

TESTIMONY OF ELLEN McCARTHY
COMMITTEE OF THE WHOLE PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE
FRAMEWORK ELEMENT OF THE DC COMPREHENSIVE PLAN

March 20, 2018

Good afternoon, Mr. Chair and Members of the Committee. My name is Ellen McCarthy; I am an urban planner with more than 40 years of planning experience, thirty-four of which have been in the District of Columbia. I served in the DC Office of Planning in the administrations of Mayor Williams and Mayor Gray, and, most significantly, I was the Director during the preparation and unanimous Council adoption of the new Comprehensive Plan in 2006. In addition, I am currently an adjunct professor in the Masters in Urban and Regional Planning Program at Georgetown University, where I teach a class in Land Use Controls (zoning and other land use actions) and co-teach a Planning Methods class in which I give the lectures on Comprehensive Planning, Zoning and Plan Implementation.

I am also a member of Ward 3 Vision, a volunteer group of Ward 3 residents who support the development of compact, walkable and diverse neighborhoods, particularly in proximity to Metrorail stations. We have been active participants in the coalition of affordable housing advocates, smart growth and environmental support organizations and some responsible developers organized by Greater Greater Washington and the Coalition for Smarter Growth; the coalition has worked together to develop proposed additional language that encourages affordable housing as the top priority to be included in Planned Unit Development public benefits proffers and mandates that any new redevelopments of publicly-assisted affordable housing be required to support at least a one-for-one replacement of the affordable units to avoid displacing existing low-income residents. I am testifying today as a supporter of most of the Framework Amendment, as submitted by the Office of Planning, with the addition of the language proposed by the GGW Coalition; however, I am testifying as an individual, and not as an official representative of those groups.

Observation

We live in a beautiful city, with a diverse and dynamic population. After decades of decline, we turned a corner in the early part of this century, and we have become a desirable place that thousands of people want to move to each year. We can't turn our back on that reality. If we build no more housing, it won't stop the influx, it will just further drive up the price of the units that are here already. You will hear conflicting viewpoints today on managing that growth, but I know we all share a desire for our city to be a place where our children want to stay, and where they can afford to live. So I hope that today, we might disagree without being disagreeable, and remember we share common goals.

Because you have many witnesses and limited time, I don't want to dwell on the reasons our coalition of affordable housing providers, environmentalists and developers has taken its position - I know there will be other witnesses who will address that. I would like to focus on a key element, that I think has been greatly misunderstood, and in fact, distorted by the groups who will testify today in opposition to the proposed amendments -- that is, Planned Unit Developments (PUDs). The topic of PUDs is particularly relevant because many who are opposing the clarifications contained in the language of some of OP's proposed amendments

to the Framework Element are generally expressing opposition because of the effect that they feel the new language will have, in terms of making it more difficult for groups to challenge PUDs after they have been heard and decided upon by the Zoning Commission (ZC).

What is a PUD?

Many of those who oppose the amendment language take a position that suggests there is something somehow illegitimate, or at least, inappropriate, about PUDs. The suits that have been brought, tying up thousands of greatly needed, market rate and affordable residential units that had been approved by the DC Zoning Commission (ZC), have all been brought with respect to planned unit developments, to the best of my knowledge.

However, it is important to understand that, contrary to the claims of some of the opponents, PUDs are nationally-recognized and commonly-accepted land use tools, which provide zoning flexibility in exchange for projects that demonstrate they provide positive benefits not available through matter of right development (that is, development which proceeds automatically with no need for special zoning actions). As Eric Damian Kelly, professor of urban planning and former president of the American Planning Association noted, in his seminal textbook, Community Planning: An Introduction to the Comprehensive Plan:

PUD ordinances generally create more flexibility in site planning and mixing of uses than is allowed under typical zoning ordinances, and the best of them blend the review of use and intensity issues ... seamlessly with the consideration of site development issues.

