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December 6, 2013

VIA IZIS

Anthony Hood, Chairman
Zoning Commission
441 4th Street, NW
Suite 200-S
Washington, DC 20001

Re: Subtitles G, H, I, and K of Draft Zoning Regulations (September 2013) -- Supplemental Comments Concerning Big-Box Retail Development

Dear Chairman Hood and Members of the Zoning Commission:

The purpose of these Comments is to supplement the Comments we previously submitted in support of a special exception for big-box development ("proposal"). In addition, these Comments serve as a response to the answers that the Office of Planning ("OP") provided to the Zoning Commission to its questions regarding this proposal.

At the November 13, 2013 Zoning Commission hearing on the Draft Zoning Code, Jennifer Steingasser of OP indicated that OP was not recommending a special exception for big-box stores because "[a]s you can see, from 90 percent of the testimony here, it's geared at one particular retailer. We don't think that's the appropriate role of the Board of Zoning Adjustment, to be focused on one retailer, their hiring, or their employment practices." See November 13, 2013 Zoning Commission hearing attached herein as Exhibit A at p. 172. This answer is inaccurate. The proposal would apply to all proposed big-box stores in the District, not just one, because they all present the same problems: exacerbating traffic, hurting adjacent small businesses, and lacking the same scale and/or character of the neighborhood where it seeks to locate. Such stores include, but are not limited to, Target, Wegmans, Best Buy, and Wal-Mart. The proposal is designed to address the problems that these types of stores create.

It is also OP's misconception that this policy is about addressing wages and benefits and therefore "really more appropriate for the City Council and the Mayor's

office.” *Id.* The majority of conditions in the proposal that a developer would need to meet in securing a special exception for a proposed big-box store concern traffic, parking, neighborhood character, noise, general health and welfare, as well as harmony with the applicable goals of the Zoning Regulations and Comprehensive Plan for the proposed development site.

More generally, the proposal is just that -- a proposal. The Zoning Commission is in a position to change and eliminate the parts of the proposal with which it disagrees and adopt and add-to the parts of the proposal with which it agrees. For example, if the Zoning Commission finds that having an economic impact study would be too cumbersome or outside the expertise of the Board of Zoning Adjustment, it does not need to include such a study as part of the conditions to secure a special exception.

Nevertheless, deciding that changes to the proposal are desired does not diminish the underlying need for adopting a special exception for big-box development. A special exception is needed not only to mitigate the problems that big-box stores create, but also to facilitate a process by which the costs and benefits of these stores are publicly weighed. This process will reward meritorious development and improve weaker, but promising, developments, while discouraging undesirable development. This process will further give the public confidence that their concerns were fairly considered. Such a process does not currently exist.

It is true that the District applies what is known as “Large Tract Review” (“LTR”) to some proposed developments that are 50,000 square feet or greater. The testimony of Ms. Steingasser and Joel Lawson of OP make clear, however, that this process is ill-suited for the purpose of influencing development. On the one hand, Ms. Steingasser notes that LTR is not an approval process, but rather a process to gather information about a project:

So there is the large tract review process, which is not an approval process. We’ve always been very clear about this. It is a pre-permit review process. It allows for pre-permit information to be submitted. . . . But it’s not an enforceable process. It’s a site plan review. It’s a way for everybody to give their information to the developer.

Id. at p. 173. On the other hand, Mr. Lawson notes that LTR can be used to change the features of a project:

And as Ms. Steingasser mentioned, large tract review isn't, it doesn't get to all of those issues. But we use it to get to those issues anyways. And we did, through that process we do discuss design. We do discuss visual impacts, and adjacencies. As we often do with large tract review, we pushed the developer in those cases, to make changes to the design. In many cases those suggestions were taken. In some cases those suggestions were not.

Id. at p. 176. This conflicting testimony as to the role of LTR reflects the fact that LTR is not a reliable tool to influence development. In addition, given that LTR is not an official approval process and not subject to a public hearing, LTR cannot be considered an adequate replacement for the PUD process. Nor, as Ms. Steingasser made clear, does LTR constitute a replacement for having a special exception process. *See Id.* at p. 173 (“[LTR] shouldn't be misconstrued to be a special exception . . .”).

