



## Comments on the Comprehensive Plan Maps, sections 223 through 225

A presentation by Nancy MacWood<sup>i</sup> for EmpowerDC, February 10, 2018

The amendments to the Framework Element of DC’s Comprehensive Plan that the Mayor and the Office of Planning sent to the DC Council are clearly intended to grant new power to the unelected Zoning Commission to facilitate development and uses where they aren’t allowed now, and to frustrate the ability of DC residents to protect their neighborhoods from unpredictable and unwanted development and uses.

Two maps, adopted and periodically amended by the elected Council as part of the Comp Plan, form the legal foundation of land use regulation in the District of Columbia:

- The *Generalized Policy Map* predicts locations of change and conservation. It is law and is intended to be used in conjunction with the Future Land Use Map, Comp Plan policies and small area plans on all land use planning and decisions.
- The *Future Land Use Map* (FLUM) is also law. It shows in map form public policy for future land use – where we want commercial and residential and how much density we want in different parts of the city. Contrary to what the Office of Planning (OP) says, it is not intended to be one of several authorities the Zoning Commission (ZC) can use in approving Planned Unit Developments (PUDs) or writing zoning regulations; it is the authority on density and if the ZC doesn’t follow the Map, and if its decision is appealed, the ZC needs a persuasive record explaining why it wasn’t followed. *OP’s amendments would so diminish the authority of the Map as to remove it as the standard for determining density.*

### The Comp Plan Amendments would change how the Zoning Commission uses these maps.

At many points in the Plan’s provisions relating to these two maps, OP has added qualifiers, disclaimers or exceptions that give the ZC discretion to deviate from these provisions when it wishes to do so, and that render them vaguer, more imprecise and more permissive. For example:

- OP says the Generalized Policy Map does “not dictate” land use decisions. That phrase permits the ZC to choose how much or whether to be guided by the Map.
- If ZC does use the map for guidance, OP has changed the meaning of the Map categories to authorize more development and to protect ZC decisions from appeal.
- OP went further in changing the FLUM because it has great significance in ZC decision-making. The amendments would create an alternative set of subjective “standards” to replace the objective standard we have now with FLUM.

*OP also says that in determining appropriate height, density and use, the ZC no longer has to rely on the FLUM. In fact, the ZC can ignore it. In all residential and commercial categories, the ZC could circumvent the FLUM’s designation of which zones are appropriate in each density category by invoking new standards, like “meeting the intent of the identified land use category” or “consistent with the Comp Plan policies on balance” or “compatible with the physical and visual character of the surrounding*

neighborhood.” These are not objective standards but rather meaningless terms that would largely insulate the ZC from effective review of its interpretation of the Plan by the DC Court of Appeals and leave citizens unable to use the Comp Plan to challenge ZC decisions adversely affecting them.

### **Changes to the map definitions will increase the land available for development/redevelopment.**

The Generalized Policy Map provides predictability because it shows residential areas that are developed, stable and not intended to change; residential areas that are developed but have vacant land that could be developed; residential areas that aren't working with existing uses and should have new uses leading to more development or redevelopment; and commercial areas. They signal what OP wants to see in the future.

Neighborhood Conservation Areas: OP wants to drop “residential” from the definition of areas that are stable and should be conserved. The majority of district residential land is designated *neighborhood conservation area*. With the amendments, OP places “new development, redevelopment and alteration” on a par with “conservation” as the guiding philosophy of neighborhood conservation areas. Segments of major streets like Connecticut Ave., Rhode Island Ave., Mass. Ave. NE, and Minnesota Ave. are importantly in neighborhood conservation areas. OP’s amendments say that only areas that are also low density on the FLUM – *single family detached and semi-detached homes* – will likely not change.

*Row house neighborhoods and small apartment complexes* designated moderate density and above on the FLUM will see new development and reuse changes, which could include *commercial uses in residential areas* and taller and denser development than what is allowed today. And OP will further this change through the expanded ZC authority to rezone based on criteria like cherry picking the Comp Plan policies to support the desired change.

OP has removed from the neighborhood conservation areas the assurance that any development will be small in scale and that it should be compatible with the existing architectural character.

Neighborhood Enhancement Areas: OP’s amendments to the *neighborhood enhancement areas*, which are primarily residential areas with vacant land -- including Deanwood, Mayfair, and Marshall Heights in Ward 7; and Hillside, Barry Farm, Anacostia, Congress Heights, Washington Highlands in Ward 8 -- also delete small scale from the description of infill development likely to occur in these areas. OP includes in this category *mixed use zones, industrial land, and also mixed use buildings*, which are usually individual buildings on a lot where a mix of uses is preferred even though the surrounding area may be zoned for a single use. It is unclear whether infill development would only be expected on vacant land in mixed use and industrial zones or whether the reach would include developed land.

OP also downgrades the emphasis on protecting the character of these neighborhoods by adding that infill development could protect or it could “enhance” the character of the neighborhoods. This effectively makes it difficult to argue that development is not compatible with existing neighborhood development patterns. This category is applied sparingly on the Generalized Policy Map now because it has a very targeted meaning and anticipates small scale infill development on vacant lots. The OP amendments could significantly increase the areas where infill development is encouraged.

Land Use Change Areas: OP’s amendments to the *land use change areas* -- that in 2006 included a total of more than two dozen areas such as Buzzard Point, South Capital Corridor, Near Southeast, Hill East, NOMA, Ft. Totten — call for significant affordable housing and employment opportunities and innovative environmental measures. *Nowhere in the amendments to the maps and discussion of PUDs does OP make linkages to affordable housing – the development of Production, Distribution and Repair areas (PDRs) is*

*the only reference.* The reference here could mean small area plans will encourage a percentage of affordable housing in new developments and/or that new development will include offices, or it could mean that OP expects PUDs with its small percentage of affordable housing as required by the Inclusionary Zoning (IZ) program. It could also mean that OP wants high density development in these areas.

