

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via-email)
From: Sharon S. Schellin
Secretary to the Zoning Commission
Date: February 17, 2009
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on February 20, 2009:

1. Z.C. Notice of Public Hearing (Case No. 08-06-8).

Attachment

ZONING COMMISSION
District of Columbia

CASE NO. 08-06-8

EXHIBIT NO. 1

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ZONING COMMISSION
District of Columbia
CASE NO. 08-06-8
EXHIBIT NO. 1

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Thursday, April 9, 2009, @ 6:30 p.m.**
 Office of Zoning Hearing Room
 441 4th Street, N.W., Suite 220
 Washington, D.C. 2001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 08-06-8 (Comprehensive Zoning Regulations Rewrite: Low/Moderate Density Residential)

THIS CASE IS OF INTEREST TO ALL ANCs

This Notice of Public Hearing announces the eighth of several proposed subject areas the Zoning Commission for the District of Columbia (the "Commission") will consider under this docket. All recommendations offered by the Office of Planning ("OP") under this docket have been reviewed by a working group and a subject matter task force as part of a process designed to ensure full public participation. Nevertheless, this process cannot replace or limit the public hearing process required in the Zoning Act or the Commission's responsibility to consider the merits of each proposal submitted.

This hearing will consider general recommendations for changes to the Zoning Regulations in relation to low and moderate density residential zones. The proposal recommends changes to the system for organizing residential zones on a local basis. It proposes changes to the measurement of height, yards, and lot occupancy. The first recommendation lays out the proposed organizational structure, while recommendations two through eight represent customizable requirements within each zone.

This hearing, like all others under this case number, is being scheduled without adherence to the set-down requirements stated at 11 DCMR § 3011 because the Commission waived the requirement at its public meeting held April 14, 2008. The Commission also waived the requirement that a pre-hearing statement be submitted before hearing notices can be published.

It is not expected that the Commission will take proposed action with respect to these recommendations, but that it will make determinations at a public meeting that will serve as guidance for drafting revisions to the zoning regulations pertaining to residential uses and other relevant subject matters.

More detailed information, including detailed explanation of recommendations in this notice, can be found in the OP recommendation document at <http://www.dczoningupdate.org/lowmoderatedensity.asp>.

Title 11 DCMR (Zoning) is proposed to be amended as follows:

Recommendations

- 1. Create a general template to establish area and use requirements, and use performance requirements, applicable to all Low Density (i.e. detached and semi-detached dwelling) zones and another for Moderate Density (i.e. row dwelling) zones.**

Approve text for specific optional tools to add protections, such as tree and slope, or incentives for such uses as arts or residential.

After the effective date of the general template provisions, individual neighborhoods may petition the Zoning Commission for the creation of a customized zone that would consist of either:

- A. Customized modifications to the general template; or**
- B. Adding one or more specific tools to the general template; or**
- C. A combination of the two.**

Each customized zone would be a residential stand-alone district.

Reason: The existing system of overlays is often confusing to interpret and apply. Users of the ordinance must reference and compare multiple chapters in the regulations to determine the applicable standards for a property. More importantly, the process for creating overlays for local zoning control is long, unclear, and ad hoc. Each overlay is designed from scratch, usually creating new tools or new lists of uses, and often having minimal organizational or functional relationship to other overlays or the rest of the ordinance.

The Comprehensive Plan recognizes the variety of neighborhoods throughout the District and calls for maintaining that variety (Policy LU-2.1.1). The Plan further recognizes the importance of “an emphasis on conservation in some neighborhoods and revitalization in others” (Policy LU-2.1.3), and expresses a need to “provide a better match between zoning and existing land uses in the city’s residential areas” (Action LU-2.1.C). The Plan also calls for exploration of “changes which would facilitate development of accessory apartments, English basements, and single room occupancy housing units” (Action H-1.5.B).

