Case #08-06

Comments on Proposed D-8 Zone

By Ellen McCarthy

This is to request reconsideration of the proposed Subtitle I D-8 zone as published. While the current version of the text addresses some of the issues raised in my earlier testimony, it is still "not ready for prime time".

Summary

The basic argument, in brief:

1. There is general agreement, clearly stated in the District Elements of the Comprehensive Plan (2010 amendments) and various federal plans (especially the SW Ecodistrict Plan) that redevelopment of what is overwhelmingly a federal office precinct in the section of SW DC north of the Freeway into a mixed-use residential and commercial area with ground floor retail, would be highly desirable, and beneficial to the District and the Federal government.
2. There is also agreement that such redevelopment will require extensive investment in infrastructure, particularly establishing or re-establishing the street grid.
3. The amendments to the 2006 Comp Plan indicated that extra height and density in the area, above what is assumed to be the current zoning level (C-3-C), would be appropriate, as long as the additional height and density leveraged inclusion of residential use and necessary infrastructure investment.
4. Studies conducted during preparation of the Maryland Avenue Small Area Plan found that creating the infrastructure necessary to support redevelopment of the sector will require more than the value created by the additional density or available through the District's standard capital borrowing program, especially given the cap on borrowing. It suggested forging a program that leveraged those resources together with a potential tax district and other federal and local resources as well.
5. As currently structured, the D-8 zone assumes a level of knowledge and planning specificity (particularly with respect to the location of street rights of way and the cost/source of needed infrastructure investment) that does not currently exist. Yet, it would grant the additional height and density without reasonable assurance that the infrastructure needed to support it was being put in place. It delinks the leveraging mandate, and it inflates the value of the existing land, without achieving the ability to use that increased value to pay for infrastructure.
6. Given the Council's direction, uncertainties mentioned above, and the need for more detailed planning, it would be prudent to keep the existing zoning, permitting extra density only by Planned Unit Development, with an explicit expectation that the PUDs would include a critical

mass of residential development and substantial contributions for the construction of streets and other important infrastructure investments, in addition to providing evidence of the commitment between and among the applicant and local and federal officials for putting those investments in place.

Observations and Comments

The enacted Comprehensive Plan and the Council resolution approving the Small Area Plan make clear that additional height and density are desirable and should be permitted in the federal sector, Federal Triangle South (FTS), for which the D-8 district is proposed -- <u>provided</u> additional density is dedicated to residential uses and, critically importantly, infrastructure improvements (mostly new and reintroduced rights-of-way) sufficient to support and sustain the additional density.

Both local and federal plans (the SW Ecodistrict Plan) contemplate reconfiguring the current superblock holdings in the sector (largely created by Urban Renewal activity) in favor of reconstituting much the historic street grid (including a multi-modal Maryland Avenue and the reintroduction of the certain other historic avenues and streets). Establishing that network is the primary infrastructure challenge for the FTS -- and a principal difference from other mixed-use Downtown districts where street infrastructure, for the most part, already exists. Implementing that street network is necessary to support the additional densities contemplated. Indeed, it can be argued that servicing the currently assumed C-3-C district (6.5 FAR and 90' in height) would practically require additional street infrastructure. The current federal use is far less dense than that.

Does the proposed zone satisfy the two key objectives for introducing additional height and density in the sector: 1) infrastructure and 2) residential use? The answer is -- not yet.

Despite the guidance provided by adopted plans, there is the dearth of more detailed planning and no real consensus agreement between and among impacted federal and private landowners and the District as to which of the federal holdings will be transferred from federal to private ownership, which and to what extent streets will actually be rededicated and/or reconfigured, and a program for how such streets are to be implemented - their use and connectivity to the existing network, who constructs them, pays for them and maintains them.

The proposed zoning was formulated in this context of a lack of information and consensus. It is a good attempt to balance a number of competing needs, but it too premature, especially when the option of pursuing any zoning changes through a PUD, following the guidance in the planning work done so far, is available. .

