

West End Citizens Association
Washington, D.C.

Boundaries: 15th Street on the East • Potomac Park on the South
Rock Creek and the Potomac on the West • N Street on the North

August 25, 2015

Mrs Sharon Schellin
Secretary to the Zoning Commission
441-4th Street, N W - Suite 200-S
Washington, DC 20001

2015 AUG 25 PM 2:34

Re WECA's Comments on ZRR NPRM (ZC Case No 08-06A & 08-06B)

Dear Mrs Schellin

This letter provides a copy of the West End Citizens Association's (WECA's) 33-page comments on the Notice of Proposed Rulemaking (NPRM) for the "Zoning Regulations – Comprehensive Text Revisions" (ZRR) before the Office of Zoning's requested deadline of September 25, 2015. Since the NPRM record may not reflect prior community submissions, Enclosures for the NPRM record are the following parts (which are a fraction of the WECA's prior submissions)

- A. new 6-page document entitled "WECA's Section-by-Section Comments" – addressing only key problems in NPRM Subtitles A, B, C, G, I, U, X, Y, and Z, i.e., there are many other non-key problems throughout the nearly 1,000 pages which are not noted herein
- B. 2-page copy of the WECA's 2-page April 6, 2015 statement on the proposed accompanying Map Amendments (ZC Case No 08-06C) – in its public decision meeting, the Commission requested that the Office of Planning (OP) submit a Map showing each of the affected Squares – please note that OP's May 29, 2015 submission still does not show map details for the affected West End Squares (however, it does provide a map including the affected Foggy Bottom Squares)
- C. 6-page copy of the WECA's November 14, 2013 testimony (including 3 Attachments) on ZRR Subtitle I (downtown)
- D. 10-page copy of the WECA's 1-page October 23, 2013 cover letter with 2-page intended November 4, 2013 testimony and 7-page document entitled "WECA's Section-by-Section Comments" – addressing Subtitles A, B, I, X, Y, and Z
- E. 4-page copy of the WECA's November 4, 2010 testimony on Planned Unit Developments (PUDs) (cited in Enclosure D)
- F. 2-page copy of the WECA's July 12, 2007 testimony on Existing Zoning Regulations (also cited in Enclosure D)

Please put a copy of the WECA's entire 33-page filing (including this 3-page cover letter and Enclosures A-F) in the Commissioner's packets for NPRM Subtitles A, B, C, G, I, U, X, Y, and Z.

Overall Comments

- The WECA continues to object to the absence of any companion document providing a Section-by-Section analysis of all substantive changes made to the existing zoning rules (additions, changes, deletions) and the reasons for each change, including any specific Comprehensive Plan directive for such a change. The WECA has repeatedly asked for a redlined version of the existing rules but the just-described and requested companion document is essential and would be sufficient for public understandability since the proposed nearly 1,000-page textual changes are indeed "comprehensive." In its March 15, 2015 post-hearing submission to the DC City Council's Committee of the Whole (COW), the WECA stated,
 - "Since, as Chair Mendelson said, a redlined text may not be practical at this point, we'd like to see a textual Section-by-Section for each old/existing regulatory Section, explaining what was relocated (and to where), changed (and why), or deleted (and why). As Chair Mendelson stated after hearing [OP] Jennifer S's explanations, the public is having difficulty trying to decipher the various OP analyses prepared to date. [We] believe that such a Section-by-Section document is essential for OP to prepare for public understanding."
- The WECA continues to object to the complexity of the proposed replacement rules, including (a) substantial repetition of textual provisions across multiple new zoning categories (which would be hard to keep consistent, especially when only one section is proposed for amendment), and (b) difficulty for the public to ascertain which of the many new categories are applicable to their neighborhoods. The WECA has repeatedly objected to the completely unnecessary new complexity. For example, in its March 15, 2015 post-hearing submission to the DC City Council's COW, the WECA stated,
 - "[We] also wanted to be sure that your hearing record includes a copy of OP's chart captioned 'Zone Name Changes As Approved by Proposed Action. As [we] testified, OP's chart reveals the complexity of the whole Zoning Regulations Rewrite (ZRR). As [we] indicated as an example, the existing C-2-A zone is replaced by 13 new zones: MU-4, MU-17, MU-24, MU-25, MU-26, MU-27, NC-2, NC-3, NC-4, NC-7, NC-9, NC-14, and NC-16. This is ridiculously unnecessary and confusing."

This WECA submission raises a multiple of questions which are open and which cannot be solved by any of OP's documents prepared to date.

If any additional information is needed, Barbara Kahlow can be reached during the day on (202) 965-1083 or at Barbara Kahlow@verizon.net

Sincerely,


(BTK)

Sara Maddux
President

Enclosures

WECA's Section-by-Section Comments
addressing NPRM Subtitles A, B, C, G, I, U, X, Y, and Z

Subtitle A, Authority and Applicability

- 1 page A-8, Sec 202 1(e), **Downtown (D) Zone District** – without any change in law, ZRR redefines the existing downtown area into a greatly expanded “central business and high-density mixed-use commercial-residential” area, which encroaches into established mixed-use neighborhoods (with much residential use), such as the West End in Foggy Bottom-West End – for more details on this important issue, please note the WECA's 4/6/15 statement provided in **Enclosure B** and the WECA's 11/14/13 testimony provided in **Enclosure C**
- 2 page A-11, Sec 207 1(a)-(c), **Zone Boundary Line Crossing a Lot** – the proposed increases in allowable bulk are objectionable in the expanded residential/mixed use neighborhoods, especially in the West End
- 3 page A-12, Sec 208 1(b), **Applicability of Zoning on Government Owned Land** – the WECA notes the NPRM's statutory reference to the **Central Area** of the District and the referenced statutory qualification that “such central area may be defined and from time to time redefined by concurrent action of the [NCPC] Commission and the Council,” i e , not redefined by the Zoning Commission in regulations

Subtitle B, Definitions, Rules of Measurement, and Use Categories

- 4 pages B-10-11, definition of **Central Area** – is this is a new non-statutorily-based definition? –see **point #3** above
- 5 page B-11, definition of **Central Employment Area (CEA)** – the WECA applauds the statement that “The geographic boundaries of the CEA are detailed in the Comprehensive Plan” and questions if the geographic boundaries for the proposed greatly expanded “Downtown” and “Central Area” are also detailed in the Comprehensive Plan – the WECA testified repeatedly and successfully before the DC City Council and National Capital Planning Commission (NCPC) to ensure non-expansion of the CEA into Foggy Bottom-West End – please also refer to **Enclosures C and D**
- 6 pages B-16-17, definition of **Floor Area, Gross (GFA)** – please clarify if GFA includes all (i e , not just those projecting 6 feet) enclosed balconies beyond the exterior walls of the building, especially because there is a potential redevelopment in Foggy Bottom in which the owner claims that the Zoning Administrator judged that such enclosed space would not count in GFA
- 7 page B-32, definitions of **Story and Story, Top** – the definition of “Story” provides that “the total area of all roof structures located above the top story shall not exceed one-third (1/3) of the total roof area” – the WECA questions the ZRR's de facto expansion of

allowable non-mechanical uses in the roof area (e g , enclosed condominium boardrooms) and if they raise issues with the Height Act – this is not an academic issue since such enclosed roof spaces were approved by the Commission in a recent Planned Unit Development (PUD) case in the West End

- 8 page B-59, Sec 310 2, Rules of Measurement for Number of Stories – states that a “story” can include “other roof structures” besides stairway or elevator penthouses and mechanical penthouses – see **point #7** above – the WECA recommends further elaboration of what would be allowable enclosed roof spaces and which would not violate the Height Act

Subtitle C, General Rules (see also **point #19** below)

- 9 pages C-37-38, Sec 702 3(b)(2), Exemptions from Minimum Parking Requirements – the WECA applauds the exception for the D-5 zone west of 20th Street where required parking will not reduced by 50% since there is much residential use in this Foggy Bottom-West End area
- 10 pages C-106-109, Sec 1500 1(c), 1501 3, 1503 1 and 1503 3, Roof Structure General / Regulations, Roof Structure Height, and Roof Structure Area – the WECA applauds “When not in conflict with the Height Act” for “roof structures housing recreational space for use of occupants of the building” and “roof structures housing recreational space for use of occupants of the building shall not exceed eighteen feet, six includes (18 ft , 6 in.) in height above the roof upon which it is located” – the WECA objects to the 0.40 increase in the allowable FAR “Solely for the roof structure uses designated in this section” and the expanded roof area for such “Roof structures shall not exceed one-third (1/3) of the total roof area for the R zones” – what is the basis for a 0 40 increase in FAR? – see **points #7 and #8** above requesting further elaboration of what specifically is allowable

Subtitle G, Mixed Use (MU) Zones

- 11 page G-11, Sec 400 7 and 400.8, MU-8 & MU-9 zones – the WECA welcomes the mentions of “located in or near the Central Employment Area” (i e , the limited statutorily CEA defined area)
- 12 page G-12, Sec 402 1, Density – the WECA notes that the total FAR and the maximum non-residential FAR are less in MU-10 than in MU-9 – why? – this is confusing, especially since, under the existing rules, the numbering system always increased as density increased (also see **point #22** below)