OP has proposed a maximum parking requirement whereby an applicant who intends to build or expand a parking area would need to secure a special exception for any parking area that exceeded 100,000 square feet. *See* Draft Zoning Code, Subtitle C, Chapter 19 Vehicle Parking, § 1906 attached herein as Exhibit B at pp. 67-68. OP suggested that such a special exception constituted an alternative to a special exception for big-box stores because addressing parking fell under more “normative standards.” *See* Exhibit A at pp. 172-73. The problem with this proposal is that any developer can easily circumvent the need for securing a special exception by building parking that does not exceed 100,000 square feet. OP's proposal is not a meaningful alternative to adopting a special exception for big-box development.

Perhaps most importantly, neither a special exception requirement for exceeding maximum parking, in all likelihood, nor LTR affords residents of the District the public forum to address their concerns. The remarks of Zoning Commission Chairman Anthony Hood captured this problem. During the November 13, 2013 hearing, Chairman Hood noted that without a special exception process, residents assume that they are powerless to influence certain developments because the development is “as-of-right” and there is no opportunity for residents to publicly raise issues that they, but not public officials, anticipate as a result of a proposed development. *See* Exhibit A at pp. 201-02. Adoption of a special exception would remedy this problem by providing residents and District officials an opportunity to publicly identify and address the concerns associated with a given project.

Supplemental Comments to the District of Columbia Zoning Commission
Re: Big-Box Development Special Exception Proposal for Draft New Zoning Code
December 6, 2013
Page 4 of 4

Thank you for your time and consideration in this matter.

Very truly yours,



Michael Kroopnick
G. Macy Nelson

cc: Clients

1 quite some time. And I think when we first
2 started this process, it was always presumed
3 that the Office of Zoning would take on that kind
4 of summary line of approach.

5 VICE CHAIR COHEN: You can have some
6 of my time.

7 COMMISSIONER MAY: I wasn't able to
8 pull off a fast one by asking all my questions
9 at the beginning. And the Office of Planning
10 just kind of go on. But --

11 VICE CHAIR COHEN: Take some of my
12 --

13 COMMISSIONER MAY: -- the remaining
14 question --

15 VICE CHAIR COHEN: -- time.

16 COMMISSIONER MAY: -- was the --

17 MS. VITALE: Big box.

18 COMMISSIONER MAY: -- big box. So
19 you can start the clock on this.

20 VICE CHAIR COHEN: Yes, he can start
21 on mine. That was my question too, is the big
22 box.

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1 MS. STEINGASSER: We're not
2 recommending a special exception for big box.
3 As you can see, from 90 percent of the testimony
4 here, it's geared at one particular retailer.

5 We don't think that's the
6 appropriate role of the Board of Zoning
7 Adjustment, to be focused on one retailer, their
8 hiring, or their employment practices. It
9 seems to be beyond the scope of zoning.

10 The City Council has taken a very
11 hands on approach to how they're dealing with the
12 issue of minimum wage, benefits. And with this
13 particular retailer they also had some very
14 hands on negotiation.

15 We feel that's more of a, that kind
16 of, that level of economic development practice
17 is really more appropriate for the City Council
18 and the Mayor's Office, than it is for the Board
19 of Zoning Adjustment.

20 So we took the approach that we need
21 to look at the normative standards of parking and
22 setbacks. And that was one of the things that

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1 led to our special exception for maximum
2 parking.

3 But most of these sites are a matter
4 of right. And whether, you know, whether it's
5 a Target or a Giant, or a Wal-Mart, it's
6 difficult for us to say, well they generate
7 differently.

8 So there is the large tract review
9 process, which is not an approval process.
10 We've always been very clear about this. It is
11 a pre-permit review process. It allows for
12 pre-permit information to be submitted.

