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**Testimony of Barbara Zartman, Chairman
The Committee of 100 on the Federal City
Thursday, July 28, 2005, 6:30 p.m.**

Case 04-33 (Text Amendments to Require the Provision of Affordable Housing)

The goal of increasing affordable housing in the District is one that can be universally applauded, the Committee of 100 on the Federal City joins in supporting that goal. This particular proposal, however, raises far more questions than it answers, and we believe this is not the right time to enact such sweeping proposals, especially when formulas are untested. The Commission has chosen to consider just two proposals, and those two without consideration of locations or implementing systems. Even the title of "inclusionary zoning" is vague, meaning different things to different people, some erroneously claiming it will house "thousands" of the city's "poorest." That is not the target population for this proposal.

- **This is the wrong time.** The forthcoming Comprehensive Plan revisions should include updated local neighborhood analyses to determine the appropriate designation of areas for redevelopment or conservation. Parallel review of the Zoning Code suggests this is not the time to impose sweeping additional categories, rather, careful review of area-specific impacts would be far more appropriate in our small, unique city, with the goal of achieving desirable social objectives while still maintaining a stable and desirable planned city.

The IZ proposal is being treated in isolation from a plan for public investments in infrastructure, parks, schools, and other capital budget considerations for various parts of the city in relation to density measures and types of development. It is devoid of the extensive recommendations in the Comprehensive Plan Ward Plans regarding land use, conservation, housing, historic preservation, and urban design in area-specific terms.

- **It is inconsistent with the Comprehensive Plan.** The Home Rule Charter mandates that "zoning shall not be inconsistent with the DC Comprehensive Plan." The land use element of the Comprehensive Plan has precedence over other elements of the Plan, as follows (§112.1(a)): "... Since the Land Use element integrates the policies and objectives of all other District elements, it should be given greater weight than the other elements." There is no language in the land use element that would suggest inclusionary bonuses would be a desirable and appropriate direction for substantial areas of the city. Our comments about the requirements for historic preservation are below.

- **It violates zoning standards.** Separate testimony is being submitted from our Zoning Chair (and C100 Vice Chair Laura Richards). But note: IZ proposals can serve to diminish adequate light, air, and open space and contribute to undue concentrations of population and the overcrowding of land in contradiction of the basic requirements in the Zoning Act and Regulations (§101.1)

Further, both the Zoning Regulations and the zoning maps are required to be designed with consideration of the "(a) character of the respective districts, (b) suitability of each district for the uses permitted in each district under this title; and (c) encouragement of the stability of districts and of land values in these districts" (§101.2)

Because the objective appears to be a floating, single mandatory bonus zone, it would have to be applied uniformly, and once the combined text and mapping case were accomplished, there

~~Barbara Zartman~~
District of Columbia

~~Case No.~~ 04-33
~~Exhibit No.~~ 107

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would thereafter be no opportunity for hearings on individual areas to which the proposal would be applied, except for the specific circumstances when the developer cannot comply even with the base proposal for providing affordable units. Private negotiations, however, would be expected.

- **Historic Preservation standards must be upheld.** Any proposal must not be inconsistent with the Comprehensive Plan (§805.18), directing that "Each historic district shall have a zoning overlay if necessary to protect and enhance its distinctive characteristics of housing type, density, height, and uses. Such overlays shall be developed between the Office of Planning and the DC Historic Preservation Office."

Proposals to mandate bonus density may well be in contradiction of the protection and enhancement of the distinctive characteristics of the historic districts that §805.18 addresses.

IZ must be subsidiary to HP standards. No IZ proposals should be put forward for landmarks, historic districts, or areas under study for possible historic district designation, certainly not prior to completing the land use review and related overlay action required in §805.18. If, following the completion of the §805.18 studies and zoning proposals, it is desired to extend some affordability element, it should be voluntary and incentive-based, not mandated.