DC zoning regulations require that, to be approved, PUDs must meet several important tests:

1. The PUD must provide a project that is superior to what would be expected from a matter of right project.
2. There should be no adverse impacts, or, if there is the possibility of such impacts, the PUD must include specific provisions to mitigate the negative impacts.
3. The PUD must provide amenities and/or public benefits superior to what would be expected from a matter of right project and are commensurate or exceed the value of the benefit being requested by the applicant for the project.
4. The project must be determined to be “not inconsistent” with the Comprehensive Plan.

PUDs go through an incredibly extensive review process, with numerous opportunities for the community to make its voice heard:

1. The prospective developer must file a “notice of intent to file” a PUD with the local ANC at least 45 days before the application can be filed.
2. The ANC can file a recommendation to the Zoning Commission about whether the project has sufficient merit to justify having the Commission set it down for a public hearing. The Office of Planning files its own separate report on that topic as well.
3. The ANC is automatically a party to the zoning case, and others who can demonstrate to the ZC that they would be affected more specifically than the public at large and the ANC may be granted party status. Any entity given party status is entitled to cross-examine the applicant and any other party and must be served with any papers filed by the applicant with the ZC.

4. All owners of property located within 200 feet of any of the boundaries of the proposed project are notified by mail that the application has been filed, and the date and time for the public hearing at the ZC. The applicant also must post a large, brightly-colored placard provided by the ZC staff, on all public boundaries of the project, indicating where and when the case will be heard, and submit an affidavit and photos attesting to the fact that the poster has been maintained. Hearing dates are also mailed to the ANCs, and published on the OZ website.
5. The application must contain detailed plans and information about the project, and a copy of the application is sent to the Office of Planning, District Department of Transportation, DHCD, DCPS and other departments for them to review and indicate to the Zoning Commission whether they see any problems occurring within their area of responsibility, should the project be approved. Agencies like DDOT generally have at least one meeting with the applicant and his/her traffic engineering firm to determine whether there will be any adverse impacts on traffic and parking. If DDOT feels that an adverse impact is likely, they will impose requirements on the PUD applicant to remedy the situation, and report to the ZC whether they feel the potential problem has been resolved. Any agency which submits a report to the ZC may be cross-examined by any party to the zoning case.
6. If the PUD application is approved, the zoning relief granted is good *only* for that project, and a covenant must be filed, running with the land if it is sold, that binds the project to provide all of the promised benefits, and to construct the project strictly in accordance with the plans as approved by the ZC. If the project is not constructed, or is demolished in the future, the benefits for the developer granted by the ZC for that project do not carry forward.

Benefits from PUDs

PUDs provide many advantages to the community and to the District as a whole that are not present for matter of right projects.

1. PUDs give the community a greater opportunity to influence design, traffic mitigation, density, use and a variety of other factors than do matter of right developments. ANC's, people who live within a 200-foot radius of the project, neighborhood associations, etc. are all entitled to weigh in on these important considerations. You will hear testimony today that suggests that somehow the proposed amendments eliminate the opportunity of community groups to have input into the development of new projects - that is simply not true. As always, the Zoning Commission must accord "great weight" to ANC positions; that is not changed by the proposed OP language.
2. PUDs provide benefits to the community, which is not the case with MOR projects. These benefits have included everything from a million-dollar contribution to the Housing Production Trust Fund to showers and related facilities for users of the Metropolitan Bike Trail to below-market day care facilities to endowments for nursing homes for the indigent elderly.
3. PUDs have become increasingly necessary because sites that represent "low hanging fruit" - development parcels which are easy to develop -- becoming quite rare. The opportunity to use PUDs to obtain zoning flexibility allows developers to proceed with projects that they might otherwise have found difficult to finance because of perceived high levels of risk.

4. By permitting denser development, PUDs allow the planning and construction of residential projects with more units, which help meet the substantial demand for housing by new residents and help keep the housing market more affordable by increasing the supply. Particularly when increased density is granted in a PUD close to a Metro station or on a major arterial, the larger number of new residents can be accommodated with little increase in traffic and can provide additional support for neighborhood-serving retail and local services. As the saying goes in the real estate industry, “Retail follows roofs.”
5. As the Zoning Regulations are currently written for PUDs, and as the Comp Plan amendments currently read, there are many items which can be included in the menu of public benefits or amenities proffered by developers in a PUD. However, it is clear to me, and to many others who will testify today, that there is one overwhelming need in the city that PUD benefits packages must address, and that is the need for more affordable housing, and the related need to avoid displacement of low-income residents. That is why the only major change that I, and other members of our coalition, strongly urge you to add to the proposed amendments is a provision in the Framework Element that PUDs should prioritize additional affordable housing units in any package of public benefits, and that there should be protections against displacement built into the PUD process.

