D.C. Zoning Commission
Comments on the Draft Code developed through the Zoning Regulation Review

Testimony of Robert T. Richards
Chair, Advisory Neighborhood Commission 7B and
Representative, SMD 7B07

Good evening, Members of the Zoning Commission. I am Robert T. Richards, Chair of ANC 7B and SMD 7B07 representative. These comments were discussed at an executive meeting of the ANC at which a quorum was present. The substance of these comments was agreed to by the members in their individual capacities. I anticipate that ANC will formally adopt these comments at its next public meeting.

I am addressing five topics: parking, accessory dwellings, affordable housing, overlay or customized zones and ANC review authority. Before turning to these, I note that the complexity of the new draft code astounds me, especially since the ZRR process was advertised as an undertaking to streamline the Zoning Code and make it user friendly. I am glad that a number of steps have been taken to make it more accessible, such as retaining the existing residential zone names. The drawings, particularly those explaining measurements of heights of buildings, are useful. Nevertheless, I find the draft code as a whole to be more of a playground for zoning theorists and an income producing vehicle for the zoning bar than a tool for the public.

"No" to Parking Reductions

We acknowledge that the draft no longer calls for reduced parking minimums along major busways. That does not go far enough for some neighborhoods, including those east of the Anacostia River. The draft retains its provision for reduced parking minimums around Transit-Oriented Development (TOD) zones around Metro stations. This assumes that persons living in the vicinity of Metro stations will commute primarily by Metro. This assumption fails to consider that:

Many Southeast residents hold low-wage jobs that are located outside the central business District. In addition, many individuals holding low-wage jobs work very late or very early shifts, or hold down two widely separated jobs. For such individuals, proximity to a Metro station does not obviate the need for a car. If you drive a car to work, you need to be able to park it when you come home.

Reducing minimum parking requirements is not the answer for southeast.

Curbside parking. In addition, we note that DDOT's just-released Traffic Management Demand study concludes that there is no one-size-fits-all solution that applies to curbside parking citywide. DDOT identified four neighborhood parking profiles. We ask the Zoning

Commission to apply the same principle in imposing parking requirements on new development. Our needs are not the same as those of residents living in or adjacent to the central business district. We need adequate, reliable parking. In other words, no reductions.

Accessory Dwellings

Requirement for special exception in all R zones. The June 2014 amendments to the draft code requiring *accessory dwellings* separate from the principal dwelling to obtain a special exception in all R zones go a long way toward allaying concerns about the loss of neighborhood character and density through the unfettered proliferation of backyard cabins. <u>This amendment should be adopted.</u>

Retain minimum lot sizes. OP's proposed amendment to eliminate lot sizes must be rejected. In the 2013 draft, the minimum lot sizes required for lots with a principal dwelling and an accessory unit were the same as the lot sizes required for a lot with only a principal dwelling, ie, 7500 sq. ft. for R-1-A, 5000 sq. ft. for R-1-B, etc. OP states that minimum lot sizes were dropped in light of comments that they were too restrictive. However, lots smaller than the proposed minimums would be substandard. If a lot is too small for single dwelling unit, it certainly is too small for a principal unit <u>and</u> an accessory dwelling, whether that accessory unit is located inside or outside the principal unit.

Minimum square footage. The minimum square footage for an interior accessory unit has been reduced in R-3 and R-4 zones from 2000 to 1200 gross floor area. Coupled with the requirement that an accessory unit can occupy no more than 30% of the .gross floor area of the entire house, this reduction allows a 360 sq. ft. micro-unit. While a unit of this size is permissible under D.C. law – which allows units as small as 220 sq. ft. – the encouragement of micro-units in small houses is incompatible with the zoning code's "intent to maintain a single household residential appearance and character in the R zones." 2014 Draft sec. 1606(d)(5)(2).

