

EXHIBIT D

ANC/CAG/OP and ZONING COMMISSION RULINGS ON 750 FT RULE

The following documents emphasize the intent of the ANC2E and the Citizens Association of Georgetown (CAG) as well as the Office of Planning and Zoning Commission to support the 750 ft requirement in the Corner Store Provisions. This directly contradicts the ANC2E support for the variance – and at neither of the ANC meetings was this issue debated by the ANC2E. They focused solely on the third prong test for an area variance of substantial detriment to the public – thus rendering any “great weight” that must be given to their decision meaningless.

These documents prove that expanding the rule for Georgetown only to 750 ft while the rest of the residential zones in all of DC only have to meet a 500 ft rule shows the focus on the need for the zoning regulations to protect the residential area (R-20) from commercial creep and also protect the economic viability of the commercial zones in Georgetown, including the MU-3 zone.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 08-06A
Z.C. Case Nos. 08-06A, 08-06B, and 08-06C
(Text and Map Amendment to Implement the Comprehensive Revisions
to the Zoning Regulations)
January 14, 2016

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of its adoption of a new Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR) and the adoption of amendments to the Zoning Map. Notices of Proposed Rulemaking were published in the *D.C. Register* on May 29, 2015, at 62 DCR 7046 and 62 DCR 8016. Changes made to the text as proposed are discussed in this Order and shown in Exhibits 1102A-1102K, 1102U, and 1102W-1102Z of the case record available on the Office of Zoning website, www.dcoz.dc.gov. This notice of final rulemaking shall become effective on September 6, 2016 and supersedes Z.C. Order Nos. 08-06-A through 08-06-E.

The text amendments create a new Title 11 (Zoning Regulations of 2016), which will be divided into subtitles as follows:

| Subtitle | Subtitle Name |
|-----------------|--|
| A | Authority and Applicability |
| B | Definitions, Rules of Measurement, and Use Categories |
| C | General Rules |
| D | Residential House (R) Zones |
| E | Residential Flat (RF) Zones |
| F | Residential Apartment (RA) Zones |
| G | Mixed-Use (MU) Zones |
| H | Neighborhood Mixed-Use (NC) Zones |
| I | Downtown (D) Zones |
| J | Production, Distribution, and Repair (PDR) Zones |
| K | Special Purpose Zones |
| U | Use Permissions |
| W | Specific Zone Boundaries |
| X | General Procedures |
| Y | Board of Zoning Adjustment Rules of Practice and Procedure |
| Z | Zoning Commission Rules of Practice and Procedure |

Corner Stores:

The existing 1958 regulations do not allow small retail uses in the residential zones. Although existing corner stores are “grandfathered”, new ones are not permitted and changes to existing ones require Board of Zoning Adjustment approval.

The initial OP proposal was to permit corner stores as a matter of right use subject to recommended conditions that address concentration, operational activities, and location and size in both the rowhouse and flat zones (R-3, R-13, R-16, R-20 and RF). OP reports and public comment in favor of corner stores highlighted that corner stores support environmental efforts to reduce car trips and hence car emissions, they support walkable communities, provide an opportunity for small grocery stores in areas having limited access to supermarkets, and support the DC Healthy Corner Store Initiative, a program of DC Hunger Solutions and an item in the Sustainable DC Plan.

There were opposing concerns expressed from the public that corner stores would alter residential neighborhoods by bringing in a commercial use, that corner stores could encourage loitering, that they would draw retail off the commercial corridor, that a grocery did not guarantee the sale of fresh food and produce, and about the by-right permission for Corner Stores to sell beer and wine for off-site consumption. OP proposed amending the advertised text to allow sales of beer and wine only by special exception and to define the term “grocery”.

The Commission reviewed maps prepared by OP that showed the potential locations of corner stores in the rowhouse and flat zones based on the recommended conditions. The Commission also recognized that there already existed several corner stores in the Georgetown historic district and, due to the tight proximity of the commercial corridors and Georgetown University, accepted a larger spacing of corner stores in the R-20 zone from the commercial zones. The Commission also recognized that Foxhall Village historic district was uniquely and purposefully developed around an existing corner store concept, and to permit corner stores by right could be incompatible with the historic character that defines the Foxhall Village historic district; therefore, in the Foxhall Village historic district, corner stores would be permitted only as a special exception.

The Commission concluded that there was public value in permitting grocery corner stores in the rowhouse and flat zones (R-3, R-13, R-16, R-20, and RF) as a matter of right use subject to conditions, and permitting other corner stores in these zones as a special exception subject to additional conditions. The Commission established a definition for grocery store and concluded that the sale of beer and wine should only be permitted as a special exception. The special exception review allows for public input and a demonstration that the corner store will not adversely impact the residential character or compete with commercial corridors.