OP Amendments to the Framework Element are Consistent with Existing Comp Plan Language

You will hear concerns expressed today from several witnesses about what is supposedly a major change in the tenor of the Framework Element language, which will allegedly both eliminate the ability of citizens to influence land use in their communities and somehow induce the Zoning Commission to run amok, randomly upzoning the city. There are two key facts which render these concerns baseless: First, in fact, OP’s proposed new language is totally consistent in tone and import with existing language in the Plan. Second, there are many checks and balances that would keep the Zoning Commission from any wholesale rezoning.

Look at the language which already exists in the Plan. Section 226 of the existing Framework Element, “Guidelines for Using the Generalized Policy Map and the Future Land Use Map” states explicitly:

The Generalized Policy Map and Future Land Use Map are intended to provide **generalized guides for development and conservation decisions.** Several important parameters, defined below, apply to their use and interpretation.

a. **The Future Land Use Map is not a zoning map. Whereas zoning maps are parcel-specific, and establish detailed requirements for setbacks, height, use, parking, and other attributes, the Future Land Use Map does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. By definition, the Map is to be interpreted broadly. . .**

c. The densities within any given area on the Future Land Use Map reflect all contiguous properties on a block—there may be individual buildings that are higher or lower than these ranges within each area. Similarly, the land use category definitions describe the **general character of development in each area,** citing typical building heights (in stories) as appropriate. **It should be**

noted that the granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here.

d. The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans.

[Emphasis added.]

Think about it - cities are extraordinarily complex systems. Goals like fostering economic development to create jobs for city residents, encouraging the creation of compact, walkable neighborhoods near transit, preserving low-density neighborhoods, fighting air pollution by increasing the number of residential units adjacent to Metro stations and increasing the production of housing to accommodate new residents while not exacerbating housing affordability are all important goals, but there are trade-offs and tensions between them. **That's why the Comp Plan can not lay down absolute rules about future land use as if there were no judgment calls to be made. That's why there must be guidance in the Plan about the importance of flexibility, and why bodies like the Zoning Commission, which hears cases generally every Monday and Thursday night, must have the room to make land use decisions about specific cases, within the general guidance provided by the Plan.**

But it is also important to remember that the Zoning Commission is not some august body isolated from the concerns of the citizens of the District. Three of the Commissioners are appointed by the Mayor, must be confirmed by the Council, and have limited terms. The Chairman will no doubt remember when he refused to hold hearings on the nomination by Mayor Fenty of a Zoning Commissioner who would have brought the total of developers on the Commission to three, highlighting the important role that the Council plays, not only in enacting careful amendments to the Comp Plan, but also providing close oversight of those charged with the implementation of the land use policies in the plan. Also, it is worth noting that the two federal members of the Commission are there to represent important federal interests, which includes the protection of the L'Enfant Plan and the preservation of the Height Act of 1910. All of these factors militate against the Zoning Commission misusing the flexibility necessarily provided in the Comp Plan to engage in any reckless upzoning. If that were any kind of serious threat, the flexibility language already in the Plan would have permitted that threat to become real, which has certainly not been the case.

Conclusion

OP's proposed amendments to the Framework Element of the Comp Plan are generally well thought-out, and I support them, with the proviso that the Council adopt the language proposed by the Greater Greater Washington / Coalition for Smarter Growth group, that affordable housing above the Inclusionary Zoning minimums should be included as a top priority in any PUD public benefits proffer, and that PUDs and other discretionary land use approvals be specifically proscribed if they do not replace existing low and moderate income units on a one-for-one basis in new developments.

