



*Corrected*

**Testimony Before the Zoning Commission  
Case No. 08-06-14**

**A review of “Conceptual Recommendations for the Medium and High Density Residential Zones”**

**by Ann Hughes Hargrove  
for the Committee of 100 on the Federal City  
December 9, 2010**

First, before we begin, the Committee of 100 (C100) finds several of comments are in order. There is too much material to be dealt with in this document within five minutes, so if necessary I will stop at the deadline time and provide the remainder to you to read on your own time amidst the multiplicity of fast-moving cases one after the other. **Secondly, the Committee urges additional work to be done on the proposals after surveys of the areas potentially involved, including built patterns and anomalies in R-5 areas as to the need or potential effect of changing these standards.** Third, we look forward, after this further work, to an additional hearing moving beyond policies and studies to actual draft regulations, and the desired change of avoiding additional commercial uses in any residential zones.

**A. Nature of R-5 zones in relation to land use and OP proposals**

**O Distribution of R-5 B through E in the city**

*(Four maps)*

We will start by simply delineating where the R-5-B through -E zones are. **The four OP-prepared maps that follow in quick sequence show that the bulk of the space allocated to these zones is in the older city north of the city center, including Columbia Heights, Adams Morgan, and Dupont Circle and along major corridors like 16<sup>th</sup> Street, and Connecticut Avenue, N.W., and that the most predominant of these zones is the R-5-B, which is largely concentrated in the neighborhoods just mentioned.** Pockets of R-5 are found elsewhere as well, although R-5-C has largely disappeared. The relatively small amount of acreage zoned R-5-E is found mainly in Foggy Bottom/West End and along Massachusetts Avenue NW between Eighth and Eighteenth Streets, N.W. OP should undertake reviews of each of the areas that we don’t discuss in more detail tonight to determine their identifying features and differences among each of these R-5 areas.

Most of the area where R-5-B and R-5-D predominate is largely built up, with substantial new development having been added along 14<sup>th</sup> Street only quite recently. This core area contains substantial amounts of space dedicated to historic districts and to landmarks, and these areas afford good access to commercial uses nearby – more about this later. Let’s keep the pattern of these zones in mind as we review OP’s recommendations.

- **OP Recommendation 4: “. . . allow a limited set of neighborhood-serving non-residential uses, subject to contextually appropriate performance standards . . . .” OP’s justification of proposal for commercial uses in R-5 areas:**  
*(Healthy Living Options Map)*

**OP's proposal in its Recommendation 4 is to convert these R-5 districts into mixed-use districts by allowing five broad categories<sup>1</sup> of commercial uses throughout each district as a matter of right under stated conditions, and thus to make existing nonconforming commercial uses in R-5 areas conforming for the future.<sup>2</sup> Why? OP justifies this proposal mainly in terms of the need for easier access, particularly access on foot, to food services and other commercial facilities.<sup>3</sup>**

OP's map labeled "Access to Healthy Living Options" rates areas of the city as Excellent, Good, and Fair when it comes to providing combined accessibility to food, fitness and health. OP does not accompany this map with an analysis of the criteria for determining interpretation of these categories, including the relevant distance standards. **But it appears that the areas in the inner city that contain the greatest concentration of the R-5-zones, especially the R-5-B, fare well with a rating of excellent or good, and to that extent have no need for spreading additional commercial uses into their zones.** So if this proposal for expanded commercial uses in R-5 zones is to be justified, it is necessary to show that commercial needs are not already adequately supplied.

Bear in mind that any such expansion is not cost-free, since every new commercial use would displace or forestall a residential use and at the same time tend to displace or forestall commercial uses in the nearby commercial zones. It is worth noting that many residents of neighborhoods that would be affected by this proposal have repeatedly had to expend great efforts to prevent such losses from residential areas over the decades following adoption of the 1958 Zoning Regulations.