- **This proposal is incredibly cumbersome and opaque.** As the OP report acknowledges, negotiations are likely to be needed for ALL development. There is no provision for citizen access or notice. The report's structured comparisons to PUDs are not meaningful: PUDs are exceptional, not mandated; the process is public, communities participate in definitions of mitigations and amenities.

Similarly, parallels with antenna negotiations are unhelpful: antennas are occasional and highly visible structures; IZ bonus density would be universal and designed to be as much like the balance of new or changed structures as possible. A discussion in last weekend's press of the planner/developer dynamics in Montgomery County is revealing (attached).

Because this program would have huge costs to administer, each delivered unit will carry an unmeasured public investment. In addition, the absorbed costs to developers would likely be reflected in some manner in the cost of these units or the overall projects.

- **Other options exist.** Currently available housing programs and resources will likely produce far more housing units than would be the case through the device of voluntary or mandatory inclusionary bonuses, with less negative potential for the destabilization of desirable built-up neighborhoods. The OP report quantifies what has been built and what is in the pipeline. There is no discussion why continuation or expansion of PUDs would not be a preferable vehicle, as cited above.

Were further stimuli needed, the District has available other resources, the most obvious of which would be forgiveness of significant property taxes on residences of certain descriptions. This would do a great deal to bring homes into more affordable ranges for the targeted populations. A lottery for a given number of vouchers or bonuses would be a simpler, more direct means of providing affordable housing than the current complex proposal.

Similarly, coordinated programs with employers of teachers, firefighters, nurses, police officers, and other targeted professions could produce incentive programs to make housing more affordable to appropriate numbers of families: joint subsidies by a hospital and the District for some portion of rent or mortgage or property tax for nurses joining the hospital staff could make District living much more attractive.

The District could also move forward aggressively with District-owned housing in need of rehabilitation or repair; by reducing or eliminating land-acquisition costs, more affordable housing could be made available with limited bureaucratic cost.

- **Where is the need quantified?** The proposals are *not* targeted to the neediest District populations. Indeed, it targets households that are *above* the median family income for the District.

The broad sweep of the proposals ignores the incredibly varied neighborhood incomes in the District. To recap the ranges according to HUD standards for the metropolitan area, the definitions are:

For a family of 4, a "very low income" would be an annual income less than \$26,850.

For a family of 4, a "low income" would be an annual income less than \$44,750.

For a family of 4, a "moderate income" would be an annual income less than \$71,600.

Spending 30% of a family's income on housing, the limits for rent or mortgage are

Very low income of \$26,850 means \$671 a month.

Low income of \$44,750 means \$1119 a month.

Moderate income of \$71,600 means \$1790 a month.

The median family income in the District is \$55,750 (half the families have a higher income and half have a lower income).

It must be noted that these data are skewed by the way in which university undergraduate students were categorized for the first time in the 2000 census. Rather than being asked to self-declare, as was the practice in previous censuses, some 70,000 students were arbitrarily classified as permanent District residents, thus changing data and proportions for District family-unit size and income (few students record substantial income, regardless of family resources). Are students to be eligible for subsidies under IZ proposals?

- **Relying on DCRA for enforcement is problematic.** The complex program will be difficult to monitor for compliance, since externally the "affordable" units will be indistinguishable from neighboring properties. Even with further investment in expanded enforcement personnel, the likelihood of violations escaping notice would be high, encouraging noncompliance.

- **How will changing income be handled? How will appreciation of property value be integrated into the program over the decades ahead?** This would seem to require invasive inquiry over a long time into family finances. It would seem likely that the properties will increase in value over time to the point where target populations will not be able to afford to purchase turnover units. Montgomery County indicates that only 3,000 of the 12,000 affordable units it has created remain available for current users.

- **Transit.** Much of the discussion about IZ has taken place in the TOD context, though of course these proposals do not specify locations. If it is the intent to use transit as the magnet for IZ zoning, such a proposal would need great clarity. Does "transit" mean Metro stops? Light rail stops? Bus routes?

- **PUDs.** Can a developer propose a PUD within an IZ overlay? How would public benefits be assessed in such an instance?

