

The Committee of 100

on the Federal City



The Committee on Judiciary and Public Safety

Testimony of Laura Richards on behalf of the Committee of 100 on the Federal City Performance Oversight Hearing on the Office of Attorney General

February 28, 2024

My name is Laura Richards, and I am testifying on behalf of the Committee of 100 on the Federal City regarding the performance of the Office of Attorney General (OAG)'s Equitable Land Use Division.

The Committee of 100 is pleased that Attorney General Brian Schwalb is continuing his predecessor's advocacy on land use and zoning issues. We have been especially impressed with OAG's work on Zoning Commission Case 22-25, a pending set of amendments to procedural rules governing how Commission and Board of Zoning Adjustment cases are conducted, how the public will be notified, and how the public can participate in these proceedings.

The OAG exhaustively analyzed the rules at issue in this case, clause by clause. In addition to preparing submitting textual testimony, the OAG prepared a lengthy Powerpoint presentation that made the amendments and their impact accessible in a way that a dry discussion of administrative law never could achieve. The OAG also proposed numerous substitutes and amendments to the rule changes proposed by the Office of Planning (OP) for the Zoning Commission's consideration.

In subsequent iterations of the proposed rules, the OAG's suggestions (and those of the public generally) were given very short shrift. Similarly, in 2021, OP and the Office of Zoning ignored OAG-sponsored rules proposing amendments to the Inclusionary Zoning (IZ) Rules to require IZ units in all Downtown zones and opening IZ units to lower-income households. See Cases 21-23 and 21-24. OP delayed scheduling the cases for a setdown hearing and asked OAG to produce a fiscal income analysis (before ultimately proceeding without one). At OP's urging, the Commission voted against setdown on a 3-1-1 vote. The public, and the public's elected representatives – in this case the OAG –should not have to struggle to be heard on zoning and planning issues.

That said, we are disturbed by some positions taken by the OAG in several recent cases, which we think undercut the ends that OAG seeks to achieve, i.e., greater equity and increased affordable housing. In two of the cases – map amendments for the Takoma Metro Station and 1617 U Street – OAG blithely endorsed the maximum height and density increases allowed under the 2021 Future Land Use Map (FLUM). In doing so, the OAG failed to take into account the likelihood that such extreme up-FLUMing will displace more African-American households,

and middle- and working-income households of any race, than will be housed under the IZ units generated by these projects.

ZC 23-02, 1617 U Street. In this case, the OAG endorsed upzoning an entire government-owned site (from U to V Streets and 16th to 17th streets), to maximize the number of affordable units, notwithstanding the future displacement of neighboring African-American homeowners and other less affluent households through increased property assessments and tax bills. The OAG also ignored the fact that additional sites along the corridor could more easily be upzoned and, not being government owned, would be subject to much lower IZ setbacks than the lot block in question.

Also, while claiming to want as much affordable housing as possible, the OAG glossed over OP's decision to apply the lower IZ requirements of IZ Plus rather than the 30 percent requirement applicable to conversion of government owned sites.¹ Surprisingly, the OAG deemed that this extreme up-FLUMing permissibly could be applied to the northern half of the site, which is designated as a Neighborhood Conservation Area under the General Policy Map (GMP), the guiding philosophy of which "is to conserve and enhance established neighborhoods." ZC Case 23-02, Exh. 391A. While the GMP guidance expressly does not preclude development, "particularly to address city-wide housing needs," such development must be consistent with neighborhood conservation.

ZC 22-36, Takoma Metro Station. The OAG advanced a similar position in the Takoma Metro Station remapping case, endorsing the maximum level of upzoning and again ignoring the proven propensity of high-density market rate housing to generate displacement. The OAG also overlooked the impact of high density on a racially diverse neighborhood that actively fostered integration from the 1960s.

A plea for more nuance. The Committee of 100 encourages the OAG to continue participating in zoning cases and other land use matters. The attorneys in the Land Use unit are sophisticated and experienced. This makes it all the more disconcerting to see it apply a one-size-

¹ The Committee of 100's testimony on this point stated in part:

The site is surrounded on three sides by rowhouse neighborhoods with a significant Black population. A racial equity analysis needs to take into consideration the potential displacement of those living in a defined surrounding zone. This potential impact is likely to occur here and should be reviewed more carefully through the Commission's racial equity lens. Further, the Setdown report states that under DC Law any disposition/development of a public site would require affordable housing that exceeds those of IZ Plus. However, it later states that out of an abundance of caution OP recommends that the rezoning is appropriate for IZ Plus. The inconsistency should be explained.

ZC Case 23-02, Exh. 402.

fits all approach to mapping cases that essentially mirrors the OP developer-friendly approach that has been shown to be defective.

We urge the OAG to take a step back and look at the results of 25 years of high-density development. The District lost 60,000 African-American residents during that period. IZ doesn't work; it simply gives away bonus density for pocket change. We expect more from a unit that has shown such promise.

Thank you for the opportunity to comment.

/s/ Laura M. Richards
Lmmrichards@gmail.com