The Working Group discussions revealed a consensus that the existing regulations are inadequate to accomplish these objectives. Working group members recognized that the existing zoning creates confusion and frustration for both property owners and neighbors, and that it was inadvisable to establish “one-size-fits-all” solutions for the entire city. Several working group members expressed satisfaction with the intent and focus of the current use of overlays to achieve a “micro-zoning” framework, but also recognized that

current methods of applying overlays to base zone districts can be an additional source of confusion.

The proposed solution to this complication and confusion is a system where zone districts are customizable directly rather than through the use of overlays. This would allow the same types of changes achievable through an overlay, but through a standardized system that allows faster, more specific, and more targeted changes to the zoning in residential neighborhoods.

A system of customizable local zones would not involve any immediate changes to the bulk or density limitations or the remapping of particular neighborhoods. The bulk and density standards of each existing zone (i.e. R-1-A, R-1-B, R-2, etc.) will remain the same. Existing overlays would be transferred into the system with their unique bulk and density standards. The template would therefore not necessitate any change to the standards of particular neighborhoods, but would allow for easier local input into the existing process.

2. **Height maximums should continue to be measured in feet; however, measurement should be to the top of a flat roof or the mid-point of a sloped roof as shown below. This would remove the need for a separate measure of stories.**



Reason: This recommendation would simplify the measurement of height in low and moderate density residential areas. Currently, height in these zones is measured to the ceiling of the top story. In the diagram above, each of these houses could have different heights based on where the ceiling was placed. Moreover, the two houses on the right would be subject to determinations of whether the tops of the buildings were “attics,” “mezzanines,” or “stories,” which would have further impact on the height measurement while having nothing to do with the actual height as seen from the street. The OP

recommendation would measure height to the top of the building with allowance for roof features or peaked roofs. This proposal would allow for simplified height measurement in a way that is most meaningful to the character of surrounding properties, and when accompanied by a removal of story designations, would greatly simplify administration and enforcement.

3. Front yard setbacks should be available as tools for local neighborhood zones.

Front yard setbacks for new buildings would start no further forward or back than any existing building on the same block face based upon on the characteristics of existing buildings.

While front yards are often a neighborhood defining element, there is no current mechanism for ensuring their maintenance. Unlike other characteristics, which can often be uniform for several blocks or a large neighborhood area, front yard setbacks are more variable and often change from block to block or on different faces of the same block.

Front yard setbacks in the context of this discussion refer to the distance between the property line and the building line. As noted, there is often an area of “public parking” between the house and the sidewalk that is in public space, but maintained by the property owner. Such public parking may constitute all or part of a front lawn. These areas are not regulated by zoning and would not be counted in any measurement of front yard as defined in zoning.

Office of Planning research has shown while there is general consistency of front yard setback within block faces, the majority of residential buildings in D.C. are *not* built to the front lot line. Based on OP’s citywide study of residential neighborhoods, approximately 80% of the single family residential structures are setback from the property line. Two thirds of rowhouses (66%) and the vast majority of detached homes (92%) are setback. With no current regulation of front yards, there are many areas where a new house could extend forward further than the surrounding group or, conversely, the home could be setback significantly more than its neighbors. Either situation could detract from the character of a residential neighborhood.

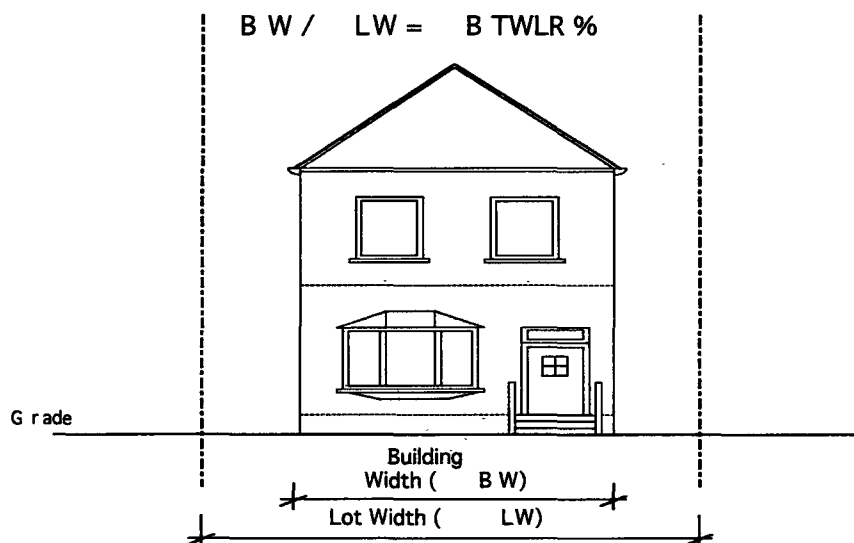
Based on OP analysis of existing conditions throughout the city, the most equitable way to regulate front yards would be to base the setback or build-to line on the setbacks of existing buildings on the same block face. This would mean that new buildings could start no further forward or back than any existing building on the same block face.

