

AMENDMENT TO MY FORMAL TESTIMONY
OF JANUARY 21, 1988,

ZONING CASE 86-26

I want to comment on the proposals of the Office of Planning made at the hearings on January 14, 1988, in which a zoning change from R-5-C to R-5-B was suggested.

O.P. bases its recommendation, submitted in a report dated January 11, 1988, on the undeniable fact that a re-zoning to R-3, as requested by us, would make a majority of the existing town-houses "non-conforming". R-5-B would be the appropriate zoning to accomodate them. O.P., further, indicates that restrictions placed on the land in private contracts (the covenant covering the area) are distinct from zoning and should not influence zoning.

We think O.P. is taking a rather mechanical approach in its eagerness to cover the existing situations, rather than assist the citizens in their effort to prevent the deterioration of the neighborhood which could happen if an insignificant change from R-5-C to R-5-B were the only effect of our efforts.

We are attempting to firm-up the facts created by two bitterly fought and expensive law suits which ruled in the wise words of Judge Gesell that the covenant has priority over zoning. How can two court actions, one of them on the appeals level, be ignored so cavalierly? Does O.P. wish us to go to court every time a town-house owner sub-divides his house into apartments which he may do under R-5-B?

The "non-conforming" status of the existing town-houses is a fact that can be "grandfathered-in", allowing for some flexibility in the application of the variance requirements for external alterations or such emergencies as the rebuilding of a dwelling destroyed by fire. It seems to us that such flexibility could be written into the re-zoning order. The "non-conformity", at worst, appears to be a mere nuisance if compared to the threat of encroachment of creeping density in the area and the constant need for new litigation.

We also wish to point out that the "moderate density" prescribed in the Comprehensive Plan for the covenant area cannot mean R-5-B. R-5-B is not "moderate density" by whatever definition. The narrow town-houses may exceed the criterion of "moderate density" if applied to an FAR formula.

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We, however, are concerned about the use of the dwellings and the density engendered by multi-family use of what must be single-family units according to the covenant and the court's decisions.

We request that the Zoning Commission support our request to change the zoning of the area on the west side of Connecticut Avenue between Harrison Street and Military Road to R-3.

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Amendment to testimony on behalf of the Chevy Chase Citizens Association and the Chevy Chase Defense Committee on January 21, 1988.