

D.C. Zoning Commission Public Hearing
Case No. 08-06-8
Comprehensive Zoning Regulations Rewrite: Low/Moderate Density Residential

April 9, 2009

Testimony of Nancy J. MacWood

I am Nancy MacWood and I am a member of the Zoning Regulations Rewrite Task Force and was a member of the Comprehensive Plan Task Force. I am also an ANC commissioner but I wish to testify on the basis of my participation in this rezoning process.

I want to use my 3 minutes to urge you to consider how these proposed recommendations will alter the predictable nature of zoning and to question why some of them are being promoted. These are very complicated and far reaching recommendations so I also urge the Zoning Commission to schedule another hearing if you seek additional information from the Office of Planning.

In general, these recommendations devise ways to provide more building in low and moderate residential zones. The Comprehensive Plan policies used as the foundation to change area and use requirements don't actually support the broad implementation of these recommendations. **Policy LU-2.1.1** calls for maintaining "a variety of residential types, ranging from low density...to high density, multi-family mixed use neighborhoods. The positive elements that create the identity and character of each neighborhood should be preserved and enhanced in the future." **Policy LU-2.1.3** doesn't suggest a citywide need for matching zoning to existing land uses but rather specifies 3 situations that require rezoning to "protect the predominate architectural character and scale of the neighborhood." **Action H-1.5.B** has a second sentence: "Any changes to existing regulations should be structured to ensure minimal impacts on surrounding uses and neighborhoods."

The focus of this effort should be on developing a process for neighborhoods that want to encourage new uses or more liberal area requirements to do so. To impose such changes on all neighborhoods is not warranted and I don't believe it is supported by the Comprehensive Plan. The zoning standards that draw a line in the sand between permissible and impermissible impacts concerning privacy, light and air, retention and management of trees and plants, noise, and the expectation of peace and quiet should not be changed to provide less protection from impacts, unless a neighborhood asserts through a public, participatory process that it seeks to do that.

Side Yards

Recommendation 4 turns predictability on its head. Residents currently understand what they can or cannot do regarding the siting of a principal building on their property. And most importantly, neighbors know what is allowed on neighboring properties. If a

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neighbor wants to push the envelope of what's allowed there is a public process with specific standards to evaluate whether a proposal is wise and fair. The Office of Planning wants to eliminate that process in most cases. I hope you will consider this recommendation not in terms of new residential construction, which isn't very likely in many parts of the city, but in terms of additions. How would 4a work? Would there be a citywide total side yard dimension, a block dimension, a 1-mile radius dimension? Let's say its 15 feet for R-1-B. That means that your R-1-B neighbor can decide that they want to build an addition with a 2 foot side yard on your side and a 13 foot side yard on the other side. The current side yard might be 8 feet and current zoning has assured you that your neighbor can only build an addition with that minimum side yard unless they seek a variance and you can fully participate in that process. Now OP suggests that each owner can determine their own side yard as long as the two add up to some unknown total. The total is less important than how it gets applied to each side yard. The current 5-8 foot minimum preserves privacy, the ability to maintain trees and plants, and light and air. Why would we want to change it?

Recommendation 4b should be amended to prohibit additions that continue a side yard of less than some reasonable minimum. It makes sense to revisit how many feet constitute a reasonable side yard. In my view, a neighbor's expectation based on current zoning, the desirability of light and air, and vegetation suggest that continuing a side yard of less than 5 feet introduces impacts that are significant and the Comp Plan guides us that any changes to existing regulations should result in only minimal impacts.

Recommendation 6b seems to correct the unintended consequence of owners filling in non-conforming side yards in zones that allow row houses and to eliminate counting non-conforming side yards towards lot occupancy in any residential zone requiring side yards. The intent of the current regulation is to preserve active open space. There isn't much you can do with a side yard less than 5 feet, so zoning restricted how much of the rear yard could be consumed with structure to compensate for the very limited open space in side yards. The OP recommendation would exclude counting the non-conforming side yard as lot occupancy and in so doing would allow more structure on the lot. A more limited and direct way to correct the unintended consequence would be to prohibit the conversion of detached or semi-detached houses into row houses. This correction along with a minimum side yard amendment to 4b would preserve green space and the intent of the Lewis Plan, and remove undeveloped land from lot occupancy calculations.

Recommendation 11 would usher in a transformation of residential neighborhood character and would blur the line between residential and commercial zones. It will come as a shocking surprise to residents if the Zoning Commission allows categories of uses heretofore either prohibited or regulated by special exception as matter of right uses. I don't believe the Comprehensive Plan supports this change. When you probe OP about how this would work, you learn that OP would establish, with the Zoning Commission's concurrence, the basic package that would allow matter of right retail, service, institutional, and office uses with a uniform package of performance standards, such as hours and gross floor area. A neighborhood would not be able to refine or restrict the package; for example, if a neighborhood only wanted corner grocery stores but no other

type of retail, they couldn't limit the introduction of commercial uses into the neighborhood in this way. The customizing contemplated here is only to further liberalize the package, not to restrict the package.

A process that invites a neighborhood through a small area plan or zoning text amendment to participate in a public process that considers combining specific commercial and residential uses would be a measured and fair way to allow these uses where welcomed but not to impose potentially impactful and transformative uses where they are not sought. The notion that home occupations should be broadened to include the use categories is the proverbial "one foot in the door" manner of expanding commercial uses in residential zones. Authorizing new categories of home occupations uses is too broad with the potential for more than minimal impacts. The recommendation should list specific new uses that Office of Planning recommends so that there can be a transparent process of evaluating the existence of impacts and the degree of impact.

The discussion about overlays in **Recommendation 1** is not accurate. I am very familiar with neighborhood commercial overlays and they are not "confusing to interpret and apply." These overlay districts are united by standards but each have unique features that respond to specific neighborhood concerns about area and use standards. This is bottom/up zoning and it is endorsed by the Comprehensive Plan. What the Office of Planning is advocating is a complicated web of multiple residential zones that would share broadened area and use requirements as recommended by OP with provision for neighborhoods to expand but not restrict these requirements. How existing overlays would be incorporated into the underlying zone is uncertain. Again, it is not consistent with the Comprehensive Plan to eliminate overlays that were designed to protect the character, scale, and an appropriate variety of uses in each neighborhood that employs them.

I urge the Zoning Commission to ask the Office of Planning to more accurately link each of these recommendations to the Comprehensive Plan. But in addition I urge the Zoning Commission to follow the path created by the Comp Plan by ensuring that any changes in the regulations ensure neighborhood character and minimally impact surrounding uses and neighborhoods.