4. Side Yards

- a) For detached homes, the standard should change from a side yard measure to a measure of the ratio of building width to lot width (shown below). It would still be**

appropriate to maintain an absolute minimum width on each side, but the two side yards could be of a different width as long as the aggregate ratio is met.

- b) Allow buildings to expand along the line of existing non-conforming side yards of any width.
- c) In historic districts, do not allow the elimination of side yards below the minimum standard, even to create an otherwise allowed rowhouse.



Reason: A thorough study of residential side yards around the city showed that there is no regularity to the separation of buildings from one another or to the width of their side lot lines. A standard eight foot requirement for side yards does not promote building location on infill lots that would complement the character of most existing neighborhoods. One method of establishing complementary side yards between new construction and established character would be to allow side yard requirements to vary by local area, however this could be too localized and area-specific to effectively regulate.

The study of side yards performed by OP showed that there is a high degree of regularity across the city in the ratio of a building's width to the width of its lot. These results indicate that compatible infill houses may be more simply and effectively assured through regulation of a maximum Building to Lot Width Ratio (BLWR). Such a standard would ensure that infill structures would be relatively consistent in their placement on their lots compared to similarly situated buildings.

The study shows a consistent average across the city of 70% BLWR with a very low deviation. Adoption of this standard, for example, would assure that R-1-A lots maintained

two side yards that added up to 22.5 feet and R-1-B had two side yards that added up to 15 feet even if both sides were not equal.

To assure a minimum level of compliance in terms of separation from lot lines it is also recommended that a minimum standard for side-yards be established. This standard would ensure a minimum separation for passage and maintenance regardless of where the building is located between the maximum BLWR. The minimum yard should be adequate for human passage and proper building maintenance.

Recommendations 4b and 4c are the result of discussions in the Historic Preservation Working Group. Recommendation 4b would allow for the expansion of all residential structures along non-conforming side yards. The current regulations include side yards less than five feet in the lot occupancy calculations and do not recognize these small open areas as open space. The current regulations also prohibit the matter-of-right extension of side yards less than five feet. This has resulted in property owners choosing to fill in the areas rather than apply for zoning relief. Recommendation 4b would remove the incentive to fill in non-conforming side yards as a way to avoid zoning relief.

Recommendation 4c would protect existing side yards along historic detached and semi-detached structures from being filled in to create row structures. Rowhouses, by definition do not have side yards, thus by converting a structure from a detached or semi-detached structure, a property owner can avoid the necessity of zoning relief due to a non-conforming side yard. However, these definitional conversions to rowhouses often conflict with the historic character and fabric of a neighborhood or the structure itself. The recommendation of 4c to restrict the unnatural removal of side yards in historic districts is an important clarification for the protection of the existing character of certain historic neighborhoods.

In non-historic districts, a series of BZA cases has provided inconsistent precedent as to whether a detached or semi detached dwelling may be converted to a row dwelling. Its most recent order suggests that such a conversion is not permissible. OP recommends that such conversion should be permitted as a matter of right in any residential districts where side yards are not required.

