

Testimony of ANC 3E on the Zoning Rewrite

This testimony was unanimously approved at a Special Meeting of ANC 3E. We thank the Zoning Commission for the opportunity to be heard on these important matters.

The proposed revisions to the Zoning Code are a sea of minutiae. And, as ANC Commissioners we are all too well versed in minutiae. But we would like to start our testimony tonight by considering core principles and the big picture.

Why do we have a zoning code and what principles should guide its revision?

We submit that zoning codes serve two purposes: (1) they are part of the fabric of rules that guide the development in a jurisdiction and (2) they create protections to ensure that one individual's actions do not adversely affect others or the jurisdiction as a whole.

Indeed, the D.C. Code provisions authorizing the zoning regulations and their amendment, quoted below,¹ illustrate these dual goals – shaping development over the medium term and protecting individuals and the community from overreach.

¹ D.C. Code § 6-641.02. Zoning regulations -- Purpose

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

Where are we now?

The Metropolitan Washington Council of Governments predicts that population in our region will grow by 1.7 million to close to 7 million by 2040, with population in the District of Columbia nearing 800,000.² Others predict our population (and the population in the region) will grow even faster.

Our zoning regulations have not been subject to a comprehensive review since they were enacted 56 years ago in 1958. In the 1960 census, the District had 763,956 residents and the region had a population of approximately 1.8 million³. The District's population dropped as low as 572,059 in the 2000 census but appears on track to return to 1950s levels – on the order of 800,000 in the coming decades. Meanwhile, there will be at least 5 million more people living in the region as a whole.

The Challenge – How do we use the zoning rewrite as part of the drive to meet the coming growth in ways that serve our goals and do not create unfair burdens on some?

As the Zoning Commissioners know well, debates about development and competing visions for our City can be intense. But, there may be more common ground on broad principles than assumed. At around the same time as the Zoning regulations were enacted, in 1956 a plan for an elaborate set of freeways was proposed for the D.C. region.⁴ Some of the people who

² See http://www.mwcog.org/news/press/detail.asp?NEWS_ID=617

³ <http://www.demographia.com/dm-uad.htm>

⁴ See http://www.slate.com/articles/life/transport/features/2010/unbuilt_highways/washington_dc_the_1956_freeway_plan.html

have testified against some of the changes to the zoning rules admirably participated in the battle to stop the freeways that could have broken up our communities and made our City a drive thru.

Their goal then, and our goal now, was to preserve and strengthen walkable, urban neighborhoods. We must, however, pursue that goal with a clear-eyed recognition that our City and even more so our region will experience substantial growth in the coming period. And, quality of life for all will be maximized to the extent that we maximize the percentage of people who work in the City who live in the City and diversify our modes of transportation.

Parking Minimums

If we add cars and people at the same pace, we will have a problem. Fortunately the most recent evidence suggests that the District's recent population boom in fact has added far fewer cars than people – according to the US Census Bureau & American Community Surveys between 2000 and 2012 the number of occupied housing units in the District increased from 248,338 units⁵ to 266,662 units⁶ an increase of 18,234 units which was an increase of 7.4% while the number of vehicles went from 220,766 in 2000⁷ to 228,918 in 2012⁸ an increase of only 8,152 cars or just 3.7%, an average of 0.45 cars per all new units over a 12 year period.

There is no way for the zoning rules to be neutral on this issue. Maintenance of the status quo is a position. Any new rules will articulate a position.

⁵ <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

⁶ <http://www.census.gov/prod/2001pubs/c2kbr01-13.pdf>; page 2

⁷

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_00_SL_DS_H046&prodType=table

⁸

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1Y_R_B25046&prodType=table

On our ANC we have increasingly needed to address three issues raised by the proposed rewrite – the requirement for onsite parking for new residences, parking at parks, and parking minimums in commercial corridors. We address those issues and the related issue of mitigation when parking significantly exceeds minimums in our testimony.

We applaud the move to eliminate on-site parking requirements for certain homes (Proposed Subtitle C, Section 1902.3(a)). We often confront curb cut applications for new construction that appear to be driven by zoning requirements rather than the need for onsite parking. Creating those onsite spaces leads to the proliferation of impervious surfaces and loss of on street parking. Everyone will benefit if this requirement is eliminated. We would also encourage creation of a process to expedite approval for not providing on-site parking even where a residential lot is accessible by an alley with a showing of access to offsite (including on street) parking and would urge consideration of a requirement that new driveways be made using pervious surfaces.