- **Waterfront zones.** It seems most unwise to increase density in W-1 zones, especially at a time when a great deal of waterfront property is to be developed. Increasing height (which with penthouse allowance is already 58') will further wall off waterfronts from everyone but those with waterside views from within the buildings. Allowing sightlines from between buildings is not a good substitute for waterfront access
- **Developer buy-outs, off-site construction are other areas for manipulation.** OP proposes a zoning-relief program for the most substantial noncompliance with IZ standards, which at least gives the public an opportunity to learn of these cases and to provide testimony where appropriate. But much of the case will be based on financial analyses by the developers and their self-certification, making citizen analysis difficult.

Conclusion:

We ask that the Commission retract these planning and zoning bonus proposals until after further studies and analyses are made in conjunction with the Comprehensive Plan on a neighborhood-by-neighborhood basis (as well as citywide), including a review of the current Comprehensive Plan in terms of its ward plans and sub-area breakouts

Further, we ask that the city make determinations as to maintaining stability of specified existing neighborhoods versus areas in need of substantial redevelopment in the revised Comprehensive Plan and clearly reflect these decisions in the revised Comprehensive Plan maps and text.

We ask that small area plans be created as part of the revised Comprehensive Plan that distinguish characteristics of one neighborhood from another in terms of appropriate density and use and that, as a priority, all areas slated for increased density (through IZ or other means) and/or redevelopment have small area plans or definitive guidelines developed as part of the revised Comprehensive Plan

Thus we ask that the Zoning Commission not consider this proposal until such time as the Comprehensive Plan is modified and a determination is made that the particular device of bonus density is suitable for the District of Columbia, as distinguished from other cities with different characteristics.

It would truly be ironic if, under the rubric of "inclusionary" goals, the District created systems that weaken the very diversity that so many value by using one-size-fits-all standards.

Montgomery to Curb Flexible Zoning

Clarksburg Trouble Spurs Officials' Call for Oversight

TIM CRAIG
Washington Post Staff Writer

They were Montgomery County's answer to cookie-cutter subdivisions and isolated neighborhoods.

"Floating zones," as loosely defined by planners, are meant to free developers from the constraints of traditional suburban zoning. The results, at least on paper, are unique communities with diverse housing stock, amenities and retail space.

Since their inception in the late 1960s, the zones have been used to build new neighborhoods in Germantown. They also have served as a tool to revitalize older suburban town centers in Silver Spring and Bethesda and across the country.

But recent events in Clarksburg, where hundreds of homes were constructed in violation of building codes, also suggest that floating zones are much like they sound: vague, unpredictable and difficult to manage.

An estimated 80 percent of upcoming residential development in Montgomery will be done on the basis of floating, or "site plan" zones. The situation in Clarksburg, which is the subject of multiple state and local investigations, has county leaders scrambling to correct what they view as serious management shortcomings in the system.