#### **O Two illustrative maps: Adams Morgan and Dupont Circle**

**We have selected two example areas with greatest concentrations of R-5-B and R-5-D, the first of Adams Morgan and vicinity and the second of Dupont Circle and vicinity.** There is no R-5-C in either of these areas.<sup>4</sup> Nor is there any R-5-E in these areas. They contain no R-4 (with the exception of one small area in Dupont Circle that was rezoned R-4 in a recent zoning case).<sup>5</sup> *(Adams Morgan map)*

**The first map**, depicting R-5-B in red, R-5-D in yellow and commercial zones in cross-hatched white largely within Adams Morgan, shows residential areas traversed by some of the commercial corridors. Not all nearby commercial corridors are illustrated in this map, such as Mount Pleasant Street that borders Adams Morgan. Also, other nearby commercial corridors in Dupont Circle are not shown. Within Adams Morgan are included Columbia Road and 18<sup>th</sup> Street west of 16<sup>th</sup> Street and 14<sup>th</sup> Street to the east along with Connecticut Avenue and

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<sup>1</sup> These are: Arts design and creation, retail, service, office, and food and alcohol services. *Conceptual Recommendations for the Medium & High Density Residential Zones*, Office of Planning, November 5, 2010, p. 17

<sup>2</sup> *Ibid*, pp. 14-20.

<sup>3</sup> See *Conceptual Recommendations for the Medium & High Density Residential Zones*, Office of Planning, November 5, 2010, p. 13: "Accommodating a limited mix of commercial uses in areas that presently lack [commercial uses] provides more options for residents in underserved areas. It would also contribute to the District's objectives of reducing automobile use, providing greater independence of movement for the young and for senior citizens, and increasing the number of "eyes on the street" in areas that lack pedestrian activity."

<sup>4</sup> This is because the Zoning Commission, after having lowered the height for the R-5-C zone as requested by citizens, decided later to not hold map cases that would determine which of these R-5-C zones would become R-5-D, a more intense and higher zone. This issue had not been brought up at the hearings on the text changes. All the R-5-C was morphed into R-5-D.

<sup>5</sup> The District Commissioners changed the 1956 Lewis Plan recommendations for much of the areas in Dupont Circle and Adams Morgan from R-4 to R-5-B as well as other more intensive zone changes. This was a period when the "Northwest Central Freeway" was proposed to go through these areas, and there were urban renewal plans as well. The freeway and the Adams Morgan Urban Renewal Plan were later defeated.

Florida Avenue and U Street on the south and Kalorama Road between 18<sup>th</sup> and 16<sup>th</sup> Streets.

(Dupont Circle map)

Similarly, the DuPont Circle vicinity map that follows shows residential areas intermingled with commercial strips on 14<sup>th</sup>, 17<sup>th</sup> 18<sup>th</sup>, P and U Streets, a snippet of New Hampshire Avenue, as well as Connecticut and Florida Avenues, but the area also has access to Adams Morgan commercial areas along 18<sup>th</sup> Street, Columbia Road, and Kalorama Road. There are commercial areas in every direction in both the Adams Morgan and Dupont Circle areas.

**What these maps clearly show is that there is no need to allow additional commercial uses in these R-5 residential areas, which are within easy reach of existing commercial districts on foot over a short distance of from 1 to 4 blocks easily within 5 to 15 minutes. A possible standard of 500 feet, about one block, for purposes of these proposals, in an area where OP encourages walking a much further distance to public transportation is, well, disingenuous and inappropriate.** This does not mean that the mix of existing uses in these commercial zones is always optimal, but the basics are readily available, such as grocery stores, drug stores, banks, retail shops, cleaners, post office substations, hardware, clothing and other specialty stores and even spaces for open air markets, such as farmers markets in these and nearby neighborhoods.

**0 Existing commercial uses in R-5 zones**

*(OP dot map of commercial uses in residential zones)*

The OP map, with dots locating 184 so-called commercial uses in R-5 zones, which OP explains are either non-conforming or have been permitted through special exception, variance or PUD, and fall into the categories of retail, service, food and alcohol services, or office.<sup>6</sup> The only additional commercial uses that are presently allowed in the R-5 that are not allowed in lower residential zones are hotels existing as of 1980 (at which time the Zoning Commission decided to prohibit new hotels in residential zones and limited the expansion of commercial aspects of these hotels), convenience stores (designed by the regulations to be for the residents of the apartment houses where the stores are located and not for general use) and art galleries.

