

## Thoughts on the Zoning Rewrite

The proposed revisions to the Zoning Code are a sea of minutiae. And, as ANC Commissioners we are all too well versed in minutiae. But we would like to start our testimony tonight by considering core principles and the big picture.

Why do we have a zoning code and what principles should guide its revision?

We submit that zoning codes serve two purposes: (1) they are part of the fabric of rules that guide the development in a jurisdiction and (2) they create protections to ensure that one individual's actions do not adversely affect others or the jurisdiction as a whole.

Indeed, the D.C. Code provisions authorizing the zoning regulations and their amendment, quoted below,<sup>1</sup> illustrate these dual goals – shaping development over the medium term and protecting individuals and the community from overreach.

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<sup>1</sup> D.C. Code § 6-641.02. Zoning regulations -- Purpose

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

Where are we now?

The Metropolitan Washington Council of Governments predicts that population in our region will grow by 1.7 million to close to 7 million by 2040, with population in the District of Columbia nearing 800,000.<sup>2</sup> Others predict our population (and the population in the region) will grow even faster.

Our zoning regulations have not been subject to a comprehensive review since they were enacted 56 years ago in 1958. In the 1960 census, the District had 763,956 residents and the region had a population of approximately 1.8 million<sup>3</sup>. The District's population dropped as low as 572,059 in the 2000 census but appears on track to return to 1950s levels – on the order of 800,000. Meanwhile, there will be at least 5 million more people living in the region as a whole.

At the same time, since 1958 our sensitivity to environmental impacts has needed to and has changed. One of the signature qualities of our City has been its tree canopy. Tree coverage was at its peak in the 1950's at 50%. It is now down to 36%, representing a loss of one-third of our tree-canopied area. The Mayor has pledged in his Sustainable DC Plan to move us back to at least 40% by 2032.<sup>4</sup> The trend, however, is in the opposite direction and without affirmative action to protect it further erosion of the tree canopy is likely if not inevitable.

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<sup>2</sup> See [http://www.mwcog.org/news/press/detail.asp?NEWS\\_ID=617](http://www.mwcog.org/news/press/detail.asp?NEWS_ID=617)

<sup>3</sup> <http://www.demographia.com/dm-uad.htm>

<sup>4</sup>

[http://ddoe.dc.gov/sites/default/files/dc/sites/ddoe/page\\_content/attachments/Draft\\_Urban\\_Tree\\_Canopy\\_Plan\\_Final.pdf](http://ddoe.dc.gov/sites/default/files/dc/sites/ddoe/page_content/attachments/Draft_Urban_Tree_Canopy_Plan_Final.pdf)

The Challenge – How do we use the zoning rewrite as part of the drive to meet the coming growth in ways that serve our goals and do not create unfair burdens on some, and do not have negative impacts on the environment, but rather protect the environment and strengthen it?

As the Zoning Commissioners know well, debates about development and competing visions for our City can be intense. But, there may be more common ground on broad principles than assumed. At around the same time as the Zoning regulations were enacted, in 1956 a plan for an elaborate set of freeways was proposed for the D.C. region.<sup>5</sup> Many of the people who have testified against some of the changes to the zoning rules admirably participated in the battle to stop the freeways that could have broken up our communities and made our City a drive thru.

Their goal then, and our goal now, was to preserve and strengthen walkable, urban neighborhoods. We must, however, pursue that goal with a clear-eyed recognition that our City and even more so our region will experience substantial growth in the coming period. And, quality of life for all will be maximized to the extent that we maximize the percentage of people who work in the City who live in the City and diversify our modes of transportation, while maintaining and strengthening the natural qualities that make DC remarkable and beautiful.