As regards infrastructure -- at Section 575.2, the proposed text appears to prohibit buildings from occupying most historic streets that have or have not been closed by the District ***and*** (emphasis added) "has been incorporated into the official [sic] District of Columbia's official highway plan prior to the filing of a building permit . . .". That provision is read in conjunction with Section 581 that provides for a novel review and approval by the Zoning Commission of all projects in the D-8 zone as special exceptions, and providing review standards, particularly Section 581.2 (a) - (c), that deal with street infrastructure design and function.

A few more detailed comments and questions follow:

o Dedication of streets appears to be determined by a future decision by the District on whether to include a street or portion in the "official highway plan". Which of the historic streets proposed to remain open or to be reopened are now in or contemplated for the Official Highway Plan (OHP)?

o If existing or historic, but are not included in the OHP, is dedication required by other means (easement, etc.) and can a structure be built on them? Which ones?

o When will the Zoning Commission review the project proposals -- will it entertain Special Exception applications before filing for a permit and therefore not necessarily know whether a street confronting the applicant project will be adopted as part of the OHP? If not, does the proposed text and process give the Zoning Commission authority to make project approval conditioned on subsequent acceptance into the OHP or another form of dedication?

o The text appears to require street dedication only, not the actual improvement of the streets determined necessary to serve the project and insure workable connectivity to other properties in the FTS sector and the larger city. I understand that, as written under the Special Exception, the Zoning Commission would have discretion for approval running to dedication only -- but no ability to condition project approval (including the incorporation of additional density and height) on actually providing the street improvements. That would be at odds with the Comprehensive and Small Area Plans -- to say nothing of prudent planning and zoning practice, which would want to require improvements necessary to serve the projects and maintain functionality across and beyond FTS were timely put in place.

It is assumed that the costs (and potentially responsibility for construction and maintenance in whole or part) would be either as part of the project (developer's contribution, leveraging the additional density and height) and/or part of a capital improvement program implemented by the District and/or federal government. The most likely approach would involve some sharing of the responsibilities.

To date, however, there is no such program or understanding in place. I am unaware if any substantive work has been done on estimating infrastructure costs for the sector as a whole. Preliminary estimates for the Maryland Avenue improvements have been made, but not to my knowledge other elements. As such, it is unclear who would have the practical capacity to fund -- and when. We do know, however, that the value of the additional envelope proposed for properties confronting Maryland Avenue would not, in itself, cover anticipated construction costs of that major project. The Small Area Plan recognizes this -- and suggests cobbling together needed funds from developer contributions, adoption of a tax leveraging district (TIF, PILOT or tax abatement), and potentially other sources.

This is a critical factor in promoting development in keeping with the adopted plans, and impacting land valuations. If a developer acquires a site from GSA at a price assuming the additional height and density -- and assuming the cost of constructing associated street infrastructure will be by others -- the developer would not have then have resources to contribute to construction of street improvements. The project would fail -- or perhaps be a drag on neighboring development as it requires a disproportionate amount of available infrastructure carrying capacity.

It would seem that Council's intent was that additional density would be granted only with the reasonable certainty that the infrastructure supporting it would be in place. Simple dedication of street right-of-ways does not achieve that objective -- and it is not apparent that the Special Exception approval incorporated in the D-8 text would provide the Zoning Commission with authority to condition approval on actually implementing the infrastructure plan.

With respect to residential use -- it is also unclear whether the proposed D-8 text will actually accomplish that policy objective. On its face, the text would seem to allocate all density over the presumed base of 6.5 FAR to residential and provide the height relief to make that density practically useable (see 576.1 and 577, respectively). But, at least two provisions raise serious questions if that is what will occur:

o At 576.5, the text makes clear that calculation of a site's allowable density shall not include existing streets (see 576.5 (a)) or, at 576.5(b), "a street right of way that has not been officially closed by an act of the Council of the District of Columbia or its predecessor bodies, even if a building has already been constructed on it." Both of those criteria make good sense. But, the text would appear to include in calculation of a site's allowable density streets now incorporated into the Urban Renewal superblocks <u>that have been closed</u> -- or, presumably, the portions of them that may have been closed.

