



September 11, 2014

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Anthony J. Hood
Chairman
Zoning Commission
Office of Zoning
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VIA E-MAIL: zcsubmissions@dc.gov

OFFICERS

Chair
Brian Flahaven

Vice-Chair
Ivan Frishberg

Secretary
Nichole Opkins

Treasurer
Brian Pate

Parliamentarian
Philip Peisch

RE: ZC 08-06A, Comments on Office of Planning's Alternative Amendments

Dear Chairman Hood:

We write to provide our comments and positions on the alternative amendments of the Office of Planning (OP) to the Zoning Regulation Review proposal set down on July 10, 2014. Advisory Neighborhood Commission (ANC) 6B voted 9-0 to send this letter during our properly noticed September 9, 2014 meeting with a quorum present.

COMMISSIONERS

SMD 1 *Vacant*
SMD 2 *Ivan Frishberg*
SMD 3 *Philip Peisch*
SMD 4 *Kirsten Oldenburg*
SMD 5 *Brian Pate*
SMD 6 *Nichole Opkins*
SMD 7 *Sara Loveland*
SMD 8 *Chander Jayaraman*
SMD 9 *Brian Flahaven*
SMD 10 *Francis Campbell*

Overall, ANC 6B strongly supports OP's effort to update the city's zoning code and urges the Zoning Commission to approve the update as soon as possible. However, we are extremely disappointed and frustrated that this process has been significantly delayed. While various stakeholders can disagree on various provisions in the update - and we have had our share of disagreements - we feel that most of the complaints about process are simply an effort to stall a much-needed update to the city's zoning code. The delay has been particularly unfair to commissions like ours who strongly support the update and who have provided comments and testimony in a timely fashion.

We also are disappointed that OP has significantly watered down a number of important provisions in the update. Unfortunately, a number of OP's alternative amendments continue this trend.

Subtitle B: Definitions

Fast Food Establishment

ANC 6B suggests additional revisions to OP's revised definition of "Fast Food Restaurant." Our commission has found that fast food restaurants, including

September 11, 2014

ANC 6B Letter to Anthony J. Hood

RE: ZC 08-06A, Comments on Office of Planning's Alternative Amendments

establishments that are considered "fast casual," put significantly more strain on the neighborhood than do other restaurants. Fast food restaurants generally generate high volumes of trash and litter; emanate strong odors from deep frying and other cooking; and attract loitering. As a result, ANC 6B believes that fast food restaurants, including fast casual restaurants, should be subject to the special exception process to allow the community to weigh-in.

The current definition of fast food is vague and interpreted narrowly, such that some establishments that operate like fast food are excluded from the definition. ANC 6B believes the revised definition should: (1) cover all fast food restaurants, including fast casual; and (2) more clearly define what constitutes fast food. While we appreciate that OP's revised language may have been intended to advance these goals, we propose the following revisions, to further clarify and improve the definition:

Fast Food, Restaurant: A business, other than a prepared food shop, where food is prepared and served very quickly; and where the food is typically made of preheated or precooked ingredients, **the food is** served to the customer in a packaged form for carry-out/take-away, although it may be eaten on site, **and-or payment is made before the food is provided or consumed.**

Characteristics of a fast food establishment may include: foods that are prepared by production-line techniques, foods that are standardized foodstuffs shipped to a franchised establishment from central locations, **the establishment includes** trash receptacles located in the dining area for self-bussing of tables, **seating for customers,** and food served on disposable tableware.

An establishment meeting this definition shall not be deemed to constitute any other use permitted under the authority of these regulations, except that a restaurant, grocery store, movie theater, or other use providing carry out sales that is clearly subordinate to its principal use shall not be deemed a fast-food establishment. **Carry-out sales shall not be considered clearly subordinate if the carry out/take away sales constitute more than twenty percent of the establishment's total sales or revenue.**

Revised Definition of Building

ANC 6B *supports* OP's revised definition of building which addresses the meaningful connection "loophole" in the current zoning code. Our commission has reviewed a number of cases where applicants have used an outdoor trellis to connect a main building to an accessory

Page 3

September 11, 2014

ANC 6B Letter to Anthony J. Hood

RE: ZC 08-06A, Comments on Office of Planning's Alternative Amendments

structure. Under current zoning, the trellis is considered a meaningful connection so that the two buildings are considered one single building, allowing the applicant to avoid seeking additional zoning relief on the accessory structure. OP's revised definition should address this "loophole" by ensuring that a meaningful connection between buildings must be above ground, enclosed, consist of common space and allow for open passage.

