



Zoning Commission Case No. 08-06A

Comment Submitted Before Closing of the Record by

Nancy J. MacWood, Chair, Committee of 100 for the Federal City

There is a danger in long cases, such as ZRR (08-06A), that the Zoning Commission will recognize arguments heard before and begin to categorize testimony into those for and against. That human tendency forces commissioners to condense positions into shorthand descriptions. And that results in providing comfort to commissioners that there is a way to handle voluminous comments by simply deciding that more people were for something than against it or vice versa. Nuances can easily be lost and the problems witnessed in one neighborhood can get overshadowed by the positive reports from another neighborhood. Therein lies one of the fundamental problems with ZRR. What you may think is a great idea for your neighborhood, may be disastrous for another neighborhood.

Earlier this month DDOT released its *Curbside Management Study* report. One of the significant themes in that report that relates to zoning is that one-size-fits-all will not work in DC. What might work in one place, will not work in another neighborhood or commercial area. That should give the Zoning Commission heartburn because OP's proposals are premised on one-size-fits-all. The report provides details about how challenging it is to manage the many demands for public parking and loading space, aka curbside, and announces that we are losing the battle. As an illustration, the inadequacy of curbside for commercial loading and parking is described as a universal industry complaint. Has this information ever come before the Zoning Commission? Isn't it relevant to your consideration of decreasing off street commercial parking and loading, which is what OP is encouraging you to do? Will OP's proposal simply put more stress on curbside?

During the summer, OP met twice with Ward 8 ANC chairs and I was invited to attend those meetings, along with some ANC representatives from Ward 7 and Ward 4. At the first meeting, every Ward 8 ANC chair (one did not attend) stated that they did not want corner stores, ADUs, reduction in parking requirements, and non-residential uses in their neighborhoods. OP attempted to move the conversation to how OP's proposals could be adapted and the commissioners stated again with more emphasis that they did not want those proposals at all. OP tried again by discussing customization and to their credit the commissioners said okay, we'd love to do that but don't impose these changes on us before we do that. Despite the clear message from Ward 8 and the eloquent testimony from Ward 4 ANC commissioners and

others, the Commission has signaled throughout the hearings that you will ignore residents and elected officials and listen to OP and its smart growth supporters.

The Zoning Commission has challenged witnesses, but rarely challenged OP. The PUD system is horribly broken but there are no proposals to reform it. Why not? When the city in partnership with private developers can present a PUD that lacks specificity and adherence to a carefully crafted small area plan as is the case with the Barry Farm PUD, the zoning rules are not working for DC residents. It is unconscionable that an entire community could become homeless because First Stage PUDs allow the applicant to seek map amendments and site plan approval with little or no evidence of what the project is. We now know, thanks to the Quatel Consulting report, that with regard to Barry Farm the government can't perform the small area plan promises and that is probably why the PUD lacked specificity. We can't rely on a "Quatel report" with every public land PUD. The regs have to be changed to ensure that public/private development deals aren't dealing the public a bad bargain. The Zoning Commission rules for PUDs should allow the scrutiny from your dais that Quatel provided. PUDs simply should not be the bread and butter of the Zoning Commission. We have example after example of pedestrian PUDs that don't enhance the city but are approved with almost anything qualifying as an amenity and 100% lot occupancy qualifying as an exemplary site plan.

The zoning issues that need addressing – pop-ups, gentrification, incompatible development, unbalanced processes, denigration of single family neighborhoods, and the mismatch of zoning designations to what is on the ground—have not been addressed or have been haphazardly added late in the game and are being considered in a piecemeal fashion. In some cases, it's because OP is finally addressing a pressing problem or OP sees an opportunity that they didn't envision in the early stages of ZRR. For example, the ZC just set down for hearing proposed regs for penthouses in residential zones. This is completely backwards because first the Zoning Commission should assess whether permitted heights are appropriate before adding more height with a penthouse. The Comprehensive Plan urges the Zoning Commission to reduce permitted heights that would create anomalies in neighborhoods. Georgetown acted to get this done, but there are many, many other neighborhoods that should have reduced maximum heights. If you approve the OP proposal, penthouses will potentially be built matter of right on top of houses that are taller than the norm. Is this any different than the often criticized allowance for pop-ups?

OP has focused on its smart growth agenda and offered reductions or elimination of every regulation related to cars, more building on lots citywide, nearly universal mixed use even in DC's traditional family neighborhoods, a clever mechanism to eliminate now and in the future all overlays, more households on all lots, and less recourse for anyone to say no or enough already. To this close observer of the Zoning Commission, a majority of the commission supports the smart growth movement and doesn't need data or analysis to assess how those edicts would change DC. It's a movement, so it's assumed that organically-developed DC is all wrong and must be changed. The reason that particular DC land use issues, like too much density in R4 zones or too much height allowance in many zones, haven't been addressed is that they don't fit into a smart growth zoning scenario. Those aren't problems that need fixing. Unfortunately for OP, most DC residents think they do need fixing.

