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D.C. Zoning Commission
Anthony Hood, Chairman
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ZC 08-06 Zoning Regulations Review

Chairman Hood and Members of the Commission:

The following comments are submitted on behalf of the Penn-Branch Citizens/Civic Association. We begin with the following general observations : Our comments referring to specific sections, including nits and typos, follow.

I. General Observations

The new regulations do not achieve the stated ZRR goal of making the Zoning Code more accessible and user-friendly.

The regulations dilute substantially the function of zoning rules as a social contract between property owners and their government, principally by

- creating layers of bonus height and densities applied on a case by case basis, and allowing rooftop occupancy, without indicating how these affect a structure's envelope; and
- allowing matter of right (MOR) increases in residential densities by allowing MOR accessory units within a residence and within existing accessory structures.

The regulations reduce significantly the ability of residents to participate in zoning decisions affecting their communities by, among other means:

- creating a vehicle for requesting a customized (overlay) zone in Subtitle X that is unduly onerous and reasonably cannot be met by the majority of District residents;
- authorizing the Zoning Administrator to approve uses that formerly required use variance; and
- expanding the scope of commercial activities that can be engaged in as a matter or right in residential neighborhoods.

The vastly reduced parking requirements increase the stress and difficulty of moving about the city.

The expanded Downtown fundamentally alters the District's landscape by allowing 40-foot height increases over current maximums in an area 3 times the size of the current Central Business District.

The expanded Downtown increases the area of the city that is financially and/or logistically inaccessible to large numbers of residents.

The cumulative impact of these factors exacerbates the District's sharp racial, cultural and economic divides.

As a member of the Federation of Citizens Associations, Penn-Branch endorses and associates itself with the resolution submitted by the FCA.

II. Typos and Grammatical Errors, with suggested corrections

Subtitle C, Chapter 6. Green Area Ratios

Section 602.7, containing the table for calculating Green Area Ratios (GAR) refers to the diameter of trees and shrubs, whereas Chapter 4, Tree and Slope protection, measures by circumference. These should be conformed with circumference as the preferred measure.

Generally, the D.C. Department of the Environment website contains ZRR draft documents pertaining to GAR. There are a number of GAR terms in those documents, not all of which are or could be contained in the Zoning Code definitions. The zoning code should cross-reference the DDOE rules or website.

Subtitle D, section 101.3 "Additional zone specific special exception ~~criterion~~ criteria, if applicable, shall be considered and are found at Subtitle D, Chapter 16."

Subtitle D, section 204.9 (d) "The external impacts of the proposed use ~~will be deemed~~ are found to be no greater than the existing use."

Subtitle F, section 100.1. "The Residential Apartment (RA) zones permit urban residential development and compatible institutional and ~~semi-public~~ buildings."
"Semi-public" is not a defined term in Subtitle F or Subtitle B (Definitions). It should be defined or omitted.

Subtitle F, section 104.1. "Center" and "library" should be plural, not singular.

Subtitle X, section 400.7. "Effectuated" should be "affected."

III. Specific Comments

Subtitle C, Chapter 7

A. Parking requirements on Pennsylvania Avenue SE.

Amend section 702(c)(2) as follows:

Wisconsin Avenue/Pennsylvania Avenue (Routes 31, 32, 34, 36, 37, 39), but not including Pennsylvania Avenue SE from the east end of the Sousa Bridge to Southern Avenue;

Rationale: The proposed amendment exempts the far southeastern segment of Pennsylvania Avenue from designation as a major bus route along which parking requirements may be reduced. Section 702 generally reduces parking requirements by 50 percent for property within a one-half mile radius of all Metro stations or within one-fourth mile along listed major bus routes (and along any future streetcar routes) unless the property is in an R or RF zone.

Reduced parking is inappropriate for this hilly neighborhood and inconsistent with the Comprehensive Plan, which requires neighborhood specific analysis before transit-oriented development (TOD) standards are applied to planning outcomes. The Comp Plan states at LU 306.8 (emphasis added):

The "reach" of transit-oriented development ... along a high volume transit corridor should vary depending on neighborhood context. While ¼ to ½ mile is generally used across the country to define the walkable radius around each station, and therefore the area in which higher densities may accommodate growth without increased traffic congestion, applying a uniform radius is not appropriate in the District. The established character and scale of the neighborhood ... should be considered, as should factors such as topography, demographics, and the ... capacity to support new transit riders.... [M][any of the city's priority transit corridors transition to single family homes or row houses just one-half block or less off the street itself.