5. Repeal current court width and area requirements. Courts would no longer be regulated.

Reason: The existing court requirements were created in 1958 as a light and air standard. The majority of residential courts created prior to that time did not meet the area and width standards and are considered non-conforming. Since the date of the original regulations, building code standards have evolved to provide light, air, and fire protection standards for all buildings. Since the original purpose of the court requirements has been supplanted by modern building codes, and the main impact of the requirements is to force variances on

court expansions, OP recommends removing the requirement. Counter-intuitively, this would lead to more retention of existing non-conforming courts by removing the incentive to fill them in to avoid a variance procedure.

6.
 - a) **Each low to moderate residential zone should have a minimum matter-of-right building footprint regardless of lot size. Lot occupancy limits would continue to apply for buildings larger than the minimum matter-of-right standard.**
 - b) **Exclude narrow courts and narrow side yards from footprint and lot occupancy calculations.**

Reason: A very noticeable impact of the current use of lot occupancy is the number of variance requests for construction or addition on smaller lots. Almost 20% of all variance requests are for lot occupancy on low and moderate density residential lots and the majority of those are on substandard lots. Generally, these are cases of buildings that fit exactly with the pattern of the neighborhood, but because of the variation in lot size, cannot build what their neighbors have as a matter of right.

A solution to this problem is to allow a minimum building footprint for any house in the neighborhood based on the characteristics of the homes in the area. For example, in an area where the building footprints are generally 1200 square feet, a lot would be entitled to a 1200 square foot building footprint even if the lot was smaller than the standard lot size due to the layout of the block.

The minimum footprint proposal would not limit the right of anyone with a larger lot from developing a larger building based on the existing lot occupancy standard. The maximum footprint of buildings would be the greater of the allowable footprint or the lot occupancy.

Based on the Lewis Plan, lot occupancy limits were originally implemented to preserve open space in residential areas. They are still useful and should be maintained for that reason. The proposal would only impact the smallest lots where open space is minimal and is outweighed by character issues and the number of created variances.

Recommendation 6b would remove narrow side yards and courts from the calculation of lot occupancy. As discussed in Recommendation 4 above, there is an incentive in the existing regulations for homeowners to fill in existing side yards and courts since they already count as lot occupancy by definition and would not therefore require a variance to add space to the building.

7. **Rowhouses should have a matter-of-right depth by which they may extend into a lot, even if it would result in the reduction or elimination of a required rear yard.**

If an area remains between the rear of a rowhouse and the rear property line that is less than the minimum rear requirement, it shall be deemed to satisfy the rear yard requirement.

Reason: As with lot occupancy, there is a demonstrated need in row house areas for a minimum standard size for a building when the lots are cut short by diagonal streets or odd alley layouts. OP recommends a similar solution to the one for lot occupancy. Row house buildings should have an allowable building depth based on the local building form that is achievable regardless of lot depth. This would allow infill to match the existing building characteristics and avoid unnecessary variances.

Also as with lot occupancy, for lots deeper than standard the allowable building depth would not limit development up to the existing required rear yard. Each building would be limited to the greater of the allowable building depth or the rear yard measurement.

- 8. Maintain the existing limits on number of dwelling units per lot, but permit customization of the standard for new customized Low and Moderate Density residential districts that are not inconsistent with the Comprehensive Plan.**

Reason: Protection of existing neighborhood character in the city is hampered by the lack of flexibility in the existing moderate apartment zones. In many cases, rowhouse areas zoned R-5-B should appropriately be limited to four or six units, while many areas zoned R-5-A have a single family detached character that is threatened by the unlimited unit count. Many R-4 areas of the city have the room and the desire for three unit buildings. Current regulations provide no ability to customize the zones R-4 and below while also providing no density protection to areas zoned R-5-B that have well established rowhouse character.

This recommendation would result in the ability to customize low and moderate residential zones that more easily bridge the transition from the one- and two-unit zones to the unlimited units permitted in the R-5 apartment zones. It would allow future planning processes to base unit density on the characteristics of a neighborhood rather than the limited choices that now exist.

- 9. a) Continue to regulate lot area and width standards by type of structure for the creation of new lots.**
b) Allow minimum matter-of-right construction of residential uses on existing sub-standard lots that are not being further subdivided.

