government will not attempt to fundamentally transform communities against the will of existing homeowners and residents. Recognizing that Freedom is a suburban/rural area, government will respect the character of the community and its neighborhoods."** While the proposed text amendment provides an established minimum lot size, there is no maximum density listed in each applicable zoning district (Chapters 155 or 158); thus, the net residential density (based on gross acreage, minus the amount of parcel dedicated to roads and open space) could be much higher than existing adjacent neighborhoods. We recommend adding a maximum net density to the proposed cluster subdivision regulations, as well as the appropriate section(s) of Chapter 158.

Another community concern is that the gross acreage is currently used to determine gross density of proposed development. The FDCA conducted a limited sampling of Maryland counties, other states', and American Planning Association (APA) model clustering regulations to see if allowing total gross acreage was a uniform way to determine gross density calculations. We did not find a universal approach to gross acreage calculations but note that there are jurisdictions that remove watercourses (streams, stream buffers) from the allowable calculation for gross density, and another that removes wetlands and wetland buffers from the gross density calculation<sup>1</sup>. In these cases, the jurisdictions considered the stream and wetland areas to be undevelopable. FDCA believes the County should remove such undevelopable areas from the allowable gross acreage calculation for proposed residential density. We believe that NOT doing so would amount to giving the landowner/developer more economic benefit than would normally be achieved.

We are additionally concerned that there could be instances where a developer proposes minimum lot sizes that are below the minimums proscribed in 155.095(A)(2). We did not see anywhere in Chapter 155 or 158 where this is addressed, and we would strongly recommend that language be added to the appropriate Chapter/division that states that no variances to minimum lot size for a cluster subdivision will be permitted.

We believe that the regulations could be strengthened by communicating clear purpose and intent of clustering in Chapters 155 and/or 158. In this regard, FDCA would recommend insertion of an opening paragraph under 155.095 that indicates the purpose, need, and opportunity to conserve existing natural environmental features, such as forests, streams, wetlands, open space, etc. while not penalizing landowners for owning parcels with undevelopable portions. Also, cross-referencing Chapter 155 and 158 would provide clearer communication to the public of the regulations and their usage.

The FDCA appreciates the opportunity for input into this important County effort. Please see below for research citations.

<sup>1</sup>The following is a summary of the limited research conducted by FDCA to identify how other communities or organizations regulate or otherwise address the goal of residential clustering:

- City of Westminster, MD, Section 164-197.1 *Residential Cluster Subdivision*
- American Planning Association, Planning Advisory Service (PAS) Report 135, *“Cluster Subdivisions”*
- Lincoln Institute of Land Policy, *“Density Definitions and Examples”*
- City of New Smyrna Beach, Florida, *“2019 Memorandum – Density Calculations Study”*
- City of Ferndale, Washington, *“September 2020, Presentation: Net Density & Gross Density”*



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We thank you for the opportunity to comment and look forward to participating in upcoming discussions. We will make ourselves available if you would like to discuss the above FDCA recommendations.

Sincerely,

Timothy Passarello, President

FDCA

Cc: County Commissioners  
FDCA Board of Directors  
FDCA Trustees  
FDCA Public Website

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\*ADMITTED IN MD AND PA

February 24, 2021

**VIA EMAIL AND FIRST CLASS MAIL**

Carroll County Planning & Zoning Commission  
225 North Center Street  
Westminster, MD 21157

RE: My Client: Freven Foundation; Gerstell Academy

Dear Madam Chair and Commission Members:

My above-referenced client owns properties on the north side of Maryland Route 140 west of Finksburg containing approximately 200 acres in aggregate at 2500 Old Westminster Pike. They are located in the Fourth Election District and appear on Tax Map 53 as Parcels 10 and 200. Parcel 200 presently is zoned Residential R-40,000 on most of its acreage, with the remainder being in Conservation. Parcel 10 is zoned Conservation under the Carroll County Zoning Ordinance.

Parcel 200 is improved primarily, but not exclusively, in the R-40,000 portion by the Gerstell Academy, a non-denominational private school for grades K-12. Parcel 10 is used for a variety of satellite and accessory activities associated with the school operation. At present, my client's use of the property is a principal permitted use as provided by County Zoning Code Section 158.072(C)(2) ("Religious establishments, schools, and colleges;") and Section 158.071(C)(6) ("Schools and colleges, subject to the approval of a site development plan by the County Planning Commission;").

Proposed amendments to the County Zoning Ordinance for the residential districts ("Concept Team Proposal February 3, 2021") in its Table of Uses found at proposed Section 158.05.1 provides that a "Private School" is only allowed as a conditional use, not a principal permitted use, in the R-40,000 zone. This is problematic for my client for a number of reasons. First, as indicated above, the bulk of its flourishing Academy is located in the R-40,000 district on Parcel 200. By specifying that a private school is now only to be allowed in the R-40,000 zone as a conditional use, not a principal permitted use, the principle part of the Gerstell Academy in the R-40,000 zone becomes a non-conforming use with its accessory and affiliated uses located in the Conservation zone presumably remaining permitted uses.

