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To: DCOZ - ZC Submissions (DCOZ)
Subject: ZC 19-21 Testimony of Committee of 100 on the Federal City -- resubmission

Before the Zoning Commission of the District of Columbia
Case No. 19-21 – Text amendment to Roof Top Elements

Statement of the Committee of 100 on the Federal City
February 13, 2020

The Committee of 100 on the Federal City (C100) is a longtime and consistent advocate for maintaining neighborhood character. We therefore are dismayed that rulemaking 19-21's proposed amendments to Subtitle E of the Zoning Regulations substantially weaken the protections afforded to the RF zones through ZC 14-11, a hard-fought set of reforms aimed at curbing evisceration of Washington's rowhouse neighborhoods. *Final Order, ZC 14-11, Text Amendment to Chapters 1, 3 4, 26, 31, and 32, Maximum Height and Minimum Lot Dimension Requirements and Use Permissions in the R-4 District) (June 8, 2015).*

Rooftop Elements. Our gravest concern is the weakening of protections for rooftop architectural elements in the RF zones. The District's rowhouse communities, with their characteristic turrets and mansard roots, are the city's signature architectural form. While the Mall and its monuments embody Washington as the nation's capital, the rowhouse is the classic visual hallmark of the local city.

Amendments to the zoning code promulgated in ZC 14-11, while far from perfect, offered a level of protection for the RF (formerly R-4) zones through height limits, prohibitions on altering many (though not all) rooftop elements

and limits on rear extensions protections. Importantly, ZC 14-11 protected rowhouses in historic districts and non-historic areas in the zone. Some commenters urged time urged the Commission to extend 14-11's protections to rowhouse neighborhoods in other zones, which are now being abused.

Instead of strengthening and expanding ZC 14-11, the Commission now proposes to water down the work it began and to allow rooftop elements to be removed or altered through a very flexible special exception showing, i.e., the new construction "shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property," and that the abutting or adjacent building's light, air and privacy are not unduly compromised." Proposed 11 DCMR 5206.1(a)(1)-(2). Another element of the standard, 5206.1(a)(3) also states that "(3) the proposed construction, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street or alley ...."

E-206's flat prohibition on removal of architectural elements is repealed. This is a travesty: the rationale behind the E-206 prohibition on removing rooftop elements was the recognition that removing a defining element of a structure is ipso facto a visual intrusion on the character and If the Commission allows removal through the very low barrier of the special exception process, it will have gutted a key element of 14-11. Again, we urge it to move in the opposite direction. Statements of the D.C. Preservation League and the Kalorama Citizens Association give examples of failures under the existing rule, demonstrating the need for its enhancement, notably *Application No. 19425 of William Gowin, (Mar. 22, 2017).* That case allowed a turret to be removed where no height increase was involved. The case revealed a misapplication of the regulations, inasmuch as special exception relief was not available in this instance. Worse, the decision revealed an insensitivity to the intent of 14-11, which was to protect the rowhouse character.

Anomalous 19-21 provisions. There also are unexplained anomalies in 19-21 that render it somewhat arbitrary overall. One of these is the deletion of

E-206.1(b), which protects chimneys and other external vents from encroachment from a penthouse or rooftop structure. Protection of these elements should be maintained in Subtitles D and E. If compelling reasons exist for not protecting them, they should be set forth on the record and a reasonable opportunity for review and comment should be provided.

The other anomaly proposes that RF zone structures subject to Historic Preservation Review Board (HPRB) jurisdiction no longer be covered by E-206.1's prohibition on removing rooftop structures. No explanation is offered. The interests and regulatory regimes of the ZC and HPRB are not interchangeable; they pursue different purposes and apply different standards. We see no basis for what appears to us to be an arbitary abdication of jurisdiction.

Notice Issue. The record in this mater reveals a consensus view that the greatly expanded scope of this rulemaking that occurred between the setdown report and the hearing report amounts to a failure of proper notice. We agree. C100 has consistently advocated for meaningful, substantive notice and opportunity for comment. See, e.g., C100 Comments in ZC 15-18, Application for a PUD at 2715 Pennsylvania Ave., NW, Attachment to Ex. 42 at pp. 2-5 (protesting the addition of last minute changes to the 2016 Code without proper notice). The same principle and arguments apply here.

Requested action. We ask the Commission to move forward with the properly noticed provisions of 19-21 that address protections for solar installations in Subtitles D and E, discussed hereafter, and that all other provisions be heard at another time, after the groundwork has been laid for a matter of this magnitude.