13 It does provide a vehicle for the ANC
14 to see the application up front and early, before
15 it's filed for permit. But it's not an
16 enforceable process. It's a site plan review.
17 It's a way for everybody to give their
18 information to the developer.

19 It shouldn't be misconstrued to be
20 a special exception, because it's not binding.
21 The city agencies and the ANCs, and the
22 surrounding communities can give information to

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1 the --

2 They can then understand what's
3 going to be required of them in terms of the city
4 regulations, and the neighborhood concerns,
5 before they go to permit.

6 It can be very frustrating. But
7 we've found it to be fairly helpful, in terms of
8 getting that information up and out into the
9 public. But we have not been provided,
10 recommending any kind of special exception based
11 on the type of employer. It's really about how
12 things are built.

13 And it seems like a lot of the
14 concerns that we've heard this evening, and that
15 we've heard through other meetings, have all
16 been related to traffic. And that's a very
17 difficult thing for the Board of Zoning
18 Adjustment or the Zoning Commission to regulate.

19 And that may need to be more
20 discussions with DDOT about how they expand
21 their authorities, or their abilities to
22 regulate. Because I had, that was the first I'd

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1 heard that DDOT had said they have no authority
2 to do anything. These are the city streets.

3 They have a responsibility to
4 maintain them. And as far as we know, they take
5 it very seriously. But if they need -- That may
6 be the place for that discussion.

7 VICE CHAIR COHEN: Is there any way,
8 however, that we can influence, let's say the
9 design of the larger retailers? And insist that
10 there be, instead of parking lots, you know,
11 parking garages?

12 Is there any way we can be more, have
13 them more design conscious, for compatibility
14 with the neighborhood? If we can't, you know,
15 and I may even agree that it is a policy issue,
16 more than a zoning issue. But are there ways
17 that we can guide and deliver a better product
18 than what is normally seen in the suburbs?

19 MR. LAWSON: Sure. I think the
20 tools that we can use vary, obviously, from
21 project to project, and from site to site. And
22 we even saw that with the various Wal-Mart sites

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1 that went through different approval processes.

2 There was at least one that's
3 nearing completion, that was a totally by right
4 development, and has been getting some fairly
5 good reviews from some people, in terms of its
6 design.

7 There's a couple of others that are
8 going through a PUD process, because that's
9 what's required for the site that they happen to
10 be going on. And a couple of the sites went
11 through large tract review.

12 And as Ms. Steingasser mentioned,
13 large tract review isn't, it doesn't get to all
14 of those issues. But we use it to get to those
15 issues anyways. And we did, through that
16 process we do discuss design. We do discuss
17 visual impacts, and adjacencies.

18 As we often do with large tract
19 review, we pushed the developer in those cases,
20 to make changes to the design. In many cases
21 those suggestions were taken. In some cases
22 those suggestions were not.

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1 We very much agree with one of the
2 comments that came from one of the speakers, that
3 this was a really good site for a more complete
4 and comprehensive development. You know, a one
5 storey retail building is absolutely an
6 underutilization of that property.

7 Zoning doesn't require, you know,
8 utilization of all of the available density.
9 And we've not proposed that so far. But we
10 pushed that point, as did some members of the
11 community. And the applicant, only to a very
12 small degree, addressed those concerns.

13 So there are some tools available.
14 It depends on the project. We're happy push
15 those tools, as kind of far as we can. But it
16 completely depends on the site.

17 VICE CHAIR COHEN: There have been
18 a number of PUDs that were in existing overlays.
19 And that was my introduction to overlays. And
20 I have sympathy for Ms. MacWood's struggling in
21 the current regulations, as opposed to my
22 struggling with the prior regulations. And the

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1 mean, I have own -- It wasn't raised in
2 testimony, I would probably depart from mine,
3 from my neighbors testimony tonight, or not
4 their, not testament but their feelings.

5 And I, have concerns about some of
6 the aspects of the zones and those neighborhood
7 overlays, existing overlay zones in my
8 neighborhood, which we would continue.

