



**D.C. Zoning Commission Case No. 14-13,
Text Amendments on Penthouse Height and Use
Comment for the Record
The Committee of 100 on the Federal City
Nancy J. MacWood, Chair**

November 24, 2014

The Committee of 100 on the Federal City appreciates that the Zoning Commission has left the record open on proposed text amendments, ZC Case No. 14-13, which would raise height and increase mass in apartment and mixed use zones and authorize expanded uses. We believe that this proposal would lead to radical change in the established rhythm of commercial and multi-family blocks, the character of neighborhoods, the infrastructure, the principle of bonus density in exchange for public benefits, and the integrity of the planning process and it should be tabled, if not rejected. The lack of fundamental planning analysis for such a sweeping height increase with accompanying new use intensities is alarming. We urge the Zoning Commission to take a step back and allow the new administration and the DC Council to have robust discussions with DC residents about whether such significant height and use changes are warranted. The Committee of 100 does not view this text amendment as a minor change to mechanical penthouses, but as an assault on established heights throughout the District's apartment and commercial zones.

Office of Planning End Runs Failed Height Act Proposal

The Zoning Commission is being asked by the Office of Planning ("OP") to endorse a proposal that has been effectively rejected by large numbers of DC residents, the DC Council, and the National Capital Planning Commission. OP's plan to lift the federal height limits outside the L'Enfant City failed. DC residents and our leaders voiced strong support for our human scale city and for maintaining controls on our built environment, especially when it comes to the height of buildings. Now the Office of Planning is using a minor amendment to the Height Act that involves eighteen inches to convince the Zoning Commission that heights and density in all apartment and commercial zones should be increased. Using the Height Act amendment as a pretext to effectively upzoning a significant amount of the city is deliberately misleading. The congressional amendment is silent on the treatment of any building whose

height is below the Height Act maximum. Nonetheless, the text amendment is promoted as a development entitlement that affects all but low density zones in the District and gives developers carte blanche to transform miles of residential and commercial building stock. The proposal would allow an additional 20 feet with only minor setbacks on all multi-family and commercial buildings and would for the first time remove bulk requirements, aka FAR, as a control on building mass per zone. This attack on historic building heights is being presented **after** the multi-year zoning rewrite process and with little or no public involvement or process.

Office of Planning Invents Comprehensive Plan Policies on Penthouses

The Comprehensive Plan does not authorize increases in building height or changes in the treatment of penthouses. The Comprehensive Plan policies offered by OP to underpin its proposal have no relationship to this proposal. The Comprehensive Plan policies related to building height almost universally urge decreases in height allowances to maintain the character of the built environment and to avoid awkward and unattractive height deviations¹.

Zoning Commission Should Use Caution in Approving Lame Duck Proposals

¹ ***Policy LU-1.1.7: Central Employment Area Edges***

Support the retention of the established residential neighborhoods adjacent to the Central Employment Area. Appropriate building setbacks, lot coverage standards, and a stepping down in land use intensity and **building height** shall be required along the edges of the CEA to **protect the integrity and historic scale of adjacent neighborhoods and to avoid creating sharp „visual distinctions between existing and new structures.**

Policy LU-1.3.5: Edge Conditions Around Transit Stations

Ensure that development adjacent to Metrorail stations is planned and designed to respect the character, scale, and integrity of adjacent neighborhoods. For stations that are located within or close to low density areas, **building heights should “step down” as needed to avoid dramatic contrasts in height and scale** between the station area and nearby residential streets and yards.

Policy LU-2.3.3: Buffering Requirements

Ensure that new commercial development adjacent to lower density residential areas provides effective physical buffers to avoid adverse effects.

Buffers may include larger setbacks, landscaping, fencing, screening, **height step downs**, and other architectural and site planning measures **that avoid potential conflicts.**

Policy LU-2.3.4: Transitional and Buffer Zone Districts

Maintain mixed use zone districts which serve as transitional or buffer areas between residential and commercial districts, and which also may contain institutional, non-profit, embassy/chancery, and office-type uses. Zoning regulations for these areas (which currently include the SP-1 and SP-2 zones) should ensure that development is harmonious with its surroundings, achieves **appropriate height and density transitions, and protects neighborhood character.**

Action LU-2.3.A: Zoning Changes to Reduce Land Use Conflicts in Residential Zones

As part of the comprehensive rewrite of the zoning regulations, develop text amendments which:

- a. Expand buffering, screening, and landscaping requirements along the edges between residential and commercial and/or industrial zones;
- b. More effectively manage the non-residential uses that are permitted as a matter-of-right within commercial and residential zones in order to protect neighborhoods from new uses which generate external impacts;
- c. **Ensure that the height, density, and bulk requirements for commercial districts balance business needs with the need to protect the scale and character of adjacent residential neighborhoods;**

Policy LU-2.4.4: Heights and Densities in Regional Centers

Maintain heights and densities in established and proposed regional centers which are appropriate to the scale and function of development in adjoining communities and which **step down to adjacent residential areas**, and maintain or develop buffer areas for neighborhoods exposed to increased commercial densities.