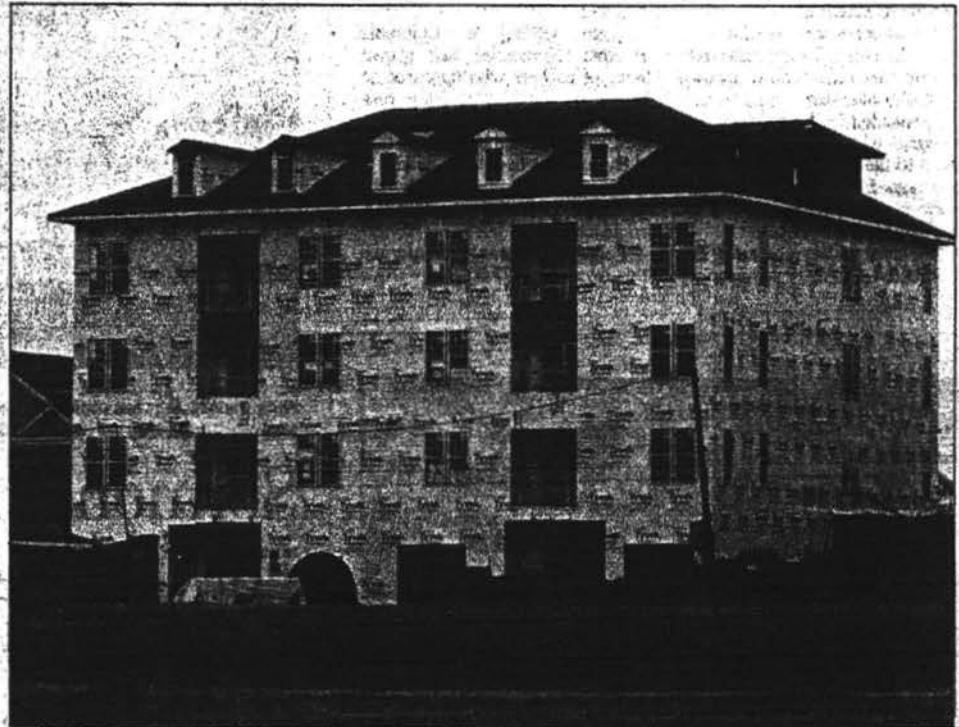
"There was no conductor, and when you don't have a conductor, it's a recipe for bad things to happen," said County Council President Tom Perez (D-Silver Spring).

Traditional zoning laws establish specific rules for land use that usually can be changed only by lawmakers. Residential, commercial, industrial and agricultural zones all come with rigid standards for the type and amount of construction that can occur. The regulations leave little leeway for interpretation and require only casual oversight from planners.

Floating or site plan zones grant developers and county officials broad authority to negotiate the shape of a neighborhood. Although builders often push for greater density to maximize profits, planners tend to seek open space, retail and affordable housing. The result of the negotiations is a legally binding document called a site plan.

But the complexity of site plans creates a management challenge for county officials. Follow-up and enforcement can be time consuming.

"There is certainly a lot more work to review a project like that instead of one where everything is laid out specifically in ordinance," said Charlie Loehr, director of the county Department of Park and



Dense construction in Clarksburg continues despite state and local inquiries into building code violations.



"There was no conductor" of the system, County Council President Tom Perez says.

tions to county officials, among them that they codify unwritten procedures used by planning staff in reviewing developments, and that they draft more specific standards to be included in zoning laws.

When it came time to implement many of the recommendations, however, Davis wrote to the Planning Board that staffing shortages made that impossible. He said that a fourth of the staff positions in the 30-member development review section were vacant in fall 2002.

Council members were furious this summer to learn that staffing problems remained and said they should have been told long ago that the Park and Planning Department needed additional support.

On Tuesday, Derick Berlage, chairman of the Planning Board, is expected to ask the Council for more than a dozen additional staff positions to implement the zones and enforce the site plan agree-

adequate staffing. Some wonder whether they foster inappropriately close relationships between developers and planners. When discrepancies arise, as was the case in Clarksburg, they fear the developers are, more often than not, given the benefit of the doubt.

"This is all done in a vacuum because generally the citizens have no clue what is being proposed," said Norman Knopf, an attorney for the Clarksburg Town Center Advisory Committee, which uncovered the building violations in Clarksburg. "It's a blank check for the developer to have professionals constantly addressing the situation... constantly lobbying."

Developers downplayed suggestions that they lobby or pressure planners but said close working relationships are formed during the creation of site plans.

"You are down there every day. You know them. You work with them. You respect them," said James A. Soltesz of Loiederman Soltesz Associates, a development engineering and planning survey firm.

But Soltesz and current and former planning officials strongly dispute suggestions that the systems gives a built-in advantage to developers.

"It's a professional planning staff, and they exercise their professional judgment and they are constantly interacting with citizens, lawyers and environmentalists," said Gus Bauman, a former county Planning Board chairman.