9 And, the future, I'm not sure of the
10 rationale anymore for having the McComb
11 Wisconsin for example, with Giant. That whole
12 block of not being part of it anymore basically.

13 And, the 25 percent limitation has
14 always been a divisive issue in the
15 neighborhood. Other neighborhoods have gone to
16 50 percent. Its led to some creative uses in the
17 front, some of those properties, which don't
18 seem very necessary.

19 But, on the special exception
20 process for, big box. So, we had to, how many
21 for this -- There are six Wal-Marts going in.
22 Two, did two have PUDs?

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1 MR. LAWSON: That's correct, two.
2 One is part of an existing PUD. And their, I'm
3 trying to remember what their status is.
4 They've either gone through, you probably
5 remember better than I do. They've either gone
6 through or, are going through the process to get
7 that approved. That's the one in Ward 8.

8 COMMISSIONER MILLER: Right.

9 MR. LAWSON: There's one in Ward 7,
10 which is going through a separate PUD process for
11 a new development on East Capitol.

12 COMMISSIONER MILLER: So we spent, and I
13 do remember with the Ward 7 one in particular.
14 We spent a lot of time on the design and the
15 compatibility, the screening of the parking.
16 Because there's a large amount of parking
17 associated with it.

18 So, I mean, do you, I understand you
19 use the large tract review process to try to get
20 to the same kinds of issues of the traffic,
21 parking and compatibility and the design.

22 MR. LAWSON: Yes. The large tract

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1 review, you know, the large tract review
2 process, there is very specific rules that set
3 out when that process applies, and when it does
4 not apply. So, it doesn't apply to
5 every project. It obviously doesn't apply to a
6 project to go through a PUD. Because a lot of
7 the issues that are addressed are very similar
8 to the issues that are discussed through the PUD
9 process.

COMMISSIONER MILLER: So
10 did you think we got a better product, thus far
11 in the PUD process for the designs, than you were
12 you able to get through the non enforceable large
13 tract review process?

14 MR. LAWSON: I think, that's,
15 honestly, I think that's probably in the eye of
16 the beholder. I think you've heard from some
17 people in the community. They did not feel that
18 was the case. They did not feel that they got
19 a better product.

20 I think that we did get improvements
21 through the large tract review. And I think, as
22 Jennifer mentioned at the beginning, the

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1 process, the large tract review process, really
2 is intended to be more of an early warning
3 system. It's intended to inform applicants
4 what the rules and the regulations are, you know,
5 will, and the, immediate site circumstances that
6 may impact their development.

7 Do they need to replace the water
8 line for example. Will we allow a curb cut from
9 that street? And to give them that feedback
10 before they get to building permit stage. So,
11 you know, it's just a very different intent for
12 the two processes. There is some language
13 in the current large tract review process, the
14 rules that set what we can do, that do talk about,
15 do talk about, neighborhood impact, so traffic
16 can come in that.

17 And they do talk, in kind of a round
18 about way, it talks about neighborhood
19 compatibility. So we do talk about design, in
20 terms of materials. I know in one case, we got
21 some additional retail, flanking the street as
22 part of the large tract review. So, were

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1 there improvements? Yes. Would there be more
2 improvements if they also went, if they had to
3 go through a PUD. You know, that's speculative.

4 MS. STEINGASSER: And, I guess if I
5 can just add. There's the PUD, which gives
6 real, you know, they're coming in for something
7 discretionary. They need something, they want
8 something, and you guys have the authority to
9 say, there's not enough in the balance. The
10 special exception is an issue of no adverse
11 impact. And, if the adverse impact is really
12 about employment practices --

13 COMMISSIONER MILLER: No, I don't
14 think that that's a -- They did testify to that.
15 And I, but I think I noted that I didn't think
16 that economic impact was an appropriate factor
17 for, to be considered in a special exception
18 process.

19 MS. STEINGASSER: Okay.

20 COMMISSIONER MILLER: Or in the
21 zoning process, and generally. But, so it was
22 the traffic, the parking, the compatibility, the

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1 design.

