



***A Bad Idea: Exempting the Zoning Commission from Conforming to
The Comprehensive Plan Future Land Use Map
(05-08-17)***

Introduction

A coalition of DC-area developers and non-profit organizations, organized by Greater Greater Washington, recently issued a “Priorities Statement” proposing revisions to the Comprehensive Plan aimed at producing affordable housing. One proposed change calls for empowering the Zoning Commission (ZC) to ignore the Comprehensive Plan:

“**Clarify zoning authority.** Through the Comprehensive Plan, the District should affirm that the Zoning Commission has the purview to allow increased density for Planned Unit Developments that supersedes the levels in the Comprehensive Plan’s maps in exchange for community benefits.”

The term “clarify” is misleading: You cannot affirm something that is not true. What is true is that the Zoning Commission does not have the “purview” to supersede the levels in the maps in exchange for community benefits. In fact, if adopted, this provision would be a radical departure from current law with significant negative consequences, giving the Zoning Commission power it does not currently have. This amendment would enable the unelected Zoning Commission (ZC) to establish its own height and density allowances for individual development projects and ignore the Plan’s limits adopted by the elected Council. The ZC currently does not have that authority, and residents are able to challenge their decisions through legal recourse when the ZC replaces Comprehensive Plan directives with its own views.

The amendment as proposed would not be legal under the Home Rule Act.

The Home Rule Act requires that zoning shall not be inconsistent with the Comprehensive Plan, which the DC Council adopts and periodically updates. The intent is to make sure that there is reliable predictability for those investing in an area, and that the unelected and unrepresentative five-person ZC’s land use and development decisions comport with the democratically-approved city planning policies as to how the District should use and develop land. Because this new language would authorize the ZC to make decisions that are inconsistent with the Plan, it could not legally be a part of the Plan.

The ZC already has considerable discretion in interpreting the Comprehensive Plan. There are good reasons not to give it even greater authority to override the Plan:

- In Planned Unit Developments (PUDs), the ZC may already grant developers height and density bonuses and other concessions in return for perceived community benefits, constrained by rules unique to PUDs, Inclusionary Zoning, etc. The proposed change would allow the ZC to permit even greater heights and densities than are currently allowed with PUDs, undermining the character, property values, and integrity of the places where they would occur.

In two recent court cases brought by citizens seeking to protect their neighborhoods from overbearing development, the Court of Appeals affirmed the importance of conforming to the Comprehensive Plan's height and density limits.

- The Comprehensive Plan and Land Use Maps provide height and density limits that help to define the character and appropriate scale of various areas of the city. Giving the ZC discretion to permit even greater heights and densities than are currently available with PUDs would undermine citizens' ability to invoke judicial protection against arbitrary ZC decisions that do not respect the Plan. The likely effect would be more incongruous, random "pop-ups" and "pop-backs" in zones where PUDs are permitted.
- Recently, the ZC greatly reduced the minimum lot area required for a PUD to 5,000sf (from 10,000sf) in many zones, ensuring a greater number of PUDs on smaller parcels that will penetrate deeper into neighborhoods. This will further increase the burden on residents who have neither the funds nor the expertise to challenge such developments to prove that the proposed height or scale of a PUD is not appropriate. The coalition's "clarification" would allow PUD developers to further increase their profit margins through greater heights and densities, disregard the balance of interests carefully struck in the Comprehensive Plan, produce relatively few additional affordable units, and seriously undercut residents' rights to challenge inappropriate development in their own neighborhoods.

CONCLUSION

The Committee of 100 strongly supports a wide range of actions to yield housing for middle and low income residents. (See *C100 Principles of Affordable Housing in DC* on 05-08-17 at www.committeeof100.net)

But we reject the "clarification" proposal as a spurious attempt to use affordable housing as a vehicle to avoid future challenges to Zoning Commission decisions and to destroy the ability of citizens to challenge developments that are inconsistent with the Comprehensive Plan and Land Use Maps.

WHAT YOU CAN DO TO PREVENT THIS RADICAL CHANGE:

- If your organization signed onto the Housing Priorities Statement, work with other coalition members to change this language so that it retains the requirement of the Home Rule Act that requires zoning to follow the Comprehensive Plan.
- If your organization or ANC is considering signing onto the Housing Priorities Statement, ask that the above language be changed before signing on.

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