OP proposes extensive possible regulation formulas regarding commercial uses in R-5 zones, on the assumption that there would be a considerable number of such uses permitted as a matter of right or by special exception as envisaged in Recommendation 4. **But this begs the preliminary question that is posed to the Commission: Are any such additional commercial uses in these areas needed? One of the first things that one notices about this map is that the bulk of the dots are located in the areas just discussed – Adams Morgan, Dupont Circle and vicinity – prime examples of R-5 areas that clearly have ready access to commercial facilities of many kinds.**

So one might well ask why OP has selected the R-5 districts for a proposed expansion of commercial uses, when as already shown that the bulk of these include the areas of the city least in need of any such intrusion? OP's strange logic seems to be that since there are already a large number of non-conforming or other commercial establishments in R-5 areas, there should be more of them – never mind whether there is a need for more. This is simply a *non sequitur*: the only justification for allowing commercial uses to intrude into residential areas, displace housing, compete with existing commercial enterprises in commercial zones and in some cases destructively alter the facades of residential buildings must be to meet some compelling and otherwise unmet need for access to commercial uses. No such need has been demonstrated, and it is affirmatively disproven by the facts as to zoning and actual use in the R-5 zones discussed above.

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<sup>6</sup> *Conceptual Recommendations for the Medium & High Density Residential Zones*, Office of Planning, November 5, 2010, p. 14

In general, there is no logic and possibly little precedent from larger cities in the notion, which seems to underlie OP's proposals, that all the denser residential zones should be targeted for a substantial amount of commercial usage. New York City, for example, has a multiplicity of medium and high density residential zones that exclude the sort of commercialization that we are discussing here. Consider the west side of Manhattan in the seventies blocks: Broadway is mixed-use commercial and high-density residential, West End Avenue to the west is high density residential, Riverside drive is mixed row-house and apartment residential, and the numbered side streets are mainly in residential rowhouse usage. An East Side example of high-density residential with virtually no commercial is Park Avenue.

There is no need to allow new commercial uses in these zones. There is no need to make the existing non-confirming uses conforming so that they would continue indefinitely and proliferate throughout the so-called residential areas. And certainly there is no need to go back and exhume non-conforming commercial uses that were discontinued at some time in the past. That being the case, in our view, the question of how to regulate such newly expanded commercial uses, including the issue of establishing the amount of space in an existing building devoted to them, is moot. The latter space allotment of, say 2000 square feet, could be the bulk of a rowhouse, and the use could deface the façade of the rowhouses and larger buildings, most of which are part of the historic texture of their areas.

Moreover, this and other aspects of these possible regulations will put these proposals directly in conflict with the provisions for home occupations in all residential zones, of which there are several major features: the businesses are to be operated in a residence as an accessory use to the primary use as a residence; the residential character and appearance of the dwelling and lot are to be maintained, and the dwelling is to be resident and owner occupied. Additional provisions limit the type and nature of the operations. This part of the code was modeled on the long-present provision that allows doctors and dentists to operate their practice in their own homes, but a primary focus in the home occupations was to encourage the stabilization of residential neighborhoods. Operators of home occupations are residents of the neighborhood, not commuters from distant points.

#### **O Guidance in the Comprehensive Plan or elsewhere regarding the location of new mixed use zones**

There is nothing in the Comprehensive Plan that suggests that particular zones, such as the R-5 zones or other specific residential zones, should be converted into new mixed-use zones. In the absence of any mandate from the Plan, the C100 examined the proposal on the basis of the “need” for commercial uses that OP has asserted in these zones and found it not sustainable by the facts on the ground in areas where the bulk of R-5 is located. We believe there is no reasonable basis for changing R-5 zones into new mixed use zones, by whatever name.

While the Comprehensive Plan, in Action LU-2.3-A, does authorize providing ground-level retail in residential districts along major corridors, while retaining the residential zoning, it does not suggest that all such corridors should receive such a modified residential zone or mixed use zone even if other reasonable factors, such as availability of nearby commercial areas, indicate a lack of need, nor does this Action apply to specific zones, or to any residential areas other than major corridors where appropriate. And decisions about where to map such amended or new zones should always be a matter of determining which areas might benefit or not benefit from such revised or new zones.

There is no Action in the Plan to allow Home Occupations requirements to be subverted by placing home occupations provisions in direct competition with straightforward commercial operations.

