



BEFORE THE ZONING COMMISSION AND
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



FORM 129 – ADVISORY NEIGHBORHOOD COMMISSION (ANC) REPORT

Before completing this form, please review the instructions on the reverse side.

Pursuant to Subtitle Z § 406.2 and Subtitle Y § 406.2 of Title 11 DCMR Zoning Regulations, the written report of the Advisory Neighborhood Commission (ANC) shall contain the following information:

IDENTIFICATION OF APPEAL, PETITION, OR APPLICATION:

| | | | |
|---------------------------------------|-------------------------------------|------------|--------------------|
| Case No.: | 18-06 | Case Name: | Office of Planning |
| Address or Square/Lot(s) of Property: | Text Amendment Creating MU-4A-MU-4B | | |
| Relief Requested: | | | |

ANC MEETING INFORMATION

| | | | | |
|--|----------------------------------|---|------------------------------|--|
| Date of ANC Public Meeting: | 10/1/07/18 | Was proper notice given?: | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| Description of how notice was given: | Northwest Current and List Servs | | | |
| Number of members that constitutes a quorum: | 6 | Number of members present at the meeting: | 8 | |

MATERIAL SUBSTANCE

The issues and concerns of the ANC about the appeal, petition, or application as related to the standards of the Zoning Regulations against which the appeal, petition, or application must be judged (a separate sheet of paper may be used):

See Letter

The recommendation, if any, of the ANC as to the disposition of the appeal, petition, or application (a separate sheet of paper may be used):

See Letter

AUTHORIZATION

| | | | |
|--|----------------|---|---------|
| ANC | 3D | Recorded vote on the motion to adopt the report (i.e. 4-1-1): | 5-2-1 |
| Name of the person authorized by the ANC to present the report: | Troy Kravitz | | |
| Name of the Chairperson or Vice-Chairperson authorized to sign the report: | Charles Elkins | | |
| Signature of Chairperson/ Vice-Chairperson: | Charles Elkins | Date: | 7/19/18 |

ANY APPLICATION THAT IS FOUND TO BE INCOMPLETE MAY NOT BE ACCORDED "GREAT WEIGHT" PURSUANT TO 11 DCMR SUBTITLE Z § 406 AND SUBTITLE Y § 406.



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ADVISORY NEIGHBORHOOD COMMISSION 3D
PO Box 40846, Palisades Station
Washington, DC 20016**

**PALISADES · KENT · SPRING VALLEY · WESLEY HEIGHTS · NEW MEXICO/CATHEDRAL · THE AMERICAN
UNIVERSITY · FOXHALL VILLAGE · BERKELEY**

11 July 2018

RE: ZC 18-06, Proposed Text Amendment Creating MU-4A and MU-4B

“Hard cases make bad law.”¹ Justice Oliver Wendell Holmes pronounced this in 1904, but it is no less true a century later. We encourage the Office of Planning and the Zoning Commission to embrace this position when considering changes to city-wide zoning regulations based upon isolated cases.

We were recently advised of a hearing on Zoning Case 18-06, located at 3200 Pennsylvania Avenue, SE. As this is far outside our jurisdiction, we would have normally paid little attention to the matter. However, in this case, the Office of Planning is proposing, and the Zoning Commission is considering, a text amendment to ZR16 that would create a special zone, MU-4A, for this specific site (Square 5539, Lots 835, 838, 839, and 840). We have no intimate knowledge or unique perspective about this site. As such, we offer no opinion about the proper course for the site.

We write, instead, for two reasons. First, we generally oppose special carve-outs for particular parcels. The District very recently undertook a wholesale reevaluation of zoning regulations for the entire city. This process was public and extensive. We believe that the threshold for establishing that the result was erroneous in some way should be high, whether for a particular parcel or for the city as a whole.²

Second, we strongly oppose any wholesale changes to zoning regulations perpetuated through a particular case outside of broad public awareness. This is not idle curiosity: the OP report notes “there may be other locations in the city with a similar situation where a modified version of the MU-4 zone may also be appropriately applied.”³ Furthermore, we are aware that some organizations within the city plan to advocate that a more restrictive new zone than that proposed by OP for the particular parcel in ZC 18-06 be implemented across the entire city. We oppose such a maneuver and also believe such a position is misguided.

