

The Committee of 100

on the Federal City



BY IZIS

December 10, 2024

Mr. Anthony J. Hood, Chairman
D.C. Zoning Commission
One Judiciary Square
441 4th Street, N.W., Second Floor
Washington, D.C. 20001

Re: Z.C. Case No. 23-27
Text and Map Amendments to Create a Navy Yard East Zone

Dear Chairman Hood and Members of the Commission:

The Committee of 100 on the Federal City (C100) offers these comments in opposition to the Office of Planning's proposed text and map amendments to zone the currently unzoned 15-acre parcel of Federal land in the Navy Yard for private development. The Committee of 100 on the Federal City has two significant objections to the proposed text and map amendments. One is the exception to the zoning regulations which would allow the developer to provide only the bar minimum amount of affordable housing. The second is the misapplication of the Height Act and zoning regulations resulting in inappropriately tall buildings next to the Navy Yard National Historic Landmark District. The Committee of 100 urges the Zoning Commission to remedy both with changes to the proposed text amendments for the Navy Yard East zone.

Affordable Housing

According to the tables in Subtitle C, Chapter 10, sections 1003.3 and 1003.4 of the zoning regulations, unzoned land being zoned for a variety of zone types (including residential) is to include 20% inclusionary units. Indeed, this is what the Office of Planning was proposing in the original setdown report and proposed text and map amendments that were filed in December 2023.¹ The new proposed text amendments only require the developer to provide 8% IZ. This is

¹ "In the NYE zone, the following gross floor area shall be set aside for IZ: (a) Twenty percent (20%) of the gross floor area dedicated to residential use, as defined in Subtitle B § 200.2, excluding penthouse habitable space; and (b) The equivalent of eight percent (8%) of the gross floor area of any residential penthouse habitable space." December 4, 2023, Setdown Report for a Proposed Zoning Text and Zoning Map Amendment to Create a New Navy Yard East (NYE) Zone, p. 25 (Exhibit 2).

deemed to be necessary to make the proposed development “financially feasible.” Apparently, the Navy and the developer decided to trade off desperately needed affordable housing for a new Navy Museum (on another site on the other side of the Navy Yard) and restoration of several building for retail use, the marine railway and a couple of piers. The Office of Planning agreed to this in a Memorandum of Understanding (MOU), but the Zoning Commission should not. Aside from the requirements of the regulations, this is also an equity issue. The developer is building waterfront residential housing but only a bar minimum (8 percent) will be inclusionary units—less than half the amount that should be required. It is becoming too much of a standard practice for the Zoning Commission to approve fewer than 20 percent affordable units in cases involving disposition of publicly owned land. Case ZC 23-02, involving rezoning public land on U Street, NW, is a recent example.

While there is wording in the MOU requiring the developer to apply for financial support from LIHTC and the Housing Production Trust Fund and, if it gets adequate support, to build an additional 7% of affordable housing (concentrated in a single building), this likely an illusory, hollow promise given funding constraints and is also problematic for at least 3 additional reasons: first, the total would be 15% rather than 20%; second, concentrating the whole site’s affordable housing in a single building is objectionable and not in accordance with the purpose of Inclusionary Zoning or city policies to create mixed-income housing; and third, the whole point of IZ is to create affordable housing without requiring additional government support.

The text amendments for the Navy Yard East zone should require 20% Inclusionary Zoning for the entire development.

Proposed Building Heights

The Navy Yard National Historic Landmark District is composed of mostly low-rise buildings of 4 stories or less. The tallest historic building adjacent to the proposed new 110 foot buildings is 35 feet, others next to it are 25 feet tall. The new buildings will tower over the National Historic Landmark District and, in fact, cut off any historical context for the partial three stories that will remain after building an additional 90 feet on top.

In addition to the proposed heights being inappropriate for buildings adjacent to a low rise National Historic Landmark District, the developer has applied for a subdivision making the area a single record lot and described it as “fronting” on 11th Street. However, the part of 11th Street adjacent to the development is a ramp leading up to the bridge/freeway that is on the other side of a wide right-of-way (ROW). The ROW is a grassy walking/biking path that connects to the waterfront and will also be the terminus for the 11th Street Bridge Park. Using the ROW/ramp/freeway to measure the width of the street is strained to say the least and calling a distant freeway ramp a “frontage” seems wrong on its face.