Subtitle I, Downtown (D) Zones

- 13 page I-5, Sec 100 1, Purposes of Downtown (D) Zones – states “in areas the Comprehensive Plan generally characterized as (a) **Central Washington**, or (b) **Appropriate for a high-density mix**” – the WECA objects to this too broad area and

believes that the huge expansion of the Downtown is not justified, especially in Foggy Bottom-West End – see **points #1, 3 & 5** above as well as **Enclosures B & C**

- 14 page I-5, Sec 100 2(c) – states “generally consistent with the policies of the Central Washington Element and other relevant elements of the Comprehensive Plan” – the WECA objects to “generally consistent” as too vague and broad
- 15 page I-7, Figure I §101 2, General Boundaries of the D Zones – this Figure clearly shows the expansion and encroachment of D Zones (primarily D-5) into the residential areas and other areas (including D-2) of Foggy Bottom-West End to which the WECA objects – see **points #1, 3 & 5** above as well as **Enclosures B & C**
- 16 pages I-17, I-23 & I-37, Sec 212 1, Parking Requirements and Standards (in D zones), Sec 306 1, General Parking Use Requirements (in D zones), and Sec 543 1, Parking (D-5) – the WECA applauds the still required vehicle parking spaces west of 20th Street NW, including for new or substantially renovated buildings in the West End which includes much residential use
- 17 page I-36, Sec 540 1, Height (D-5) – the WECA objects to a maximum height of 130 feet in any of the new D-5 zone in Foggy Bottom-West End except along Pennsylvania Avenue
- 18 page I-113, Figure I §900 9, Credit Trade Areas – the WECA objects to any expansion of the existing credit trade areas into Foggy Bottom-West End – the text does not indicate the old versus new boundaries which the WECA recommends be specified in an accompanying Figure or in the text – Zone 1 appears to be expanded in the West End

Subtitle U, Use Permissions

- 19 pages U-14-15, Sec 204 1(b), Matter-of-Right Uses – R-Use Group D and Sec 205 1(b), Special Exception Uses – R-Use Group D – the WECA objects to “An existing nonresidential use shall be considered a conforming use and may expand by up to ten percent (10%) of its gross floor area as a matter-of-right” and “A proposed expansion of an existing non-residential use in excess of ten percent (10%) of gross floor area” shall be permitted – the WECA is especially concerned about any expansion of limited grandfathered commercial uses in residential zones since DC case law clearly says that any expansion is not permitted – unfortunately, the Zoning Administrator was unfamiliar with DC case law and, as a consequence, the DC Court of Appeals recently affirmed this restriction in a BZA case but a subsequent ruling was made under estoppel due to the lessee’s reliance on the Zoning Administrator’s uninformed judgments – at a minimum, the WECA recommends that a textual reference to the clear DC case law be added – thankfully, **Subtitle C, General Rule, p C-8, Sec 204 1, Nonconforming use** provides, “A nonconforming use of land or structure shall not be extended in land area or gross floor area”

Subtitle X, General Procedures

- 20 page X-13, Sec 300 6, PUDs – The WECA applauds the regulatory provision providing that “The Zoning Commission may approve a PUD application **with** or without **modifications**” (emphasis added) because, in the past, the Commission has stated that it can only vote a PUD up or down (with conditions) but with no modifications
- 21 page X-15, Sec 301 3, PUD Minimum Land Area and page X-33, Sec 601 4, Design Review Applicability – The WECA supports the regulatory provision providing that all property included in a PUD in Zone Groups 1, 2, and 6 “shall be contiguous” – the WECA believes that contiguity is especially important for “Omnibus PUDs” including for a Campus Plan in which the Campus Plan area includes non-University-owned properties – unfortunately and contrary to the WECA’s longstanding request for ZRR provisions governing Omnibus PUDs, there are no provisions governing Omnibus PUDs whatsoever in ZRR, including in Subtitle X, **pages X-3-6** governing Campus Plans – See **Enclosures E & F**
- 22 page X-17, Table X §303 4 Maximum PUD Height Permitted in the Least Restrictive Zone District – like **point #12** above, this Table shows that MU-7 and MU-8 have maximum heights below MU-6 and MU-10 is below MU-9 – why? – this is confusing, especially since, under the existing rules, the numbering system always increased as height increased
- 23 page X-20, Sec 305 4, PUD Public Benefits – The WECA recommends that the following proposed language be amended to reflect the actual statutory requirement “A **majority** of public benefits of the proposed PUD should relate to the geographic area of the Advisory Neighborhood Commission in which the application is proposed” (emphasis added) – the statutory requirement states, “Location of PUD amenities. Require that a **substantial** part of the amenities proposed in Planned Unit Developments (PUDs) shall accrue to the community in which the PUD would have an impact” (emphasis added) – “majority” is not equivalent to “substantial” and an ANC boundary can be much larger than the “community in which the PUD would have an impact” – please read the WECA’s more detailed objections in **Enclosures D and E**
- 24 page X-31, Sec 500 1, Map Amendments – The WECA applauds the regulatory provision providing “The Zoning Commission will evaluate and approve, disapprove, or **modify** a map amendment application” (emphasis added) because, in the past, the Commission has stated that it can only vote a Map Amendment up or down, i.e., with no modifications

Subtitle Y, Board of Zoning Adjustment Rules of Practice and Procedure

- 25 page Y-4, Sec 102 2, BZA, Organization – The WECA objects to “(or staff designee)” in the description of the BZA membership of 3 Mayoral appointees, a NCPC representative,

and a “member of the Zoning Commission (or staff designee)” – a Zoning Commission Member (appointed by the Mayor and confirmed by the City Council), not a staff employee (presumably from the Office of Zoning), should be participating in any BZA case

- 26 pages Y-28-29, Sec 400 5, BZA, Review and Processing of Applications, and Sec 401 1, BZA, Expedited Review – The WECA recommends deletion of the provisions for a hearing “Unless waived by an applicant” and “An applicant may waive its right to a hearing” since a public hearing provides an opportunity for the affected public to be heard, i e , the absence of a hearing would be unfair to the public
- 27 pages Y-41 & Z-45, Sec 409 1, BZA, Hearing Procedures Variance and Special Exception Applications and Sec 408 9, ZC, Public Hearing Procedures – The WECA requests that the witness order be revised to allow Parties in Opposition to testify right after Parties in Support and before all individuals in support, opposition, or undeclared, i e , to move Parties in Opposition to the application ahead of Individuals and organization representatives in support of the application – often the Individuals and organizations includes many witnesses, thereby requiring the Opposition Parties to wait a long time (often delayed to a day 2 hearing) to present their case and preventing the BZA and ZC from clearly hearing both principal support and opposition views back-to-back and on the same day – the WECA believes that this revised order would be fairer to the Opposition Parties
- 28 page Y-57, Sec 604 4, BZA, Final Decision and Effective Date of Decisions – The WECA feels that it is unfair to only allow the prevailing Party in an application or appeal to file a proposed order and for the other Parties not to either have that opportunity to file a proposed order or, more importantly, an opportunity to comment on a proposed order, i e , the WECA recommends deletion of the following sentence “No response to the proposed order may be submitted by any other party ”
- 29 page Y-65, Sec 704 6, BZA, Modification of Significance – 10 days for a Party to submit written comments on a Modification of Significance is an insufficient time period for ANCs which only meet monthly, i e , 10 days is unfair, especially for Modifications of Significance

Subtitle Z, Zoning Commission Rules of Practice and Procedure

- 30 page Z-17, Sec 206 7, ZC, Submitting Comments for Filing Documents Electronically or by E-Mail – The WECA recommends deleting the requirement for all documents to be filed in PDF format since many members of the public do not have the technical capability to translate their submission documents into a PDF file

- 31 page Z-26, Sec 302 10(c)(2)(A), ZC, Campus Plan/Further Processing – the WECA applauds the 10-year (versus recently approved 20-year George Washington University) campus plan period as more reasonable and realistic

- 32 pages Z-32 & Z-47, Sec 400 7, ZC, Setdown Procedures Scheduling Contested Case Applications for Hearing and Sec 500 7, ZC, Setdown Procedures Scheduling Rulemaking Case Petitions for Hearing – the WECA applauds the new ANC Setdown Form which allows an ANC to provide feedback on whether a matter should be set down for a hearing

- 33 page Z-40, Sec 404 10, ZC, Requesting Party Status – The WECA objects to the new provision stating “Replies to any opposition by the person requesting party status will not be accepted into the record” since it unfairly does not allow an organization requesting Party status to defend any erroneous information submitted by the Applicant or another participant in the case

- 34 pages Z-42 & Z-51, Sec 405 5(e) and Sec 405 6(b), ZC, Referrals to and Reports of Public Agencies and Sec 504 4(b), ZC, Reports of Public Agencies – the WECA applauds the three requirements for OP to report on “Issues or concerns raised by community members” – the WECA’s experience with OP is that it routinely had not included in its reports to the ZC WECA’s concerns, including those filed in the WECA’s Party request letters which were filed before finalization of OP’s reports

