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via FAX 202-727-6072

Zoning Commission
District of Columbia
441 4th Street, NW #200
Washington, DC 20001

May 9, 2014

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RE: Case 08-06A

Dear Commissioners:

I am writing in response to Chairman Hood's request (at last month's Budget Oversight Hearing) that suggestions about how the Commission should proceed in its deliberations on the proposed new zoning code be sent by letter to Mrs. Schellin for distribution to the Commissioners. In my testimony at the budget hearing (attached below), I argued that the process of substantively amending the existing code needs to be separated from streamlining it and that a public advocate position should be created within the Office of Zoning to handle outreach and to provide independent review of proposals that originate in the Office of Planning. I write today to extend and apply that analysis to the situation you are now facing.

To put it bluntly, you can't rely on the Office of Planning to summarize the public comments. Abstractly, it's problematic enough that we have a system where OP is responsible first for making the proposals and then vetting its own work. It makes no sense to also give OP the role of characterizing and evaluating critiques of its work product. That approach will create a soundproof echo chamber rather than the robust policy debate that should inform your decisionmaking.

Ideally, the Office of Zoning should (a) hire someone qualified to do an independent analysis of the public comments and (b) outline what the Commission wants from such an analysis (e.g. identification of areas of consensus and of controversy, suggestions as to how to break down topics for the next round of hearings, and a list of specific questions to be addressed/answered for each topic).

With the May 5th submission of OP's summary of written public comments, my concerns are no longer merely hypothetical. The summary that OP has produced is misleading, erroneous, and unhelpful. Their agenda appears to be to stifle debate rather than to identify what's at issue and to find the best way to evaluate and accommodate competing concerns/interests/preferences/factual claims.

Consider, for example, at the issue of accessory apartments. If you were to rely on OP's summary, then the impression you'd come away with is that some people are for accessory apartments (and we thank them) and that some people are against (and they are wrong – we're not proposing what they think we are, they haven't seen our studies, they don't understand the current law, and/or they should be talking to a different agency). OP expresses its willingness to re-write a passage that doesn't convey its intent and to lower the minimum lot size, but there's no meaningful reconsideration or refinement of policy based on public input, no additional evidence/explanation provided to justify proposed policies, and no attempt at problem-solving. This summary is a document that does nothing to help the Commission weigh the pros and cons of various proposals.

By contrast, if you read the written comments themselves, the most obvious takeaway is that internal accessory apartments are much less controversial than external accessory apartments. While there is vehement and categorical opposition to external ADUs, no one who testified appears to be opposed to

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accessory apartments located within the primary home on a lot. A few ANC's call for the special exception requirement to be maintained for these units, but most of the concerns that are voiced about internal apartments involve creating a mechanism for insuring compliance with tax, zoning, and safety requirements under a matter-of-right regime. Moreover, if you actually look at the written testimony or at Montgomery County's Class 3 accessory apartment regulations (rather than rely on OP's summaries), you'll find examples of such mechanisms – e.g. requiring a certificate of occupancy or creating a licensing process that provides notice to neighbors and imposes penalties for unlicensed units (as MoCo did).

In OP's summaries, none of this information is clearly presented. And it is helpful information because it suggests that you should (a) consider internal accessory apartments separately from external accessory apartments (b) flag the compliance issue as a crucial one and ask for more input on that question (e.g. from DCRA, DHCD, and ANC's, and regarding how other jurisdictions handle these issues); and (c) consider external ADUs in a separate hearing that encompasses a variety of other related issues – alley lots, substandard lots, and the appropriate size and uses of accessory buildings.

Long story short, the challenge here is to treat criticism as an opportunity to improve the text, the policies, and the process. Otherwise, public hearings are pretty much a waste of everyone's time. Public testimony has provided the Commission with a wealth of information (as well as a series of unanswered questions). And the key to making use of that information is to entrust its analysis to someone who is more interested in learning from public input than in dismissing it.