This is a developers zoning code. Think about it – downtown would expand and provide developers with unprecedented maximum heights and density in parts of the city where this has never been allowed; high return market rate housing would be encouraged in these areas and developers even get bonuses

(TDRs/credits) for doing what they want to do anyway; developers holding onto worthless TDRs would get them remonetized; developers would get new opportunities in built-out neighborhoods to construct 2-story houses, aka garages; developers could build all sorts of habitable penthouses (again, how is this different than pop-ups?). And what do residents get? No recourse to maintain quality of life as we know it and lots more stress. OP however describes these proposals as creating a vibrant city. But most residents like the District with its a diverse housing stock, population, entertainment, and culture. What residents don't like is endless development, much of it approved by the Zoning Commission, oriented to childless couples, singles, and the wealthy.

DC residents are looking for equity. Imposition of the smart growth agenda favors the above demographic but doesn't respond to the needs of shift workers, families who have sunk life savings into a home, grandmothers housing extended family members, or ordinary citizens who have invested time and resources into making DC home and the best place it can be.

The Zoning Commission has not been well served by OP (you need to demand that the Council provide you with independent staff). But the Zoning Commission has also not been particularly inquisitive or forceful in demanding data and unbiased support for proposals or reasons for changes in the code. It seems to be enough that the OP wants to make a change. The often heard testimony from city residents that OP is promoting its agenda rather than listening to the concerns and, in some cases, absence of concerns with current regulations should make you uncomfortable with endorsing OP's agenda, unless of course you agree with the smart growth movement. But there has been little evidence that the Commission is willing or interested in challenging OP. OP has only to voice a response however unresponsive and the Commission abandons further questioning. I hope my perceptions don't presage the outcome of ZRR.

With apologies for repeating myself, here are my top 8 recommendations, in no particular order:

External ADUs – don't approve. It is still ludicrous to assume that this is no change when existing code requires a 5000 or larger sf lot in R1 zone, garage 8 ft from side lot line, living only on second floor, and resident must be part of family's staff. That is a very narrow reg that intentionally limits implementation to a small group of households with particular needs and strictly protects neighbors from potential negative impacts. That is completely different than creating a reg that allows ADU on lots as small as 3000 sf in multiple residential zones, garage apartment with no setback, living on 2-floors, and residents are a separate household with no relationship to household in principle residence.

Non-residential uses in residential zones – add language to clarify that Zoning Administrator can only approve home occupations not on approved list if the home occupation is closely related to the listed occupation. The use category system should not be applicable to home occupations. If clarifying language is not added, the ZA will be able to interpret the proposed language as authorizing every occupation within the category that the authorized use falls into. For example, tutor would authorize all service category uses. That is over broad and turns the home occupation permission into license to establish any commercial use in a residential neighborhood.

Two-story garages – don't approve. This is an example of OP seeking ways to increase density in residential neighborhoods when no one is seeking this. Developers however will surely take advantage of it if it is approved. As proposed, this reg will change neighborhoods. The built environment will now

have more structure, privacy will be reduced, air and light will be reduced, and the comity that neighborhoods strive to create will be challenged. As an ANC commissioner, I have experienced the upset that even a new one-story garage can create due to privacy, air and light concerns. There is no persuasive reason to permit two-story garages, except by variance.

Parking and Loading – don't approve. OP has not presented data that shows its proposal won't transfer parking and loading demand to public streets. This is another example of OP promoting its agenda and giving a waiver to developers at the expense of DC residents. The DDOT *Curbside Management Study* report makes it clear that our city transportation experts think that commercial loading and parking on public streets is untenable and not meeting the expressed needs of the industry so how can OP propose to reduce the responsibility of private developers to provide for the demand they create? The Zoning Commission should not accept OP's agenda of reducing private resources to handle vehicular demand in light of the inconvenient truth recently stated by DDOT. These proposals should be tabled or rejected until DDOT completes its study which should include a comprehensive evaluation of public and private parking and loading resources.

Corner stores – don't approve. This is perhaps the most foolish proposal in ZRR. It is ripe for abuse. None of the Ward 8 ANC chairs support it. They need grocery stores but they don't want corner stores and markets. They know that they have potential to become nuisances. Ward 4 ANC commissioners with experience with corner stores testified in detail about the problems with these stores in their neighborhoods. Other large cities have experienced significant problems related to corner stores, including obesity. It is not reasonable for the Zoning Commission to assume that a commissioner's experience in his or her neighborhood will be the universal experience, especially when witnesses are describing very different experiences. Converting housing to this use is taking a needed resource and replacing it with something not many people want. This is a concept that should be part of customization.