No accessory dwelling outside the principal dwelling should touch a side or rear lot line, except for a rear line abutting an alley. In many neighborhoods, lots share a rear lot line – no alley divides them. To allow an accessory dwelling to abut such a rear lot line – or any side lot line – eviscerates privacy-protecting rear- and side-yard setbacks. The Zoning Commission no doubt remembers that at the beginning of the ZRR process, the OP proposed to reduce side yards to 3 feet. Faced with widespread protests, OP increased side yards to 5 feet, then back to the current 8 feet. Given this history demonstrating the sanctity of setbacks, it makes no sense to allow accessory dwellings not to comply with setbacks. Retention of setbacks should be a nonwaivable element of any special exception proceeding.

The owner-occupant requirement is good and should be nonwaivable. This speaks for itself. In addition, we support the requirements for the fire and water/sewer authorities to review a special exception application for exterior accessory units.

Affordable Housing

Redefine "affordable housing" to be more transparent; discretionary zoning benefits should be tied to different levels of affordable housing, with fewer benefits for higher levels of affordability. We object to the draft code's definition of "affordable housing" because its lack of transparency facilitates and encourages displacement and gentrification in the worst sense of those terms. The definition streamlines and simplifies the various definitions of "affordable housing" contained in the existing code for PUDs, IZ and the Downtown Development Overlay, some of which are imported from other statutes. Under the proposed new definition, housing for any 4-person household earning up to $86,000 (80% of AMI) is affordable. Housing for any single-person household earning up to $61,000 is affordable. (DC IZ income limits at 80% AMI). The average household income for all of Ward 7 is $54,000.

A random sample of ZC orders, summarized in the footnote below, shows that the majority PUD-related affordable housing targets the 60 to 80 AMI range, which, to repeat, exceeds the Ward 7 median income even at the lower range.[1]

- [1] ZC 05-28J/05-28K (12/09/13) (review and approval of second-stage PUD). In 2008, the Commission approved a second-stage application for three of the 10 building blocks in the Parkside PUD – Blocks A, B, and C. The Commission approved a senior living facility consisting of 98 units to be reserved for individuals with an income greater than 60% of the area median income ("AMI"). This project in Block A has been built and is currently occupied. It also approved 112 townhouses, 42 of which would be reserved for buyers with incomes between 80% and 120% AMI. This proposal was later modified to provide 100 townhomes in Z.C. Case No. 05-28G. Once built, the project will provide 42 workforce units. (Id.)
- ZC 11-24 (10/15/12). The Project provides 150-180 dwelling units and approximately 254,000 sf GFA of residential uses, which equates to more than 50% of the density of the Project as a whole. The Applicant will provide 46 of the 150-180 residential units as affordable units as depicted on the Plans. In the North Building, five units will be reserved for households earning less than 30% of the area median income ("AMI") with the remaining 29 units reserved for households earning less than 60% of the AMI. Half of the units in the North Building will be reserved for senior citizens. In the South Building, 12 units will be reserved for households earning less than 80% of the AMI. [The Order contains additional provisions for senior housing.]
- ZC 07-35B (10/19/09) (second minor modification). Mixed use PUD in which "approximately 32% of the dwelling units will be affordable to households having 60 % or less of Area Median Income ("AMI"), and approximately 35% will be moderate –income units serving households having incomes between 60 % and 80% of AMI in accordance with the requirements of the public agencies providing financial subsidies for this purpose."
- ZC 09-15 (10/14/10) The proposed project consists of a residential apartment building containing up to 44 units of affordable housing [of a total 225 units]. The units will be distributed among studio, one-bedroom, and two-bedroom units as follows: nine studio

For purposes of transparency, any new definition should retain distinctions among "moderate," "low" and "very low" income housing, with some numbers attached for additional clarity. The draft PUD regulations refer variously to "affordable," "moderate-income" and "low-income") without indicating how that translates into dollars. Also, the PUD rules state that housing shall be administered pursuant to IZ standards, which targets households at the 50% and 80% AMI levels.

