

Comment in Response to the Office of Planning Supplemental Report on ZC 25-09

Chairman Hood and Members of the DC Zoning Commission,

I am a long-term Washingtonian who has lived in Cleveland Park for the past 30 years. I have been involved in many land use and development issues over that time including in the neighborhood and citywide. I want to comment on the Office of Planning's Supplemental Report on Zoning Case 25-09.

Setback Issue

There is perhaps no more important issue for the integrity of zoning than whether OP incorrectly cut setbacks from the zoning proposal. There is no question that setbacks are a traditional zoning tool to mitigate development mass. Never has OP recommended to the Zoning Commission (ZC) that setbacks be handled exclusively by the Historic Preservation Review Board (HPRB) when an historic district is involved in a map amendment case.

It is clear to me from OP's supplemental response that it knows setbacks are a proper tool for zoning, and it wants to fashion its treatment of this issue on the record in a way that doesn't create precedent. In the supplemental, OP ignored entirely the Guidelines for Zoning Changes section (Section A) of the CADG which pertains to the proposed zoning envelope, including setbacks. Instead, OP referenced the Building Design Guidelines section (Section B). The latter section acknowledges that the HPRB can require setbacks beyond what may be required by zoning on a project-by-project basis. There is no mention in the CADG that zoning should not enlist its usual transition and mass mitigation tools to the more than 500% proposed increase in density over existing density along the Cleveland Park commercial corridor. In fact, the illustrations in the zoning section of CADG show setbacks on the front and rear facades of the proposed Cleveland Park zone.

The ZC should not abandon its authority to ensure development standards that acknowledge the need for transitions from the low and moderate density neighborhood to the hugely incompatible proposed commercial and residential density on the corridor. I can't conceive of another part of the city where OP and the ZC would proceed in this way.

Consistency Issue

Throughout all the testimony on 25-09, the issue has never been that OP's proposed zone of MU-8A is not consistent with the Comprehensive Plan. Yet, that is the argument OP focuses on in the supplemental. OP misses the point.

The issue is that there are other zones more appropriate for the commercial corridor in Cleveland Park that are also consistent with the Comprehensive Plan and indeed are mentioned as consistent in the Framework Element. OP has not explained why MU-8A is a more appropriate zone, it just argues it can recommend any zone it wants to recommend and still be consistent. Unfortunately, that is true, but the ZC should not take that arbitrary approach. It should consider the historic and extremely modest existing structures, the evolution of the commercial area as an adjunct to the low and moderate density neighborhoods, and the potential that extreme height differentials will permanently re-envision what is an intentional, planned synergy of residential and commercial uses and development. Updating that plan

to meet current needs does not mean that the ZC should destroy the past in favor of the new. The opportunity and challenge the ZC has centers on customizing zoning to acknowledge that what is on the ground tells a story that is valuable and that updates can co-exist when restraint is employed.

Historic Preservation Review Board Issue

In the supplemental report, OP tries to counter testimony that it misled the public by referencing transitions and setbacks in the CADG as part of the zoning proposal. Despite setbacks being included in the zoning section of CADG OP now states that setbacks are the province of HPRB. That is not true and never has been true.

Setbacks are a tool of the ZC and the HPRB can also use them as a tool to tweak a building addition to be more compatible with its main structure. The purpose of the tool is different for each body. The ZC uses setbacks to ensure that building mass does not overwhelm adjacent structures that are usually smaller and susceptible to the negative consequences of larger developments. Impacts such as reduced light and air, noise, artificial light pollution, and lack of privacy are common concerns from a zoning perspective that could lead to mitigation tools like setbacks.

The HPRB employs setbacks to modify a design to enhance its compatibility as an addition to an existing structure and to ensure the new construction is secondary to the existing structure. The task for HPRB centers on design and not impacts to adjoining uses. The missions of the ZC and the HPRB are completely different. Typically, these bodies are very disciplined to separate their mission, although it must be said that the OP proposal will make it almost impossible for the HPRB to fulfill its mission. How does the HPRB preserve the prominence of 15-foot contributing buildings with a 75-foot addition on top?

