



Summary of Testimony of Nancy J. MacWood
Chair, The Committee of 100 on the Federal City

Zoning Commission Case No. 08-06A, Subtitle C

The Committee of 100 **does not support** the following proposed text amendments and finds that they are either vague, unsupported by data, missing important existing standards, or inconsistent with the Comprehensive Plan or current zoning provisions. Suggested changes to each section are in italics.

1. Sec. 200.1 (a) includes use groups and use categories interchangeably. *There should be consistent terminology for the same concept throughout the code.*

2. Sec. 304.7 allows structural changes (development) of non-conforming residential flats or apartment buildings in Subtitle D, Residential Zones, and Subtitle E, Residential Flat zones. *These are the very zones where an increase in a non-conforming building is not wanted. This proposal is contrary to the zoning concept that all structures within a zone should comply with scale, mass, setbacks, buffers, and other representative development standards to maintain character and purpose of a zone. The existing prohibition against adding to non-conformity should be retained.*

3. Sec. 304.8 allows a non-conforming use to be extended indefinitely simply by selling or leasing property to one of an extensive list of other non-conforming uses within a broad category. *This proposal would perpetuate the establishment of a non-conforming use and prevent the establishment of a conforming use that would likely benefit a community more. Specific non-conforming uses that communities support, like corner stores, are addressed in other parts of the code, but even those do not allow flipping from one non-conforming use to another. The Zoning Commission should not approve this proposal.*

4. Sec. 304.9 allows a non-conforming use to be continued with a special exception, even if the use is not in the same use category of the existing non-conforming use. *This is simply a maneuver to end run the zoning rules. It undermines the predictability of the code and the public's reliance that only appropriate uses will be allowed. The special exception process provides no protection since all special exception applications are approved. The Zoning Commission should not approve this proposal that encourages opportunities to perpetuate a non-conforming use. The existing provision should be retained.*

5. Sec. 402.3 would remove existing requirement and conditions for a special exception to erect more than one principal building on a record lot that is not within a residential zone. *It is important to review the site plan, massing and other development features of this type of proposal that could affect a lower density*

adjoining property and/or present adverse impacts that need mitigation or would make the proposal unacceptable. The Zoning Commission should retain the existing provision.

6. Sec. 407.4(c) would allow height measurement for theoretical subdivisions to be taken from the finished grade. *This is inconsistent with the measurement methodology proposed in R, RF, and A zones where these subdivisions would be created. The Zoning Commission should not allow the height measurement to be manipulated in subdivisions and should require the measurement from the existing grade.*

7. Sec. 500.1 describes the purpose of regulating height. There is no mention of preserving the scale and character established throughout the city. *The Zoning Commission should add this concept as a purpose statement.*

8. Sec. 503. 4 would allow height measurement from the finished grade when height is limited to 40 ft unless there are other rules regulating the height measurement. *This provision is confusing, unnecessary and inconsistent with the concept of measuring from existing grade. The Zoning Commission should not approve it.*

9. Sec. 506.1(a) establishes special exception standards for height and roof structure waiver application review. It includes the consideration of the purpose and intent regulations of those concepts but there is inaccurate citation of the purpose statement. *The Zoning Commission should direct the Office of Planning to present revised text amendment and to draft purpose statements, if they haven't been included or are lacking measurable basis for the evaluation of consistency of request with the purpose of the zoning regulations.*

10. Sec. 600 states that unit density regulations are intended to control the quantity of dwelling units. *That purpose isn't the right one. Unit density regulations should reflect the intention to provide a variety of residential housing options, and land development and use permissions per zone as established by the Comprehensive Plan. There are different housing densities in single family zones than in multi-family zones. The Zoning Commission should not approve this text amendment and should ask the Office of Planning to revise it to include the factors that control density prescriptions.*

11. Sec. 601(c) would allow six (6) unrelated persons to live in a proposed garage ADU, in an ADU created in the primary house, and in the primary house, if unrelated. *This is inconsistent with the controls that the Office of Planning states it is recommending. This proposal should be rejected and replaced with a total of 6 persons in any allowed living situation on a lot where some are unrelated.*