- 27 pages Y-41 & Z-45 – see point #27 above

Statement of Barbara Kahlow on behalf of the WECA
for ZC's 4/6/15 Hearing on Case No 08-06C, ZRR Map Amendments

I, Barbara Kahlow, live at 800 25th Street, N W This statement is submitted on behalf of the West End Citizens Association (WECA), the oldest citizens organization in the Foggy Bottom-West End area of Ward 2 The WECA is primarily interested in maintaining and improving the quality of life for the existing residential community in Foggy Bottom-West End

On March 18, 2015, the WECA asked the Zoning Commission (ZC) for a postponement of its April 6th Zoning Regulations Rewrite (ZRR) Map Amendments Hearing (ZC No 08-06C) until the public has had an opportunity to review and comment on the proposed draft ZRR text which is still not available On February 9th, the ZC set down this case basically without discussion

Case No 08-06C, captioned "Map Amendment to Implement the Comprehensive Revisions to the Zoning Regulations, including New Zone Names," includes not only many Map Amendments across several Wards and neighborhoods, including 11 in Foggy Bottom-West End, but also the Office of Planning's (OP) changes in Zone Names which would add enormous and unnecessary complexity to the zoning rules and for the public First, let me address the latter

In my March 15, 2015 post-hearing submission for the WECA to the DC City Council Committee of the Whole (COW), I stated

OP's chart captioned "Zone Name Changes As Approved by Proposed Action" reveals the complexity of the whole Zoning Regulations Rewrite (ZRR) As I indicated as an example, the existing mixed use C-2-A zone is replaced by 13 new zones MU-4, MU-17, MU-24, MU-25, MU-26, MU-27, NC-2, NC-3, NC-4, NC-7, NC-9, NC-14, & NC-16 This is ridiculously unnecessary & confusing

What is the ZC's rationale for adding this enormous complexity? Wasn't the entire rationale for ZRR to simplify the current and time-tested zoning rules?

As stated in the WECA's March 18, 2015 postponement request letter, "Logically, the Map Amendments hearing should be AFTER (not before) the proposed draft text we asked OZ for a necessary delay for fairness to the public The rationale for a delay is because "the public won't know all of the ramifications of these proposed Map Amendments until we see the proposed ZRR text" and then the ZC will consider these 90 days of public comments before it makes key decisions, e g , to triple the size of the downtown and to do so without a prior change in law "

As I stated in my March 12, 2015 WECA testimony during the COW's continuation OP performance hearing

I want to emphasize only one of the major substantive issues – a dramatic expansion of the downtown without any change in the statutory definition by the City Council of the Central Employment Area (CEA) My understanding is the OP is proposing a 3-fold

expansion of the downtown (see attached map) Over the years, the WECA carefully fought to limit the expansion of the CEA into Foggy Bottom-West End ZRR now includes expansion of the “downtown” into Foggy Bottom-West End (e g , [East of 22nd Street) and OP seeks to accomplish this enormous change by Map Amendments instead of a change in law In the February 20, 2015 DC Register, OP had the Office of Zoning Notice an April 6, 2015 Zoning Commission hearing to effectuate these changes now, i e , in advance of the Zoning Commission’s continuing consideration of ZRR with at least one more not yet scheduled public hearing on the policy changes

There are major impacts for an expansion of the downtown in Foggy Bottom-West End, including (a) increased height (due to an accompanying proposed expansion of Transferrable Development Rights (TDRs) into more of Foggy Bottom-West End), (b) increased allowable density for non-residential uses, and (c) reduced parking requirements

Specifically, Case No 08-06C #22 proposes to change protective mixed use SP-2 zoning in Squares 170 (including AIA), 171 (including the Corcoran Gallery of Art), 172 , and 173 (including the Red Cross) in Foggy Bottom to the new D-2 zone The WECA objects to any increase in allowable height and any reduced parking requirements in this part of Foggy Bottom Case No 08-06C #24 proposes to change portions of Squares 72 (this Square includes R-5-E residential use), 73 (this Square includes R-5-E residential use & the historic Stevens School), 74 (including the IFC), 76, 78 (including the historic Arts Club), 99 (this Square includes R-5-E residential use), and 100 in the West End from C-3-C zoning to the new D-5 zone The WECA objects to any increase in allowable height and any reduced parking requirements in this part of the West End

Thank you for your consideration of the WECA’s views on this untimely and unfair hearing

C

11/14/13 Testimony of Barbara Kahlow
on ZC Case No 08-06A – The Zoning Regulations Review (ZRR) Subtitle I

I, Barbara Kahlow, live at 800 25th Street, N W I am testifying on behalf of the West End Citizens Association (WECA), the oldest citizens organization in the Foggy Bottom-West End area of Ward 2 The WECA is primarily interested in maintaining and improving the quality of life for the existing residential community in Foggy Bottom-West End

Before the October 28, 2013 deadline for written testimony on the Zoning Regulations Review (ZRR), the WECA submitted detailed written comments On November 4th, I testified on behalf of the WECA at the first ZRR hearing in this round of hearings During that night, the Commission asked for further information about the WECA's concerns relating to the Office of Planning's (OP's) attempt to redefine large parts of our neighborhood (including where long-term and short-term residents reside) as being part of the Downtown I decided to return tonight to further address these concerns

In my November 4th oral testimony, I asked the Commission to compare (1) the statutory boundaries of the Central Employment Area (CEA) in Foggy Bottom-West End, (2) the p 3-11 CEA map in the 2006 Comprehensive Plan, and (3) OP's two ZRR maps on pp I-58 and I-110 Below is an elaboration of this comparison request

Expansion of the Central Employment Area (CEA) in Foggy Bottom-West End

As the WECA stated in writing and orally, the WECA repeatedly and successfully fought to contain the boundaries of the Central Employment Area (CEA) in Foggy Bottom-West End and contends that a change in law is required before OP's redefinition (including its expanded Transferable Development Rights (TDRs) receiving zones) can be legally included in ZRR Here are some facts relating to this proposed expansion

- As stated in the WECA's October 28th submission, the statutorily-set boundaries of the CEA in Foggy Bottom-West End are

“east on the E Street Expressway and E Street, N W to 19th Street, N W, north along 19th Street, N W, to F Street, N W, west on F Street, N W to 20th Street, N W., to Pennsylvania Avenue, N W, west along Pennsylvania Avenue, N W, to 21st Street, N W, north along 21st Street, N W to M Street, N W., east along M Street, N W to 20th Street, N W to New Hampshire Avenue, N W, and northeast along New Hampshire Avenue, N W to Dupont Circle on the west ”

- As further stated in the WECA's October 28th submission

ANC-2A and Foggy Bottom-West End community groups successfully fought boundary exclusions from the statutory CEA definition area, as reflected in the 1994 and 1999 Comprehensive Plan Amendment Acts, to ensure that Environmental Impact Statements would be required for five possible development sites (the old Associated General Contractors PUD at 1957 E Street, the old Red Cross National Capital Chapter at 2025 E Street, the now International Finance Corporation from Pennsylvania Avenue to K Street

between 21st and 22nd, the Pan American Health Organization (PAHO) at 23rd and E, and the PAHO support building at 2121 Virginia) and the entire George Washington University (GWU) Campus Plan area

- OP's proposal effectively expands the statutory boundaries for the CEA into the West End (e.g., in some Squares from West of 21st Street to 22nd Street and from North of Pennsylvania Avenue to M Street) without an accompanying statutory amendment to expand the "downtown" (see Subtitle I-58, Figure 4, "All Streets in Downtown Zones with Designated Street Segments")
- The 2006 Comprehensive Plan maps the CEA on p 3-11 (see **Attachment A**) **Attachment B** is a marked up copy of ZRR Subtitle I Figure 4 which shows OP's proposed expansion, captioned "Downtown Zoning" During the November 4, 2013 hearing, OP referred to the new term "Central" In fact, "Central Area" is defined in Subtitle B without any mention of Foggy Bottom-West End Its definition is "The area included within the combined boundaries of the Urban Renewal Plan for the Downtown Urban Renewal Area and the Urban Renewal Plan for the Shaw School Urban Renewal Area, as approved and modified periodically by the National Capital Planning Commission and the Council of the District of Columbia (45 DCR 1046)"
- The "District of Columbia Comprehensive Plan Generalized Policy Map" shows the proposed expansion area in the West End (North of Pennsylvania Avenue) as "**Neighborhood Enhancement Areas.**" This map shows the area South of Pennsylvania Avenue as "Institutional Uses"
- The "District of Columbia Comprehensive Plan Future Land Use Map" (FLUM) shows the expansion area in the West End as "moderate density residential," "high density residential," and a mixture of both The FLUM shows the expansion area in Foggy Bottom (South of Pennsylvania Avenue) as "Institutional" Please note that none of the proposed expansion area is "High Density Commercial"
 - *The WECA requests that the Zoning Commission not expand the CEA or the Central Area into more of Foggy Bottom-West End, especially into Squares which include current residents.*

Expansion of Transferable Development Rights (TDRs) in Foggy Bottom-West End

As stated in the WECA's October 28th submission, the current zoning rules for TDRs (which increase allowable density and allowable height, including for PUDs) at 11 DCMR § 1709.16 state, "The New Downtown receiving zone consists of the C-3-C zoned portions of Squares numbered 72 through 73, 74, 76, 78, 85, 86, 99, 100, and 116 through 118" in the West End

