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Testimony Before the Zoning Commission on the
Zoning Regulation Review

By

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Commissioner

Advisory Neighborhood Commission 6B

Single Member District 05

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I am Commissioner Brian Pate, representing ANC6B SMD05, an area stretching south of Lincoln Park to Eastern Market Metro Plaza. ANC6B has already taken an official position on the ZRR, which you have received via official correspondence. For the record, I voted in favor of ANC6B's position and fully endorse the ANC's official stance on the ZRR. I am testifying today on my own behalf on items I felt were not reflected in ANC6B's position. None of the below points are ANC6B's official position. My views are my own.

Today I'd like to make six points.

First, I believe that it is time to move forward with recommended changes. They are the product of years of process, work and public input. They've been tailored to accommodate local concerns and, I know first hand, incorporate a great deal of community feedback. A document of this size and complexity will never achieve full consensus, but we should have the courage to move forward coupled with a commitment to revisit the code at regular intervals to perfect it as we find areas needing clarification or improvement.

I fear that we've reached a point where people, my constituents, are delaying projects in order to see what the outcome of the rewrite will be. Delay also incentivizes use of loopholes to skirt anachronistic elements of the code. For example, in ANC6B, we've seen a number of BZA cases featuring the use of a trellis to connect a primary and accessory dwelling, usually a carriage house, creating, in the eyes of the zoning administrator, a single dwelling, in order to gain relief from restrictions on additions to the accessory dwelling. I believe residents should not be forced to use loop holes to make renovations to their property that have become, de facto, by right actions. Further, I believe we have an obligation to reduce regulatory uncertainty.

Should the Zoning Commission decide to delay wholesale adoption of the recommended changes, it may be prudent and more effective to move less controversial elements one piece-at-a-time.

With this said, I would like to highlight a few areas of the proposed regulations that can be refined or strengthened, starting with local issues and working up to citywide issues:

1. ***Unzoned area of Capitol Hill*** – Squares 1080 S and 1067 S, which consist of waterfront property along the Anacostia River south of the former SE Freeway between Barney Circle (16th St) and 12th St SE are currently unzoned. Almost four years ago, the Office of Planning undertook a land use study of the area, yet the area remains uncategorized. This is important because the squares are adjacent to a proposed replacement for the SE Freeway dubbed SE Boulevard. Initial proposals for the Boulevard appear to be devoid of any consideration for contextual urban planning, much less future land use in the area. Though presumably the General Waterfront provisions in Subtitle C-4, Chapter 23, Section 2302 would apply, finalizing

zoning for this area, either through the ZRR or a follow on activity, will improve the City and community's ability to plan its future.

2. ***Fast Food Definitions and Exceptions*** –Fast food establishments are allowed in C-2-A areas only with a special exception. The existing regulations define “fast food establishments” using standards more suitable for the fast food industry as it was in the 1970s. Further, the Zoning Administrator’s interpretation of fast food (vs. prepared food, etc.) can, at times, appear to be subjective. These two factors make it difficult to manage the inevitable tensions that arise when restaurants in commercial corridors abut residential corridors. The new regulations prohibit fast food restaurants in the M-25 and M-27 mixed use areas on Capitol Hill. However, it appears to me from the text of Subtitle G, Section 1414.2, that a fast food establishment in M-26 would be a by right use. ANC6B is on the record requesting that all three areas, M-25, M-26 and M-27 have the same policy regarding fast food establishments. Further, while the proposed regulations provide an updated definition of “fast food establishment” (Subtitle B, Section 100.3), it is not clear if an establishment needs to meet one or more than one of these conditions to be considered a fast food establishment. Additional clarity and terms that take the subjectivity out of the assessment of “what is” and “what is not” a fast food establishment would be helpful and appreciated. The ANC’s play an important role in balancing the interests of residents and businesses. This particular piece of the zoning code should ensure that ANC’s have the leverage to do so, through the special exception process, in a thoughtful, constructive and consistent way.

3. ***Inclusionary Zoning*** – It is important to ensure that affordable units built today remain affordable units in the future, even beyond the 30-40 year standard common in existing affordable housing projects, after which certain units can revert to market rate. Subtitle C, Section 2204.1 appears to achieve this, but only for units created after implementation of the new regulations. It’s important that the Zoning Commission carefully review this section of the ZRR to ensure that it achieves the objective of creating sustainable, long term affordable units.

In reviewing this section, I also noted that the Subtitle C, Section 2201.4 (a) exempts areas in Georgetown and near the Naval Observatory from IZ requirements. Perhaps there is a justification for this, but on the surface, it seems elitist, pretentious and exclusionary that these well off areas of the District would not contribute to solving one of the largest problems facing our City. I would note also that this section is a recent amendment to the ZRR, which further reinforces my sense of moral indignation towards the exception.

4. ***Parking Minimums*** – The relief granted in the ZRR is welcome, though an imperfect compromise that still results in an arbitrary minimum. That said,

it's important for the ZC to wield it's influence to ensure that the Council, working with DDOT, amends the RPP program so that those developers that benefit from parking minimum relief do not simply off-load parking demand onto adjacent residential streets.

5. **Maps and Overlays** - Time permitting, the draft regulations would benefit from accompanying maps. This would make it much easier for the public to understand the overlays and delineations spelled out in the narrative. Additionally, I would ask that OP work quickly to develop and codify the process by which it will work with communities to develop area specific overlays and special use areas. Again, I find some inequity in OP's willingness to work with Georgetown to create their own special overlay as part of the ZRR process, when they've told the rest of the City to wait because they don't have enough time to draft a process for the rest of us.

This concludes my testimony. I hope you will move forward and approve the new zoning code, especially the sensible components, while simultaneously working to improve it. Thank you for your time and for your willingness to listen to the ANCs and the public. cvb