Factors against designating this segment of Pennsylvania Avenue include:

- The corridor abuts stable low density neighborhoods (R-1-B to R-5A) and low-density commercial nodes (C-1, C-2 and C-2-A) at Minnesota, Branch and Alabama avenues.
- The area -- encompassing DuPont Park, Penn-Branch, Fort Davis and Hillcrest neighborhoods -- is characterized by hilly topography rising to the eastern rim of the District's topographic bowl.

- Walkability scores for this area range from the mid-40s to mid-60s, compared with scores in the 90s for highly walkable neighborhoods such as Capitol Hill. The topography reduces walkability, especially for seniors.
- Off-street parking at existing commercial nodes already is tight. These short-term parking spaces frequently are abused by suburban Maryland commuters who park all day for free and take the bus to work.
- Metro conveniently can be used only in conjunction with connecting buses: From the intersection of Branch and Pennsylvania avenues, the nearest Metro stations are the Blue Line Potomac Avenue station (1.75 miles) and the Green Line Naylor Road station in Temple Hills, MD (2.4 miles).
- New development built without adequate parking inevitably will result in spillover parking.

A rudimentary analysis of the factors identified in the Comp Plan would have demonstrated that this segment of Pennsylvania Avenue and its surrounding environs should not have been designated for reduced parking requirements. There is nothing in the extensive record of this ZRR proceeding that provides the site-specific analysis required by the Comp Plan for the above-described segment of the Pennsylvania Avenue bus routes. Without such an analysis the designation lacks a foundation and is arbitrary.

B. Additional Parking Comments

The new code reduces parking requirements for multiple zones and uses citywide, notwithstanding substantial and continuing testimony from vehicle-reliant residents. One-third of District households do not own vehicles, by choice or economic necessity. Those who continue to drive presumptively need to do so. Forcing residents out of their cars penalizes District residents and does nothing to halt commuter traffic. Some of the more draconian measures to which we object and which should be deleted include:

- Within half a mile of Metro stop s and quarter of a mile of major bus routes, only 1 space must be provided for every 6 units/families. If more than 2 spaces are provided for every 3 units, developers will be penalized. Currently 1 space is required for every 2 units. **Retain the current requirement.**
- Single family detached homes will no longer have to have garages or driveways unless they have alley access. Those with garages can convert them for alternative uses while cars move to the street. **Allow driveway without alley access, as is typical in many single-family neighborhoods.**
- No on-site parking will be required for apartment buildings with 5 or fewer units "near" transit and in larger apartment buildings the parking requirement is less than one space per six units. "Far" from transit apartments must provide it is less than one space per three units. This assumes most that the neighborhoods are walkable at all hours and that the vast majority of residents are capable of walking. **Retain the current requirement.**

- **Section 702.3(f)** requires a reduction in required parking if "[a]ll or a significant proportion of dwelling units are dedicated as affordable housing units." This penalizes lower-income households who are more likely to work shift work, to have 2 jobs or to have lengthy commutes to the suburbs. **Retain the current requirement.**

C. Bike lanes.

No continuous (protected and marked) bike lanes facilitate travel to and from downtown across Sousa bridge.

D. Section 401.4. Tree and slope protection. Amend as marked:

"Where removal or cutting of trees has occurred that would have been prohibited by this section if an application for a building permit had been contemporaneously filed, no building permit shall be issued for a period of ~~five (5)~~ **seven (7)** years from such removal or cutting ~~unless the Board grants a special exception pursuant to Subtitle X.~~

Rationale: Too lenient as drafted. The 5-year penalty and special exception availability invite circumvention.

E. Chapter 10 -- Inclusionary Zoning

Recommendations:

- Remove all references to "affordable," "low-income" and "moderate income" contained in chapter 10 and elsewhere in the code and refer instead to the actual measure to determine IZ eligibility: households at 50 or 80 percent of AMI.
- Provide a cross-reference to DHCD where code users can obtain actual numbers.
- Enact the provisions of Chapter 10 as temporary rules to underscore the Commission's commitment to improving the program if possible. Penn-Branch doubts that it can be tweaked: a complete do-over is necessary, but ZRR is not the place to do it.

Rationale: This is simple, honest disclosure. "Affordable" applies to such a broad of range of incomes that it no longer is meaningful. IZ does not and never did serve low-income residents, i.e., those with incomes at below 30 percent of AMI. Do not let the code insult genuinely low-income people by pretending that it does. The Zoning Commission cannot use the ZRR process to improve the program substantially, although we understand it is engaged in a separate initiative aimed at that end.

The legislative report accompanying D.C. Council Resolution 21-137 (June 2, 2015) determined that of the 118 IZ units produced to date, 81 percent were produced at 80 percent of AMI (109,200) and

19 percent at 50 percent. Not all of these are leased or purchased. Sense of the Council in Support of Improving Inclusionary Zoning Resolution of 2015, p. 3. The 2013 median income for Ward 7, where Penn-Branch is located was 32,178 and for Ward 8, \$24,442. U.S. Census Bureau, 2013 ACS 5-Year Estimates. The trickle of IZ units produced cannot benefit Ward 7 residents.