That raises the question of which planned streets are such closed streets. We should not have to guess. And, to the extent those streets are to be reintroduced, it would appear that the FAR theoretically on them would be assignable to the portion of the lots or resubdivided lots that were not dedicated for street purposes. That could be quite a bit of density -- all of which would be assumed to carry the C-3-C permission for commercial use. In that event, and with the proposed height relief, there may be no need (or incentive) for additional density for residential use -- as commercial density transferred from the "closed streets" provides all the density a project can practically use. Presumably, the developer would have already paid GSA for such density -- which would also complicate any developer contribution toward infrastructure, as discussed above.

It is recommended that the Zoning Commission closely assesses the impacts of these provisions.

o At 577, the proposed text would raise the matter-of-right height in the sector to 130' or 110', depending on the width of adjacent streets from which the point of measurement is taken. In a similar vein, as discussed above, by taking this approach to height relief, a project could proceed utilizing the 6.5 FAR density without seeking additional density and without inclusion of residential use. If, as I understand, the Zoning Commission would have no basis under the D-8 Special Exception authority to deny approval, this would appear to violate the Comprehensive and Small Area Plans intention to grant height in excess of 90' for the purpose of achieving the residential mix of uses (and infrastructure).

At present, the marketplace favors construction of residential product -- and, thankfully, most property owners and developers have come to recognize the value creation and sustaining effects of mixed-use districts. In Washington, that realization was the result of hard-fought planning and zoning actions that reserved-out a portion of the envelope for residential use, required residential development, and provided incentives for residential use. The reality of marketplace, however, is that it is subject to cycles -- and it should be expected that commercial demand will reemerge and be in position to out-compete residential use. One of the major weaknesses of Federal SW is that it is virtually 100% commercial – predominately office buildings with a smattering of hotels, and what little retail exists is largely a lunchtime-only enterprise. However, this sector offers an attractive setting for both residential and commercial uses, and one can expect that property owners will have options to redevelop according to the demand profiles of market cycles as the present. It is prudent planning and zoning policy therefore to provide guidelines that will achieve the desired balance of uses across the longer-term.

Upon review a few other comments on the proposed text are offered:

o Much discussion during formulation of the local and federal plans dealt with removal of the across street building bridge in the Forrestal Complex (spanning 10th Street at Independence Avenue). I am curious then about the intention of the language at 572.2 (a) allowing buildings to be constructed 25' above right-of-way grades. Obviously, the proposed regulations do not affect federal projects. Where does the Zoning Commission envision private projects incorporating such street bridging buildings?

o At 581.2 (b)(3), the text emphasizes the importance of D Street between 10th Street and 12th Street. D Street exists in two segments: one south of Maryland Avenue and another small one block section north of Maryland Avenue that operates effectively as an off-ramp for the 11th/12th Street highway and Mall underpass connector. The adopted plans actually contemplate closing of the northern section of D Street in favor of creating an intersection at 11th Street and the newly installed Maryland Avenue. This section should be clarified to reflect plan guidance.

o At 576.4, there is a reference to Zoning Commission review consistent with Subtitle I, Section 581.8. There is no 581.8.

In conclusion, the current D-8 text does not provide adequate and appropriate zoning guidance to foster redevelopment in keeping with the objectives of adopted plans. Indeed, until local and federal officials come together on the key questions of reconfiguring the sector, reintroducing street infrastructure, and funding that infrastructure -- introducing zoning that will sufficiently address the opportunities and challenges will be difficult to achieve. This is not to suggest that the issues facing local and federal officials are easy. There are many complex and often competing objectives to resolve. It may take some time to fully come to workable understandings and terms.

Fortunately, there is a tried-and-true alternative that can be employed to move forward on portions of the sector where progress can be made more incrementally: the Planned Unit Development (PUD). Good use of the PUD has been made to resolve complex, single and multi-parcel development projects -

- through single stage and two-staged PUDs. Until planning is advanced to allow for a more matter-of-right formulation sector-wide, the Zoning Commission should consider using the PUD to grant additional density and height relief for projects that demonstrate they meet the residential use and infrastructure objectives of the adopted plans. This would allow involved parties to formulate workable solutions for properties where issues are more readily addressed, such as along the Maryland Avenue corridor, and to tackle other portions of FTS as decisions on repositioning federal agencies, reconfiguring holdings, and reintroducing and funding street improvements are made.

Thank you for considering these comments.