The ZC should examine the CADG and reject the OP pretense that it did not present setbacks in the zoning section of CADG and that it's not the role of the ZC to use setbacks in any map amendment involving an historic district because that authority resides only with the HPRB.

IZ+ Issue

OP presents an inconsistent narrative about IZ+ in its attempt to restrict the amount of affordable housing that could potentially be required in the new zones. OP references its reports in ZC 20-02 as its essential analysis of the walls it wants to constrain IZ+.

First, OP says that a density increase approval beyond 125% automatically increases construction costs because stick construction would be replaced with concrete and steel construction. A common building code rule of thumb is that construction mode changes above 85 feet. In Cleveland Park the zoning proposal recommended by OP is 75 feet and the density increase amounts to 150% (current FAR compared to proposed FAR). According to OP construction costs will be in the higher range, according to the building industry it should be in the lower range. An arbitrary statement that affordable housing cannot be accommodated when building costs may go up as density capacity goes up and profitability also goes up should not be the basis for formulating zoning policy and regulations.

Second, contrary to its statement in ZC 20-02 that IZ+ "should be able to operate independent of other affordable housing tools" OP states in its supplemental report that IZ+ was intended to be matched with other housing subsidies programs that incidentally would achieve deeper affordability. This is the first

time I have heard there is an intentional connection. If it's true it isn't working and the ZC should not presume that it has any effect on the production of affordable housing in Ward 3, which is what 25-09 is about.

The Housing Production Trust Fund has operated since 1989. Only once has a Ward 3 housing project received HPTF funds and that was in 2022 for senior housing at the Lisner Home. Ward 3 has never received Low Income Housing Tax Credits. The mayor has never used her authority to buy land or property in Ward 3 to produce affordable housing. The only way affordable housing is produced in Ward 3, including Cleveland Park, is through IZ and IZ+. It is astonishing that OP, which knows that Ward 3 is not receiving public funds for affordable housing or preferential tax treatments in exchange for affordable housing, and that HANTA targets a higher income group than IZ+ or public housing programs, is trying to convince the ZC that there are other resources when there are not.

It is the role of ZC to maximize the production of affordable housing when it awards unearned bonus densities in high opportunity areas like Ward 3. It cannot rationalize giving away density without a commensurate increase in the affordable housing requirement based on OP's baseless arguments.

Third, OP's last argument to the ZC that there is no reason to increase the IZ+ set aside requirement in this case is that any approved density greater than 125% probably can't be built. That is preposterous. At least half of the zones OP is proposing be rezoned in Ward 3, including Cleveland Park, will increase densities above 125%. Some will more than double what OP says is the buildable limit.

The ZC probably knows that on its face all three of OP's reasons not to adjust IZ+ to match the density increase proposals are not persuasive. The ZC has very little direction from OP that it can rely on regarding IZ+. It should use common sense and build on its IZ+ rule to decide that excessive amounts of market rate housing are not needed in Ward 3, but more affordable housing is needed, and the new zones should reflect that reality.

Conclusion

The reaction of the Zoning Commission in the public meeting after OP submitted its supplemental report was very disappointing. The ZC commissioners expressed satisfaction with the report, the quality of the answers, and the comprehensiveness of the report. I expected some push back, some frustration that questions had not been answered, and that some answers were off point. OP did nothing to change the weight of the evidence that the ZC should

- Include setbacks and other transition tools in the new zones and allow the HPRB to further employ setbacks if a particular project design warrants them;
- Designate Cleveland Park commercial corridor MU-5 as consistent with the Comprehensive Plan Framework Element and other plan policies that guide the Zoning Commission to consider multiple other existing factors in determining the appropriate zone; and
- Adjust IZ+ to produce more affordable housing at deeper affordability levels in exchange for massive amounts of unearned, matter of right density.

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