F. Subtitle D -- Residential Zones

Rename and reorder the R Zones.

Recommendation: To promote transparency and ease of use for individuals who resort to the zoning code, neighborhood-specific subzones should be identified by neighborhood name as well as by number. For instance, R-11 should be listed in the Table of Contents as "R-11 -- Naval Observatory/Tree and Slope Protection Residential House zone."

Rationale. Subtitle D lists 18 categories of R zones, i.e., low-density, mostly detached single family houses, which are: R-1-A and R-1-B, designations carried over from the 1954 code, as amended, at the request of residents. The remaining categories are R-6 through R-21. R-6 and R-7 establishing standards for creation of tree and slope overlay zones in, respectively, large-lot and medium-lot neighborhoods. Categories 8 through 21 establish height and density standards, and tree and slope overlay provisions, for specific neighborhoods. Identifying a specific geographic area solely by a number requires unnecessary cross-referencing by the code user.

Also, R-21 appears in Subtitle D after R-1-A and R-1-B and before R-6. The numbers flow consecutively thereafter. R-21 should be put in its proper place.

[There appears to be no R-3, R-4 or R-5 zone. These numbers should be listed in the Table of Contents as "reserved." Note: There are references to R-3 and R-4 at various places in the code text. Is this an error?]

A stated goals of ZRR project was to make the code more user friendly. These simple fixes are a step in that direction. The oblique nature of zone names and the resulting user-unfriendliness was covered exhaustively by the Friendship Neighborhood Association (Marilyn Simon) in its testimony at the April 5, 2015 Zoning Commission meeting. That testimony merits review.

G. Height Limits as affected by the Comp Plan, Small Area Plans and Subtitle X

Proposed amendment to Subtitle D, section 302.1, establishing heights for Penn-Branch:

All existing heights in areas zoned R-1-B in the area bounded by the north side of Pennsylvania Avenue, the east side of Branch Avenue, and Fort Dupont Park (Penn-Branch boundaries) should have a 30-foot height maximum -- reflecting predominant heights of 1- and 2-story buildings, except for structures fronting on Pennsylvania Avenue, where the SAP calls for maximum heights of 50 feet.

Rationale. The Comp Plan directs the Zoning Commission to reduce maximum allowable heights from 40 the predominant height in a neighborhood. With the exception of the new Georgetown neighborhood plan, this has not been done.

This is supported by ANC 7B. We believe similarly situated neighborhoods should be afforded comparable relief. We presume the relief afforded to R-4 zones in ZC case 14-11 will be carried over into the new code.

See also our related comments under Subtitle X with respect to our residential zone.

H. Height Tables in Various Zones

Recommendation 1: Amend the tables of building heights throughout the code to show what maximum heights could be pursuant to ZC Case 14-13, in the same way that tables show FAR before and after IZ bonuses are applied.

Rationale. There are various tables of maximum heights for different purposes throughout the new regulations. These maximums predate ZC case 14-13 (Penthouse structures) authorizing habitable rooftop structures. The rooftop provisions, which allow one-third of a roof's surface to be used, give rise to significantly different building heights from those in the tables. For instance, the table at 403.1 establishes maximum heights and stories for MU zones (formerly predominantly C zones). MU-3 and MU-4, with respective height maximums of 40 and 50 feet, potentially can reach 55 and 65 feet under ZC Case 14-13. This is a qualitative difference and should be reflected in the height tables as a matter of disclosure and transparency.

Recommendation 2. Some small area plans -- including the Pennsylvania Avenue SAP -- establish absolute heights. In accordance with the intent of the SAPs, the habitable portion of a rooftop structure should count toward the absolute height.

I. Subtitle H - NC Commercial Zones

Rename the NC zones in chapters 3 through 9. As described above, regarding Subtitle D zones, specific NC zones are identified by number, but not name, making cross-referencing difficult. For instance, "NC-1" should be renamed "NC-1-Macomb-Wisconsin," etc., to promote ease of use.

Resolve an ambiguity regarding the designation of C-1 zones: Are former C-1 zones that are not part of a neighborhood overlay going to be NC or MU-3 zones? The "Summary of Amendments" posted on the Commission's website at <http://dcoz.dc.gov/ZRR/Summary.pdf> states both that:

Mixed Use (M) zones include those zones that permit residential and commercial uses both by right which are currently the C, SP, W, and CR zones; [and] □

Neighborhood Mixed Use (NC) zones include those zones that permit residential and commercial uses both by right and are covered by existing neighborhood commercial overlays, these are currently C -1, C-2, and C-3 zones and the CP, WP, MW, ES, TK, HS, and GA overlays;

Notwithstanding the summary's reference to C-1 zones, the only NC zones in the text are those already covered by overlays. Presumptively C-1 zones become MU-3 zones, which is the closest approximation to existing C-1. This should be made clear.