We would also urge that parking minimums at parks be reconsidered. We currently have a project at which a park is surrounded by on-street parking and does not currently have onsite parking. In the process of renovating the park, the city may feel compelled to consume precious park space for a few parking spaces. There should be an easy way to avoid this outcome that poorly serves the full community.

In certain commercial corridors -- in proximity to a Metrorail station, a streetcar line (in operation or under contract for construction) or a WMATA identified "Priority Corridor" (Proposed Subtitle C, Section 1902. 1) -- the proposal calls for additional reductions off of the existing parking minimums. We support allowing projects to provide such reduced parking in

appropriate circumstances, and have worked to achieve that goal in consideration of a recent development at 4600 Wisconsin Avenue — and expect to in future matters. As with 4600 Wisconsin Avenue, we believe there must be a mechanism to assure such reductions do not adversely impact nearby neighborhoods and do generate the kind of pro-public transit and alternative transit benefits necessary to make such reductions viable. We also believe there should be flexibility to expand or contract the areas in which the reductions apply over time. Therefore, we suggest the following:

- Proposed Subtitle C, Section 1900.2 requires preparation of a parking plan for all projects and Proposed Subtitle C, Section 1900.3 authorizes the Zoning Administrator to request that DDOT review and make recommendations relating to parking plans prior to approving a building permit. These sections could be revised to require development of a Transportation and Parking Demand Management Plan (“Management Plan”) for projects covered by Proposed Subtitle C, Section 1902.1, which could address parking supply in the area, access to private, off-site parking, any steps taken to avoid adverse effects flowing from the approach taken to providing onsite parking and plans for support for public transit, car-sharing and alternative transit modes. Notice of the Management Plan should be provided to the relevant ANC.
- DDOT should be called upon to create a menu of mitigation tools that an applicant can draw from in crafting a Management Plan, including template enforceable lease provisions to foreclose access to Residential Parking Permits (RPP) for residents of a new building as well as the kinds of measures listed to address mitigation when there is excess parking under Proposed Subtitle C, Section 1907 and included in the voluntary agreement crafted by our ANC in the 4600 Wisconsin Avenue matter.

- DDOT shall approve such a Management Plan if it includes enforceable prohibitions on access to RPP for residents of the building as well as other incentives to encourage use of public transit and/or alternative modes of transit. If a Management Plan for such a project does not include enforceable restrictions on access to RPP or otherwise does not secure DDOT approval, a Special Exception should be required.. Moreover, in all cases for projects in these zones, under Proposed Subtitle C, Section 1903.2, we would urge that significant weight be given to whether or not restrictions to access to RPP have been included, including for reductions below 50% of the otherwise governing minimum.
- DDOT should be empowered to require modifications to the Management Plan as a condition of approval of a building permit.
- Proposed Subtitle C, Section 1902.1 defines the places in which the 50% reduction applies. One of the locations – within ¼ mile of a streetcar line that is operating or under a construction contract -- relies on a snapshot approach – designating a place with the knowledge that in the not too distant future there could be other places that would qualify based on characteristics, but do not based on timing. Another location – within ¼ mile of a WMATA identified Priority Corridor – allows for flexibility based on the action of others in the future. An additional provision should be added allowing for changes and additions to the Proposed Subtitle C, Section 1902.1 list based either on Amendments to the Code or direction in the Comprehensive Plan.
- In the meantime, while we applaud the mitigation requirements when a site exceeds a minimum – we believe they should apply when they exceed a minimum by 100%. The approach on this score does not prohibit provision of additional parking but appropriately

balances the goal of accommodating an owner, while also requiring the owner to support broader goals when their use of their property could create burdens for others.

Why these changes?

The requirement of the Management Plan and providing access to it to the relevant ANC will allow monitoring and input as a check on projects externalizing parking to the detriment of nearby neighbors and create an incentive to take positive steps to encourage public transit and other modes of transport. While the new, lower minimum would recalibrate default requirements for parking, these enhancements to the parking plan requirement would allow for more flexibility to address particular needs.

In the meantime, the increase to the threshold at which mitigation under Proposed Subtitle C, Section 1907 would take effect would create a reasonable rubric. If a project in one of the relevant zones went below the 50% reduced minimum, under the current proposal, it would require a Special Exception from the BZA. If it were in the zone between the 50% reduced minimum and the otherwise standard minimum such reduction could be justified through a reasonable Management Plan. If additional parking over the standard minimum were provided steps would need to be taken to strengthen public transit and alternative options under Proposed Subtitle C, Section 1907.