### Parking Minimums

If we add cars and people at the same pace, we will have a problem. Fortunately the most recent evidence suggests that the District's recent population boom in fact has added far fewer cars than people – according to the U.S. PIRG between 2000 and 2012 the number of occupied housing units in the District increased by 18,234 units which was an increase of 7.4% while the

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<sup>5</sup> See [http://www.slate.com/articles/life/transport/features/2010/unbuilt\\_highways/washington\\_dc\\_the\\_1956\\_freeway\\_plan.html](http://www.slate.com/articles/life/transport/features/2010/unbuilt_highways/washington_dc_the_1956_freeway_plan.html)

number of vehicles increased by only 8,152 an increase of just 3.7%, an average of 0.45 cars per all new units over a 12 year period.<sup>6</sup>

There is no way for the zoning rules to be neutral on the question of how much parking presumptively to require. Maintenance of the status quo is a position (a position crafted 56 years ago). Any new rules will articulate a position.

The Office of Planning has grappled with this issue through the process. The current proposal calls for the maintenance of existing minimums in many areas (Section 1901), reduced minimums (perhaps most controversially by 50%) in specified areas (Section 1902.1) and elimination of minimums in others (Section 1902.3). The proposal allows for special exceptions to a parking minimum requirement through an application to the Board of Zoning Adjustment (“BZA”) (Section 1903). It also requires mitigation when a project substantially exceeds (provides more than 150% of) a parking minimum (Section 1907).

We applaud the mitigation requirements when a site exceeds a minimum by more than 50%. The approach on this score does not prohibit provision of additional parking but appropriately balances the goal of accommodating an owner, while also requiring the owner to support broader goals when their use of their property could create burdens for others. We applaud particularly the elements of the mitigation measures that call for tree plantings (1907.3(a)(2)) and increases to green area ratios (1907.3(a)(2)) which can be part of the tree canopy and critical stormwater management challenges we face going forward as a city.. Indeed, we believe the approach used in this setting is instructive for other parts of the parking debate (and zoning debate generally).

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<sup>6</sup> [http://uspirg.org/sites/pirg/files/reports/Moving\\_Off\\_the\\_Road\\_USPIRG.pdf](http://uspirg.org/sites/pirg/files/reports/Moving_Off_the_Road_USPIRG.pdf)

In terms of the elimination of minimums Downtown, in the Southeast Federal Center, at Capital Gateway and in the M-11 zone (Section 1902.3(b) through (e)) as an ANC covering an area some distance from those locations, we defer to others on that question but underscore our interest in encouraging the use of widely available public transit, particularly to reach Downtown, as many commuters pass through our ANC and more can be expected to in the future, and the strengthening of public transit options.

We applaud the move to eliminate on-site parking requirements for certain homes (Section 1902.3(a)). We often confront curb cut applications for new construction that appear to be driven by zoning requirements rather than the need for onsite parking. Creating those onsite spaces leads to the proliferation of impervious surfaces and loss of on street parking (since offsite parking requires curb cuts that take away at minimum one parking space). Wouldn't it be more efficient for that residence to simply park on the street where the impermeable surface already exists (rather than adding more impermeable surfaces)? Everyone will benefit if this requirement is eliminated.

The biggest controversy comes from the areas in which parking minimums are proposed to be reduced by 50% in proximity to a Metrorail station, a streetcar line (in operation or under contract for construction) or a WMATA identified "Priority Corridor" (Section 1902. 1). We support this proposal with the following caveats and suggestions.

- Proposed Section 1900.2 requires preparation of a parking plan for all projects and Proposed Section 1900.3 authorizes the Zoning Administrator to request that DDOT review and make recommendations relating to parking plans prior to approving a building permit. These sections could be revised to require a description of the steps taken to avoid adverse effects flowing from the plan and notice of the plan to the relevant ANC.

Such plans could include the kinds of mitigation measures relied upon when excess parking is proposed (Section 19007.3) or other measures including provision for offsite parking, support for transit, limitation to RPP rights, designed to mitigate any neighborhood impact.

- Proposed Section 1902.1 defines the places in which the 50% reduction applies. One of the locations – within ¼ mile of a streetcar line that is operating or under a construction contract -- relies on a snapshot approach – designating a place with the knowledge that in the not too distant future there could be other places that would qualify based on characteristics, but do not based on timing. Another location – within ¼ mile of a WMATA identified Priority Corridor – allows for flexibility based on the action of others in the future. An additional provision should be added allowing for changes and additions to the Proposed Section 1902.1 list based either on Amendments to the Code or direction in the Comprehensive Plan.