The *high density category* on the FLUM is currently limited primarily to downtown. OP's amendments would remove that restriction and permit high rise office, retail, and high rise residential buildings in other parts of the city.

Commercial areas: When it comes to *commercial areas*, OP stresses that all commercial areas allow residential uses. OP signals its desire to redevelop many of our traditional commercial corridors with their older storefronts, and in many cases historic designation, by stating in the definition of *main street and mixed use corridors* that some are underutilized with significant capacity for redevelopment. *This likely means pop-ups or teardowns.* One way or another, it appears that many commercial corridors and streets will be targeted for infill development or redevelopment.

### **OP's strategy for change:**

OP's changes to the FLUM show how it intends to accomplish what it laid out in the generalized policy map and give us more insight into the type of changes OP wants. They include:

- Commercial uses in residential zones. OP tried to accomplish this during the Zoning Rewrite (ZRR) but failed, so now they intend to change the FLUM to give the ZC the go ahead to do it.
- Altering the FLUM **so that it** no longer "defines" the different levels of density in residential areas, it only "describes" them.
- Omitting that each density category refers to actual neighborhoods and replacing it with the vague notion that each density category denotes the type of structures that would be appropriate, but so would other types of structures found in different, sometimes higher, density categories. This is a direct reaction to the Durant decision in which the Court of Appeals said the FLUM described neighborhoods, not individual buildings, and the ZC had to look at the overall density of the neighborhood in deciding what density was appropriate, not just find that the height of a single existing building satisfied the consistency with the FLUM standard.

**The Zoning Commission will have new authority to do just about anything.** *With such fuzzy new direction combined with OP's amendments that give the ZC authority to ignore the FLUM, the ZC could do just about anything it wants.*

In case the ZC is reluctant to grasp the almost unfettered discretion OP is handing it, OP includes an amendment that expressly states that OP can use the new standards - "meeting the intent of the identified land use category" or "consistent with the Comp Plan policies on balance" or "compatible with the physical and visual character of the surrounding neighborhood" - to find any zone district compatible with any density category.

This means that *mixed use zoning* could be applied to parts of Deanwood, an enhancement area that now would include mixed use in the definition. It could also result in commercial zoning in row house zones, like Georgetown, Foggy Bottom, and Naval Observatory or higher residential zoning because OP said in the neighborhood conservation area definition that only single family detached and semi-detached houses would be immune from use changes and protection of community character.

*Residential flat zones*, found in large numbers in Ward 1 and Ward 5, could be rezoned apartment zones using the new ZC authority. OP is projecting over 22,000 new households in ward 5 by 2045, 10,000 more than in any other ward – how does that get accomplished?

In addition, in the list of zones that normally would be compatible with a particular density – even though OP encourages the ZC to consider any zone compatible with any density category – OP *adds a zone to moderate density* list that adds 10 ft. to what is generally considered moderate; and says an additional 30 ft. in the medium density category – which includes parts of Connecticut Ave., 14<sup>th</sup> St., Tenleytown, parts of Mt. Pleasant and Kalorama -- may be okay.

While greater height seems to be the objective in OP's changes to the residential categories in the FLUM – and perhaps uses, but with less transparency – in the FLUM commercial categories, OP's changes are often opaque. One change that is clear is the comment added by OP that *in every commercial density category PUDs are available and the ZC can approve a PUD using one of the meaningless new decision-making standards, just as they can in approving a map amendment to change the zoning.*

In the *moderate density commercial* category, OP's amendment states that buildings in this category generally range up to 50 feet, but then they list moderate density zones with heights ranging up to 75 feet.

In the *high density commercial* category, OP deletes that it applies to the Central Employment Area and other major office employment centers, like L'Enfant Plaza and the Navy Yard metro area where many city agencies are located. This means that heights greater than 90 feet could be approved where the ZC, using its new powers, decides high rise office, office/retail mix, or residential are appropriate whether the FLUM designates an area for this level of development or not.

OP is amending the maps and definitions to allow major changes in *PDR zones*. Some PDR zones are in neighborhood conservation areas on the Generalized Policy Map and OP retains the current Framework Element statement that these PDR areas will retain the mix of industrial, office and retail that exists now. But if a PDR area is in a neighborhood enhancement area or land use change area, the intensity of the use or the size of the development could be changed by the ZC. In fact, OP says that if a PDR area is striped on the FLUM it expects the developer to seek new zoning and a PUD. With its new authority the ZC could approve high density development. And while OP states that it wants affordable housing in FLUM's striped PDR areas in greater quantities than IZ would require, it should be noted that the ZC has no regulations currently requiring PUDs to create affordable housing beyond the IZ program requirements.

**The OP amendments to the maps remove for many residents any predictability that all residents enjoy now.**

*A bedrock principle of zoning is that property owners give up the right to do whatever they want with their land in exchange for the knowledge that neighbors also can't do anything they want.* There is a shared commitment through zoning that as a community we will have a level of certainty about our environment. The OP amendments toss that precept out the window and replace it with a new certainty that developers and real estate speculators will have an unobstructed pathway to maximum development and redevelopment in many parts of our city, and that the Mayor and OP are making these changes, in part, to deny residents an effective remedy based on the Plan when they believe their rights have been trampled.

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