- OP's proposal expands TDRs into additional Squares in Foggy Bottom (South of Pennsylvania Avenue) by its proposed Credit Trade Areas which far exceed the 12 Squares in the West End which are included in the current TDR receiving zone rules (see Subtitle I-110, Figure 20) Inappropriately, OP characterizes this Foggy Bottom-West End credit trade area as part of "Farragut Square" Also, OP captions 3 new zoning areas (D-5-B-1, D-6-B-1, and D-2-B-1), the first 2 of which allow 130' in height, which would

change the character of these neighborhoods **Attachment C** is a marked up copy of ZRR Subtitle I Figure 20 to show the expansion

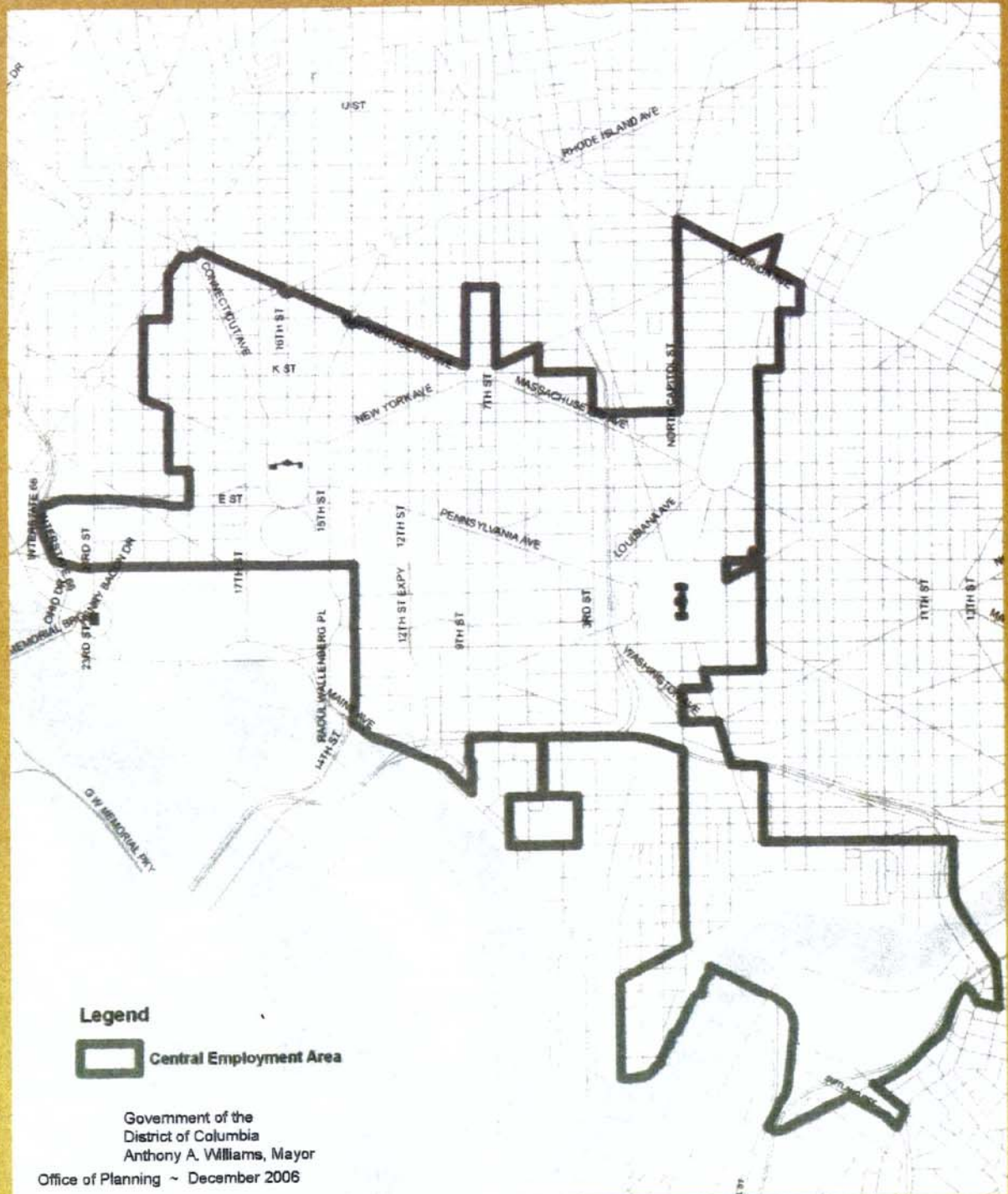
- *The WECA requests that the Zoning Commission not expand TDRs into more of Foggy Bottom-West End.*

Thank you for your consideration of the WECA's views

Attachments

Figure 3.2:

