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April 19, 2007

Zoning Commission of the District of Columbia
One Judiciary Square, Suite 210-South
441 Fourth Street, NW
Washington, DC 20001

Re: **ZC Case 06-47** "Minimum Lot Area and Lot Occupancy Requirements for Apartment Houses in the R-4 Zone District", and
ZC Case 07-03 "Minimum Lot Dimensions in the R (Residential Districts)"

Honorable Members of the Commission:

Thank you for holding a hearing April 5 to consider two text amendments and allowing me to provide my comments and recommendations, and to present materials to the record.

The two cases are related in that they focus on development of apartment houses in the R-4 zone district.

As you will recall, I stated that I was (and I still am) opposed to the advertised provisions being adopted **as written** because the language proposed, while addressing some of the outstanding issues, does so in a manner that is unnecessarily restrictive.

Accordingly, I offered two recommendations, each of which falls (in my mind) within the scope of the Notice provided for the two cases and would, if adopted along the lines proposed, have a far better result.

- First, moderate the absolute language advertised by adding a special exception process to operate in the manner of existing § 223 for circumstances where the property could provide a ratio apartment units to lot area in the range of 600-899 square feet per unit, with the long-standing matter of right provisions taking over for ratios at or exceeding 900 square feet per unit. Such a special exception would avoid the burden of a variance process before the Board of Zoning Adjustment that would, in many (but not all) areas now zoned R-4, be next to impossible to pursue because the circumstances would be commonplace, not unique.

- Second, accord the universe of buildings that were apartment houses when the "present" regulations became effective, May 12, 1958, status that allows them to exist as a conforming use, even if the use is one that is not to be expanded except in a manner consistent with *current* applicable regulations (including the changes proposed in these two cases). For this, I suggested adapting the "savings" clause that applies to hotels in the R-5 zone districts.

To me, the first change (provide for a special exception process) is entirely consistent with the background factors in these cases and the provisions of the prior and just-adopted Comprehensive Plan, particularly its provisions relating to development of housing and having units that are within reach of persons of moderate means, even if technically "market rate."

The second change (establish a savings clause) is also warranted on that basis. However, making such a change that would apply to all areas now zoned R-4 is a suggestion that requires deliberation if apartment buildings that exist or would be "grandfathered" are deemed to detract from the quality of the areas in which they are situated. This may require rezoning to a more restrictive zone for this and other reasons as part of the efforts to ensure that zoning is "not inconsistent" with the Comprehensive Plan. Here, note the areas where R-4 is zoned but the area so zoned is not one with either moderate-or medium-density

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residential uses depicted on the Generalized Land Use Map (December 2006). The just-adopted Comprehensive Plan also sets out a number of specific Actions, including Action LU-2.1-.A:

> Rowhouse Zoning District – Develop a new row house zoning district or divide the existing R-4 district into R-4-A and R-4-B to better recognize the unique nature of row house neighborhoods and conserve their architectural form (including height, mass, setbacks, and design). 309.17

Where areas now zoned R-4 are generally developed with two-story row houses, an occasional apartment house may seem out of character. However, there are many areas where the buildings are three or even four stories, with many buildings that include three or more apartment units that are, thus, apartment buildings. Whether these units are in buildings that, in an earlier time, were homes of more affluent residents and their servants, or in buildings that were developed as apartment houses as allowed under the pre-1958 zoning rules and maps, they collectively provide a sizeable number of housing units in the District of Columbia, an asset that should be supported and whose life should be extended, not thwarted and restricted.

Finally, although not part of my testimony that evening, I recommend that the Commission examine the existing regulations in the Residence zone districts as it relates to "conversions" more generally, not just conversions to apartment buildings in the R-4 zone district. Such a change could be a useful regulatory companion to the effort now under consideration. Its scope, however, while within the realm of issues in this case ("conversion"), may be deemed as falling outside the limits of the Notice in the two cases now before you.

Section 405.8 currently provides:

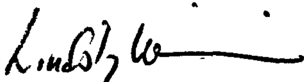
405.8 In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).

Perhaps this section should be amended and a companion section added (along with a renumbering of existing subsection 405.9) along the following lines, this to clarify existing authority (so the added text is not really new law, and thus is not necessarily out of reach in terms of Notice requirements of the DC Administrative Procedures Act) and specifically addresses the regulatory ambiguity (my term) perceived in the decision, at least insofar as reflected in the transcript of the meeting where the decision was discussed, of the Board of Zoning Adjustment in appeal case BZA 17519 (November 14, 2006) in which Mr. Turnbull was participating from the Zoning Commission (Order not yet issued):

405.8 In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.); **provided that this subsection does not apply if side yard requirements are relieved by other provisions of this Title;**

405.9 A building being converted to a detached dwelling, semi-detached dwelling, row dwelling, flat, or apartment house in a zone districts where these uses are authorized must satisfy the side yard requirement for the use to which the building is being converted.

Thank you for considering this letter and my previously delivered testimony and exhibits in this matter.



Lindsley Williams

cc: Apartment and Office Building Association of Washington, D.C.