



Zoning Commission Hearing, Case No. 08-06A

Subtitles A, X, and Z

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Chair, The Committee of 100 on the Federal City

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Since this is the first hearing on the zoning code revision text amendments, I want to express our expectations for how you will approach this significant task and offer some context that may be helpful as you hear conflicting views on many of the Office of Planning's proposals. There is a little-read bit of candor in the Implementation Element of the Comprehensive Plan. The statement describes the document as the city plan but adds that its implementation is dependent in part on the Zoning Commission.

The legal concept that zoning laws should not be inconsistent with Comprehensive Plan policies seems at times as less a restriction than an archaic check-off. But DC residents are increasingly aware of the significance of the Comp Plan and we want it to inform your deliberations, and not just a phrase from a policy but the intent of the body of policies that are relevant to a zoning topic.

The Committee of 100 also urges caution. The city has experienced an unusual growth spurt, but an unprecedented recession contributed to the population growth rate increase and the CFO has told Council that population growth rates are declining and he forecasts a 0.8% rate in FY2017. It would be a terrible mistake to base land use law on an assumption about an unstable trend. Similarly, we should not leap to assume that the Comp Plan targets for development are not sound. We have large parcels, vacant or underdeveloped land and unmet capacity within current zoning limits. There is no need to act quickly to make drastic decisions about use of developed land based on short term trends or market interests. Most importantly, the Zoning Commission should not make policy and should be skeptical of zoning proposals that clearly were not considered by the Council when it adopted the Comp Plan.

Likewise, we hope you will use caution in adopting unproven planning theories that have not been analyzed using DC facts. Our city has some unique aspects, like the number of our jobs that are held by non-residents, which may render some proposed zoning changes based on theory actually quite

unreasonable. Whether or not they are in vogue right now within the planning industry, most of our zoning concepts are working.

You will hear a lot about affordable housing throughout these hearings and we hope you will find that there are meaningful opportunities that aren't being fully explored. Token proposals will not achieve the goal of reversing the trend of expensive market rate housing out of reach for most DC residents.

And finally, we urge you to use your common sense as you evaluate the enormous task before you. You know that there are different challenges faced by neighborhoods and that each has different strengths. We hope you will look for practical proposals that don't jeopardize what is working, and opt for minimal changes that are unlikely to have unintended consequences. The task is not to make policy, which is the job of the DC Council. The mission is not to transform the city, but to translate the Council's land use plan into regulations. The task is manageable if you approach it from the perspective that we don't want solutions for problems that the Council has not identified and proposed a solution.

Since I have provided you with detailed bullets, I want to just highlight a few areas with regard to Subtitles A, X, and Y.

One of the most ill-considered proposals is the consolidation of overlays with underlying zones. The Office of Planning is ignoring the Comp Plan policies that endorse overlays and encourage more of them. OP is tone deaf to residents who spent years creating overlays and stand by them. By definition overlays distinguish underlying zoning provisions. They work. The Zoning Commission should reject this significant change that only OP wants.

The changes to the name of residential zones are not substantive changes, but they will cause great confusion. It is pointless to change R1B to R2 and require all the subsequent R zones to assume the name of a well known zone, but with different development criteria. What does this accomplish, other than confusion? The Zoning Commission should retain the current R zone titles.

Apartment Zones should be identified as residential zones. These zones are residential and they share the attributes of our neighborhoods. The Office of Planning is stressing in the purpose statements for Subt. F that these zones are intended for institutional and semi-public buildings, but the residents in neighborhoods zoned R5 would say that they live in multi-family neighborhoods. This potential transformation of multi-family zones into a non-residential zone should not be allowed and the Zoning Commission should make that point by inserting residential (R) into the title.

The Zoning Administrator's authority to grant deviations and modifications to development standards is missing a very important requirement. The zoning administrator ("ZA") should be required to notify the relevant Advisory Neighborhood Commission that he is considering taking action and again when he takes action. The ZA's action is appealable to the Board of Zoning Adjustment, but only if an appeal is filed timely. The lack of a notice requirement puts an ANC at a terrible disadvantage if it finds that the ZA's action was unwarranted or harmful. ANCs should not be expected to constantly monitor

the DC Register in order to represent neighborhoods and the ZA should be transparent in actions he takes that affect an ANC area.

The planned unit development ("PUD") proposals include some serious policy considerations. They should not be approved by the Zoning Commission until you review the other subtitles. Here is one reason. The proposed PUD height bonus for C2C zones would be an increase from 90 ft. to 110 ft, but a maximum height of 130 ft. by right is proposed for this zone in downtown. The PUD height bonus for C3C, C4, and C5 downtown zones is the same as the by right height proposed for these zones in downtown. We are giving away height and offering a way outside the PUD process to get unlimited FAR through TDRs. Why is the housing linkage for PUDs not applied to downtown and by right zoning bonuses not linked to affordable housing? Are we maintaining outdated incentives for developers, misjudging the current economic climate, and missing an opportunity to leverage density bonuses?

PUDs are being discouraged downtown because a developer cannot file for a PUD until he has used TDRs to gain as much density as allowed. If a developer doesn't own TDRs, he has to buy them. With TDRs a developer can gain in most cases unlimited FAR. The maximum height is already available so what is the incentive to seek a PUD? Are we saying that the purchase of TDRs is a better process than the PUD process? Are we saying that public benefit packages, evaluation of design, review of environmental construction and building operations, and the potential for affordable housing and open spaces aren't important downtown? The TDR approach in the C3C, C4, and C5 downtown zones don't require affordable housing and the PUD housing linkage is also not applied downtown. These are the continuing waivers for developers as we consider a 3-fold increase in the downtown land area. There will be more discussion of this issue in Subt. I, but the Zoning Commission should be aware of this situation as it considers Subt. X.

Finally, the proposed design review process lacks limits on the amount of zoning flexibility that could be achieved. The proposal provides no limits in awarding waivers of height, setbacks, lot occupancy, courts, or building transitions in RF and A zones. This is arbitrary and would lead to unpredictable development standards for any project that opts for design review rather than the more rigorous PUD process. The Zoning Commission should not approve this unlimited authority and ask the Office of Planning to draft new text amendments that establish specific and more restrictive design review flexibility limits than can be achieved with a PUD. The benefit to the city is less when zoning waivers are not leveraged for public benefit.