Central Employment Area 304.10



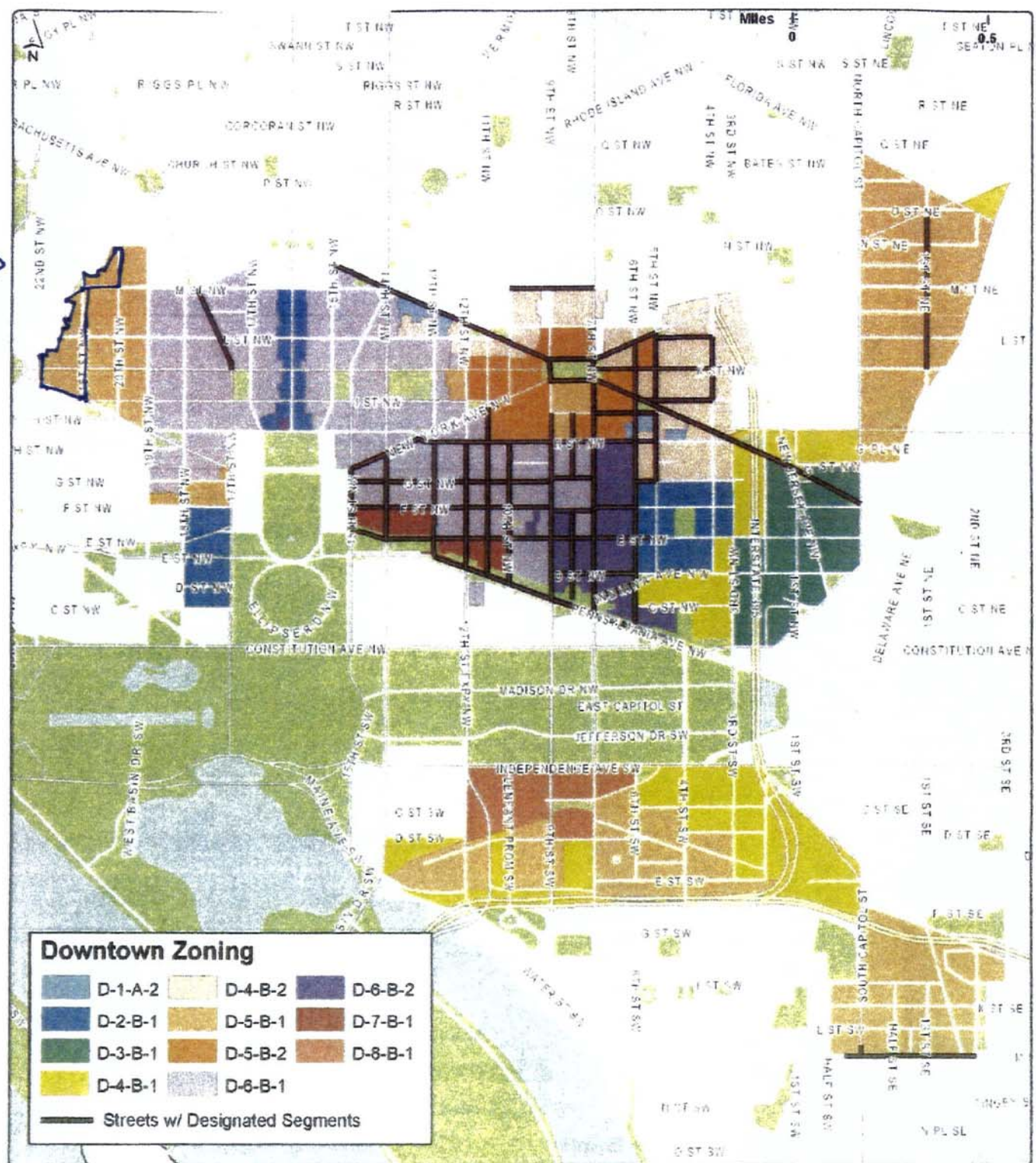


Figure 4. All Streets in Downtown Zones with Designated Street Segments

20-222-20
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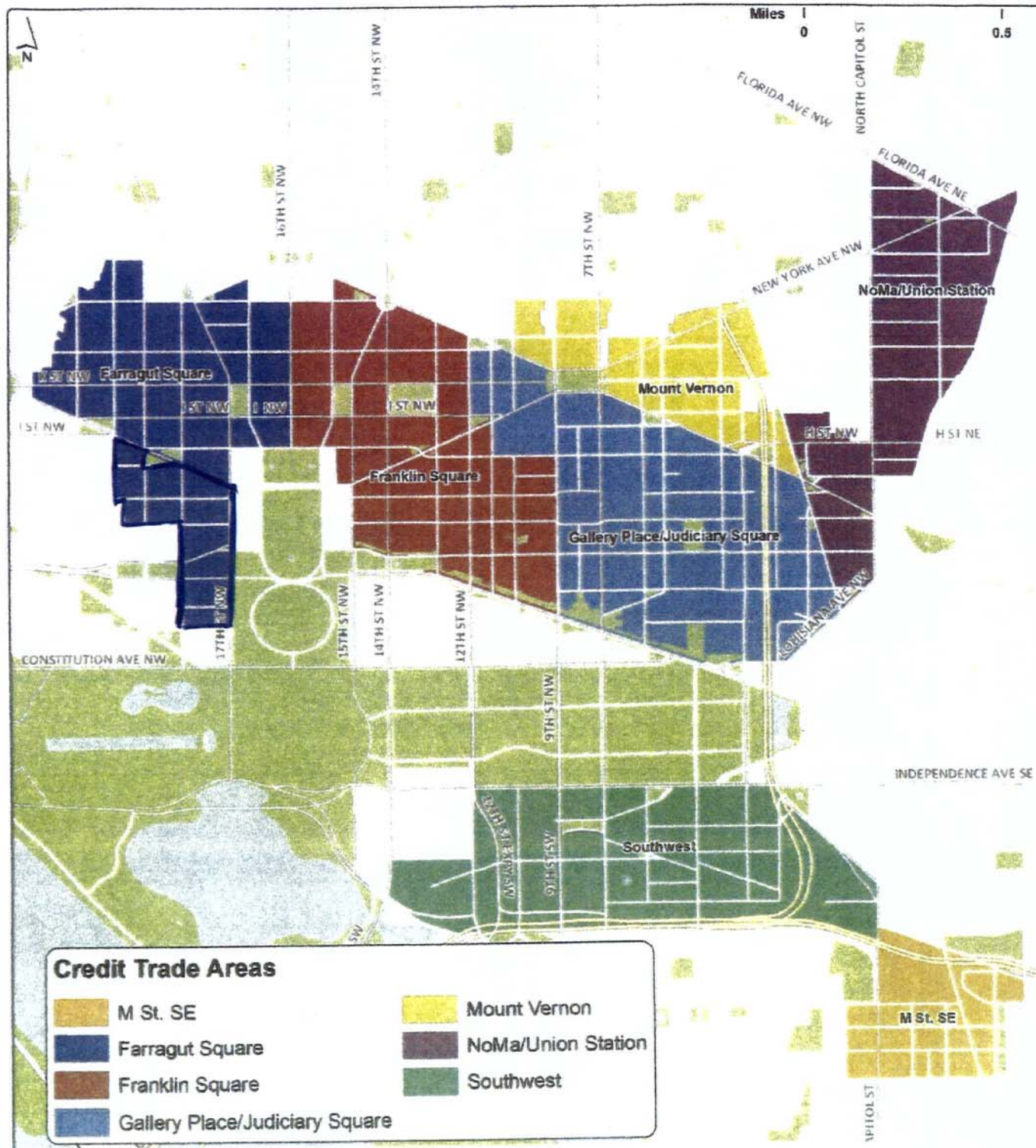


Figure 20. Credit Trade Areas

900.9 Use of credits generated by exceeding the arts requirements of I §607 is limited to 0.5 FAR above the permitted non-residential use.

D

West End Citizens Association
Washington, D.C.

Boundaries: 15th Street on the East • Potomac Park on the South
Rock Creek and the Potomac on the West • N Street on the North

October 23, 2013

Ms Sara Benjamin Bardin
Director, Office of Zoning
441-4th Street, N.W - Suite 210
Washington, DC 20001

Re: Advance Copy of WECA Testimony on ZRR (ZC Case No. 08-06A)

Dear Ms Bardin

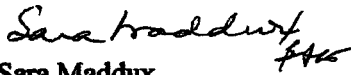
This letter provides a copy of the West End Citizens Association's (WECA's) 15-page testimony on the Zoning Regulations Review (ZRR) before the Office of Zoning's requested deadline of October 28, 2013. Enclosed are the following testimony parts.

- (a) 2-page oral testimony to be delivered by the WECA Secretary-Treasurer on November 4, 2013
- (b) 7-page document entitled "WECA's Section-by-Section Comments" – addressing Subtitles A, B, I, X, Y, and Z
- (c) 4-page copy of 10/4/10 WECA testimony on PUDs (cited in (a))
- (d) 2-page copy of 7/12/07 WECA testimony on Existing Zoning Regulations (cited in (b))

Please put a copy of the WECA's 15-page filing in the Commissioner's packets for the hearings on Subtitles A, B, I, X, Y, and Z, i.e., the Commission's November 4, 5, and 14, 2013 hearings.

If any additional information is needed, Barbara Kahlow can be reached during the day on (202) 965-1083.

Sincerely,


Sara Maddux
President

Enclosure

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11/4/13 Testimony of Barbara Kahlow
on ZC Case No 08-06A – The Zoning Regulations Review (ZRR)

I, Barbara Kahlow, live at 800 25th Street, N W I am testifying on behalf of the West End Citizens Association (WECA), the oldest citizens organization in the Foggy Bottom-West End area of Ward 2 The WECA is primarily interested in maintaining and improving the quality of life for the existing residential community in Foggy Bottom-West End

Before the October 28, 2013 deadline for written testimony on the Zoning Regulations Review (ZRR), the WECA submitted 7-pages of detailed comments captioned “WECA’s Section-by-Section Comments ” They were presented as Procedural Issues followed by Substantive Issues And, the Substantive Issues were presented in this order: Subtitle A, Subtitle B, Subtitle I, Subtitle X, Subtitles X & Z, Subtitle Y, Subtitle Z, and Other Subtitles Your hearing Notice asked for tonight’s oral testimony to address Subtitles A, W, X, Y, and Z However, since I do not intend to testify at the Commission’s other six hearings this week and next week (e g , on November 14th on Subtitle I, Downtown Zones), I am available tonight to answer Commissioner questions on issues identified in the WECA’s advance submission regarding the other Subtitles

The WECA testified at or submitted written statements for the following Zoning Commission hearings on ZRR (a) July 12, 2007 (appended to the WECA’s advance submission), (b) September 22, 2010 on height, (c) October 4, 2010 on Planned Unit Developments (PUDs) (attached to today’s testimony), and (d) November 8, 2011 on administrative amendments (ZC Case No 12-11) Are all four of these testimonies already in the ZC No 08-06A case record? If not, I would be happy to supply copies for today’s case record The WECA also participated in five of OP’s ZRR Working Groups Height, Retail Strategy, Campus/Institutional, PUD, and Administration and Enforcement The Commission did not hold a followup hearing on Campus/Institutional issues

Lastly, the WECA testified at three City Council Committee of the Whole hearings on ZRR and the Office of Planning (OP) October 5, 2012, March 3, 2013, and July 2, 2013 Are these testimonies already in your case record? If not, I would be happy to supply copies for today’s case record

Tonight, I will briefly cover Procedural Issues followed by Substantive Issues

Procedural Issues

Possibly sounding like a broken record, I want to reiterate the following WECA recommendations (a) that the Zoning Commission require OP to produce a **redlined** version, (b) that the Zoning Commission require OP to produce an **identification of and explanation for each and every substantive change** for public review and before any Commission vote on the proposed text, and (c) that the Commission continue the current easy-to-understand-and-use zoning categories since the WECA opposes OP’s proposed **very complex replacement zones**, e g , from 3 to 20 low density residential zones An identification of and explanation for all substantive changes is essential My review of the setdown ZRR text was frustrating, time-consuming, and, frankly, unable-to-be-completed without this essential aid It is unreasonable to

ask the public to search the current zoning provisions and enacted Comprehensive Plan protections and then compare them with OP's proposed ZRR text

Substantive Issues

The most serious substantive issue for Foggy Bottom-West End is OP's attempt to **redefine large parts of our neighborhood** (including where long-term and short-term residents reside) **as being part of the Downtown**. The WECA repeatedly and successfully fought to contain the boundaries of the Central Employment Area (CEA) and contends that a change in law is required before OP's redefinition (including its expanded Transferable Development Rights (TDRs) receiving zones) can be legally included in ZRR. I raised this issue in OP's December 13, 2012 ZRR public meeting in Anacostia and was assured by the OP Director during the question-answer period that ZRR would not include any language inconsistent with current law.

On a related matter, the WECA opposes OP's **new allowable increases in density, percent non-residential uses, and height** for PUDs. In addition, since much of the West End is zoned C-2-C, OP's automatic height increase from 90 feet to 110 feet in C-2-C zones would dramatically change the character of this mixed use area.

