

approved by unanimous vote of delegates, with one abstention
October 12, 2009

**MCCF Position on ZTA 09-08, Establishment of Commercial Residential (CR)
Zones-- for Council testimony October 27, 2009**

- 1) The MCCF is concerned that the legislation to create a new CR District, which is in fact a family of related mixed-use zones, is far too complex. The draft zoning text amendment (ZTA) is part of a purported effort to simplify and reorganize the current Zoning Ordinance. Yet the ZTA is dozens of pages long and contains complex provisions and standards which developers and their land use attorneys will no doubt understand, but which will likely perplex neighborhood citizens groups and their leaders.
- 2) The Federation is troubled that the flexibility in the CR Zones, in the allocation of commercial and residential FAR (floor area ratio) for any given property, will result in uncertainty over the amount of FAR devoted to particular uses until Planning Board approval of the project. The number of housing units, or amount of retail and office space, in any given project will not be known until Project or Preliminary Plan approval. Multiply this problem by the total number of properties located in the area of a master or sector plan proposed for CR zoning, and MCCF believes this uncertainty will prevent any effective long-range infrastructure planning by the County government for adequate schools, roads or transit capacity.
- 3) MCCF is concerned that there will be little input from residents, and any input will be largely disregarded, when Planning Department staff develop lists of acceptable Density Incentives to be allowed by developers seeking maximum allowed FAR under Optional Method. In addition, several of the incentives listed in the ZTA would allow density in exchange for so-called amenities which a developer should provide as a matter of good design and sound land use planning (e.g.; pedestrian mid-block connections for large projects, structured or below-grade parking, and safe drop off areas for day care centers).
- 4) Federation members believe the Minimum Public Use Space Requirements are unacceptably low--ranging from zero for certain lots of one acre or less, to a maximum of only 10% for larger lots. In addition, we are troubled that developers could be allowed to provide public use space offsite within 1/4 mile of their project site, or buy out of the requirement entirely by making a payment to a "Public Amenity Fund" (akin to buying out of Moderately Priced Dwelling Unit requirement). The draft legislation, however, does not specify who will make decisions on use of such a Fund, or whether it will be administered on county wide or local basis.
- 5) MCCF opposes the provisions in the ZTA reducing or eliminating the Residential Amenity Space requirement for certain Moderately Priced Dwelling Units and Workforce Housing Units. We assert that residents living in MPDUs and WHUs have at least as much need for recreation and amenity space as those living in market rate units.

6) MCCF suggests that since a cornerstone of the new CR District is encouragement of mixed-use projects, and a maximum amount of commercial and residential FAR will be specified in each zone, the Table of Permitted Uses should specify which of the permitted uses are considered as residential, which are considered as commercial, and which, if any, qualify as both.

7) The Federation is concerned that CR zoning could be applied to properties for which it is not recommended in a master or sector plan. The draft legislation lists a number of existing zone categories which could be replaced with CR zoning, through the Local Map Amendment (LMA) process. Language in the ZTA requires only that the densities and heights of the CR zoning be consistent with the maximum density and height of the zone currently applied to a property or the one recommended for it in the master or sector plan. This seemingly facile replacement of current zones with CR presents at least two problems.

a) Several zones recommended for application to properties in master plans do not have building height limits (e.g.; Transit Station-Residential and Transit Station-Mixed), making replacement with CR zoning less of a certainty.

b) Unlike the floating zone requirements now in place, it does not appear that the Council in approving a CR Zone LMA will be required to make any finding as to "compatibility" with existing or planned adjacent development, or approve a detailed development plan at the time of rezoning.

8) MCCF is concerned that the rapid degradation of the natural environment will be continued, if not hastened, through implementation of the proposed CR District. Not only is there no requirement for minimum "green area" (a portion of a property left undeveloped, with no buildings or vehicular access surfaces on it), but the Density Incentive provision in an earlier draft of the ZTA for "permeable area" has been replaced in the introduced version by "vegetated area with a minimum 12 inch soil depth." The term "vegetated area" refers to the equivalent of a large planter box located over below grade parking, and cannot provide the same benefit as real permeable surface in allowing rainfall to percolate into the ground and recharge the water table. "Permeable area" should be reinstated in the Incentive Density Provisions.

Finally, the Civic Federation strongly urges the County Council to fully explore the costs, implications, and possible unintended negative consequences of master plan application of the CR zone as proposed. Until you have completed such an analysis of the CR zone, we urge members to postpone further consideration of the Gaithersburg West Sector Plan and White Flint Sector Plan, since both these plans propose use of this untested and complicated new zone.

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