

Committee of the Whole Performance Oversight Hearing  
Office of Zoning  
March 18, 2021

Testimony of Andrea Rosen, Ward 4, for the DC Grassroots Planning Coalition  
**(Revised)**

According to the Office of Zoning Independence Act of 1990, the Office of Zoning is “an independent agency responsible for providing professional, technical, and administrative staff assistance to the ZC ... for purposes of assuring uncompromised decisions.” The DC Grassroots Planning Coalition’s concern revolves around the Commission’s compromising conduct and breaches of independence.

The conduct I refer to is Zoning Commission Chair Anthony Hood’s August 5, 2020, letter to Council Chair Phil Mendelson concerning the Comprehensive Plan Amendment Act (formerly B23-0736, now B24-0001), a letter that we believe crosses ethical and legal bounds.

The Grassroots Planning Coalition believes that Chair Hood’s letter cannot be reconciled with the Zoning Commission Rules of Ethics (Title 11-Zoning Commission Rules of Practice and Procedure, Chapter 1) particularly:

105.3 Members of the Commission shall avoid all actions which might result in, or create the appearance of, the following: ... (c) Impeding government efficiency or economy; (d) Losing complete independence or impartiality; (3) Making a government decision outside official channels; or (f) Affecting adversely the confidence of the public in the integrity of government.

105.5 In any proceedings before the Commission, all members of the Commission shall be prohibited from receiving or participating in any ex parte communication relevant to the merits of the proceeding.

Chair Hood’s letter goes beyond a disinterested query about the Council’s schedule for considering the bill. Rather, the letter urges swift passage of the Mayor’s thoroughgoing amendments of the Comp Plan to enable the Zoning Commission to advance “a backlog of cases that are in limbo.” Chair Hood advises the Council Chair that “updates to the Comprehensive Plan, including Land Use map and policy amendments are needed to counteract adverse decisions by the DC Court of Appeals in zoning cases . . . .”

In essence, the letter lobbies the Council Chair to disregard the Council’s process of holding public hearings on legislation and giving consideration to feedback from the public and other Council members. Its author all but presumes the Chair will adopt the Mayor’s changes wholesale, with emphasis

on changes to the parts of the Plan that inform the Commission's deliberations and carry greatest legal weight. This is the same exhortation we have heard from the developers' lobby and the Mayor herself. The Zoning Commission's effort to try to circumscribe the legislature's role<sup>1</sup> in determining the handling and final form of legislation seems to us not only to trespass on the Council's legislative role, but to belie the Zoning Commission's reputed independence.<sup>2</sup>

Further, reading between the lines, we discern that Chair Hood may be declining to consider cases because they can be approved only if and when the Office of Planning's profound changes to the Comp Plan are accepted by the Council. His admission exposes the Commission's intent to pre-determine outcomes before a public process has occurred. This is unlawful and unethical and further undermines public confidence in the impartiality and adjudicatory ability of the Commission.

Moreover, the "limbo" in which cases find themselves because of a deliberate lack of action by the Commission is artificial. The District of Columbia has a Comprehensive Plan that is ***in force now*** to guide the Commission's timely consideration of projects that come before it.

Finally, with regard to the "adverse decisions by the DC Court of Appeals in zoning cases" to which Chair Hood refers, one must ask, ***adverse to whom?*** Adverse to the Zoning Commission, to be sure, since on a number of occasions, the Court found that the Commission had not followed the law. And adverse to applicants who hoped that their projects would sail through. The use of the term "adverse" to refer to decisions that favor residents' challenges to ZC approvals indicates an implicit bias in ZC decision-making, a bias toward less-controlled development and less public involvement in the city's future. And indeed, the Mayor's Comprehensive Plan Amendment Act advances fewer restrictions and less public involvement.

Having suffered through four years of a president who sought to subordinate the other branches of government to his at the federal level, we are sensitive to the fact that Chair Hood urges the chair of our local legislature (the only one in which we have voting representation) to collaborate with the executive to avoid certain findings of the judiciary, upsetting the balance of powers that are core to our system of government.

Thank you, Chairman Mendelson and Council members, for your attention and for the opportunity to speak.

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<sup>1</sup> Home Rule Act; DC Code §1-204.04 - Powers of the Council

<sup>2</sup> "The Zoning Commission (ZC) is an independent, quasi-judicial body." <https://dcoz.dc.gov/zc/about>

Attachment:  
Zoning Commission Chair A. Hood Letter to Council Chair P. Mendelson,  
dated 8/5/2020