The next most important substantive issue is OP's proposed revised rules governing future acceptable **PUD benefits and amenities**. Attached to today's testimony is another copy of my October 4, 2010 testimony for the WECA on this issue. The WECA's view is based on long-term successful experience identifying and negotiating substantial and appropriate PUD amenities for our neighborhood, most of which do not include upgrades of public land or governmental services which the WECA believes should be paid by taxpayer funds, not developers. The WECA strongly recommends that the Commission continue to allow the identification of non-public PUD benefits and amenities which are desired for the immediately impacted community.

The WECA assisted the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) in its evaluation of ZRR and the WECA requests that the Zoning Commission give "great weight" to ANC-2A's October 16, 2013 ZRR resolution.

Lastly, the WECA asks the Commission to require OP to **add the coverage areas** for ZRR which the WECA recommended on July 12, 2007 but which are not yet addressed in OP's ZRR. For example, they include (a) identification of governing provisions for omnibus PUDs (especially for campus plans), (b) clarification of sequencing for the DC Environmental Policy Act, and (c) clarification of sequencing with other review agencies.

Thank you for your consideration of the WECA's views.

Attachment

WECA's Section-by-Section Comments

PROCEDURAL ISSUES

- **Redlined version** -- The Office of Planning (OP) has not yet released a redlined version, as in traditional in governmental rulemakings, of its proposed Zoning Regulations Review (ZRR) "supersede in full" document for the entirety of the existing zoning rules so that the WECA and other community groups can thoughtfully and thoroughly review each of the proposed textual changes (Subtitle A, §100 1)
 - *The WECA requests that the Zoning Commission require OP to produce a redlined version.*
- **Explanations** -- OP has also not yet released explanations, as in traditional in governmental rulemakings, for each of the proposed policy and textual changes in its proposed ZRR so that the WECA and other community groups can thoughtfully consider each of the proposed changes
 - *The WECA requests that the Zoning Commission require OP to produce an identification of and explanation for all substantive changes for public review*
- **Complexity** -- As shown in OP's 5-page "Zone Name Conversion Table" which precedes Subtitle A in the setdown version, OP's proposal adds a dramatically expanded list of zoning categories, e g , instead of the current R-1, R-2, and R-3 (1 e , 3) zones, there will be 20 low-density residential zones (newly called R-1 to R-20) A second example is the complicated "Zone Reference Table" for mixed use zones (currently SP, C, CR and W), which ran 8 detailed pages in the last version but which does not seem to be included in the setdown version even though it is referenced in multiple places in the setdown text
 - *The WECA opposes this unnecessary increase in complexity and recommends that the Zoning Commission instead continue the current zoning categories.*

SUBSTANTIVE ISSUES

Subtitle A – Authority & Applicability

- **Penalties**
 - Penalties for violations are limited to \$100 per day (Subtitle A, §305, p A-21)
 - *The WECA requests that the Zoning Commission increase the penalty level so that it will act as a deterrent to noncompliance.*

Subtitle B – Definitions

- **Planned Unit Development (PUD)**
 - The definition of a PUD "in one (1) or more districts" does not mention a requirement for contiguity of Squares (Subtitle B, p B-20)
 - *The WECA requests that the Zoning Commission amend OP's proposed definition to include a requirement for contiguity of Squares in any PUD, including an "omnibus" PUD*

Subtitle I – Downtown Zones

- **Expansion of the Central Employment Area (CEA) in Foggy Bottom-West End**
 - The statutorily-set boundaries of the CEA in Foggy Bottom-West End are “east on the E Street Expressway and E Street, N W to 19th Street, N W, north along 19th Street, N W, to F Street, N W, west on F Street, N W to 20th Street, N W, to Pennsylvania Avenue, N W, west along Pennsylvania Avenue, N W, to 21st Street, N W, north along 21st Street, N W to M Street, N W, east along M Street, N W to 20th Street, N W to New Hampshire Avenue, N W, and northeast along New Hampshire Avenue, N W to Dupont Circle on the west ”
 - ANC-2A and Foggy Bottom-West End community groups successfully fought boundary exclusions from the statutory CEA definition area, as reflected in the 1994 and 1999 Comprehensive Plan Amendment Acts, to ensure that Environmental Impact Statements would be required for five possible development sites (the old Associated General Contractors PUD at 1957 E Street, the old Red Cross National Capital Chapter at 2025 E Street, the now International Finance Corporation from Pennsylvania Avenue to K Street between 21st and 22nd, the Pan American Health Organization (PAHO) at 23rd and E, and the PAHO support building at 2121 Virginia) and the entire George Washington University (GWU) Campus Plan area
 - OP’s proposal effectively expands the statutory boundaries for the CEA into the West End (e g, in some Squares from West of 21st Street to 22nd Street and from North of Pennsylvania Avenue to M Street) without an accompanying statutory amendment to effectively expand the “downtown” (see Subtitle I-58, **Figure 4**, “All Streets in Downtown Zones with Designated Street Segments”)
 - *The WECA requests that the Zoning Commission not expand the CEA into more of Foggy Bottom-West End, especially into Squares which include current residents*
- **Expansion of Transferable Development Rights (TDRs) in Foggy Bottom-West End**
 - The current zoning rules for TDRs (which increase allowable density and allowable height, including for PUDs) at 11 DCMR § 1709 16 state, “The New Downtown receiving zone consists of the C-3-C zoned portions of Squares numbered 72 through 73, 74, 76, 78, 85, 86, 99, 100, and 116 through 118” in the West End.
 - OP’s proposal expands TDRs into additional Squares in the West End and into some Squares in Foggy Bottom (South of Pennsylvania Avenue) by its proposed Credit Trade Areas which far exceed the 12 Squares in the West End which are included in the current TDR receiving zone rules (see Subtitle I-110, **Figure 20**)
 - *The WECA requests that the Zoning Commission not expand TDRs into more of Foggy Bottom-West End*

Subtitle X – General Procedures

- **Planned Unit Development (PUD) Benefits and Amenities** (Subtitle X, pp 17-26)
 - Subtitle X §§300 1(b), 300 5, 304 4 (b), and 305 6 require “public benefits” (i.e., without mention of project amenities), whereas, §304 3, 304 4(c), and 305 1 require “public benefits and project amenities ” §305 addresses in more detail public benefits §305 3(d) states, “Monetary contributions shall only be permitted if made to a District government program OR if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided” (emphasis added).
 - §305 5(s) provides, “Other public benefits and project amenities and other ways in which the proposed PUD substantially advances the Comprehensive Plan.” Further, §305 6 provides, “Public benefits other than those listed above may be proposed to and considered by the Commission ”
 - §305 4 paraphrases a statutory requirement (but without reference to the statutory provision), stating “A majority of public benefits of the proposed PUD should related to the geographic area of the ANC in which the application is proposed ”
 - *The WECA recommends addition of “and project amenities” in §§300 1(b), 300 5, 304 4(b), and 305.6*
 - *The WECA supports inclusion of the alternative in §305 3(d) for monetary contributions for non-District government programs; i.e., for other items or services appropriate and needed for the directly-affected community. Over the years, the WECA has been responsible for inclusion of amenity funds for many needed items and services in the Foggy Bottom-West End community As a consequence, the WECA strongly supports the inclusion of §§305.5(s) and 305 6.*
 - *Since “Majority” is not equivalent to “substantial” and since “the geographic area of the ANC” is not equivalent to the “community in which the PUD would have an impact,” the WECA recommends that the exact statutory language be used instead of the paraphrased version in §305.4. The statute provides, “Location of PUD amenities. Require that a substantial part of the amenities proposed in Planned Unit Developments (PUDs) shall accrue to the community in which the PUD would have an impact.”*
- **Zoning Commission (ZC) Action on PUDs** – Subtitle X §§300 6, 304 1, and 308.16 respectively state, “The Commission may approve a PUD application with or without modifications”, “The Commission will evaluate and approve, disapprove, or modify a PUD application”, and “The Commission shall either approve, deny, or modify the application ” (Subtitle X, pp 17, 23, and 34)
 - *The WECA strongly supports these provisions since the Zoning Commission should be able to approve modifications to a PUD application*

- **Contiguity** – Subtitle X §§301 3, 301 4, and 301 5 require that the property in a PUD “shall be contiguous ” (Subtitle X, p 19)
 - *The WECA supports these provisions and requests that provisions governing “omnibus” PUDs be added in all three subsections.*
- **PUDs and Increases** in density, % non-residential uses, and height
 - For PUDs, OP proposed. (a) **increased Floor Area Ratio (FAR) density** (“the Commission may increase total FAR . by no more than twenty percent (20%) of the zone district associated with the PUD As part of the twenty percent (20%) increase, the Commission may **increase the FAR for non-residential uses** by no more than thirty-four percent (34%) of the matter-of-right non-residential FAR permitted within the zone district associated with the PUD) (see §303 3 in Subtitle X-20) and (b) an **unjustified increase in the height limit** in C-2-C zones from 90 feet to 110 feet (see Table on Subtitle X-21), including areas within Foggy Bottom-West End
 - OP’s proposed definition of PUD and its proposed provisions governing PUDs (see Subtitle B-20 and Subtitle X-17-41) do not include any provisions covering **“omnibus” PUDs**, including an **increase in maximum FAR for a Campus Plan** (e g , from 3 5 to 4 5) omnibus PUD, however, §§301 3-301 5 in Subtitle X-19 do mention necessary contiguity for PUDs
 - *The WECA requests that the Zoning Commission not allow for increases in currently allowable density, percent non-residential uses, and height in Foggy Bottom-West End and define and state governing provisions for “omnibus” PUDs.*
- **Applicant Identification of PUD Changes made for the Community**
 - Subtitle X §307 8(d) requires, “The applicant shall also indicate what meetings or discussions were held with the community and the OP as well as any changes that resulted from community input” (Subtitle X- 31)
 - *The WECA supports this identification provision and thinks that it will assist the Zoning Commission in its questioning of the Applicant before the communities have had an opportunity to present their views in opposition*
- **OP Identification of Community PUD Concerns**
 - Subtitle X §308 5(d) requires OP to report on “Issues or concerns raised by the ANC or community members” (Subtitle X-33)
 - *The WECA supports this requirement, especially because OP does not routinely reach out to the WECA pre- or post-setdown and usually does not even mention issues in its reports which were cited in WECA’s letters requesting “Party” status.*