#### **O Recommendation 5: Dividing the R-5-B zone between apartment areas and row house areas**

The three pictures that follow are designed to illustrate the type of residential stock that exists in Adams Morgan, much of which was zoned R-5-B in the 1958 zoning maps by the District Commissioners in areas that had been slated for R-4 in the Lewis Plan.<sup>7</sup> There is very little vacant land in Adams Morgan today, and it is good that the Comprehensive Plan land use action LU-2.1-B directs that rowhouse areas should be accorded a new rowhouse zoning district, including possibly a new split zone for R-4 into R-4-A and R-4-B. OP has indicated in Recommendation 5 of its November 5 Conceptual document (erroneously labeled Recommendation 3 in that document) that this undertaking is slated for attention early next year. This recommendation does not appear in the published advertisement. The C100 very much supports this effort.

*(Photo of apartment houses)*

The first picture shows a group of apartment buildings on Columbia Road that are at the southwest gateway end of the neighborhood, the venerable Wyoming and three others, all within the Washington Heights Historic District, with the Wyoming additionally being a landmark. Across the street is the Lothrop mansion at the apex of Columbia Road and Connecticut Avenue, and notable rowhouses that are in the Kalorama Triangle Historic District, illustrated in picture 2.

*(Photo of residential rowhouses)*

Close to commercially zoned areas, this gateway end of the neighborhood is a remarkable composition and an important respite from the more intensive commercial uses that exist nearby.

*(Second photo of residential rowhouses)*

The third picture is a group of rowhouses on Wyoming Avenue within a historic district that are examples of many of the residential rowhouses that are the predominant use in the Adams Morgan area. The block ends at commercially-zoned 18<sup>th</sup> Street. These houses represent a lifestyle that many find highly desirable as outside the commercial zone but within easy reach of it. We are pleased that such rowhouse areas may be given a more appropriate zoning in the future.

There will be additional testimony about the character of R-5 areas from the next speaker, using the Dupont Circle area as an example.

## **B. Recommendations regarding space, height, light, and air for side yards and courts**

There are several guiding principles put forward by OP in this section with which the C100 differs, and we believe there is a need for modification of the proposed policy language, to be followed by draft regulations developed after further study of existing buildup, potential new development, and anticipated impacts.

### **1. OP: Changes in these regulations are warranted because it is important to limit non-conformity.**

The history of zoning in 1958 teaches us that non-conformity was rampant and endorsed when the regulations were changed as a response to the perceived importance of improving landuse standards as to such issues as use, light, air, open space, and density.

**2. OP: Changes in these regulations should be sought to encourage adaptive use.** In general, the C100 would sound a cautionary note about easy resort to the notion of promoting “adaptive re-use”, as seen on p. 5 and elsewhere in the November 5<sup>th</sup> *Conceptual Recommendations*. Adaptive re-use is something you try for when the use for which the building was originally constructed is no longer viable. Residentially zoned buildings should be

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<sup>7</sup> The 1950's and 1960's focused substantially on urban renewal plans (such as one slated for Adams Morgan) and freeway issues, including the Northwest Central freeway slated for Florida Ave./U Street with changes proposed for nearby streets in both Adams Morgan and Dupont Circle. Both the urban renewal plan and the freeway plans were defeated after much effort, including ultimate decisions by the NCPD and the courts. The industrial zoning in Adams Morgan, largely mapped over rowhouses, small apartment buildings, and warehouses as the heart of the urban renewal plan, has been changed through passage by the zoning Commission of the Reed Cooke overlay case to provide C-2-B and R-5-B.

encouraged to meet high standards for their residential usage, since the primary use of such buildings is residential and the viability and security of living in these residential zones is at stake.

**3. How high the standards and whose standards?** The Committee believes that where building code standards are presently or potentially higher than those of national standards, the building code standards should be preeminent. Also, if the Zoning Commission determines that the building code standards should be higher than they presently are, even if they are higher than the national standards, then the higher standards should prevail, as the building code must be in compliance with zoning. As to all codes emanating from other regulatory bodies, standards therein should not be automatically accepted as though there is no parallel requirement under zoning.