A new District mayor and administration will take office in less than six weeks. The Comprehensive Plan will be reviewed and new policy amendments will be approved by the new DC Council in 2015. Significant zoning changes proposed in the sunset of a lame duck administration that have never been publicly vetted should be tabled so that the public and the newly elected DC Council have time to consider how to guide the Zoning Commission on building heights.

Office of Planning's Proposal Leads to Unintended Consequences

One of the conclusions of the Office of Planning's Height Act Development Feasibility Report was that developers will build up where the market is strong in order to reap profit from expensive construction, even when it involves a few floors. The proposed text amendments to allow up to 20 feet more structure on a larger portion of the roof with no mass and scale limitations will be attractive to developers, but probably only in areas where the market is already strong. Some of the oldest buildings in the District are in these areas.² Will these buildings be demolished to take advantage of a proposal that will allow additional stories and density above current building limits? Will the prospect of enticing luxury market rates for housing, office or other uses with unprecedented views be an incentive to tear down and build sparkly new buildings? Will this enhance our neighborhood commercial corridors or create better designed apartment buildings than currently exist? Doesn't the intent of this text amendment contradict the goals of the Land Use Element of the Comprehensive Plan?

The Committee of 100 urges the Zoning Commission to think carefully about what people value about the District's built environment and to frankly assess what we might get with this proposal. Do we really want to encourage more soulless neighborhoods without services, green space, or any reason to go there? Or do we want to protect what draws people to DC? A recent study of Seattle, San Francisco, and Washington, DC³ identified the neighborhoods with a mix of older and newer buildings as the most appealing to young and old. These highly walkable areas fostered locally-owned businesses and a variety of cultural offers. They offered charm. These areas were not in downtown DC where the majority of buildings have been constructed since 1980. However, the areas where most of our older buildings are and where there is vibrancy or still potential to create these vibrant mixes of older and newer buildings is just outside downtown. Will this proposal help to remove the incentive to preserve these areas by making it too tempting to tear down the buildings that we should be preserving? Will it foster more "community building" that lacks the attractive attributes of communities built incrementally?

Office of Planning Proposal Leaves Unanswered Questions

One of the hardest nuts to crack seems to be convincing the Zoning Commission that there is diversity of services and needs throughout DC. The District Department of Transportation has gone on record as acknowledging that you can't successfully apply one-size-fits-all solutions in the District. Some metro stations offer great service, some don't; some metro train lines don't go where you need to go or can't get you there reliably. Some bus lines aren't efficient, reliable, or go where residents need to go. In these situations, the transit options might as well not exist. The Comprehensive Plan recognized the flaws in public transit and the needs of our diverse population and directed the Office of Planning and the Zoning

² Median Building Age, Washington, DC, *Older, Smaller, Better: Measuring How the Character of Buildings and Blocks Influences Urban Vitality*, National Trust for Historic Preservation, May 2014.

³ *Older, Smaller, Better: Measuring How Character of Buildings and Blocks Influences Urban Vitality*, National Trust for Historic Preservation, Preservation Green Lab, May 2014

Commission to analyze and study, with public participation, the capacity for more development and not assume that transit could be exempt from this analysis. Despite all the planning red flags, this proposal to allow nearly every building on a non-local street to create more density and expand uses is offered without any data or study of how it could affect traffic, parking, and loading. The Office of Planning has concluded - with no supporting data - that more density won't lead to more infrastructure capacity demand. Yet, the District Department of Transportation's *Curbside Management Study* published this summer finds that our public parking supply is overwhelmed with multiple, competing users. Does it make sense to encourage miles of buildings to increase by two stories without any investigation of the potential impact on existing infrastructure? Is the Zoning Commission sure that new and more intense uses won't have loading needs, won't attract patrons in cars, won't be adding stress to areas that shouldn't be redeveloped or absorb more density?

What will two additional floors on an existing building look like? The Office of Planning's sample of existing penthouses found that most of them cover less than a 1/3 of the roof area so when, as a result of this text amendment, more imposing structure covers most of the roof will the design relate to the building architecture? How will the setbacks be used? What happens to the light and air of nearby buildings? Will a more massive roof structure result in awkward and ugly height deviations between buildings and blocks? How does height increases comply with the Comprehensive Plan directive to encourage step downs and protection of established scale? **Are we addressing reviled R4 pop-ups and creating a different type of pop-up with this text amendment?** Are we guaranteeing that the easy way to use a 20 foot gift is to tear down the old and build another generic building?

OP Spurns District Residents Views on Height

District residents from all wards made it clear to the Mayor, Office of Planning, DC Council, and NCPC that we did not want building heights increased. Residents described losing the character of their neighborhoods, their prized views, and the quality of life afforded by a livable and human scale city. It is astonishing on one level that OP is still pressing this issue with the one body, the Zoning Commission, that wasn't involved in the Height Act debate. The Zoning Commission surely knows that DC residents went to the DC Council Office of Planning oversight and budget hearings to accuse OP of dismissing their views on building height increases. It is inconceivable that the Zoning Commission would act on an Office of Planning massive height increase proposal less than a year since residents angrily rejected OP's attempt to remove controls on maximum heights. It is also surprising that the Zoning Commission would consider such a drastic change in the last days of the administration identified with the failed campaign to increase buildings heights throughout the District and would hold its single hearing on this proposal two days after nearly every DC elected official was involved in an election.

