

June 12, 2013

## **Planning Board Draft Zoning Code--Montgomery County Civic Federation Comments**

The Civic Federation acknowledges the immense effort undertaken by the Planning Board, its staff, and the citizen advisory group on revising the county Zoning Code. We do support the aim of trying to provide more certainty in the standards and make implementation of the Code more predictable for all stakeholders. The MCCF is very supportive of the repetition of the Adequate Public Facilities language in the Purpose section of the proposed Zoning Code (Sec.1.2.1. Purpose of Chapter 59, subsection G), and addition of a Board finding that a Site Plan "substantially conforms with the recommendations of the applicable master plan and the approved guidelines" (Sec.8.3.4. Site Plan, subsection A4). But we do have concerns.

The following is a list of concerns with certain aspects of the Planning Board Draft Zoning Code and its implementation (ZTA 13-04 and District Map Amendment G-956, referred to hereafter as the "DMA") which the MCCF urges the County Council to address.

### Proposed Zoning Code and DMA change uses and increase densities on some properties.

Since ZTA 13-04 and companion DMA change the allowed uses and densities on numerous properties, MCCF is concerned this proposed legislative process is the equivalent of a master plan revision for the entire county, absent the meetings between planners and residents of the community which are traditional and useful parts of the master or sector plan rewrite process.

For example, the current standards for the majority of existing C-2 Zone properties in the county allow 1.5 FAR of retail or office use in a 43 foot high building (except for a portion of downtown Bethesda where a past ZTA allows 2.5 FAR with a residential component in a 65 foot high building, if site is within 1500 feet of a Metro station and no closer than 300 feet to a single-family residential use). But the proposed DMA assigns existing C-2 properties into one of four new zones, with the choice dictated by specifics of the location of the property:

- 1.5 FAR of "General Retail" but at a 65 foot building height;
- 1.5 FAR at a 45 foot building height but allowing up to 1.0 FAR of residential use;
- 2.0 FAR and 45 foot building height but allowing up to 1.5 FAR of residential use.; or,
- 2.5 FAR with up to 1.5 FAR of residential use but with a 75 foot building height.

Using the example above, MCCF believes the proposed process will distort area master plans containing C-2 properties by allowing increased jobs or dwelling units to be built in areas where the master plan had not anticipated the infrastructure needed to accommodate such density. We urge a more appropriate process of matching new zones to existing standards as closely as possible, then seeking to apply any new uses or standards the Planning Board or its staff desires as part of future area master plan revisions with their usual and expected community participation process.

### Standards of some existing zones have been significantly altered in proposed replacements.

For example, the proposed new standards for the R-60 and R-90 small lot residential zones will allow Farming (except sod production and livestock), Animal Husbandry (keeping of up to 8 miniature goats, hens, ducks and rabbits), and On-Site Farm Markets. While current standards require the structure housing animals to be 100 feet from the property line of an R-

60 or R-90 lot and at least 25 feet from the nearest neighboring home, the new standard will require the structure be only 5 feet from the property line. At a time when a new strain of avian flu is a worldwide health concern (which, in China and Southeast Asia, is currently being transmitted from chickens to humans who raise or process the birds), it seems unwise for us to move to allow farming in urban areas and closely packed residential neighborhoods. (The City of Los Angeles requires backyard chickens be kept at least 20 feet from an owner's house and 35 feet from any neighbor's home.) And the fact that no definition of what constitutes an On-Site Farm Market is contained in the new code is of particular concern.

Proposed Floating Zones introduce uses not currently allowed in residential areas.

MCCF is concerned that the C/R, Employment and Industrial Floating Zones could introduce new uses not currently allowed in neighborhoods with residential zoning. For example, under certain circumstances and with Council approval, the new Floating Zones would allow restaurants, grocery stores and other retail (up to 49,999 sq. ft.), health clubs, clinics with more than 4 medical practitioners, light manufacturing and production, indoor recreation facilities (capacity up to 1000), and structured parking to float onto single-family residential zoned properties.

MCCF believes a more appropriate approach to preserving the character of residential neighborhoods can be found in the zoning code for Arlington County VA, which prohibits residential properties from being rezoned into a commercial zoning classification.

Site Plan approval authority of the Planning Board has been weakened.

Under the following provision of current law, the Planning Board has the authority to exercise some control over architectural design standards when approving Site Plans.

Sec.59-D-3.4. Action by Planning Board

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(b) The Planning Board shall not approve the site plan if it finds that the development would not achieve a maximum of compatibility, safety, efficiency and **attractiveness**; and the fact that a site plan complies with all of the stated general regulations, development standards or other specific requirements of the zone shall not, by itself, be deemed to create a presumption that the proposed site plan is, in fact, compatible with surrounding land uses and, in itself, shall not be sufficient to require approval of the site plan.

We note the proposed new code addresses safety, efficiency, and compatibility of new development, but the removal of the term "attractiveness" concerns us. The fact that the Board rarely exercises this authority granted in law is no reason to delete the authority from the Code. We urge the Council to retain the term in law, and perhaps pursue the creation of some architectural design standards working group to advise the Planning Board during its Site Plan approval process.

We thank you in advance for giving serious consideration to our comments.

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