Principally, OP’s proposed new zone – to be created for the particular site at 3200 Pennsylvania Avenue, SE, at least initially – would reduce building density by 20 percent, increase setbacks, and limit the maximum number of stories to four.⁴

¹ *Northern Securities Co v. United States*, 193 US 197, 400 (1904).

² Nonetheless, we reiterate that we offer no opinion about the proper course for the site at 3200 Pennsylvania Avenue, SE.

³ Memorandum from Jennifer Steingasser to the Zoning Commission, April 24, 2018, “ZC Case 18-xx – Setdown Report for a Proposed Zoning Text Amendment Petition to create a new MU-4A zone and to rename the MU-4 zone to MU-4B.”

⁴ *Ibid.*

Others are pushing a more restrictive proposal to reduce building density by 40 percent by setting the maximum floor area ratio at 1.5 instead of 2.5 currently (2.0 instead of 3.0 currently upon satisfying inclusionary zoning regulations). They seek to have this zone be “*implemented* in low density areas across the city which about R-1-A are R-1-B zones.”

Zoning regulations govern a city’s growth. The evolution of a municipal zoning code requires a visible process fostering open community discussion about what development should look like and how it should fit into what currently exists. This involves civic engagement, community organizing, and other elements of civil society that constitute a healthy democracy. We feel the zoning rewrite that produced ZR16 and the MU-4 zone was such a process.

Utilizing ZC 18-06 to consider such broad application of a text amendment – affecting parcels across the entire city – is effectively exclusionary compared to the process that produced ZR16, which the proposal drastically alters. The ZR16 process took place over 8 years and the Office of Planning held more than 350 public meetings. Substantive and detailed replies were offered in response to hundreds of comments. Thousands of DC residents participated in the process.⁵ ZR16 was unanimously approved barely two years ago (January 14, 2016) and hasn’t even been in effect for two years yet. This process should be applauded, not undermined.

We also reject the notion that reducing FAR from 2.5 at-present to 1.5 as-advocated by some is needed because ZR16 is out of touch with the zoning regulations that governed city development from 1958 until 2016. Indeed, such a proposal fails this very test itself, as the C2-A zone under ZR58 – which became MU-4 *en masse* under ZR16 – permitted FAR of 2.0 by-right. Such a proposal is not about making ZR16 more closely resemble ZR58 – which, importantly, was explicitly rejected during the public process creating ZR16; it is about reducing development opportunities to be 25% below what they were under ZR58.

We do not believe it is prudent for the Office of Planning or the Zoning Commission to consider proposals to create a new zone, MU-4A, for the parcel at 3200 Pennsylvania Avenue, SE without explicitly considering the likely implications of making such a zone available city-wide (let alone *implemented* city-wide as some seek). While changes to the recently-enacted zoning regulations may be warranted, any potential changes should be debated more publicly than through an otherwise narrow zoning case. This is all the more necessary given that the public so thoroughly engaged in a wholesale rewrite of zoning regulations so recently; given this, the public engagement process for changes to the adopted zoning regulations should more closely mirror the public engagement process that produced the adopted zoning regulations just two years prior. We believe anything else is effectively exclusionary to the broader public who has so clearly expressed its interest in the zoning rules governing their city’s future development.

In summation, we take no position on the possible zoning decisions regarding the parcel at 3200 Pennsylvania Avenue, SE. Whatever decision is adopted for this parcel, we believe it imprudent to apply this decision to other parcels throughout the city. The Office of Planning and the Zoning Commission are

⁵ See <https://zoningdc.org/2016/01/15/zoning-commission-unanimously-approves-zrr/> for additional information about the public outreach and engagement with the ZR16 process.

considering modifying the MU-4 designation under ZR16 for this site because this particular case is hard, as they have acknowledged since ZC 17-11. Specifically in cases like this, we urge the Zoning Commission to heed to wisdom of Justice Holmes that “hard cases make bad law.”

Adopted by a vote of XX-YY-ZZ on July 11, 2018, with a quorum (6) present, during a regularly-scheduled and publicly-noticed meeting of ANC3D.

A handwritten signature in black ink on a light gray rectangular background. The signature reads "Stephen K. Gardner" in a cursive script.

Stephen Gardner
Chair, ANC3D