Why these changes?

The requirement of the parking plan and providing access to it to the relevant ANC will allow monitoring and input as a check on projects externalizing parking to the detriment of nearby neighbors and create an incentive to take positive steps to encourage public transit and other modes of transport. While the new, lower minimum would recalibrate default requirements for parking, these enhancements to the parking plan requirement would allow for more flexibility to address particular needs.

One source of reluctance to embrace lowered parking minimums is the suggestion that first DDOT must fix parking generally, including reform of RPP. Indeed, while access to on-street parking in many areas is not a challenge, near some of our commercial districts, it can be. In an ideal world, we would revisit the rules around RPP and pricing for parking generally, as part of addressing these issues. And, indeed, our ANC fully supports such a review.

However, we cannot solve every problem at once and the issue before the Commission is how to deal with parking minimums. Leaving minimums in place as is, sets a course for a generation. Lowering minimums with no safety valve could leave us at the mercy of flawed rules governing parking generally. Lowering minimums with a safety valve protects us if no changes are made on parking generally and uses this round of changes to incentivize a fuller reconsideration of parking generally and RPP rules.

In the meantime, keeping the door open to revisions to the qualifying areas through the Comprehensive Plan allows for a political check on the process to either expand or contract the application of the minimums. The Zoning rules are expressly intended to be consistent with the Comprehensive Plan. The rules should not foreclose flexibility in the Comprehensive Plan and would be strengthened through reinforcement through the Comprehensive Plan process.

#### Accessory Apartments

An important means of increasing housing opportunities and maintaining affordability in the District is by enabling more accessory apartments. ANC 3E believes that separate in-house dwelling units commonly known as in-law or Au Pair suites already exist throughout Ward 3 and the District and that the zoning re-write sensibly makes such in house units matter of right. We

also believe the additional revenue from renting such units will give aging homeowners more opportunities to age in place by renting excess space and will also enable more middle class families to afford living in the District while also increasing rental stock in the city which should reduce the upward pressure on rental prices. We also support allowing homeowners to add accessory apartments to outbuildings.

### Corner Stores

Although the corner store proposal does not currently apply to any areas within the boundaries of ANC 3E we believe the proposal is a sound one. Currently retail in the District is largely confined to commercial corridors which can often be separated by significant distances. Limiting retail activity to these corridors precludes convenient and pedestrian accessible neighborhood serving retail for large swaths of the city, including Upper Northwest. Having said that we have a great example of the type of neighborhood serving retail we believe the corner store proposal ought to generate in the popular Broad Branch Market which serves a section of Chevy Chase that otherwise is lacking retail within walking distance. The Sheridan School Farmer's market has also thrived despite being located in a residential part of Ward 3 far from a major commercial corridor. We acknowledge that creating the opportunity for a corner store does not guarantee that it will be a successful one like Broad Branch Market however the opportunity for such businesses should not be precluded either.

The one revision we would propose to the Corner Store proposal is that rather than limit alcohol sales based on floor area (15%), that such sales should be limited as a percentage of gross revenue. See Proposed Section 1605.8. A critical fear of Corner Stores in some neighborhoods is that they will become essentially liquor stores. The floor area limitation does



not protect against them being used essentially in that function whereas a reasonable requirement based on gross revenue would.

#### Green Area Ratios/Pervious Surfaces/Tree Protection

We applaud the provisions in the Proposed Code focused on Pervious Surfaces (Chapter 16), Green Area Ratios (Chapter 17) and Tree Protection (Chapter 18). The proposed rewrite aspires to bring our Zoning Code into the 21<sup>st</sup> Century and express 21<sup>st</sup> Century values. A critical such value is the protection of our environment.

Already the proposed code calls for using mitigation measures when variances, exceptions and PUDs must be approved to bolster the goals of Chapters 16, 17 and 18. If the Zoning Commission asks the Department of Planning to propose further revisions to the Code, we would urge that the Office of Planning should look for additional ways to use mitigation generally to advance these important goals.