We note that the MU purposes statement at Subtitle G, section 100.1., indicates that mixed-use neighborhood commercial developments (residential + commercial) will be the expectation rather than an option, although there may be no demand or market for a residential component in every neighborhood commercial zone. Mixed use should be an option, not an expectation.

J. Subtitle X, Chapter 4 -- Petition to Create a New Zone

Recommendation: Adopt Subtitle X, Ch. 4 as a temporary rule subject to further revision.

Rationale: The petition process provided is difficult, cumbersome and expensive, and requires the assistance of experienced zoning counsel. The new code essentially means that all but the most affluent neighborhoods lack a reasonable means of obtaining a customized zone.

This is a pernicious outcome because throughout the ZRR process, district residents were assured that the new code's provisions for customized zones would provide an empowering vehicle through which they could engage in direct, hands-on planning, **after** the new code became final. Unless the petition process is substantially simplified, the ability to petition is meaningless for most residents.

When it became known that Georgetown was creating its own customized zone --R-19 and R-20 -- as part of the ZRR process, residents from a number of other communities, including ANCs in Wards

7 and 8, met with Department of Planning staff and asked to have customized provisions including in the ZRR. This request was denied.

The petition issue is emblematic of the economic chasm that divides the District. It embodies the ZRR's fundamental flaw: it is part of the toolkit of gentrification and a wedge that drives residents further apart. Notably, the 14 neighborhood-specific R zones in Subtitle D are all in Georgetown and the most affluent areas of Ward 3.

If the Zoning Commission seeks to build any credibility for the ZRR, the petition provision must be meaningfully available to all.

K. Subtitle I -- Downtown Zones.

Expansion of Downtown

Generally. The new code triples the size of Downtown DC. The existing downtown, as defined in the Comprehensive Plan as the Central Business District, covers 6.8 square miles, approximately 10 percent of the city's overall area. The redefined downtown will include Nationals baseball stadium, will straddle mid-city from 23rd Street NW to each of North Capitol Street, and the waterfront south of the National Mall. About one-quarter of the city will now be "Downtown."

There is no basis in the Comp Plan for this radical remaking of the city. Penn-Branch therefore opposes more than an incremental increase subject to review of this initiative in the Comp Plan revision process.

This expansion automatically allows about 40 feet of additional height in most of these areas, along with increased density and intensified uses.

The higher costs associated with downtown locations for shopping, arts venues, dining, etc. will make more of the city financially inaccessible for many residents and small/local businesses. The proposals abolishing parking requirements except for retail make much of the city physically inaccessible as well.

Downtown Parking

Delete Section 212.1:

~~Vehicle parking spaces are not required in D zones, other than areas west of the centerline of 20th Street, N.W.~~

Rationale: Downtown need to be accessible by multi-modal forms of transportation. Maintain the existing requirements or at least the reduced parking requirements in non-downtown commercial

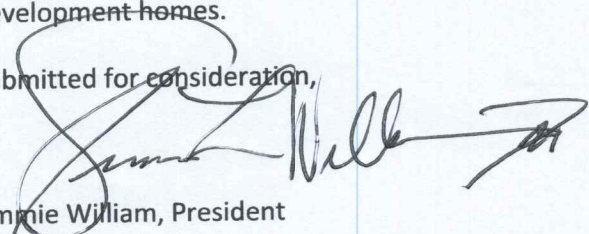
zones. The cost of downtown parking and the stress of congestion are natural deterrents. The removal of parking requirements simply makes things worse.

We note that big box stores in downtown, in contrast to other uses, are required to provide "sufficient" parking. Such stores are subject to parking minimums and may exceed them without incurring the penalties found elsewhere in the rules for providing excess parking. See section 303.1(d) ("Large format retail uses [are permitted as special exceptions] except that sufficient parking shall be provided for employees and customers").

It is arbitrary to acknowledge that customers of big box stores need a place to park but people coming downtown for other reasons don't.

Finally, under section 305.5, a downtown child development center or child development home is considered be a residential use. Although Penn-Branch is not immediately affected by this provision, we think that treating a daycare center as a residence is arbitrary at the least and detracts from the overall seriousness of the rules. Our objection does not extend to child development homes.

Submitted for consideration,



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cc: Laura Richards, Legislative Coordinator