

	ADVISORY NEIGHBORHOOD COMMISSION 3C GOVERNMENT OF THE DISTRICT OF COLUMBIA CATHEDRAL HEIGHTS • CLEVELAND PARK MASSACHUSETTS AVENUE HEIGHTS MCLEAN GARDENS • WOODLEY PARK
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Zoning Commission Hearing on Case No. 08-06A
Zoning Code Revision
Testimony of Commissioner Nancy J. MacWood on behalf of
Advisory Neighborhood Commission 3C
January 30, 2014

I am Nancy MacWood, a 13 year ANC 3C commissioner, former ANC chair and current ANC 3C Planning & Zoning Committee and Historic Preservation Committee chair. ANC 3C appreciates the opportunity to testify and express our views on some of the proposed zoning changes that will affect our neighborhoods and commercial areas. 3C is one of the larger ANCs; we include single family, semi-detached, rowhouse, and apartment areas in Ward 3. Our commercial areas are zoned low to moderate density and serve primarily the surrounding neighborhoods. Our residents have created 3 commercial overlays and several residential overlays and we have two historic districts.

ANC 3C has strong concerns about the effect of some of the zoning proposals on the stability of our neighborhoods. In general, the initiatives that we will comment on have the potential to significantly change the character of our neighborhoods. We have not asked for these changes. And after examining them, we believe they would not produce benefits for our residents and would undermine generations of community building. We are disappointed that the zoning revision has focused so many changes on our neighborhoods; changes that we haven't asked for and that we don't want.

ANC 3C is also alarmed at the way the zoning proposals would eliminate our ability to represent our residents. Numerous provisions would effectively remove an ANC's opportunity to participate in public hearings on behalf of our constituents. In the future, when residents turn to their elected ANC commissioner for help, we would be powerless to assist them if some of these proposals are approved.

Legal notice, which is critical to maintaining community relations and fostering discussion, would no longer be required for a host of new uses, many of which are currently prohibited. Who thinks this is a good idea? ANCs have been a prominent part of our governance structure, assuring residents, at the most local level, a voice in decisions. These proposals announce that it is a new day in the District. Permissions to allow property owner's to exercise their self-interest

would replace consideration for everyone's quality of life. Neighborhoods would become denser and commercialized, not because our elected council members think that is what we want, but because the Office of Planning wants it. That is not our vision for DC and not what our residents expect or want.

We will comment on specific proposals, but we hope the Zoning Commission will look at the totality of these proposals and how they have the potential to turn our neighborhoods upside down and leave us with little or no recourse to self-correct. Looking at the amount of change being proposed for low density residential neighborhoods one would think that they must be re-envisioned to be good places to live. You know that is not the case, and yet, you control through the permissions that you approve our future neighborhood quality and our comfort level that our emotional, physical, and financial investment, large or small, in our homes and neighborhoods is protected.

Home Occupations and Garages/Accessory Structures

Several of our comments can be grouped together under the title external chaos. Currently, we allow the inside of a home to be used for multiple purposes. You can have a home occupation that is relatively quiet and non-commercial. You can create an income-producing apartment with a Special Exception. You can build a 1-story garage on the lot line of your property and you can use it for a car or storage, but not as the site for your business or as an apartment. If you want to monetize your home, you have some options either by right or with a special exception, but you must do them in your home where the affects would be minimal on the neighbors and the neighborhood. Some things you cannot do except with a variance and those are very hard to get precisely because we don't want that use or development in residential neighborhoods. There is currently a clear distinction between what's allowed in a neighborhood from what's allowed in a commercial area.

Proposals before you would wipe out many of the protections against external chaos. Garages would become the site for home occupations. Home occupations would expand to include every business within a general business category just by maintaining the current language but changing the definition of category. Your neighbor could still tutor in his home, but he could also create a dry cleaning service, an appliance repair shop, or a catering operation in the garage.

Under the proposals these businesses could be housed in 2-story, 20 foot high accessory buildings next to the neighbor's back yard. The neighbor could not object. The ANC would get no notice that a business was about to be created in an expanded garage and would have no authority to complain no matter how many garages were transformed into business sites. It is not reasonable to assume that this huge leap from prohibited development and uses would have no affect on quality of life and neighborhood character. These proposals remove the ANC's power to protect the neighborhood from unreasonable external uses and development.