The goal is to build in protections for the neighborhood while also encouraging a move to reliance on diversified modes of transit. We believe an approach along the lines suggested here would do just that.

One source of reluctance to embrace lowered parking minimums is the suggestion that first DDOT must fix parking generally, including reform of RPP. Indeed, while access to on-

street parking in many areas is not a challenge, near some of our commercial districts, it can be. In an ideal world, we would revisit the rules around RPP and pricing for parking generally, as part of addressing these issues. And, indeed, our ANC fully supports such a review.

However, we cannot solve every problem at once and the issue before the Commission is how to deal with parking minimums. Leaving minimums in place as is, sets a course for a generation. Lowering minimums with no safety valve could leave us at the mercy of flawed rules governing parking generally. Lowering minimums with a safety valve protects us if no changes are made on parking generally and uses this round of changes to incentivize a fuller reconsideration of parking generally and RPP rules. If RPP policy is later revisited, the terms of the changes to the minimum may also be revisited.

In the meantime, keeping the door open to revisions to the qualifying areas through the Comprehensive Plan allows for a political check on the process to either expand or contract the application of the minimums. The Zoning rules are expressly intended to be consistent with the Comprehensive Plan. The rules should not foreclose flexibility in the Comprehensive Plan and would be strengthened through reinforcement through the Comprehensive Plan process.

Accessory Apartments

An important means of increasing housing opportunities and maintaining affordability in the District is by enabling more accessory dwelling units (“ADUs”). We believe the additional revenue from renting such units will give aging homeowners more opportunities to age in place by renting excess space and will also enable more middle class families to afford living in the District while also increasing rental stock in the city which should reduce the upward pressure on rental prices.

We believe that the proposal sensibly makes in house ADUs matter of right. We share the view expressed in the proposal that where a new accessory building is constructed or an existing accessory building expanded or subject to an addition for use as an ADU, BZA approval should be required. Where an ADU is added in an existing building without expanding or adding to the building approval should be matter of right but that an element of the approval process should be evidence that the owner has provided written, individual notice to neighbors within 50 feet and an opportunity for such neighbors to provide suggestions of potential modifications. Moreover, we would urge that any such converted units be subject to full inspection, regulatory and tax obligations. There should be strict penalties for lack of compliance with such requirements.

Corner Stores

Although the corner store proposal does not currently apply to any areas within the boundaries of ANC 3E we believe the proposal is a sound one. Currently retail in the District is largely confined to commercial corridors which can often be separated by significant distances. Limiting retail activity to these corridors precludes convenient and pedestrian accessible neighborhood serving retail for large swaths of the city, including Upper Northwest. Having said that we have a great example of the type of neighborhood serving retail we believe the corner store proposal ought to generate in the popular Broad Branch Market which serves a section of Chevy Chase that otherwise is lacking retail within walking distance. The Sheridan School Farmer's market has also thrived despite being located in a residential part of Ward 3 far from a major commercial corridor. We acknowledge that creating the opportunity for a corner store does not guarantee that it will be a successful one like Broad Branch Market however the opportunity for such businesses should not be precluded either.

The one revision we would propose to the Corner Store proposal is that rather than limit alcohol sales based on floor area (15%), that such sales should be limited as a percentage of gross revenue. See Proposed Subtitle D, Section 1605.8. A critical fear of Corner Stores in some neighborhoods is that they will become essentially liquor stores. The floor area limitation does not protect against them being used essentially in that function whereas a reasonable requirement based on gross revenue would.

Green Area Ratios/Pervious Surfaces/Tree Protection

We applaud the provisions in the Proposed Code focused on Pervious Surfaces (Proposed Subtitle C, Chapter 16), Green Area Ratios (Proposed Subtitle C, Chapter 17) and Tree Protection (Proposed Subtitle C, Chapter 18). The proposed rewrite aspires to bring our Zoning Code into the 21st Century and express 21st Century values. A critical such value is the protection of our environment.

Already the Proposed Code calls for using mitigation measures when variances, exceptions and PUDs must be approved to bolster the goals of Chapters 16, 17 and 18. If the Zoning Commission asks the Department of Planning to propose further revisions to the Code, we would urge that the Office of Planning should look for additional ways to use mitigation generally to advance these important goals.

We believe that while the rewrite addresses Green Area Ratios, Tree Protection, and Pervious surfaces requirements, the concept of such equitable environmental mitigation should be extended to new residential construction, and additions to existing residential structures that result in lot occupancy in excess of current defined maximums.