- **Maximum PUD Extensions**

- Subtitle X §311 3 provides, “An approved PUD may receive no more than two extensions” (Subtitle X-37)
 - *The WECA supports this new maximum and thinks that no more than two extensions should apply to BZA approvals as well*

- **Applicant Views of PUD Party Status Requests**

- Subtitle X §317 4 provides, “The applicant may appear at the public meeting of the Commission’s consideration to object to the request or my submit written response to the party status request which will be considered by the Commission at the public hearing” (Subtitle X-41)
 - *The WECA supports this provision and thinks that it would have avoided the Zoning Commission’s granting party status to an inappropriate group and the Zoning Commission’s not granting party status to the WECA in a specific PUD case that was later unsuccessfully litigated by the inappropriate group (ZC No 11-12).*

Subtitles X & Z – Modifications

- OP’s proposed provisions unfairly allows a “modification of consequence” for a PUD without a public hearing (“A modification of consequence, including but not limited to a proposed change to a condition cited by the Commission in the final order the Commission may consider a modification of consequence by proposed action with no additional public hearing” at §312 6(b) in Subtitle X-38) and also for non-PUDs (see §705 9(b) in Subtitle Z-45)
 - *The WECA requests that the Zoning Commission require public hearings for all “modifications of consequence” to zoning Orders, including for PUDs and Campus Plans.*

Subtitle Y – BZA Procedures

- **Party Status (Subtitle Y-31)**

- Subtitle Y §404 2 allows “any party may file a response to a request for party status ”
 - *The WECA supports this provision and believes that such input might prove helpful to the BZA*
- Subtitle Y §404 4 provides, “In granting party status, the Board may specify whether the person will be permitted to participate as a party for general or limited purposes ”

- *The WECA questions what “a party for limited purposes” means and strongly objects to this unfair restriction on the rights of the directly affected. For example, would limitations affect cross examination?*
- Subtitle Y §404 5 allows the BZA to “make any other orders including but not limited to prohibiting a person who is granted party status from introducing designated matters in evidence ”
 - *The WECA strongly objects to this unfair restriction on the rights of the directly affected. In fact, the WECA had to file suit (and win at the DC Court of Appeals) because of such a BZA restriction (in BZA No 18031).*
- **Extensions (Subtitle Y-59)**
 - Subtitle Y §706.2 provides, “A time extension granted pursuant to Y §706 1 shall not exceed two (2) years ”
 - *The WECA recommends the addition of a maximum number of extensions, as in Subtitle X §311 2 for PUDs. An Officer of the WECA participated in a BZA case (BZA No. 15461) with multiple extensions which unfairly left the community with a vacant and blighted property for many years.*

Subtitle Z – ZC Procedures

- Subtitle Z §405 2 changes the requirement that OP “shall” to “may” include in its setdown reports written reports from all relevant agencies, especially the District Department of Transportation (DDOT) (Subtitle Z-22)
 - *The WECA does not support the change from “shall” to “may” since DDOT reports are critical in evaluation of most PUDs in Foggy Bottom-West End.*
- Subtitle Z §§405 5(e) and 405 6(b) require OP reports to include “Issues or concerns raised by the ANC or community members” (Subtitle Z-23)
 - *As indicated above under OP Identification of Community PUD Concerns and for Subtitle X §308 5(d), the WECA supports this requirement, especially because OP does not routinely reach out to the WECA and usually does not even mention issues in its reports which were cited in WECA’s letters requesting “Party” status.*
- Subtitle Z §706 5 provides, “An applicant with an approved PUD may request no more than two (2) extensions. The second request for an extension may be approved for no more than one (1) year” (Subtitle Z-46)
 - *As indicated above under Maximum PUD Extensions and for Subtitle X §311 2 and for Subtitle Y §706 2, the WECA supports this new maximum and thinks that no more than two extensions should apply to BZA approvals.*

- Subtitle Z §1200 7(e) for Campus Plans provides, “The applicant shall also indicate what meetings or discussions were held with the Office of Planning, the affected ANC and other individuals and community groups concerning the proposed development, as well as any changes that resulted from these meetings or discussions” (Subtitle Z, pp 61-2)
 - *The WECA supports this identification of changes made for the community and thinks that it will assist the Zoning Commission in its questioning of the Applicant before the communities have had an opportunity to present their views in opposition.*

Other Subtitles

- OP proposed changes in the requirements for minimum and maximum parking spaces which could adversely affect some future developments in Foggy Bottom-West End
 - *The WECA requests that the Zoning Commission not change the requirements for **parking** spaces in Foggy Bottom-West End*
- OP’s proposal continues not to address longstanding WECA recommendations for areas needing regulatory attention in the ZRR text Please refer to the WECA’s July 12, 2007 testimony at the Commission’s “Roundtable regarding the Existing Zoning Regulations” in which the WECA identified five areas needing regulatory attention (see attached) For example, these two areas are not addressed at all in OP’s proposed ZRR text
 - Clarification of **sequencing** for the DC Environmental Policy Act
 - Clarification of **sequencing** with other review agencies

Attachment

E

10/4/10 Testimony of Barbara Kahlow
on ZC Case No 08-06-12 – Comprehensive Zoning Regulations Review PUDs

I, Barbara Kahlow, live at 800 25th Street, N W I am testifying on behalf of the West End Citizens Association (WECA), the oldest citizens organization in the Foggy Bottom-West End area of Ward 2. The WECA is primarily interested in maintaining and improving the quality of life for the existing residential community in Foggy Bottom-West End.

My Professional Qualifications and Related Subject Matter Expertise

I hereby provide some background information for the Commission During my career of professional responsibilities, I spent 25 years at the Office of Management and Budget (OMB), primarily involved in regulatory policy development. During that service, I chaired multiple interagency (involving 20+ agencies) policy development initiatives As a signature accomplishment, I created the government-wide “common rule” mechanism for regulatory relief whereby each agency codifies identical regulatory language in its part of the Code of Federal Regulations After OMB, I served in Congress for seven years, retiring as Staff Director of the House Government Reform Subcommittee on Regulatory Affairs This was the only Subcommittee in either chamber devoted to regulatory process and policy

I have been recognized by the Zoning Commission as an expert witness in the regulatory process in hearings dating back to the early 1990s, as reflected in the records. It is from this perspective in which I will be discussing the regulatory policy development process employed by DC’s Office of Planning (OP) in its “Comprehensive Zoning Regulations Review” and then the substance of tonight’s hearing relating to Planned Unit Developments (PUDs) Also, since 1991, I have participated in a dozen or more PUDs

Regulatory Development Process

I bring to your attention that I have never participated in a regulatory development process with less respect for the public’s comments In the Federal Executive Branch, standard regulatory policy development, under the Administrative Procedure Act (APA), requires each agency to identify each substantive public comment and the agency’s explanation for inclusion in full or in part or rejection DC’s regulatory development practice does not require such rigor or intellectual integrity

To date, I have participated in five of OP’s “Comprehensive Zoning Regulations Review” Working Groups: Height, Retail Strategy, Campus/Institutional, PUD, and Administration and Enforcement In all five, most public comments¹, including all of WECA’s relating to PUDs, were largely ignored by OP This includes WECA’s two major PUD issues

- (a) DC’s policy for future “omnibus” PUDs, such as the George Washington University’s 20 non-contiguous Squares “omnibus” PUD for its campus plan which was used to bypass the protective cumulative floor area ratio (FAR) cap for colleges and universities

¹ The prime exception was the first meeting of the Administration and Enforcement Working Group, which was chaired by the Office of Zoning (OZ) instead of OP In this meeting, OZ requested public input in four areas (Pre-Hearing Procedures, Hearing Procedures, Post-Hearing Procedures, and Administrative Items) and I am confident that our comments will be taken into account

in 11 DCMR §210.3 (“In R-1, R-2, R-3, R-4, R-5-A, and R-5-B Districts, the total bulk of all buildings and structures on the campus shall not exceed the gross floor area prescribed for the R-5-B District”), and

- (b) DC’s regulatory procedures to implement DC law protecting impacted communities from PUDs, requiring,
“Location of PUD Amenities Require that a substantial part of the amenities proposed in Planned Unit Developments (PUDs) shall accrue to the community in which the PUD would have an impact” (DC Law 16-300, Policy IM-1 18, 2502 12) ²

With respect to the former, during OP’s Campus/Institutional Working Group, OP promised to address “omnibus” PUDs in OP’s PUD Working Group. But, OP failed to do so. With respect to the latter, OP failed to mention this statutory requirement in any of its written presentations on PUDs.