Quality control is the Commission's job here – and that is a function that no one else in DC government is empowered to perform. The fact that OP's proposals do not become law unless/until you adopt them suggests that this role has been given to you for a reason. Ultimately, the Zoning Commission is responsible for promulgating the District's zoning regulations. Residents throughout the city have, collectively, spent untold hours working to ensure that the revision process will actually improve – rather than simply eviscerate – the existing code. Don't betray them. Your mission is not simply to "get it done," but to "get it right." And you can't do that without establishing a more deliberate and deliberative decisionmaking process. To create that process, you need to break the revision down into manageable pieces and to focus the public debate so that it is more substantive and provides you with the information you need to make intelligent and responsible decisions on a series of complex issues.

It's a lot to ask, I know – but no more than what you are capable of, and no less than what District residents deserve.

Respectfully submitted,



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cc: Council Chair Phil Mendelson

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District of Columbia Council
2015 Budget Oversight Hearing on the Office of Zoning
TESTIMONY OF SUZETTE M. HEMBERGER
before the Committee of the Whole
April 14, 2014

Two things were apparent from public testimony at last month's oversight hearing on this Agency.

First, people trust the Office of Zoning.

Secondly, over the past few years, this Agency has made great strides in terms of online communication and it seems highly motivated to keep improving the public's access to information relevant to its mission and decision-making process.

With these two observations in mind, I'd like to make two budget suggestions (both which may involve reprogramming of funds from the Office of Planning):

1. Allocate sufficient funds to the Office of Zoning to enable it to hire consultants (and, if necessary, a new in-house IT person) to streamline the zoning code and render it more user-friendly as well as to create supplementary materials like guides, summaries, and finding aids. This might be an appropriation that, in part, waits for next year. Meanwhile, it would be very helpful if the existing code could be turned into a single, searchable pdf available online as soon as possible.
2. Give OZ funding for a new permanent staff position: a public advocate. This staffer (who should be a professional, ideally an AICP certified planner) would serve three functions – review proposals where OP is the author/applicant, provide substantive public outreach services that would clearly and accurately inform citizens what specific changes the ZC will be considering, and summarize public comments.

It's time to acknowledge that the Office of Planning's own attempts to make zoning code easier to use have failed miserably. The ZRR draft is longer and more unwieldy than current code -- and it's in the process of getting worse not better, as

various patches are made and exceptions are carved out. The bottom line is that significant substantive changes have been buried in a mountain of convoluted code, which has created a situation rife with unintended consequences. To mention only one, we're on a path that would throw into doubt the status of the entire body of existing case law and administrative precedent accumulated over more than 50 years.

The way out of this mess is to separate the substantive amendment of the existing code from a wholesale revision designed to make the code easier to use. The Zoning Commission should make substantive changes explicitly and deliberately, debating each policy proposal separately. Then, after the code says what we want it to say, consultants should be hired to do the streamlining – people who have done this before and done it well. These consultants should report to Office of Zoning and be tasked with rendering the code user-friendly without changing its substance. When they confront editorial choices that have substantive implications, they should refer such questions to the Zoning Commission for guidance, spelling out alternative approaches and what they see at stake in the choice between them. This team should include IT people, at least one of whom is (or will be) a permanent employee of the Office of Zoning. Increasingly, users of the code access it electronically and the code needs to be structured in a way that makes it easy to navigate both in printed form and online.

As for the public advocate position, the Zoning Regulations Review process has exposed and magnified problematic aspects of public policymaking process in this domain. It's bad enough that, constitutionally, decisions about local zoning are made by five unelected Commissioners. At very least, we need to do what we can to create a structure in which those decisions are as fully and as accurately informed as possible. To put it bluntly, we can't just let OP vet OP's policy prescriptions. From the standpoint not only of public input but of quality control, the Zoning Commission needs access to an independent voice with expertise on these issues and it should come from someone who has been specifically charged with the task of representing the public interest. This is a resource that the Council, as our elected representatives, can and should provide to the Zoning Commission.