Solar installations

C100 embraces, with caveats, provisions that expand protections for rooftop solar installations to the R zones and to new construction in RF zone construction (as well as already-protected additions).

Our concerns are:

1. Defining "significant interference"

Existing rule:

11 DCMR E-206(c)(1), governing additions to adjoining buildings in RF zones, states that "significantly interfere shall mean an impact caused solely by the addition that decreases the energy produced by the adjacent solar energy system by more than five percent (5%) on an annual basis, as demonstrated by a comparative solar shading study acceptable to the Zoning Administrator ...."

Proposed rule:

ZC 19-21 proposes to redefine "significantly interfere" to mean "shading of the solar energy system caused solely by the proposed construction that is more than five percent (5%) above the amount of shading for the year preceding the time of application, as determined by a weighted average calculation or other method acceptable to the Zoning Administrator ...." Proposed new D-208.1(d)(2) and amended E-206.2©

There is, however, no one-to-one correlation between energy production and degree of shading; it is exponential. For instance, one consumer solar guide cautions that "just 10 per cent shading of a solar PV panel can result in a 50 per cent decline in efficiency ...." https://www.solarguide.co.uk/solar-pv-and-shading# Another advises that "[j]ust a little shade can affect a solar panel 's power output dramatically.... "If even one full cell in a series string is shaded ..., it will most likely cause the module to reduce its power level to half of its full available value." https://www.wholesalesolar.com/blog/effect-shade-solar-panels/

An additional 5 percent of shading sounds modest, but likely will result in a decrease in energy efficiency greater than 5 percent. Rather that setting up a chain of unintended consequences, C100 suggests that the Commission retain the existing definition for RF zones and institute it for the R zones. If the Commission wants to pursue amount of shading as a measure of impact,

C100 suggests further consultation with the D.C. Department of Energy and the Environment. Another resource is the DCRA Green Building unit, as the DCPL suggests.

2. Excessive authority vested in the ZA to develop shadow study standards
C100 also objects to provisions vesting the Zoning Administrator with discretion to decide what kind of shadow study an applicant would have to submit to demonstrate no significant interference to a solar installation. The proposed rule requires:

A comparative solar shading study that shows at least shadow depictions for three (3) times a day (9:00 a.m., 12:00 p.m., and 3:00 p.m.) on the solstices and equinoxes for both the year preceding the time of application and the same year showing the impact of the proposed construction, or that meets an alternative minimum standard established by the Zoning Administrator; . . . .
Proposed new 11 DCMR D-208.1(d)(2) and 11 DCMR E-206.2(d)(2) (emphasis added). This requirement replaces the existing requirement for a maximum 5 percent reduction in energy efficiency.

Without departing from its view that efficiency, rather than shading, is the appropriate measure of interference subject to a persuasive showing otherwise, C100 asserts that if a shadow study were called for, the manner of conducting it should be defined in the rule and not left to the discretion of the Zoning Administrator. As a general matter, zoning regulations operate to provide certainty, a point we have made many times before. The rules cannot provide such certainty if standards can be developed and applied on an internal administrative basis.

The office of the ZA creates flexible internal standards that are not publicly announced or widely disseminated in a systematic fashion. There is no assurance that any "alternative minimum standard" will be a published standard uniformly applied. See, e.g., BZA Appeal 19961 (the ZA developed a standard, "zoning raze," which was known only to insiders and applied inconsistently). In this case, the BZA asked DCRA to explain a "zoning raze." DCRA's response, through counsel, adequately demonstrates the need for clearly defined, published standards. We reproduce it substantially in full here.
The zoning regulations do not have a definition for raze. Since a definition does not exist ... the Office of the Zoning Administrator created a standard of what constitutes a raze/zoning raze versus a demolition (or partial building removal). The Office of the Zoning Administrator generally finds that a raze has occurred if there was a change in lot occupancy and whether a minimum of 40% of the pre-existing wall surface area was retained.... In the instant case, the two pre-existing party walls of the row home exist, which constitutes 50% of the pre-existing wall surface area. Under a narrowly tailored view, the construction would be a demolition and not a raze; however, ... no building exists at the site. The current state of the site was not the result of a raze or demolition, but an act of God. Given that the current condition of the property is neither the result of a raze nor a demolition, the proposed activity is considered new construction.

BZA Appeal 19961, DCRA Amended Response to BZA's Questions, Ex. 71 (Sept. 17, 2019)

Thank you for the opportunity to comment.

Committee of 100 on the Federal City
s/ *Laura M. Richards*
Chair, Zoning Subcommittee
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