Reason: The current regulations establish the allowable lot size on the type of building. OP would recommend maintaining existing standards and consolidating into one section for ease of use in the creation of new lots.

There are many legally existing lots that do not meet the minimum lot size standards for their applicable zone districts. OP recommends that minimum matter-of-right construction be allowed on existing lots that do not meet current standards. All new or changed lots would continue to be subject to existing lot size standards.

- 10. Provide a matter-of-right square footage allowance for accessory structures on substandard lots. Structures above the matter-of-right standard would be subject to lot occupancy limits meaning that property owners could build larger accessory structures by transferring unused footprint allowance from the primary structure.**

Reason: OP recommends that each residential lot utilizing the building footprint allowance rather than lot occupancy (see Recommendation 6) should be provided with a matter-of-right square footage allowance for accessory structures separate from lot occupancy. To exceed this allowance, both the main building and the accessory structure would have to meet the lot occupancy limitation in the traditional way.

Under this recommendation each lot would either have 1) a total lot occupancy limit for all buildings; or 2) two footprint allowances, one for the main building and one for an accessory building.

- 11. In shifting to a system of use control by general category rather than use lists, control the establishment of retail, service, institutional, and office uses (including home occupations) through performance measures. Within general limits, performance measures that apply to each category could be customizable to meet the needs of particular neighborhoods (i.e. hours of operation, maximum GFA, etc.)**

Reason: Many areas of the city were historically built with a strong presence of neighborhood retail and service uses. As the city strives to promote more local food availability, walkable neighborhoods, reduced reliance on the automobile, and healthy urban environments there will be increased demand for corner stores and home businesses that allow for sustainable living.

Moreover, the existing home occupation regulations have a very limited list of possible home occupation uses. As traffic increases and technology evolves, there will be increased pressure and opportunities to telecommute and to do an increasing amount of work from home. There will be a need to allow and promote a wide variety of home occupations and allow some local customization of the standards.

OP recommends that local residential neighborhoods have the flexibility through the planning process to allow for limited commercial uses. These uses would be controlled and regulated by impact through performance measures as described in the broader discussion of uses as part of the Retail subject area.

The appropriateness of an area for such neighborhood uses would be determined on a local basis by small area plan, with reference to the Comprehensive Plan and historic preservation constraints.

- 12. Expand types of uses for adaptive reuse of historic institutional buildings. Conditions would be put on the impacts of new uses in these buildings that would allow development as either matter-of-right or special exception.**

Reason: Historic institutional buildings should not be left in disuse if the use closes. The regulations should allow, through special exception or matter-of-right, the opportunity to reuse the buildings for government offices uses and other uses that are compatible with residential neighborhoods. Approval of this recommendation would simplify the path for adaptive reuse of these buildings and encourage limitation of negative impacts by offering a matter-of-right option.

- 13. Allow a second residential structure on the same lot in those zones that allow two or more dwelling units per building, where the lot is served by an alley of suitable width.**

Reason: As a matter-of-right or special exception as appropriate, OP recommends allowing the establishment of accessory residential units with appropriate alley access. This will allow for the adaptive reuse of existing carriage houses while also providing a source of affordable housing. These units would count against the total number of units allowed on the lot the same as any accessory unit.

- 14. Update loading standards for additions to historic structures to match parking standards in all zone districts.**

Reason: OP recommends that there be a similar threshold test for the requirement of loading for additions to historic structures as was adopted for parking requirements. This would mean that additions to historic structures that are over 50% the gross floor area of the original structure would have loading requirements based on the area of the addition. The requirement would only apply to the addition; the original structure would never have a loading requirement regardless of use change.

PROCEDURES

The public hearing on this part of Case No. 08-06 will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning. The Commission will impose time limits on testimony presented to it at the public hearing.

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All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, Suite 210, 441 4th Street, N.W., Washington, D.C. 20001. Please include the number of the particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, GREGORY N. JEFFRIES, WILLIAM W. KEATING, III, PETER G. MAY, AND MICHAEL G. TURNBULL ——— ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY RICHARD S. NERO, JR., ACTING DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.