### **O Recommendation 1: Side Yards<sup>8</sup>**

OP's November 5 Conceptual Recommendation at p. 6 shows a photo of two apartment buildings with contiguous side yards. For buildings only four stories high, the amount of space between these two buildings appears to be adequate for purposes of a pass-through and to meet fire emergency needs as well as for light and air. OP has recommended that "In light of the minimal number of side yards, the small size of existing side yards, and the lack of requirement that the side yards be provided at all, . . . the standard side setback requirement, when a side setback is provided, should be a minimum of 4 feet in width."<sup>9</sup> OP would also "allow existing buildings to build back along existing nonconforming side yards."<sup>10</sup>

**As to the standard side yard setback:** Certainly establishing a *minimum* standard of 4 feet for setbacks is good, but there remains the issue of variability of height in relation to light and older buildings with windows built to the lot line. If the same standards were to be applied to all buildings, irrespective of height and whether there were windows along one or both sides of contiguous buildings, the light might be inadequate.

**As to the problem of building over windows:** The city should seek a long-delayed acceptable solution to the issue of building over windows needed for habitable space in existing older buildings when a new building is built at the lot line, a problem in the older parts of the city, and accept that one formula does not fit all because of the variable height of buildings. Dr. Lewis, when dealing with regulations in 1956 as quoted by OP on p. 3 of the hearing notice, was undoubtedly worried about windows being covered over. The 1958 regulations did not deal with this problem adequately.

**As to the issue of building back along existing nonconforming side yards:** We should not, without adequate study and presentation of options, agree to "building back along existing nonconforming side yards" as an option by right, for these non-conforming side yards can relate to problems of inadequate light and air for windows and the importance of open space.

The side yard in row house areas usually abuts one side of the extended and indented building to achieve light on the windowed side, with the other side lacking in windows and built to the lot line, and as long as the

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<sup>8</sup> For all of the OP propositions regarding changing standards, more work needs to be done. In 1958, when the zoning regulations were amended to become the foundation of our zoning regulations today, enormous non-conformity was created as to such things as FAR, lot occupancy and the like. This was done quite deliberately, in part because those involved undoubtedly wanted clearer and stricter standards. They recognized that this would impose additional work for the BZA, but also were thinking about new construction. However, much of the zoning we are talking about in this case affects largely built-up areas, and we believe further studies should be undertaken regarding the removal of standards that are important, especially as to open space, light, and air.

<sup>9</sup> *Conceptual Recommendations*, p. 6.

<sup>10</sup> *Ibid.*, p. 5.

distance between the adjacent buildings is sufficient for two or three story buildings, there is no major problem with them. But development does not always follow a desirable pattern.

While these existing standards are hold-over standards from the past, they do at least serve the purpose of providing light and air in most instances, and the standards may be more than that required by any present or successive building code regulations. The C100 believes a solution should be found regarding the problem of building over windows needed for habitable space in existing buildings.

Therefore, C100 **recommends the following amended policy language for Recommendation 1:**

*Define side yard standards to apply to any side portion of a building that will be set back from the side lot line. Assure that any building with side windows or with the need for a pass through between buildings meets setback standards to assure adequate light and air for passageway purposes and/or for windows, taking into account building height. Assure that side windows on the lot line of any existing buildings are not obstructed by new development on the adjacent lot.*

**O Recommendation 2: Courts**

*(Photo of U-shaped apartment building)*

The example picture is from a U shaped building with front court on 20<sup>th</sup> Street, N.W. illustrating a not uncommon building pattern in the inner city. The C100 does not favor removing area and width requirements for courts. We do recommend that in those instances where a different shape is desired for the court, revised standards be created, but not standards that would be significantly lower than those for rectangular shapes. There are many U shaped buildings with front court yards that provide adequate light and air for the residents as well as the advantage of adequate yard space that is a bit off the street. We should not encourage fill-in of such spaces where they exist, and we should not lower the standards for new buildings.

**Recommendation 2, as modified, would read as follows:** *Continue standards of area and width requirements for courts, but provide for modification for different architectural shapes, assuming the revised area standards are not significantly lowered, and take into account light and air needs of any window walls adjacent to the court in relation to height of the building. While the building code provides for light, air, and fire safety through requirements for minimum window space and window separation, it should be reviewed as to whether it is adequate for zoning purposes before accepting building standards as adequate or adopting changes in zoning standards.*

**O Recommendation 3: Eliminating narrow courts and side yards from lot occupancy totals**

OP's Recommendation 3 states: "Eliminate narrow courts and side yards from lot occupancy calculations." This seems a reasonable proposal for the reasons stated, so long as it does not serve as the camel's nose under the tent toward relaxing lot occupancy requirements in the direction of denser development in R-5 areas.