As a matter of policy, the Commission should reserve the most substantial benefits within its discretion for households most in need. Largely through the PUD process, the Zoning Commission confers development bonuses in exchange for public benefit and amenities, which typically include some level of affordable housing. Yet much of this housing is beyond the reach of much of the District. In addition, many of the affordable units are sized and located for young singles on their way up the job ladder. We are subsidizing gentrification and simultaneously forcing out long-time, low and moderate income residents. There may have been a need 20 years ago to rebalance the District's income mix to build a middle class. However, it makes no sense in today's economic climate in the city to keep throwing zoning benefits at housing for new singles earning up to $60,000 while young singles who grew up in the city in Wards 5, 7 and 8 cannot get out of their parents' house. I realize that a project's financial structure often drives the income mix, especially when government financing is involved. You do retain the power of clarity and the power of "no." You need not indiscriminately treat the term "affordability" as a one-size-fits-all umbrella covering a $60,000 a year single and a female head of household with children earning $34,000 (the median income in some Ward 7 census tracts). Words matter.

More powerfully, the Zoning Commission can reject or modify a PUD that is substantially out of scale or visibly lacking in distinction when the affordable housing component does not significantly address a critical housing need. This is achieved to some extent through the PUD provisions for senior housing and housing with three or more bedrooms. Stop treating near-market rate affordable housing as a fig-leaf for upzoning. At a minimum, the Commission can accord lesser bonus value to higher AMI projects. The Commission can be a small part of the solution, or a big part of the problem.

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units, 26 one-bedroom units, and nine two-bedroom units. All units will be reserved for households earning less than 60% of the Area Median Income ("AMI").

- ZC 07-27 (11/10/08). In addition to providing a significant amount of market rate housing units, the project will also set aside 28 affordable units [for sale]….The 28 affordable units will be divided equally between both income distributions (14 units for 50% AMI and 14 units for 80% AMI).
- ZC 05-19 (04/2006) (approving a mixed-used project for retail and approximately 72 new units "that are all affordable rental units for at least 60% of the Washington, D.C. Area Median Income").

ANC REVIEW

All members of ANC 7B have expressed their concern about the loss of review authority owing to the increased number of matter-or-right provisions in the rewritten code for actions that formerly required a special exception. While some of these new MOR provision s have been rolled back, notably the accessory dwelling provisions, I am no longer sure what's in and out of the ANC's jurisdiction. Is there a comprehensive list of the new MOR provisions? My ANC very strongly wants to retain its existing scope of review authority.

Overlays

At various times in the process various residents of ANC 7B have requested an overlay or customized zone that embodies in enforceable code language the provisions of our Small Area Plan. We also have inquired about a tree and slope overlay for those portions of the neighborhood adjacent to Fort Dupont Park. We have been rebuffed and told to come back later, after the new code is adopted. We also have been given to understand that the customized zones allow only upzoning and reduced restrictions. That obviously is inconsistent with the manner in which more affluent neighborhood have been treated during the ZRR process. According, this is a formal request to designate a reserved section in Subtitle K for a Pennsylvania Avenue SE Overlay Zone, with the provision that greater restrictions may be applied subject to notice and comment. We view this as important to maintain the shrinking affordability of our neighborhood (affordability in this instance meaning the lower than average home purchase price, which helps maintain income diversity and retards the displacement of young families.)[2]

Thank you for the opportunity to comment. I look forward to your next steps.

Respectfully submitted,

/s/

Robert T. Richards

[2] As a separate matter, please take a look Section 207, which addresses what, happens when a lot straddles two zone districts. The allowable bulk for the portion of the lot located in a less restrictive use zone may be increased by the bulk permitted on the portion of the lot located in a more restrictive use zone, provided that no portion of any structure permitted on the lesser restricted portion of the lot shall be extended to the more restricted portion of the lot. So far so good. *But*, this is countermanded in the next section: Section 207.2 allows the property owner to seek a special exception to extend the less restrictive height, bulk and density standards to the more restrictive lot. Given high percentage of SE applications granted, Section 207.2 effectively upzones all property within 35 feet of the boundary line and for reason is unacceptable. This can have an especially deleterious effort where lots cross boundary lines between a low-density residential zone and a higher density mixed use zone.