PUDs

Today’s proposal is problematic in multiple ways. In order of presentation versus importance, they include

- Recommendation 2, p. 4 – The proposed standard 30% density increase for non-residential FAR is excessive. In fact, in its 9/10/10 accompanying document (p. 10), OP admits that 4 of the 10 zones (including SP-2 and C-3-C) would result in increases in available bonus density.
- Recommendation 5, p. 9 – In its 9/10/10 accompanying document (p. 13), OP recognizes the difference between benefits and amenities (“The regulations refer to both ‘benefits’, which should support the neighborhood or city as a whole, and ‘amenities’, which should support project occupants and adjacent neighbors”). In OP’s 5/5/10 Working Group meeting, a third element was mentioned: mitigation measures. However, OP’s incomplete “list” only includes one of the three elements: “public benefits.”
 - The WECA believes that many of the “public benefits” listed are inappropriate since they: (a) are DC’s own responsibilities (e.g., ANC space which DC is required to provide, park maintenance, public alley construction, and public street construction), (b) are already part of a quality project (e.g., block frontage streetscape), or (c) may not accrue to the immediately impacted community (e.g., day care, a transit store).

² Based on various PUD experiences in Foggy Bottom-West End in the 1990’s, working with Ward 2 Councilmember Jack Evans, I proposed protective legislative language for our community. In response, the Ward 2 Plan in the Comprehensive Plan Amendment Act of 1999 provided the following requirement for all PUDs in Ward 2: “A substantial part of the amenities provided in proposed Planned Unit Developments (PUDs) shall accrue to the community in which the PUD would have an impact” (DC Law 12-275, §1327.1(j)). After the Zoning Commission decided not to incorporate Ward Plan language into the zoning rules, in the next Comprehensive Plan cycle, the WECA sought city-wide protective legislative language. In response, the Comprehensive Plan Amendment Act of 2006 widened applicability to the entire City: “Location of PUD Amenities: Require that a substantial part of the amenities proposed in Planned Unit Developments (PUDs) shall accrue to the community in which the PUD would have an impact” (DC Law 16-300, Policy IM-1 18, 2502 12).

- The WECA does not agree with two of the three “standards” in OP’s proposal (a) “Cannot include monetary contributions” and (b) “Should last for life of the project ” Attached is a 1-page document prepared at the request of a Mayoral appointee to the National Capital Planning Commission entitled, “Examples for Arrington Dixon of PUD Amenities for Foggy Bottom-West End 6/8/09 ” This listing includes monetary contributions – most of which would not last the life of the project but which enhance the area surrounding the project and attract other positive developments – for specific needed amenities in Foggy Bottom-West and other specific amenities to benefit the immediately impacted community
 - Six of the 18 examples are \$100,000 for prescription drugs for the elderly at St Mary’s Court, \$50,000 for a van for the elderly at St. Mary’s Court, 5,000 s f of retail, \$500,000 for nutrition for the elderly in ANC-2A, \$10,000 for a traffic light for the safety of elderly pedestrians, and \$462,000 for augmented services in the West End Library The bottom line is that the current “negotiated” process for PUD amenities works most of the time and results in more desired and appropriate amenities than any of those on OP’s list
- Recommendations 9 & 10, pp. 9-10 – Zoning enforcement by the Department of Consumer and Regulatory Affairs’ (DCRA’s) Zoning Administrator too often does not work satisfactorily but for different reasons than those indicated in OP’s PUD documents As a consequence, the WECA has needed to file multiple Form 300s (“Complaint of Non-Compliance with BZA/ZC Order”) about non-delivery of PUD amenities which were explicitly stated in ZC Commission (ZC) Orders and multiple Appeals of Zoning Administrator-issued Certificates of Occupancy (CofOs) Therefore, instead of relying on DCRA, the WECA believes that the independent Office of Zoning (OZ) needs to assume more responsibility for enforcement of zoning Orders.
 - The WECA objects to a 6-12 months Temporary CofO before the community amenities are delivered, instead, the WECA would like all community amenities to be delivered before issuance of any CofO
 - The WECA also objects to the post-approval audit by the understaffed DCRA Zoning Administrator and believes that the Office of Zoning should conduct such audits
 - The WECA believes that the PUD rules should include penalties for enforcement of undelivered amenities which were specifically required in zoning Orders, e g , daily fines, and CofO revocation. Also, the rules should specify deadlines for Zoning Administrator action on Appeals

In addition, OP’s PUDs proposal does not present some existing problems and possible solutions for them For example, what should happen when needed agency analyses (e g , a Department of Transportation independent traffic analysis) are not prepared, as requested by the Zoning

Commission? The WECA believes that the proposed PUD should be delayed until critical DC analyses are in hand and available for cross-examination by the “Parties ”

Summary

The WECA respectfully requests that the Commission ask OP to (a) present and respond to each substantive public comment so that the Commission will have the benefit of understanding the public’s views, and (b) revise its proposal to more fully reflect public comments, including those expressed herein Thank you for your consideration of our views

Attachment

Testimony of Barbara Kahlow on behalf of the WECA
7/12/07 ZC Roundtable regarding the Existing Zoning Regulations (11 DCMR)

I, Barbara Kahlow, am testifying tonight on behalf of the West End Citizens Association (WECA). In the last 1 1/2 years, I have testified on behalf of the WECA in 5 Zoning Commission cases. These include three George Washington University (GWU) cases -- a proposed 20-year replacement campus plan via an "omnibus" Planned Unit Development (PUD), the School Without Walls PUD, and the Square 54 PUD -- the 2101 L Street PUD, and the 1143 New Hampshire Avenue PUD. My testimony will be based on that experience.

The WECA, founded in the 1890's, is one of the oldest citizens associations in DC. It is primarily interested in maintaining the quality of life for the existing residential community.

Due to testimony time restrictions, I will only make 5 points tonight.

- 1 Clarification of sequencing for the DC Environmental Policy Act – The revised zoning rules should provide for **no Zoning Commission decision until DC has completed its analysis**, as required by the "District of Columbia Environmental Policy Act of 1989" (DC Law 8-36, 10/18/1989), of the possible adverse environmental effects of each feasible alternative (i.e., not just the specific application filed with the Zoning Commission) and the identification of commensurate mitigation measures for each feasible alternative.

Federal implementing rules for the companion "National Environmental Policy Act of 1969" (NEPA) state, "Timing. An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made" and "shall be commenced no later than immediately after the application is received" (40 CFR § 1502.5). DC implementing rules provide, "Agencies, boards, and commissions . . . shall integrate the Environmental Impact Statement ("EIS") process with other planning processes at the earliest stages of their planning for major actions . . . when the widest range of feasible alternatives is open for consideration" (20 DCMR § 7200.2).

- 2 Clarifications regarding the Building Height Act – The revised zoning rules should address the measurement point for the maximum allowable height under the "Building Height Act of 1910" (6/1/1910) of each loosely connected building in a Square and when, if ever, a closed non-mechanical structure or architectural embellishment is allowed on a roof that meets the maximum height. In the Square 54 PUD case, the Commission approved 122 feet in height at the Southeast corner at 22nd and I Streets even though buildings fronting on either of these streets cannot by law exceed 110 feet. The applicant used the measuring point of an unconnected or

loosely connected separate building in the Square. Non-mechanical structures were proposed above the maximum allowable height both in the Square 54 PUD (a 25-foot “outdoor room”) and 1143 New Hampshire PUD cases.

3. Clarification of sequencing with other review agencies – The revised zoning rules both for the Zoning Commission and the Board of Zoning Adjustment (BZA) should specify the required sequencing of reviews by other Federal and DC review agencies, including the DC Historic Preservation Review Board, the Commission on Fine Arts, the National Capital Planning Commission, etc. Confusion has reigned both for Applicants and communities in a great number of cases during the last 30 years in which I have actively participated in many zoning cases.
4. Changes to the PUD regulations – Since they were clearly never intended, the revised zoning rules should prohibit “omnibus” PUDs involving multiple Squares (or setting a maximum of two or three contiguous Squares) and should limit first stage approvals to two years without any time extension discretion by the Commission. In the GWU campus plan case, GWU sought and received approval for a 20-Square PUD with a 20-year first stage approval.
5. Clarification of the minimum level of required public amenities – The revised zoning rules should indicate the minimum level of required public amenities for the immediately impacted community and should clarify when the amenities level formula in 11 DCMR § 2404.7 is required and under what circumstances a lower level is acceptable relative to the requested increase in permitted gross floor area for office use. In fact, if the formula is non-binding, the revised zoning rules should specify a minimally acceptable level of public amenities relative to the requested increase in permitted gross floor area for office use.

The Notice for tonight’s hearing asked witnesses “whether the regulations should be completely overhauled or whether the regulations should be updated.” The WECA believes that updating is essential. Thank you for considering the WECA’s views.