Nevertheless, planning officials are hoping to build additional safeguards into the system to address any appearance that developers enjoy too much access. Loehr temporarily revoked planners' ability to make staff amendments to site plans last month un-

ners take input from everyone, not just people seeking to build."

Underlying the situation in Clarksburg is an increasingly politicized fight between county agencies over who is responsible for enforcing a key feature of site plans, the height and setback rules.

The county code indicates that it is the Department of Park and Planning, operated by the Planning Board. In the mid-1990s, the department received authority from the county and state to issue fines if the site plan agreements are violated.

The planning department says the Department of Permitting Services, overseen by County Executive Douglas M. Duncan (D), is responsible for heights and setbacks once structures are built.

The dispute will be a focus of a County Council hearing Tuesday. Until the matter is sorted out, Duncan has halted the issuance of building permits for projects that require site plans.

planners. Residential, commercial, industrial and agricultural zones all come with rigid standards for the type and amount of construction that can occur. The regulations leave little leeway for interpretation and require only occasional oversight from planners.

Planning of site plans requires a great deal of coordination with other agencies and county officials broad authority to negotiate the shape of a neighborhood. Although builders often push for greater density to maximize profits, planners tend to seek open spaces, retail and affordable housing. The result of the negotiations is a legally binding document that is a site plan.

But the complexity of site plans creates a management challenge for county officials. Follow-up and enforcement can be time consuming.

There is certainly a lot more work to review a project like that, instead of one where everything is laid out specifically in ordinance," said Charlie Loeber, director of the county Department of Park and Planning.

There have been warnings about Montgomery's increasing reliance on floating zones. In 2003, a Deloitte consulting firm said the county's zoning ordinance was "one of the most difficult to use and understand" it had reviewed.

The report by Charlie Loeber also said that "there is too much negotiated development with little guidance" and that procedures and review processes routinely employed by staff are not reflected in ordinance.

In Clarksburg Town Center, a leapfrog of residents grew up around the developer, Newland Communities, over what they viewed as a failure to follow plans that provide grocery and other shopping. As they investigated their neighborhood was rebuilt, they discovered that hundreds of houses were built too close to the street. County officials say they never realized the problem.

When the Planning Board held a hearing on those claims in April, a senior planner altered a site plan to reflect what had been built, otherwise safe.

The planner, who contends that much was stressed and overworked, said he had been given the authority to amend a site plan after it was approved by the board. Newland Communities contends the plan to alter the site plan was not authorized.

Some planners say the county's recent growth has hampered its ability to plan in a rational way.

The workload never decreases, says the staff, said Joe Davis, former chief of the development review section of the planning department, an offshoot of the board. "You have a reviewer asked to comment on projects that are ongoing, and they list a long time. All the while they have new projects coming in the door."

David Clanton made recommendations

from Park. Any officials among them that they could overturn procedures used by planning staff in reviewing developments, and that they draft more specific standards to be included in zoning laws.

When it came time to implement many of the recommendations, however, Davis wrote to the Planning Board that staffing shortages made that impossible. He said that a fourth of the staff positions in the 30-member development review section were vacant in fall 2002.

Council members were furious this summer to learn that staffing problems remained and said they should have been told long ago that the Park and Planning Department needed additional support.

On Tuesday, Derrick Berlage, chairman of the Planning Board, is expected to ask the Council for more than a dozen additional staff positions to implement the zoning and enforce the site plan agreements.

Civic activists, however, say the flaws in site plan zones go beyond

enough to undermine suggestions that they lobby or pressure planners but said close working relationships are formed during the creation of site plans.

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Nevertheless, planning officials are hoping to build additional safeguards into the system to address any appearance that developers enjoy too much access. Loeber temporarily revoked planners' ability to make staff amendments to site plans last month until he can review the practice.

And Berlage said he intends to look for ways to make sure plans

Services, overseen by County Executive Douglas M. Duncan (D), is responsible for heights and setbacks once structures are built.

The dispute will be a focus of a County Council hearing Tuesday. Until the matter is sorted out, Duncan has halted the issuance of building permits for projects that require site plans.