Affordable housing –reduce the percentage of AMI for IZ eligibility. It is widely known, that 80 and even 60 percent of AMI does not capture the low income DC population. The current IZ program is skewed to higher incomes that are outside the income group targeted by IZ programs. The percentage should be significantly lowered to perhaps 30% in order to ensure that limited IZ resources are reserved for the lowest income population. Other program improvements should ensure that fees do not conflict with intent of the program to provide stable and affordable housing.

Downtown – these proposals should be tabled in order to more fully explore the impacts of them. OP has presented very complex proposals that are hard to unravel. OP should be required to present them in a clearer fashion – and the Zoning Commission should not accept that these are complex concepts and that only a few land use attorneys can comprehend them. If that is true, then the regs are ripe for being manipulated. Among the highly questionable proposals - extending the life and profit of expired TDRs in exchange for nothing; permitting maximum height and density in parts of the city where historic and protected viewsheds would be compromised; exchanging maximum height and density for market rate housing when workforce and low income housing is in short supply; and encouraging new office towers with no plan for repurposing the current downtown or responding to downward job creation trends. Among the gaps in the proposals – no set aside for parks or passive and active green space per the Comprehensive Plan; no design requirements that will prevent the creation of a concrete jungle; no real protection for historic resources; and no discernable plan for community building. These proposals are

transparent gift to developers. The caution that NCPC staff, who testified at the September 8, 2014 hearing, urged when the Zoning Commission considers new height permissions in an expanded downtown are well placed. Where are the models showing how OP's sweeping proposal will impact the L'Enfant City and our monuments? Its extraordinary that NCPC staff would testify at a Zoning Commission hearing and it reflects their serious concern that the Zoning Commission is not fully aware of the issues and might approve new regulations that could damage the federal interest.

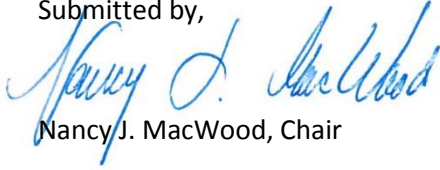
PUDs and special exceptions – don't approve design review or reduced lot requirements and reform requirements. I have no confidence that the Zoning Commission is the right body for design review. I realize that there are architects currently on the commission, but I don't think they feel empowered to exercise their design expertise as the Historic Preservation Review Board members do. The new design level PUD seems a waste of time. In addition, the number one request during the long ago PUD working group – that was well attended – was to increase the lot threshold for PUDs so that there would be fewer applications. OP has proposed the reverse. The ANC commissioners and DC residents I know who have experienced the PUD process have almost universally concluded that it is a rigged system that grants zoning waivers for very little in return, and almost never results in a rejection. PUDs are so prolific that one wonders why a developer builds a matter of right project. First stage PUDs should require detailed site plans, accurate number, size and type of units, location of retail and square footage, distribution of income eligibility, location and type of amenities and public benefits, comprehensive transportation analysis, analysis of Comprehensive Plan zoning designations as compared to map amendment request, etc. In other words a rigorous exposition of the project and evaluation of the project should occur at First Stage. The real scrutiny should not be left to Second Stage. There should be no Second Stage if PUD has not demonstrated it meets all the requirements for an exemplary project during initial hearing stage. There are certainly more reforms of PUD regs that are warranted but time and resources should be devoted to this exercise at later date.

Special exceptions should be more than a pass through. While variances should remain the more difficult waiver to get, special exceptions should not be the catch-all for every change that OP wants but many residents don't want. When there is opposition to a notion, OP's default is to require a special exception. Many residents and even ANC commissioners think that guarantees an opportunity to use public regulatory process to stop something. In practice, that almost never happens. Special exceptions are intended to be permissions with some conditions that control or mitigate some aspect of a use or project. The Zoning Commission should be sure that special exceptions are extended to uses or projects that most want as long as there are a few controls. External ADUs are a good example. OP has heard strong opposition to external ADUs. Rather than drop the concept, OP is proposing a special exception. They are proposing few review standards that might actually strengthen the hearing process and result in decisions that some ADUs are not appropriate and should not be approved. Instead OP is proposing the typical special exception review that puts the burden on the opposition to show negative impacts. If this use were prohibited, a variance would be required to create an external ADU and the burden would shift to the applicant to demonstrate need.

By allowing OP to rewrite the zoning code when the Zoning Commission actually asked that it be updated only as necessary, the Commission has created an impossible task. Because the Commission seems dismissive of the Comprehensive Plan and does not use it as a blueprint but rather as an obstacle that should not direct your actions, you have no guidance other than OP. District residents are frustrated

and fearful that you will indeed recreate the city in OP's smart growth image and that we will have no recourse – certainly not at the ballot box. It would be reassuring to residents if the Zoning Commission would show restraint in approving OP's proposals and exhibit caution in granting any new permissions that seem favored by only a few or a limited demographic.

Submitted by,

A handwritten signature in blue ink, appearing to read "Nancy J. MacWood". The signature is fluid and cursive, with the first name "Nancy" and last name "MacWood" clearly distinguishable.

Nancy J. MacWood, Chair