There can be no question that what is being proposed is a height and density increase. The two zones that apply to most of the District's apartment buildings are R-5-B and R-5-D. The former allows very little height increase with a PUD - only 10 feet over matter of right development. With this proposal R-5-B apartments could increase 20 feet with no scrutiny or public benefits. In R-5-D zones, an apartment building gains no height from a PUD, but with this proposal an apartment building could increase from 90 feet to 110 feet and gain as a matter of right what could not even be achieved with a PUD. The Office of Planning's text amendment is giving no-questions-asked height and density increases that the District has not allowed previously under any circumstances.

The Zoning Commission may recall that during ZRR, Ward 8 ANC commissioners expressed their desire to work with OP to assess down zoning parts of R-5-A zones. They described structures that should be protected with zoning classifications in R-2 or R-3 zones. Currently, R-5-A allows 40 feet of height and no more than 3 stories, but through a PUD process 60 feet of height is possible. With this text amendment, the matter of right story limit is meaningless and the 40 feet limit rises to the PUD height limit, but without any of the accompanying public process. The problems of too much potential height and density in R-5-A zones identified by Ward 8 ANC commissioners are exacerbated rather than solved by this amendment. And these commissioners would have no opportunity to object.

Rooftop Penthouses Do Not Provide Affordable Housing

The Zoning Commission has demonstrated an interest in addressing the District's lack of affordable housing through zoning law. While that is commendable the policy issues embedded in this text amendment case should not be seen as meeting the public interest as long as affordable housing is required. There is no equivalency of public interest in this proposal. In fact, significant unintended consequences could render any anticipated affordable housing gain as an actual loss of market rate affordable housing.

Applying the PUD housing linkage to two floors of office space or Inclusionary Zoning ("IZ") rules to two stories of luxury housing might produce some funds for the Housing Production Trust Fund and perhaps a unit or two of "affordable" housing, but incentivized teardowns of apartment buildings could eliminate many more market rate "affordable" units than could possibly be returned using the IZ or housing linkage formulas. The Office of Planning has not informed the Zoning Commission or public about the potential loss of unsubsidized market rate affordable housing. These are the housing units – many of which are rent controlled - that we need to maintain and protect, not encourage developers to eliminate so they can build more expensive units.

The Committee of 100 finds developers' argument that requiring production of affordable housing – even at the minimal level proposed – is a deal breaker a shameful reaction. But we reach the same conclusion for very different reasons. Coupling this proposal with an affordable housing mandate distracts from the core policy issue regarding an across the board height and density increase, and it does more harm than good for ensuring affordable housing in the District. First, Inclusionary Zoning standards need reform. The program does not sufficiently target the lowest income residents. The percentage of AMI eligibility threshold should be lowered until this income population has access to housing they can afford. Second, the IZ exchange of bonus density for "affordable" housing is not equivalent to the bonus densities being offered. Third, there are too many loopholes that allow developers to successfully get relief from even the minimal requirements.

We urge the Zoning Commission to not be distracted by the notion that an affordable housing link can excuse an unprecedented height and density freebie for developers. It is not a good bargain. You risk losing some of the most valuable housing and buildings in the city.

Conclusion: This is Bad Zoning Law

This proposal is far too significant to be rushed through the Zoning Commission. There is no reason it couldn't have been proposed and considered during ZRR. Surely the Zoning Commission realizes that

District residents would react strongly and negatively to this widespread height and density increase **if they knew about it**. Advisory Neighborhood Commissions that typically don't meet in August were unaware of a July setdown meeting and most were not expecting new zoning regulations to be considered outside and on the heels of the ZRR process. Couple that with a scheduled hearing two days after the general election and you have a perfect scenario for guaranteeing little or no participation in the consideration of this very significant text amendment. The height allowance for District buildings was the most controversial issue of 2013. A more transparent and engaging zoning process would show that none of the passion about building heights has decreased.

The Zoning Commission surely also realizes that Congress did **nothing** to necessitate this text amendment. Congress rejected the Office of Planning's intense campaign to gut the federal Height Act and offered only an eighteen (18) inch increase in penthouse height when a building was at the federal height limit. They did nothing more with respect to District building heights. This text amendment is a boldfaced attempt by the Office of Planning to get something for the development community from the Zoning Commission by twisting what little they got from Congress. District residents and the DC Council sent a strong message to OP that it should leave our human scale building heights alone and move on to some other issue. The message apparently was not heard and OP has fashioned a false argument that congressional action demands swift District reaction to achieve its height and density goals. The Zoning Commission should not be fooled. The Committee of 100 strongly urges the Zoning Commission to see this proposal for what it is – a remnant of an ideological agenda – and to reject it for contradicting the Comprehensive Plan, for lacking good planning analysis, for its lack of public input, and for ignoring the expressed values of District residents from all eight wards.