Penthouses (Roof Structures):

Although initially discussed as part of this case, the penthouse regulations were ultimately considered separately as Z.C. Case No. 14-13. Changes made to the 1910 Heights of Building

| ANC | Exhibit # | Subtitle | Comment | Response |
|-----|-----------|----------|--|--|
| | | | <p>minimum total floor area to 1,200 sq. ft. ANC 2E believes 1,750 sq. ft. would be an appropriate minimum in Georgetown. Special exception review by the BZA would be appropriate for applications for any house less than 1,750 sq. ft. in Georgetown. ANC 2E objects to § 253.7 which expressly permits a new door to be created in the front of a house in the R-20 zone provided only that it is below the main level of the house. Any exceptions should be by a special exception following CFA review and approval of an additional door. In R-19 and R-20 an existing two story accessory structure should be permitted to be used for dwelling purposed on both the first and second floors. In R-20 a new accessory structure should be permitted to be used for dwelling purposes. Balconies and projecting windows should be prohibited if they face adjoining property but not if they face an alley or the principal residence to which they are secondary. Georgetown is well served by retail and other commercial stores on Wisconsin and M Street as well as numerous corner stores throughout the neighborhood. Accordingly, we support this section (Subtitle U § 254.6(e)) placing a 750 foot restriction on new corner stores but believe it should apply to R-19 Georgetown as well.</p> | <p>R-3, R-13, R-17, and R-20 zones. Additional doors are determined appropriate if the proposed accessory apartment is located in a historic district. That is because the addition of the door would need to be reviewed by the CFA for its compatibility with the historic district. Having a special exception review would therefore be redundant. An accessory apartment is allowed only on the second story of a detached accessory building. The regulations include restrictions on balconies facing adjoining properties. They do not permit corner stores in the R-1-B zones; therefore, the 750-foot restriction would not apply to the R-19 zone (R-1-B in Georgetown).</p> |
| 3B | 829 | D | <p>ANC 3B recommends the following for improving the zoning code: 1. Use of a uniform set of definitions so that the Urban Forestry Administration's (UFA) guidelines and definitions apply to residential, institutional, commercial, and D.C. government new construction projects and throughout the entire permitting process. 2. Zoning regulations should require plans to depict accurately all trees at risk from construction activity prior to permit review and approval. Plans should show accurately each tree's size and Critical Root Zone according to the uniform set definitions. 3. Plans for new construction must show trees on all adjacent private and public land whose Critical Root Zones and/or crowns would be impacted by construction activity and the completed project. 4. The UFA should be required to review final plans</p> | <p>The Zoning Regulations cannot provide tree protection that is not zone specific. Rather, there are certain areas for which tree protection have been identified. These areas were formerly mapped in overlays but now are in standalone zones with the same specific tree protection rules. The Council has adopted legislation to protect trees on a District-wide basis, and that legislation is enforced by the Urban Forestry Administration. The UFA has permit requirements that can be found in "DDOT Trees Permits and Laws" on the DDOT website at http://ddot.dc.gov/sites/default/files/dc/sites/ddot/publication/attachments/ufa_laws_and_permits.pdf.</p> <p>There is no need to duplicate the UFA</p> |

Advisory Neighborhood Commission 2E



Representing the communities of Burleith, Georgetown and Hillandale

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(202) 724-7098 • anc2e@dc.gov

September 14, 2015

Mr. Anthony Hood
Chairman, D.C. Zoning Commission
441 4th Street, NW, Suite 210
Washington, DC 20001

**Re: Case No. 08-06A, Zoning Regulations Review
Comments on Portions of Subtitle U Pertaining to Georgetown**

Dear Chairman Hood and Members of the Commission:

On August 31, 2015, ANC 2E held its regularly scheduled public meeting, which was properly noticed and attended by seven of eight commissioners, constituting a quorum. At this meeting the Commission unanimously adopted the attached comments on portions of Subtitle U pertaining to Georgetown. We file this attachment both for ANC 2E and for the Citizens Association of Georgetown, which adopted these comments as well.

We trust the Commission will give this resolution the “great weight” to which it is entitled under District of Columbia law.

Commissioners Solomon, Lewis, Jones, Clausen, Starrels, Birch, and Roaché, or any one or more of them, are authorized to act for ANC 2E on this matter and any matter that may come before the Commission relating thereto.

Sincerely,

Ron Lewis
Chair, ANC 2E

COMMISSIONERS:

Ed Solomon, District 1 Ron Lewis, District 2 Jeff Jones, District 3 Kendyl Clausen, District 4
Bill Starrels, District 5 Tom Birch, District 6 Monica Roaché, District 7, Reed Howard, District 8

ZONING COMMISSION
District of Columbia
CASE NO. 08-06A
EXHIBIT NO. 935

Advisory Neighborhood Commission 2 E

Citizens Association of Georgetown

Before the Zoning Commission of the District of Columbia

Comments on portions of Subtitle U pertaining to Georgetown, Case No.
08-06A

September 1, 2015

Advisory Neighborhood Commission 2E joins in these comments by the Citizens Association of Georgetown.

