

District of Columbia Office of Planning



Office of the Director

September 11, 2019

Chairman Phil Mendelson
1350 Pennsylvania Avenue NW
Suite 504
Washington DC 20004

RE: Framework Element - Section 227.2 of the Engrossed and Committee Print

Dear Chairman Mendelson,

On July 8, 2019, I transmitted a letter with three comments on the draft Framework Element of the Comprehensive Plan (Comp Plan) that the Committee of the Whole circulated. Since then, the Office of Planning has worked with you, other Councilmembers, and committee staff to help ensure a strong Framework Element that addresses the critical issues facing the District, while minimizing unintended consequences. We appreciate the progress made on almost all the issues ahead of the September 17 second reading of the bill.

However, there is one outstanding issue that we feel is important to resolve prior to the second reading, for which additional background may be helpful. Specifically, new language contained in Section 227.2 of the Engrossed version from the first reading states:

Each land use category identifies representative zoning districts and states that other zoning districts may apply. The Zoning Commission, in selecting a zone district, such as through a Planned Unit Development or Zoning Map Amendment, shall determine if it:

- is not inconsistent with the Comprehensive Plan;
- meets the intent of the Future Land Use Map land use category;
- is generally compatible with the character and scale of the Future Land Use Map land use category when considering the site in total; and
- is generally compatible with the physical and visual character of the surrounding neighborhood.

As originally introduced, the Framework Element language described the circumstances under which a zone not listed in the FLUM category description might be appropriate to be mapped through the Planned Unit Development process. In our July 8 response to the Committee draft, we highlighted that the language was reused in a problematic fashion and recommended its removal.

The proposed section in the Engrossed version modifies the language we responded to, but we still have two major concerns. First, as articulated in our July 8 letter, the Comp Plan is not the correct vehicle for directing the Zoning Commission. Second, we are concerned about creating a novel and ambiguous review standard, where existing standards already achieve the intended objective.

Our first concern is enumerating what the Zoning Commission “shall determine” in approving a rezoning sets zoning requirements when zoning authority is exclusively the authority of the independent Zoning Commission. *Durant v. District of Columbia Zoning Comm’n*, 65 A 3.d 1161, 1166 (DC 2013). Consequently, Comp Plan language directing the Zoning Commission to make certain determinations in connection with approving a zoning change is of questionable legal effect, which could create confusion and risk unnecessary litigation.

Our second concern is one of substance. The rigorous set of considerations that already govern zoning changes would not be modified by the proposed bullets. Most importantly in the context of the Framework Element, the Zoning Commission must find that any zoning change is “not inconsistent” with the Comprehensive Plan, considering all applicable Elements and text, the General Policy Map, and the Future Land Use Map. In the case of a Planned Unit Development, the Zoning Commission must also find, among other things, that a project “will not result in unacceptable project impacts on the surrounding area.” The Zoning Commission has experience applying these standards, and the D.C. Court of Appeals has interpreted them.

Singling out the intent and “character and scale” of the FLUM category in a list that includes the larger and Charter-mandated “not inconsistent with the Comprehensive Plan” standard that governs all zoning decisions suggests a parity between these considerations. It may be read to suggest other parts of the Comprehensive Plan are of lesser importance. The final bullet creates a new zoning standard that increases the risk of litigation and cannot be applied in the case of a zoning map amendment because the Zoning Commission does not have a specific development proposal to consider.

We are concerned that the confusion and uncertainty about the significance of this new language that we have observed since the Committee Print became public could foreshadow challenges the Zoning Commission may face when called to apply it. We have seen how a lack of clarity can result in years of litigation as the courts resolve differing interpretations. At a time when the District has begun to find clarity and predictability around the Comprehensive Plan, land use, and zoning, this language could move toward additional ambiguity and generate disputes about how it is to be implemented.

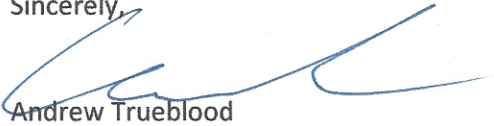
Given the existing statutory requirements that zoning be “not inconsistent” with the Comp Plan, neither the Framework Element nor the zoning amendment process would lose anything if Section 227.2 was removed. However, if the Council wishes to include a description of how the Comprehensive Plan factors into the zoning amendment process, we recommend replacing the current language with the following:

Each land use category identifies representative zoning districts and states that other zoning districts may apply. A zoning district may be appropriate to be mapped, either through the Planned Unit Development or zoning map amendment process, if it is not inconsistent with the Comprehensive Plan, including the Future Land Use and Generalized Policy maps, the text of the Plan and the intent of the land use category. Under the Zoning Regulations, a proposed Planned Unit Development should not “result in unacceptable project impacts on the surrounding area.”

This language accurately describes the scope of the Zoning Commission's analysis of whether a proposed zoning district is "not inconsistent" with the Comprehensive Plan, which often includes analysis of compatibility. It also highlights the Zoning Commission's analysis of project impacts on the surrounding area, which is not part of determining Comprehensive Plan consistency, but an important parallel consideration related to compatibility.

As we eagerly await the Council's approval of the Framework amendment, we look forward to continuing to work with the Committee to make sure we get it right and avoid unintended consequences that could undermine the District's ability to meet the needs of its residents, especially the need for affordable housing. We strongly urge you to take these concerns to heart. Toward that end, I am happy to make myself available to answer any questions you or your colleagues may have.

Sincerely,



Andrew Trueblood