

"Federation Corner" column  
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### **County accelerates pattern of excluding residents from the planning process**

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This week, the County Council's PHED Committee continues its work on ZTA 06-11, which is designed to "improve" downtown Wheaton, by modifying its Retail Preservation Overlay Zone. Instead, this ZTA, one of the most detailed I have ever seen, is serving as a substitute for redoing the Wheaton Sector Plan, even though work is to begin next year on this sector plan. Although there have been some concerted efforts to make outreach on this ZTA more inclusive than is usually the case, the specific wishes of these community participants have already been cast aside as the unverified claims of several business owners have been given greater weight than what was promised by county officials to these community members.

I have observed or participated in six Master or Sector plans in the last six years: Potomac, Upper Rock Creek, Olney, Shady Grove, Woodmont Triangle, and Damascus. In all cases, there was fairly extensive community involvement at the beginning of the process which often created community consensus. This was then followed by lobbying by business interests that grew in intensity and influence as the individual plan moved from planning staff to the Planning Board and then to the County Council. The final goal, whether initially proposed by the government or the business sector, was always much greater density, even in an area as distant as Damascus. It was only when the community remained involved in large numbers that they were able to preserve most of what they had initially decided was best for them. This only happened in three of these communities.

The Wheaton Retail Preservation Overlay Zone was created in the early '90s to protect small businesses by creating conditions to ensure their survival. It has been very successful in preserving small businesses, and there is also a 0% vacancy rate. However, a number of people are not happy because they also wanted new development to bring in new amenities to improve the commercial area while still retaining the best of the small businesses, and there has been little new development. County redevelopment officials in Wheaton have worked for several years to come up with changes to this Overlay Zone through writing ZTA 06-11 to help jumpstart new development.

However, with the Wheaton Sector Plan now up for review next year, the need and urgency of this ZTA is much lower. The only issue of some urgency is to deal with the requirement that even the smallest change to a commercial requires site plan approval. Several Wheaton restaurants that have wanted to make small changes to their establishments have not done so because it costs tens of thousands of dollars to submit a site plan to the Planning Board, costs that these restaurants cannot afford. Site plans are required so that the Planning Board and its staff can scrutinize the details of a project to ensure that it is compatible to the immediate community and in keeping with the Master or Sector Plan.

To help solve this problem, the ZTA proposes that changes below a certain size would not require site plan. However, where the known problems with the two restaurants involved additions of no more than several thousand square feet (SF), the ZTA proposes that developments under 20,000 SF be exempted. Planning Board staff have recommended 10,000 SF and the Planning Board itself recommends 5,000 SF. Since some involved community members knew about the 20,000 SF recommendation, this is uncontroversial to them while others find it uses a very big solution to solve what is a very small problem. With the Sector Plan process just around the corner, it seems to me that it is better to err on the side of caution for the time being, placing the site plan exemption below 5,000 SF.

There are two other major changes included in the ZTA: one to raise the height limits of new buildings and the other to require new buildings to guarantee that part of their retail space be reserved for small businesses. The two changes are problematic because of timing. However, certain community members had initially agreed to support height increases up to 125 feet near the Metro and 100 feet in the rest of the Overlay Zone, although they were first offered a maximum height of 100 feet near Metro and 85 feet elsewhere. Now, with the imminent passage of legislation requiring workforce housing, as well as options to provide more MPDU housing in exchange for greater density, there is a fear that this ZTA could result in allowing buildings near Metro that could be 150 feet tall, because additional floors would be allowed to meet these housing requirements regardless of what the Sector Plan or this comprehensive ZTA would permit.

Some community participants are most firm in their support of a requirement that 45% of the retail space in new buildings be set aside for small businesses and that this space be guaranteed for at least 10 years. They believe that this is the best way to allow new development while providing places for small businesses to locate and thrive. However, when a businessman, who owns acres of property in Wheaton, made certain assertions about this requirement at the last PHED Committee worksession on this ZTA, the county redevelopment people and the PHED committee members immediately endorsed the possible adjustment of the requirements to only guarantee small businesses for just 3-5 years in such space and also increasing the size of the space to accommodate larger businesses.

Even if all of the proposed changes are defensible from some perspective, the real problem is that the larger Wheaton community had little say in this ZTA that could potentially transform the Wheaton Overlay Zone overnight. While the outreach for this ZTA was better than for most, it was not comprehensive, and a number of community members who actively participated in the review process may be close to believing that they have been misled and that they now see a document that bears little resemblance to what they initially supported. The result is as if no one in the community was ever involved. This is also a microcosm of what happens to Master and Sector Plans where the community goes home after the initial work and learns years later that the approved plan bears little resemblance to what they supported. It also happens when small community groups are the only ones following the planning process from beginning to end.

The greatest threat of ZTA 06-11 is that it could presage that ever more comprehensive changes could be made in the future through ZTAs, even as the public finds it is ignored when it knows to be involved in the process. This pattern of planning without the public can eventually cause a county that is proud of its nationally-recognized planning procedures to have a process run solely by political leaders who work hard to accommodate the needs of business. Some would say that is already the reality in parts of Montgomery County.