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Gerstell's status as a non-conforming use is genuinely problematic, just as it would be for any business. A non-conforming use's ability to modify, to make alterations or similar expansions or changes of a use are extremely limited by Carroll County Zoning Code Section 158.033. For instance, a non-conforming use is not permitted as a matter of right to make modifications, expansions, alterations or substitutions of one non-conforming use for another. They may only attempt such normal evolution of their activities requiring modifying the facility's physical footprint by requesting the discretionary approval of the Board of Zoning Appeals or County Zoning Administrator after a hearing. The request for these approvals requires a filing fee with their application and the owner's neighbors will be invited to participate in the hearing on the owner's request.

There is no certainty that such a request would be permitted. Often times applicants must hire counsel at additional expense. Even if approved, there are significant limitations imposed by Section 158.033 on the extent of any expansions allowed. Delays caused by an administrative hearing and perhaps appeal process could hamper reasonable efforts to address the legitimate needs and goals of the school, its students and the community at large. Further, the 12 month period for lapse of a dormant non-conforming use or within which restoration of non-conforming uses must be begun as a result of a casualty loss further hamper the value of land upon which a non-conforming business is conducted.

Non-conformity most often leads to a diminution of the owner's property value. Lenders may back away from refinancing or providing new financing for non-conforming uses. In the event of a likely diminution in value, an owner may need to look for additional collateral for loans in addition to the site itself. And, in lending documents for commercial real estate, it is common to find a provision indicating that zoning non-compliance is a term of default which will allow a lender to reconsider the value and convenience of the security it has taken for a loan and to call a note under certain circumstances.

Secondly, the proposed Table of Uses addresses a scholastic use such as Gerstell Academy in different language than the current Ordinance does. First, nowhere in the proposed text amendments for the Residential districts, nor in the existing text of the Zoning Ordinance is a "Private School" defined. This lack of specificity can create ambiguity with a potential of creating inconsistent results and unintended consequences.

Further, the language of the proposed amendment with regard to these schools could pose constitutional infirmities in that there is no demonstration of why a "private school" should be treated differently than any "non-private" or "public school" that in any way can be considered reasonably related to enforcement of the police power through zoning. How can

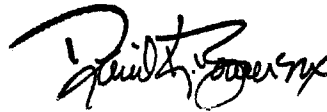
a distinction between an undefined private school and another type of school be reasonably related to the impact of that category of use on adjacent and neighboring properties compared to public or non-private institutions sufficient to justify a different treatment by the Zoning Code?

My clients ask that you protect their parcels and the thriving, successful Gerstell Academy located on them safe by keeping this use a principal permitted use in the R-40,000 zone, and perhaps making this use a permitted use in all residential districts. Further, instead of the description of the use as a "Private School" it is suggested that you use the language currently used in the existing Zoning Ordinance to eliminate any constitutionally based challenge to the distinction between private and other types of schools.

Thank you very much for your attention. Please contact me if you have any questions or comments.

Very truly yours,

HOFFMAN, COMFORT, OFFUTT,  
SCOTT & HALSTAD, LLP



David K. Bowersox

DKB/kat

cc: Ms. Lynda Eisenberg  
Ms. Mary Lane  
Mr. John Scholz  
Commissioner Richard Weaver

**Proposed Text Amendment for Retirement Village**  
(amendments by underlining in red or strike outs)

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**§158.002**

...

**RETIREMENT HOME.** A development consisting of one or more buildings designed to meet the needs of, and exclusively for, the residences of senior citizens, or age-restricted adult housing as referenced in Chapter 155.

RETIREMENT VILLAGE. A Retirement Home on 20 acres or more of contiguous land which may be developed as a subdivision, site plan or combination of both where the bulk and parking requirements otherwise applicable may be relaxed, waived or varied as provided elsewhere herein.

**§158.073(G)**

...

(2) Nursing homes, ~~and~~ assisted living facilities, retirement homes and retirement villages.

...

Use	Lot Area	Lot Width	Density	Front Yard Depth (feet)	Side Yard Depth (feet)	Rear Yard Depth (feet)
... <u>Retirement Village</u>	<u>20 acres (aggregate)</u>	<u>n/a</u>	<u>5 DU/acre</u>	<u>20</u>	<u>10</u>	<u>10</u>
				<u>These internal dimensions may be reduced administratively by the Planning Commission.</u>		
				<u>30 as to perimeter of Retirement Village.</u>		

**§158.075(G)**

...

(2) [same as §158.073(G) above]



§158.075.1(A)

...

LAND USE CATEGORY SUBCATEGORY DESCRIPTION	R- 40,000	R- 20,000	R- 10,000	R- 7,500	Additional Regulations
Retirement home/age-restricted adult housing	X	C <sup>3</sup>	C	C	158.002
<b>Retirement Village</b>	<b><u>X</u></b>	<b><u>P<sup>5</sup></u></b>	<b><u>P<sup>5</sup></u></b>	<b><u>P<sup>5</sup></u></b>	<b><u>158.002</u></b>

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<sup>4</sup> It will be stated elsewhere in the document that the density yield may not be greater than allowed in the zoning district.

<sup>5</sup> The density of the Retirement Village use may exceed 3.5 dwelling units per acre upon a finding by the Planning Commission that the nature and character of the proposed dwelling units are market appropriate and the density is consistent with the applicable comprehensive plan for the subject area upon consideration of the overall land use patterns and densities, and the potential impacts associated with the project, in the neighborhood. MD CODE ANN., STATE FIN & PROC., §5-7B-03 promotes designation of Priority Funding Areas where density is “at least” 3.5 units per acre.