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Sent: Tuesday, September 28, 2010 11:10 AM

To: Catania, David A. (COUNCIL); Thomas, Harry (COUNCIL); Evans, Jack (COUNCIL); Graham, Jim (COUNCIL); jim@grahamwone.com; Brown, Kwame (COUNCIL); Barry, Marion (COUNCIL); Bowser, Muriel (COUNCIL); Brown, Michael (Council); Cheh, Mary (COUNCIL); Mendelson, Phil (COUNCIL); Wells, Thomas (COUNCIL); Gray, Vincent (COUNCIL); Alexander, Yvette (COUNCIL)

Subject: Comprehensive Plan Amendment Act Hearing, - Amendments for your consideration

The Downtown Cluster of Congregations
1313 New York Avenue, N.W.
Washington, D.C. 20005

Sept. 28, 2010

Chairman Vincent Gray & Members
D.C. City Council
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Bill 18-867, "Comprehensive Plan Amendment Act of 2010"
e-mail

Via fax and

Dear Chairman Gray & Members,

Please find attached a letter sent to the Office of Planning in June of 2009 requesting amendments to the Comprehensive Plan.

To my knowledge, none of the proposed amendments were included in the current Bill 18-867 forwarded by the Executive branch.

Thank you for your attention to this matter.

Respectfully,

Terrance Lynch

Executive Director

June 30, 2009

The Honorable Harriet Tregoning
Director, Office of Planning
Government of the District of Columbia
2000 Fourteenth Street, Fourth Floor
Washington, DC 20009

Re: Request for Amendments to the **Comprehensive Plan for the National Capital: District Elements – Land Use** to Restore Prior Policy and Rights for Places of Worship to Be Established and Operate In All Areas of the District of Columbia

Dear Ms. Tregoning:

This letter seeks support of your Office and Mayor Fenty to propose and advocate for changes to the Comprehensive Plan adopted in 2006 that would address what I believe is an unnecessary, unwise, and un-Constitutional imposition of restrictions on where Places of Worship may be established or, if already established, where they may expand, a policy that reversed the entire regulatory history applicable to these institutions since zoning controls were enacted in 1920.

I have reviewed the changes adopted in 2006 and, while supportive of the overall goals and the considerable accomplishments in that undertaking, ask that you seek changes in areas adverse to the long-term freedoms accorded Places of Worship in our Nation under its Constitution and a general philosophy that strives to separate “Church” from “State.”

The context of this request is not at issue, namely the overall adopted land use goal:

Ensure the efficient use of land resources to meet long-term neighborhood, citywide, and regional needs; to help foster other District goals; to protect the health, safety, and welfare of **District residents and businesses**; to sustain, restore, or improve the character and stability of neighborhoods in all parts of the city; and to effectively balance the competing demands for land to support the many activities that take place within District boundaries. 302.1

The statement correctly notes the full spectrum of needs, from local areas to the larger region. It also recognizes both residents and businesses in its formulation but, perhaps inadvertently, omits “institutions” from the narrative. I suggest that the term in bold above, “**District residents and businesses**”, be amended to read “**District residents, institutions, and businesses**” instead.

That, however, is not the crux of what I consider the most important issue and request, namely to reformulate the adopted Policies and Actions in the Land Use Element such that Places of Worship may continue to locate and carry out their programs of worship in a manner that is unfettered by controls that are not essential to maintaining public safety and health. The changes adopted in 2006 often subsume Places of Worship within a larger cluster of “institutions” and then adopted “controls” on all “institutions” in that class that are fundamentally at odds with this Nation’s Constitution, applicable Federal law, and the development controls that have been in effect in the District of Columbia since 1920 as applied to Places of Worship.

As you should know, the present zoning regulations – with one critical and unfortunate exception – presently provide that churches and places of worship may be established in every base zone district, from the otherwise most restrictive R-1-A (see § 201.1(b)) Residence district to the most permissive M (Manufacturing) district, allowing this either by specific language or a succession of provisions such as

those at the R-2 zone's use list allowing all uses in the previous (and more restrictive) district's provisions (see § 300.3(a)).

In addition, churches and places of worship have relied upon, enjoyed and benefitted from at least three special provisions:

- They are allowed to reach a height of sixty feet (60.0 ft.) in Residence zones where the height limit is sometimes less than 60 feet (R-1-A, R-1-B, R-2, R-3, R-4, R-5-A, and R-5-B, see § 400.6).
- They are allowed to locate up to half of the "required parking" elsewhere than on the lot of the Place of worship (§ 2116.3) and
- They are not required to post the Certificate of Occupancy "conspicuously" as is required for other uses (see § 3203.3. a provision paralleled in the building code, which specifically exempts a need for posting in the area of a sanctuary).

With this in mind, review with me the current pertinent provisions that bear on this issue and those I believe should be amended, which this letter reviews in the order in which they are currently adopted in portions of the second and third sections of the Land Use Element, focusing on provisions where I suggest amendments as indicated, but revealing with section heading the context in which such provisions appear..