Subtitle C: General Provisions

Inclusionary Zoning

ANC 6B believes it is important to ensure that affordable units built now remain affordable units in the future, even beyond the 30-40 year window after which certain units can revert to market rate, typically associated with current affordable housing projects. Subtitle C, Section 2204.1 appears to achieve this goal but only for units created after implementation of the new regulations. It's important that the Zoning Commission carefully review this section of the proposed text to ensure that it achieves the objective of creating long term affordable units, not just for future developments, but for existing ones as well.

In reviewing this section, ANC 6B also notes that Subtitle C, Section 2201.4 (a) exempts areas in Georgetown and near the Naval Observatory from Inclusionary Zoning requirements. Perhaps there is a justification for this, but on the surface, it seems to be an exclusion that only heightens the perception of Georgetown as an entitled and exclusive enclave and works against creating socio-economically diverse neighborhoods. All areas of the city, including its most well off neighborhoods, should contribute to solving one of the greatest problems facing DC. ANC 6B also notes that the section exempting large areas of Georgetown is a recent amendment which has had little prior scrutiny and further reinforces our objection to the exemptions.

Subtitle D: Residential House (R) Zones

Accessory Units

ANC 6B *opposes* OP's alternative amendment that would require any accessory apartment in an accessory building to be permitted as a special exception. The Zoning Commission should approve OP's original language retaining the matter of right provision for accessory apartments. With the city facing a housing crisis, accessory apartments provide a much needed affordable housing alternative. While this proposal would not directly impact our commission area (most of ANC 6B consists of the proposed Residential Flat (RF) Zones), we feel strongly that the zoning code should make it easier, not harder, for homeowners in all residential zones to provide accessory units.

September 11, 2014

ANC 6B Letter to Anthony J. Hood

RE: ZC 08-06A, Comments on Office of Planning's Alternative Amendments

Subtitles D & E: Residential House (R) and Residential Flat (RF) Zones

Conditional Commercial Uses in Residential Areas (aka "Corner Stores")

- (1) While we appreciate OP's clarification that residential use is permitted above a corner store, ANC 6B *opposes* OP's alternative amendment language that continues to prohibit corner stores in buildings with more than one dwelling unit. We do not agree that a corner store in a small apartment building on a residentially zoned lot should be prohibited.
- (2) ANC 6B *opposes* OP's alternative amendment that would make beer and wine sales a use that can only be approved as a special exception, a change that will make corner stores less viable. ANC 6B feels that the 15 percent of gross floor area cap, coupled with the public Alcoholic Beverage Control Board process that any corner store would have to go through to get a liquor license provides ample protection for residents living near such stores.
- (3) ANC 6B *supports* OP's alternative amendment that more fully defines the "grocery" aspect of corner store provisions. Since "grocery" corner stores would be allowed as a matter of right, we feel that the more specific definition and requirements are appropriate.

Camping in Alley Lots

ANC 6B *supports* OP's alternative amendment that would permit camping on alley lots only by special exception and subject to certain conditions, including a time restriction.

Subtitle C: General Provisions

Vehicle Parking

ANC 6B *opposes* OP's alternative amendment to remove Priority Bus Corridors from the areas within which required parking may be reduced up to 50 percent as a matter of right. We continue to strongly support OP's original proposal that would have fully removed parking minimums from 1) single-family homes or residential developments of less than 10-units and 2) apartment or commercial mixed-use zones within ½ mile of Metro or ¼ mile of Priority Bus Corridors. OP's alternative amendment represents a further watering down of this original proposal and also sends an unhelpful signal that bus transit should be treated differently than other forms of transit for purposes of zoning.

Bicycle Parking

ANC 6B *supports* OP's alternative amendments on bicycle parking which represent reasonable adjustments based on public comments and industry practice.

Page 5

September 11, 2014

ANC 6B Letter to Anthony J. Hood

RE: ZC 08-06A, Comments on Office of Planning's Alternative Amendments

Subtitles G, J & K: Mixed Use (M), Production, Distribution and Repair (PDR) and Special Purpose Zones

Large Format Retail

ANC 6B *supports* OP's alternative amendment requiring a special exception for all new large format retail establishments with single tenant space of 50,000 square feet or greater.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Flahaven", with a large, stylized flourish extending to the right.

Brian Flahaven
Chair