2 MS. STEINGASSER: Yes.

3 COMMISSIONER MILLER: Did the
4 large tract review process for these, last any
5 longer than, I guess it was shorter than the PUD
6 process. Because that, one of those PUDs
7 involved a lot of other issues as well.

8 MS. STEINGASSER: Still going on.
9 And, one of the projects is very close to here.
10 And, I mean, I think it's spectacular. But, I
11 that's more to do with the development team than
12 the retailer, you know. So, it's hard to say and
13 it's hard to, I mean, we could get to the bulk,
14 the impacts, that kind of thing of parking and
15 loading.

16 But it's hard to, I mean, I
17 personally am not familiar with what the one on
18 Georgia Avenue looks like. I have not seen
19 that. So, I don't know whether it's attractive
20 or not.

21 COMMISSIONER MILLER: Okay. Thank
22 you. We'll --

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1 MS. STEINGASSER: I mean could --

2 COMMISSIONER MILLER: -- be
3 discussing --

4 MS. STEINGASSER: Okay.

5 COMMISSIONER MILLER: -- it further.

6 CHAIRMAN HOOD: I want to piggyback
7 upon Commissioner Miller's last comments about
8 special exception. You're, right. I didn't
9 want to get into a particular big box specific
10 store or whatever.

11 But, I think you know, I've always
12 been one in favor of having a public input and
13 public review. While I know that we say, well,
14 we don't want to talk about, no we don't want to
15 talk about salaries. And that, for me, that
16 wasn't the issue.

17 My issue was special impacts. Look
18 at adverse impacts, as you stated. And, I just
19 don't want to close the book on that. I don't
20 want to close the book on that yet.

21 I'm not going to say I'm against
22 anything that matters right? You're looking at

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1 a guy that has transfer stations in his
2 neighborhood constantly. They've been,
3 they've outlasted the fight. There still
4 there.

5 And, I just thought that the
6 necessary buffer, and I don't want to go down
7 that hole, that's a old argument. But, I think
8 that we need to continue to look at that, and not
9 just close the book on that. But, let me
10 just say that, one of the things that I think,
11 and I'm not necessarily more concerned about
12 those who engaged. I am, but I'm more concerned
13 if the people that are engaged, as I stated
14 earlier, are having problems with navigating
15 through the regulations. I'm
16 concerned about the ones we don't hear from.
17 That, when I go to community meetings as a
18 citizen, because I do take, I do participate in
19 my neighborhood, and activities and things that
20 go on.

21 And, they said, well that, the
22 zoning allows for it. And then, I'm sitting in

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1 the audience and they'll say, well Anthony Hood,
2 you all didn't recognize the unintended
3 consequences. Do we grapple all that now? I
4 don't know.

5 But, that's something we need to
6 really take seriously. And, I know, I know you
7 are. I'm not saying that Office of Planning
8 hasn't at all. But one of the things I am going
9 to suggest. And you just do it for me.

10 MS. STEINGASSER: You know I will.

11 CHAIRMAN HOOD: In one of our
12 meetings, since everybody else has got it. I'm
13 going to go through a page. And, I think the
14 formatting, I actually like the formatting.
15 But, I think, I don't know if everything is in
16 here. And, I heard a lot of the panel say they
17 had to go back to this chapter and that chapter.

18 And, I'm not asking for it soon.
19 But, in the next month or so, depending on how
20 far we go. I would like for you all to just do
21 a running exercise for me. We'll just take M-1
22 and M-2. Show me how, if I'm going to do

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1904 MINIMUM PARKING REQUIREMENTS FOR ADDITIONS TO EXISTING BUILDINGS OR STRUCTURES

1904.1 An addition to an existing building triggers additional parking requirements only when the gross floor area of the building is expanded or enlarged by twenty-five percent (25%) or more beyond the gross floor area on [effective date of amendment], or in the case of a new building, the gross floor area used to calculate the initial parking requirement. The additional minimum parking required shall be calculated based upon the entire gross floor area added.