LU-2 Creating and Maintaining Successful Neighborhoods 308

LU 2.1 A City of Neighborhoods 309

LU 2.2 Maintaining Community Standards 310

LU 2.3 Residential Land Use Compatibility 311

Policy LU 2.3.5: Institutional Uses 311.7

Policy LU 2.3.6: Houses of Worship

Recognize churches and other religious institutions as an important part of the fabric of the city's neighborhoods. Work proactively with the faith-based community, residents, ANCs, and neighborhood groups to address issues associated with church transportation needs, operations, and expansion, so that churches may be **established and** sustained as neighborhood anchors and a source of spiritual guidance for District residents. 311.8

Policy LU 2.3.7: Non-Conforming Institutional Uses

Carefully control and monitor institutional uses that do not conform to the underlying zoning to ensure their long-term compatibility, **respecting, however, tenets of the Constitution and applicable Federal law pertaining to Places of Worship and diplomatic protocols.** In the event such uses are sold or cease to operate as institutions, encourage conformance with existing zoning and continued compatibility with the neighborhood. 311.9

LU 2.4 Neighborhood Commercial Districts and Centers 312

LU-3 Balancing Competing Demands for Land 313

This section of the Land Use Element addresses five specific activities that require a greater level of direction than can be covered in the “Neighborhood” policies listed described above. These activities are an essential part of the District of Columbia and are vital to the city’s future. Each of these uses presents a unique set of challenges and land use compatibility issues. They include [in part]: * * * * *

- b. Institutional Uses, **including Places of Worship**, which desire land **and already developed buildings**, for expansion but are often hemmed in by adjacent neighborhoods;
- c. Foreign Missions, namely the chanceries and embassies of foreign governments, which seek to locate or expand in some of the city’s most desirable neighborhoods; * * * * * 313.1

LU-3.1 Public Works and Industrial Land Uses 314

LU-3.2 Institutional Uses 315

Institutional uses occupy almost 2,300 acres—an area larger than all of the city’s retail, office, and hotel uses combined. These uses include colleges and universities, private schools, child care facilities, **houses of worship** and religious institutions, hospitals, private and non-profit organizations, and similar activities. 315.1

* * * * *

The growth of private institutions has generated significant concern in many of the city’s neighborhoods. These concerns relate both to external impacts such as traffic and parking, and to broader concerns about the character of communities where institutions are concentrated or expanding. **These concerns should be evaluated openly, but in a context respecting Constitutional and diplomatic principles.** 315.5

Policy LU-3.2.1: Transportation Impacts of Institutional Uses 315.6

Policy LU-3.2.2: Corporate Citizenship 315.7

Policy LU-3.2.3: Non-Profits, Private Schools, and Service Organization

Ensure that **large** non-profits, service organizations, private schools, seminaries, colleges and universities, and other institutional uses that occupy large sites within residential areas are planned, designed, and managed in a way that minimizes objectionable impacts on adjacent communities. The zoning regulations should ensure that the expansion of these uses is not permitted if the quality of life in adjacent residential areas is significantly adversely affected. **Where the institution is a Place of Worship or contains such a Place, ensure that the oversight required to ensure this concern is addressed is limited only to those aspects having a compelling public interest to protect public safety so as to protect critical principles to not involve government bodies and officials in matters of worship.** 315.8

Action LU-3.2.A: Zoning Actions for Institutional Uses

Complete a study of residential zoning requirements for institutional uses other than **Places of Worship and** colleges and universities. Determine if additional review by the Board of Zoning Adjustment or Zoning Commission should be required in the event of a change in use. Also determine if the use should be removed as an allowable or special exception use, or made subject to additional requirements. 315.9

I ask for these amendments to address not just abstract principles but changes that are now unfolding in the process of the rewrites of the zoning regulations and a recent decision to expand the provisions of one overlay zone district – that known as the Sixteenth Street Heights overlay zone.

As to the rewrites, the recommendations forwarded by your office to the Zoning Commission specifically recommended treating a range of institutions in a similar fashion. This inappropriately included “Places of worship” in the roster, jeopardizing their long-standing rights as expressed to date in other provisions of the Zoning Regulations. I ask, again, that you reverse that position but ask, as well, that you seek amendments to the Comprehensive Plan to ensure its guidance is clearly framed in the same manner.

As to the Sixteenth Streets Heights overlay, its provisions impose a significant burden on all non-residential uses from establishing themselves in the affected area without a public hearing process before the Board of Zoning Adjustment (see §§ 1551 through 1553). Undeniably, a Place of Worship is not a residential use. However, while Places of Worship may operate or lease their facilities to a range of other institutional purposes, these other uses are seen both by District code officials and sponsoring/hosting/leasing religious organizations as separate from the Place of Worship itself and, as such, are adequately dealt with in existing and proposed provisions of the Comprehensive Plan and zoning code. However, the extant provisions of the Sixteenth Street Heights overlay impose un-Constitutional reviews on the establishment of a Place of Worship with no other companion use intended, delaying their ability to establish a Place of Worship for those of their faith until after a long and expensive zoning case that infringed on the rights of members of that faith who reside in the District of Columbia to assemble and affirm their beliefs. The provisions of the same overlay will, as presently written, come into play anytime a Place of Worship seeks to expand in the area covered by the overlay at this time, and, I fear, if the principles it embodies are applied city-wide under the overall precepts of the present Comprehensive Plan’s provisions and your own recommendations that fail to accord Places of Worship the protections to which they are entitled.

Accordingly, to buttress my request, I attach a copy of the First Amendment of the United States Constitution and the full text, emphasis added, of the Religious Freedom and Institutionalized Persons Act (of 2000) and the provisions of the Religious Freedom Restoration Act (of 1993). The older of these two statutes, while found un-Constitutional as it applies to States of the Union, remains in effect for the District of Columbia and various other areas of the United States such as the Commonwealth of Puerto Rico, the Virgin Islands, and other similar areas.

Thank you.

Terry

Cc: Council of the District of Columbia

Attachments