Zoning maps going back to 1936 (which show actual streets) show that the ROW to the waterfront was never an extension of 11th Street and that 11th Street past O Street was always an entrance to the bridge. To say that a building “fronts” on a distant freeway ramp that would be at least 80 feet from a new building seriously distorts the application of the Height Act. The logical

frontage which is directly adjacent to the north end of the development is O Street which is 3 lanes wide— just over 30 feet. See the attached 1936 Zoning Map and current photos.

The previous Zoning Administrator confirmed to the developer that they can create a single record lot and use the “frontage” on 11th Street as the measuring point to build up to 130 feet. While this determination seems suspect because it mimics verbatim the request from the developer’s lawyer², we also believe it is patently wrong. Consequently, the zoning should limit heights to 90 feet with setbacks. This height is beyond what would be allowed with the 30-foot O Street width or any of the internal streets as the measuring point. A 90-foot maximum with setbacks is more compatible to the National Historic Landmark District and more proportionate to adjacent streets.

Conclusion

The Navy and the developer have bullied the city by initially objecting to having the land zoned at all (since the land is Federal until the agreement is fully carried out and the land transfers to the developer); invocations of national security (requiring the land exchange); financial feasibility; and a “poison pill”/ultimatum in the Memorandum of Understanding that it can be terminated “If the Zoning Commission materially deviates from [the Master Plan] or the affordable housing set asides....” The Zoning Commission should recognize that the Navy and the developer are attempting to relegate it to a “rubber stamp.”

We urge the Zoning Commission to apply its judgement and to remedy these major deficiencies in the planned development for Navy Yard East by limiting building heights to 90 feet with setbacks and providing for 20% affordable housing. The zoning regulations were crafted in a deliberate, public manner. The Zoning Commission should not permit exceptions to these well-established rules grounded in sound policy whenever a developer objects.

Please contact any of us if you have questions. Thank you.