We have seen no data or heard persuasive arguments to support a need to increase garage heights, to allow unlimited commercial businesses as home occupations, or to establish free

standing business sites on residential property. The level of business activity that could be produced from these proposals should be in commercial areas only. **We do not support increasing the height of garages or expanding home occupation categories or location as proposed.**

Roof Structures

We are also concerned about codifying the Zoning Administrator's practice of permitting by right recreational roof activities in low density neighborhoods. Low density residential zones require side and rear yards where most recreation activities are located. Typically, there are fences, trees, and shrubs that help to muffle noise and provide privacy. Roof top activities could be quite different and **we urge that the ANC and neighbors have an opportunity to suggest conditions through a Special Exception requirement to avoid unintended consequences from this new use.**

Accessory Dwelling Units

We do not support accessory dwelling units in garages. Since there is no District-specific information available about the number of existing ADUs, their locations, their tenants, their affordability, their safety, and their contribution to senior's aging in place, we think that expanding the permission to accessory structures is not warranted. It is much easier to expand an allowance with conditions based on good information than to retract a permission that may be unnecessary to achieve goals and that will change neighborhood character. While the Office of Planning describes external ADUs as two units in R4 and one unit in R1, it is clear that garage apartments would result in two housing structures on one lot in single family neighborhoods. That would be a fundamental change. We urge the Zoning Commission to establish the goals of this use and to determine that internal ADUs cannot achieve these goals before expanding the permission to garages and accessory structures.

Accessory Structures in Side Yard Setback

ANC 3C further has concerns about the proposal to allow accessory buildings to be constructed in the side yard setback (Subt. D, Sec. 1306.1). A 10 foot high by 12 foot long building that is potentially only 5 to 8 feet from the neighbor's house would present a wall-like appearance and would reduce light and air. Any accessory structure built on a lot line is going to present problems and we urge that the zoning code avoid creating more of these controversies in single family neighborhoods by simply not expanding this problematic permission. These types of structure are more appropriate in the rear yard, which is where accessory structures are currently permitted. (But even in rear yards we find these structures quite controversial.) We can envision no reason to compromise the side yard open space requirement that has allowed a pattern of trees and green space to create aesthetic and environmental benefits in our neighborhoods. **We strongly urge the Zoning Commission to reject allowing accessory structures in the side yard setback and to maintain the current requirement.**

We also want to point out that the exemption (Subt. C, Sec. 1102.2) to allow structures providing sustainable support for a residential building in the side yard setback may be too broad. We realize that there is a proposed 4 foot limit for these structures but we want to be

assured that this could not be waived. We have dealt with generators being constructed in front yards near a neighbor's lot line, which created strong opposition. The proposed front yard setback would address that problem, but we don't want that problem moved to the side yard.

Corner Stores

ANC 3C foresees many issues created by the corner food store proposal. We strongly urge the Zoning Commission to only permit corner food stores based on a small area plan requesting them and approved by the DC Council. Neighborhoods should determine if this use, which is currently prohibited, would be a benefit to the community and under what circumstances. The current proposal is full of holes. The distance requirement and the concentration limits only apply to food stores and they can be waived by Special Exception. The Special Exception process does not really protect a neighborhood because it is assumed that applications will be approved and that the only question is what conditions might be added to the order. That does not give neighborhoods much comfort that any rowhouse ground floor won't be converted to a commercial use and that these stores won't proliferate in the neighborhood.

The same lack of reliable and predictable controls is true for other types of retail, service, food & alcohol, and arts stores. The proposed conditions for these uses are minimal and don't cover distance from commercial zones or concentration limits or even the number of employees and hours. Each applicant for a Special Exception can propose almost every feature of the store, including outdoor seating, music, changes to the façade, number of employees, and hours. From our perspective, we want residents to enjoy the benefits of congregating, shopping, and eating in locations established for those uses, and to have the choice to live in a quieter, stress free environment. These proposals have the strong potential to remove that choice even if ANCs and neighbors oppose it. Why would you want to do that to neighborhoods that are not seeking commercial uses? Is it really the province of the Zoning Commission to decide that every rowhouse neighborhood whether they want it or not should have food and alcohol stores and other types of commercial businesses? **If our rowhouse neighborhoods decide they need commercial, we would like to work with our residents to determine what that would mean and then approach you about permitting it. Please reject the proposed by right or by Special Exception corner store proposal.**