1904.2 Notwithstanding C § 1904.1, additions to historic resources shall be required to provide additional parking spaces for an addition only if:

- (a) The addition results in at least a fifty percent (50%) increase in gross floor area beyond the gross floor area existing on [effective date of amendment]; and
- (b) The resulting requirement is at least four (4) parking spaces.

1905 MINIMUM PARKING REQUIREMENTS FOR AN EXPANSION OR CHANGE OF USE WITHIN AN EXISTING BUILDING OR STRUCTURE

1905.1 Additional parking spaces shall be required only when the minimum number of parking spaces required for the new use exceeds the number of spaces required for the prior use that occupied the same gross floor area.

1905.2 When determining the required number of additional required parking spaces, it shall be assumed that the previous use provided at least the minimum number of spaces required.

1905.3 A historic resource shall not be required to provide additional parking spaces for a change in use without expansion.

1905.4 If a use operates solely outside of a building or structure, any expansion of that use shall conform to the applicable parking standards.

1906 MAXIMUM PARKING REQUIREMENTS

1906.1 The following maximums shall apply to all newly constructed parking areas, and to parking areas that increase the number of parking spaces or the land area by twenty-five percent (25%) or more:

- (a) No above-grade parking area shall be built or expanded to exceed one hundred thousand square feet (100,000 sq. ft.) in land area.

1906.2 The Board may grant, by special exception, an increase in the maximum size of parking area allowed under C § 1906.1 (a) or the maximum parking standards of a land use subtitle if, in addition to meeting the general requirements of Y Chapter 8, the applicant demonstrates that a transportation demand management plan approved by DDOT will be implemented. The Board may impose as a condition of its approval, requirements as to



screening, landscaping, setbacks, fences, the location of entrances and exits, or any other requirement it deems necessary to protect adjacent or nearby property.

1907 MITIGATION FOR PARKING SIGNIFICANTLY IN EXCESS OF THE MINIMUM REQUIREMENT

1907.1 For the purposes of this section, the term “excess parking space” is defined as all vehicle parking spaces provided in excess of the minimum parking requirement for that location and use pursuant to C §§ 1901 and 1902, but shall not include either parking spaces to be dedicated to an off-site use in accordance with the provisions of C §§ 1901.7 and 1901.8, or dedicated car-share spaces provided in accordance with the provisions of C § 1908.

1907.2 For the purposes of this section, the term “minimum parking required” shall mean:

- (a) The minimum required number of parking spaces pursuant to C §§ 1901.5 and 1902 for the relevant use(s); or
- (b) Within the Downtown zones of Subtitle I and the zones of K Chapter 4, where there is no minimum parking requirement, the minimum number of parking spaces otherwise required for that use pursuant to C §§ 1901.5 and 1902.

1907.3 The provision of excess parking spaces shall require the following Transportation Demand Management (TDM) features:

- (a) For any excess parking space greater than one point five times (1.5 X) the minimum parking required for that zone, the following TDM measures shall be required:
 - (1) Bicycle parking spaces provided in accordance with the provisions of C § 2001 at a rate of one (1) bicycle parking space for each three (3) excess parking spaces, to a maximum of one-hundred (100) additional bicycle parking spaces, with such bicycle parking spaces being provided at the same ratio of long and short term spaces as required in C § 2002.1;
 - (2) One tree for every ten (10) excess parking spaces, with such trees to be planted within public space in the Ward in which the site is located, at a location to be determined by the Urban Forestry Division of DDOT, and of a species and size consistent with industry standards for street trees;
 - (3) One on-site electric car charge station for every twenty (20) excess parking spaces;
 - (4) One car share space to be provided in accordance with the provisions of C §§ 1908.3 through 1908.10 for every twenty (20) excess parking spaces, to a maximum of ten (10) car share spaces;
 - (5) The Green Area Ratio required for the site pursuant to C Chapter 17 shall be increased by a rate of .001 for each two (2) excess parking spaces, to a maximum of an additional .1.