12. Sec. 801.8 allows the height of an accessory building to be measured from finished grade. *As in all applicable subtitles, the height measurement should be consistently measured from the existing grade.*

13. Sec. 1100.1 relates to the purpose of side setbacks but there is no title or introductory statement stating that it is the purpose statement. *This should be corrected and additional purposes statements should include that side setbacks are partly intended to provide light and air, privacy, and green space.*

14. Sec. 1891.1 is the purpose statement for tree protection regulations. *It does not include an intention to preserve the tree canopy in the District or to lessen the heat island effect of constructed space. The Zoning Commission should include more comprehensive and citywide land use goals to be achieved by protecting trees.*

15. Sec. 1901.5 proposes a new minimum parking formula for private schools. *The Office of Planning has provided no rational for this change other than it's wish to have only two (2) parking formulas. The proposal is not data driven or supported. There has been no information shared that private school-created parking demand has lessened. The Zoning Commission should reject this change and retain the current formula that is based on likely demand. It should be noted that OP only did a sampling of the affect of this change several years after the proposal was presented and that sampling showed that using the new formula would significantly reduce the parking requirement for most of the private schools sampled.*

16. Sec. 1902.1 reduces the minimum parking requirement by 50% based on frequency of bus service or proximity to a metro station. *The Zoning Commission should not approve this proposal, which is inconsistent with the Comprehensive Plan policy that reductions in parking near transit should be based on a study, area by area, that considers additional factors, including the potential for stimulating development in underdeveloped areas where there is significant unmet transit capacity.*

17. Sec. 1903.2 establishes that only one of many listed reasons for seeking a special exception from minimum parking requirement is needed for approval of the waiver. *This proposal sets up the same limited pretense for not providing off-street parking supply even if a new demand is being created. The review standard should require the applicant to demonstrate that they can satisfy all of the factors listed and thus, demonstrate that approval is unlikely to have an adverse impact on the surrounding area.*

18. Sec. 1907 establishes penalties for creating parking spaces in excess of the minimum required. *This proposal was never discussed with the task force nor was it presented at public meetings. It is clear that some residents share a philosophy that parking stimulates car ownership and that is bad result, but that is an unproven assumption and jurisdictions that have relied on it (Portland) have found it unworkable. The Zoning Commission should reject this proposed section as inconsistent with the Comprehensive Plan, which only endorses the consideration of parking maximums as part of the development of TOD overlay, and as an unwarranted reaction to exceeding a minimum zoning requirement.*

19. Sec. 2200.1 (a) establishes the purpose of Inclusionary Zoning ("IZ") regulations. *It appropriately refers to the creation of affordable housing, but Subt. B contains a definition of affordable housing that uses a different criterion than is used to implement IZ. The definition should be corrected to be consistent with IZ description.*

20. Sec. 2200.1(f) is not an accurate purpose of the IZ program. *It does not provide a full range of housing choices since it is applied only to multi-family housing developments that provide more than 10 units of housing. There may be rare circumstance where a new housing subdivision is required to comply with IZ, but that is not the focus of IZ. Also, IZ does not provide housing for all income groups and it does not control the size of units since that is controlled by the developer. The Zoning Commission should either delete (f) or ask OP to revise it for accuracy.*

21. Sec. 2201.4(a) exempts proposed new downtown zones from IZ requirements. *The Zoning Commission should not approve this proposal until it considers Subt. I, which would create a 3-fold increase in downtown area with maximum development allowances (height and FAR) either by right or based on the production of market rate housing.*

22. Sec. 2207.1 authorizes special exception relief, part or full, from complying with IZ requirements.

This is based entirely on a showing that compliance would deny an economically viable use of land. There is no information about what would constitute a showing of economic hardship or what viable means in this situation. The IZ program has been widely criticized for a lack of enforcement and this provision would contribute to that perception. The Zoning Commission should ask OP to draft standards for the applicant and standards for review.

Submitted by,


Nancy J. MacWood, Chair