Institutional Uses

It is interesting to us that the Office of Planning wants to convert garages to apartments at the same time that they are promoting proposals to convert existing housing for non-residential uses. An example of this non-residential creep into our residential neighborhoods is the institutional use proposal. First, institutional would have a different meaning than under current zoning. It would include private clubs and libraries, social service programs and non-profits. Currently, these uses are prohibited in low density residential zones with the exception of a small carve out for non-profits in historic districts. The proposal would continue that carve out for historic districts but would allow, with a Special Exception, institutional uses in every other neighborhood, which means that an entire house could be removed from the housing stock and used for a non-residential purpose. The only stipulation is that the use be organized

for the social welfare of the neighborhood. What does that mean? Anybody could decide that they have a program for our social welfare that we should pay them to provide. Again, we ask the question, why would you approve this? **We do not want this introduction of non-residential uses in our neighborhoods by Special Exception or otherwise.**

Parking

One of our big problems with the zoning proposals is the lack of foundation for them. There is no data, no reports, no rational for many of the proposals that could affect us profoundly. Parking is a good example. The school and church proposals have no basis other than the Office of Planning's desire to have only two standards: square footage and number of residential units. What is wrong with having a third standard if it works? We have 5 large private schools in our ANC and there is no doubt that these schools create parking issues. Only one of our schools was surveyed to show how the change would affect the parking requirement – and then only after the proposal was announced. The result showed that the minimum parking requirement would be reduced significantly. Yet, there has been no accompanying report demonstrating that the need for parking had diminished. This is disturbing evidence that the goal is to reduce parking supply despite the demand. **We oppose changing the school and church formula from a user based standard to a square footage standard.**

ANC 3C does not support reductions in the minimum parking requirements for multi-family residential zones or in commercial zones. We do not support administrative reductions in parking requirements based solely on proximity to frequent bus routes or a metro station. That is too simplistic. There should be context for right-sizing the creation of off-street parking supply and it should include an examination of the existing variety and intensity of uses, the supply versus the demand, and the intensity of proposed uses. These proposals deny residents a voice and prevent ANCs from sharing the knowledge we have of our neighborhoods. For these same reasons, **we also strongly oppose penalties, termed mitigation in the proposal, for exceeding parking minimums.** There is no profit incentive to overbuild parking so if more spaces than required are proposed there is probably a demonstrable need. **What we support is the maintenance of the current regulations that allow minimum non-residential parking minimums to be reduced by Special Exception, and we would favor extending this process to residential parking minimums.** We have no interest in forcing the creation of unnecessary parking. But it's unreasonable to ignore what our reality is so that parking theories can be implemented.

Overlays

We want to urge the Zoning Commission to maintain neighborhood commercial and residential overlays in their current form. Our residents worked hard and long to create these overlays to distinguish neighborhood interests and needs from citywide applied zone district provisions. They typically trump the citywide provisions when there is a conflict and their purposes and goals are the main standards for review in Special Exception cases. The Office of Planning proposal dilutes the overlay purpose and goals and the review standards by listing the underlying zone purposes and standards as co-equal. The more stringent and focused goals and standards would no longer trump the more general goals and purposes. Instead they

would become features of the underlying zone with no special significance. The Comprehensive Plan explicitly recognizes our neighborhood commercial overlays and states that they should be preserved as overlays. **We request that you reject the Office of Planning's substantive change and maintain the overlays in their current form.**

Trees

It is unfortunate the revision of the zoning code has focused on liberalizing permissions rather than on improving provisions that work. One example is the absence of improvements to the Tree & Slope Overlay. ANC 3C has had several cases where it is clear that the Zoning Administrator would benefit from the Urban Forestry Administration's ("UFA") expert advice. We urge the adoption of a new provision that would require consultation with and guidance from the UFA before building permits are issued for commercial or residential construction that raise tree issues. Further, we would recommend that the terms "critical root zone" and "root plate" be defined and incorporated into the tree regulation conditions. We will provide more information to the Zoning Commission on this subject prior to the closing of the record on March 3, 2014.