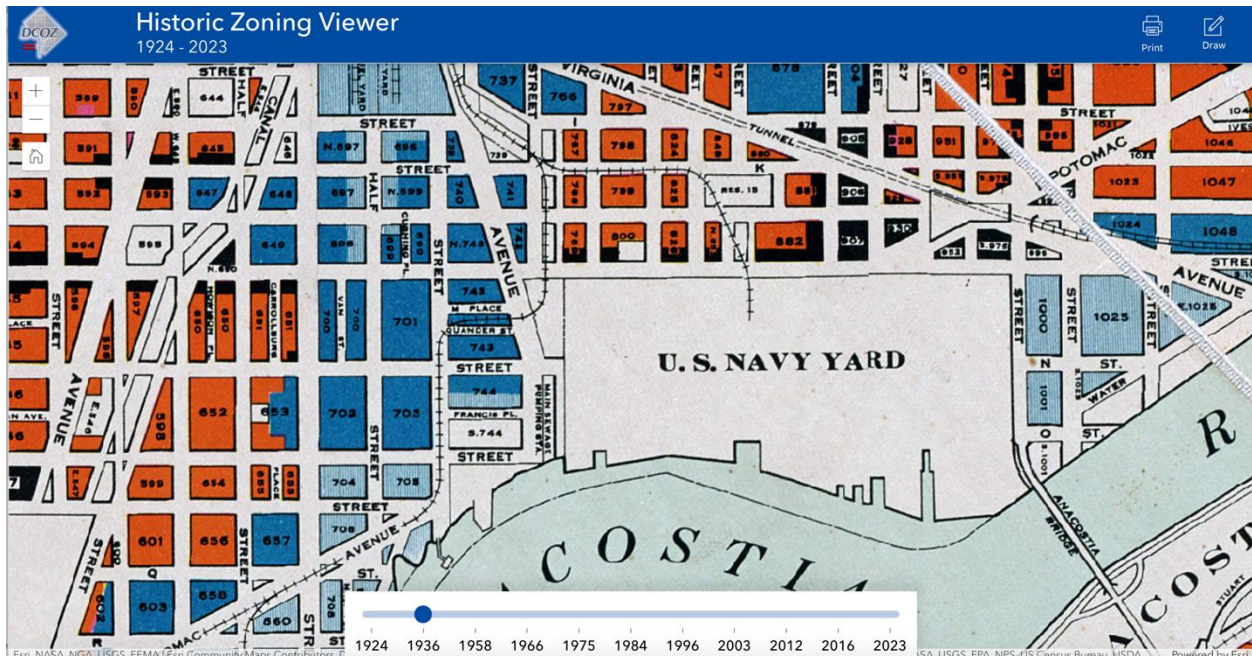
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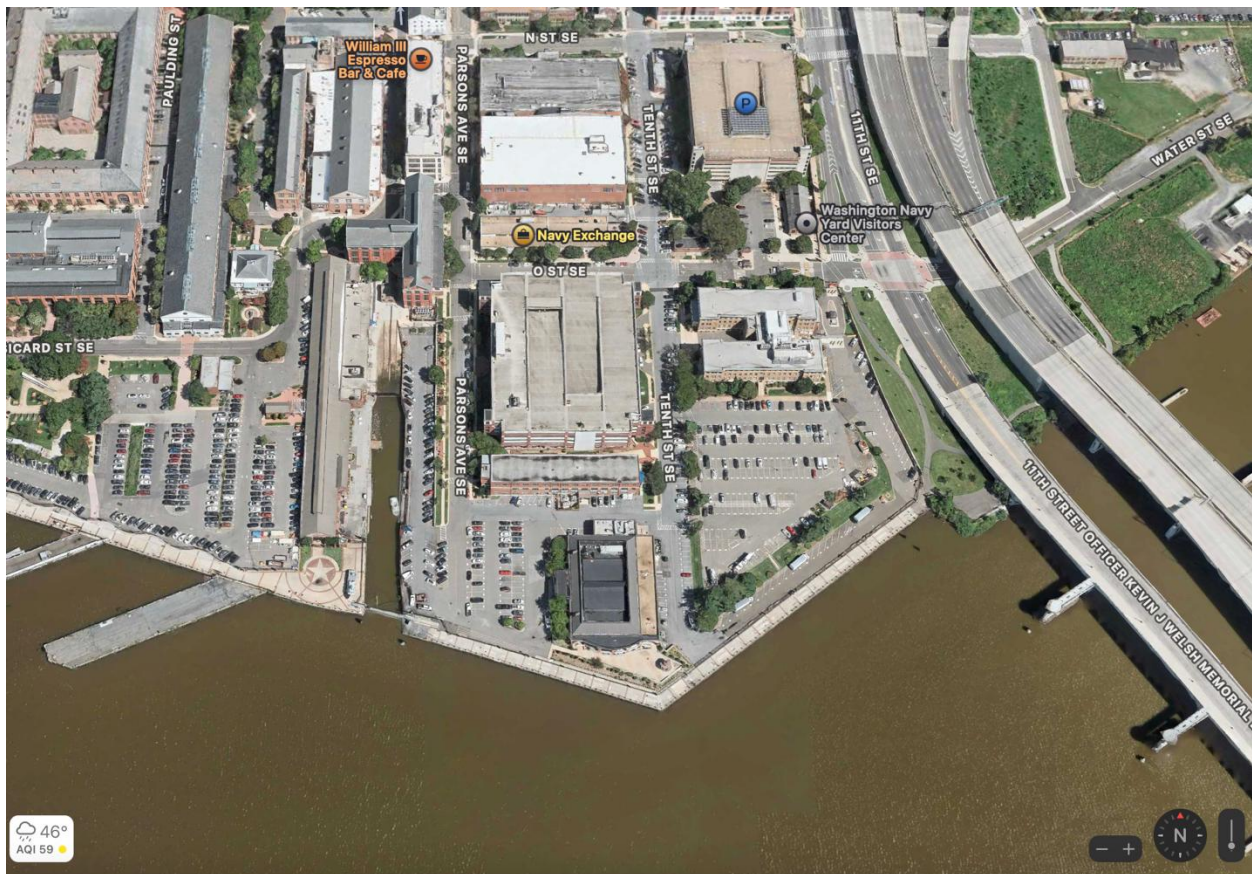
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² In a somewhat analogous situation, the DC Court of Appeals remanded to the Zoning Commission an order, noting that in a previous case (*Durant II*) the Court expressed “ ‘serious concern’ about an almost entirely verbatim Zoning Commission order approving a PUD application. ... We also explained that such verbatim adoption can trigger more careful judicial scrutiny and result in less deference to the ruling of the trial court or the administrative agency. As we did in *Durant II*, we find in this case serious ground for concern that the Commission’s order does not reflect careful and independent consideration by the Commission of the findings and conclusions that the intervenor submitted. *Cummins v. DC Zoning commission*, 229 A.3d 768 (DC Court of Appeals; 2020).



1936 Zoning Map



Current Aerial View





WNY SOUTHEAST CORNER MASTER PLAN



Proposed Building Heights