The Citizens Association of Georgetown (CAG) represents over 1200 residents of Georgetown and has been an active participant in the zoning rewrite process from the beginning of that process. CAG appreciates the inclusion of the Georgetown Residential house zones in Chapter 12 of the Proposed Regulations. They represent an appropriate tailoring of the general Residential regulations to the historic preservation needs of Georgetown, a national and DC Historic District. We thank the Office of Planning staff for working with CAG and Advisory Neighborhood Commission 2E to develop regulations meeting the special needs of this Historic District. However Subtitle U (Uses) includes some technical glitches and some substantive changes that as applied to Georgetown need amending for the reasons set forth below.

Subtitle U, §253.7-Accessory Apartments

While CAG supports the proposed deletion of the minimum lot size requirement for accessory apartments within a principal dwelling, and a reduction in the minimum total floor area from the 2000 square feet originally proposed, CAG disagrees with the proposed reduction in R-20 of the minimum total floor area to 1,200 sq. ft. GFA. In CAG 's comments on the Alternative Language to Certain Advertised Text, dated September 5, 2014, we stated that 1750 sq. ft. would be an appropriate minimum in Georgetown. CAG is concerned that the proposed 1200 sq ft GFA minimum would encourage small houses to be altered in an historically inappropriate manner. In particular a 1200 sq. ft. minimum CAG would permit even very small houses to have an accessory apartment. That in turn would create an incentive in many cases to provide an additional entrance facing the street which would have an adverse impact on both the historic house and the historic streetscape. Because the Board has the authority in §1606.5(d) to modify the minimum house size requirement in appropriate cases, CAG believes that is the appropriate approach for any house less than 1750 sq. ft. GFA in Georgetown.

CAG also objects to Section 253.7 which expressly permits a new door to be created in the front of a house in the R-20 zone provided only that it is below the main level of the house. Creating a below grade door in the front of a house could still change the appearance of an historic house in an inappropriate manner and adversely impact the historic streetscape of Georgetown. CAG believes that the default rule set forth in 253.7 should govern in R-20 and that any exceptions should be by a special exception following CFA review and approval of an additional door.

§253.9-Accessory Apartments

This proposed section creates special requirements for accessory apartments in Georgetown. It needs to be revised to reflect the different situations presented in R-20 and R-19. R-20 is characterized by the most part by attached or semi-detached houses on lots of modest size that in many cases do not meet the minimum lot area standards of § 201.3 ((3,000 sq. ft. semi-attached, 2000 sq. ft. attached). R-19 is characterized by detached houses on much larger lots, many of which have garages. In prior comments on earlier drafts of the regulations we

urged that in R-20 accessory apartments in accessory buildings used for dwelling purposes should only be permitted to be located in an existing two story accessory building to avoid encouraging construction of new accessory buildings on the interior of lots in R-20. However the proposed regulations limit accessory apartments to the second story of an accessory building in both R-19 and R-20 which does not accurately reflect what we proposed and is unduly restrictive. In both R-19 and R-20 an existing two story accessory structure should be permitted to be used for dwelling purposes on both the first and second floors. In R-20 a new accessory structure should be permitted to be used for dwelling purposes.

In addition there is a technical issue with the provision restricting the location of balconies and projecting windows. The problem with balconies and projecting windows is that they invade the privacy of neighbors. Accordingly they should be prohibited if they face adjoining property but not if they face an alley or the principal residence to which they are secondary. Accordingly we believe §253.9 should be revised to read as follows (new material underlined):

"An accessory apartment proposed in the R-19 and R-20 zones shall be subject to the restrictions on existing of Subtitle U §§ 253.5 through 253.8 and the following conditions:

- (a) It shall only be permitted in a detached two story accessory building in R-20; and
- (b) Any balcony or projecting window shall not face a principal building in single household residential use on an adjoining lot, and provided the balcony is located entirely within the permitted footprint of the accessory building."

Subtitle U, §254.6(e)-Corner Stores

Georgetown is well served by retail and other commercial stores on Wisconsin and M Street as well as numerous corner stores throughout the neighborhood. Accordingly we support this section placing a 750 foot restriction on new corner stores but believe it should apply to R-19 Georgetown as well.

We appreciate your consideration of our comments.

Respectfully Submitted,

Ron Lewis, Chair

Advisory Neighborhood Commission 2E

/s/

Robert P. vom Eigen

President, CAG

/s/

Richard Hinds

General Counsel, CAG