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Executive Director
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October 21, 2013

Anthony J. Hood, Chairman
Zoning Commission
One Judiciary Square
441 4th Street NW, Suite 200S
Washington, DC 20001

OFFICERS

Chair
Brian Flahaven

Vice-Chair
Ivan Frishberg

Secretary
Philip Peisch

Treasurer
Brian Pate

Parliamentarian
Nichole Opkins

VIA: DC Office of Zoning's Interactive Zoning Information System

RE: ZC #08-06A, Zoning Regulations Review

Dear Chairman Hood:

At its regularly scheduled, properly noticed meeting on October 8, 2013, with a quorum present, Advisory Neighborhood Commission (ANC) 6B adopted the attached set of recommendations and comments regarding the Zoning Regulations Review proposal now before the Zoning Commission, ZC #08-06A. The recommendations address issues in proposed Subtitles C, E, G, and H. ANC 6B's statement also sets forth some needed "technical corrections" in the proposal.

COMMISSIONERS

SMD 1 *David Garrison*
SMD 2 *Ivan Frishberg*
SMD 3 *Philip Peisch*
SMD 4 *Kirsten Oldenburg*
SMD 5 *Brian Pate*
SMD 6 *Nichole Opkins*
SMD 7 *Sara Loveland*
SMD 8 *Chander Jayaraman*
SMD 9 *Brian Flahaven*
SMD 10 *Francis Campbell*

ANC 6B appreciates the Zoning Commission's consideration of these recommendations and comments. If you have questions or need further information, please contact Commissioner David Garrison, Chair of ANC 6B's Zoning Regulations Review Task Force, at david6b01@anc6b.org or 202-543-3593. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to be "BF", with a long horizontal flourish extending to the right.

Brian Flahaven
Chair

Advisory Neighborhood Commission 6B
Statement on Zoning Regulations Review proposal
Before the DC Zoning Commission
Case # 08-06A
October 21, 2013

At its regularly scheduled monthly meeting on October 8, 2013, Advisory Neighborhood Commission 6B approved the following recommendations and comments to the DC Zoning Commission regarding the Office of Planning's proposed rewrite of the city's zoning code (Zoning Regulation Review):

Subtitle E: Residential Flats (RF) Zones

Alley lots – *ANC 6B supports* the proposal to allow residential use (renovation or new construction) of alley lots on narrow alleys (less than 24 feet wide) by special exception (Subtitle E, Sections 900, 1104, and 1105), (10-0 vote).

Accessory units – *ANC 6B supports* the proposal to allow two dwelling units to be located either within the principal structure (current regulation) or one each in the principal structure and an accessory structure (e.g. a carriage house), (10-0 vote).

Conditional Commercial Uses in Residential Area (aka "Corner Stores")

- (1) *ANC 6B supports* the proposal to change the test for the conditional use of commercial space in residential areas from a variance in all situations to a more nuanced approach. *ANC 6B supports* the proposal [Subtitle E, Sections 1101.2(e), 1102.2(d) and 1106] that such conditional uses of commercial space in residential areas be matter-of-right for *grocery* stores at intersections, and *grocery* stores in mid-block buildings that were built before 1958 for non-residential use and only where it has been used for this purpose within the previous 3 years. All other permitted commercial uses would also be restricted to either intersections or mid-block buildings that were built before 1958 for non-residential use and would need a *special exception*. The 3-year requirement would essentially prohibit the re-conversion to commercial uses of any mid-block building that had been converted to residential use (10-0 vote).
- (2) *ANC 6B supports* giving the Board the authority to waive the requirement that a corner store may not be located within 500 feet of another commercial use in the same residential area where the applicant meets certain conditions (Section 1106.4), (10-0 vote).
- (3) At Subtitle E, Section 1106.5 list the prohibitions on Corner Stores. Section 1106.5(b) states that a Corner Store may not be "on a lot or within a building also containing an accessory apartment or another Corner Store." This can be read to prohibit there being a residential unit on the floor above a Corner Store. *ANC 6B* does not agree that residential units above a corner store should be prohibited. An "accessory apartment" is defined in Subtitle B, Definitions, Section 100.3 as "a dwelling unit that is secondary to the principal dwelling unit in terms of gross floor area, intensity of use, and physical character". *ANC 6B supports encouraging the upper floors of a corner store building to be put to residential use*. Indeed, having the owner of the store living above the establishment would seem an especially attractive approach (10-0 vote).
- (4) Similarly, Section 1106.5(d) prohibits locating a corner store "within any building or on any lot containing more than one dwelling unit." This would bar a Corner Store from multi-use buildings with multi-family residential units. *ANC 6B* does not agree that a corner store in,

for example, a small apartment building on a residentially zoned lot should be prohibited. *ANC 6B opposes this limitation* (10-0 vote).

Lot occupancy requirement for semi-detached dwellings – The Zoning Regulations Review proposal does not change the current limit of 40% lot occupancy for semi-detached dwellings in RF Zones. ANC 6B’s docket often includes requests for zoning relief to allow semi-detached dwellings to go to 60% of lot occupancy in conjunction with the building of rear additions. In most cases, ANC 6B agrees fairly routinely to such requests on the theory that there is usually not a persuasive reason for treating a semi-detached dwelling any different than a detached building on the matter of lot occupancy. Thus, *ANC 6B urges the Zoning Commission to change the lot occupancy requirement for semi-detached dwellings in RF zones to 60%* (9-0 vote).

Side Setbacks -- ANC 6B notes the problem presented by the current code requirement that a rear addition to existing semi-detached residential structure must either be set back 8 feet from the property line or go all the way to the lot line. This requirement often results in applicants proposing to expand rear additions to the side lot line, closing off views through side setbacks. This loss of view lines is especially frustrating where the applicants might well prefer to continue an existing setback that is less than 8 feet if the code permitted. *ANC 6B supports* the proposal to reduce the conforming setback to be 5 feet for any newly constructed unit (Subtitle E, Section 207), and further, *ANC 6B supports* the proposal (Subtitle E, Section 1008.5) (9-0 vote):

“In the case of a building existing on or before (Effective date of this title), with a non-conforming side setback, an extension or addition may be made to the building; provided that the width of the existing side setback shall *not be decreased*; and provided further that the width of the existing side setback be a *minimum of two feet*.” (emphasis added)

Subtitle C: General Rules

Parking -- ANC 6B supported the Office of Planning’s original proposal to eliminate the minimum parking requirements in residential zones. ANC 6B is discouraged that the Office of Planning’s final proposal would restore the current minimum parking requirements in RF Zones. ANC 6B urges the Zoning Commission to eliminate the minimum parking requirement in residential zones (7-2 vote).

Subtitle H: Neighborhood Mixed Use (N) Zones

Eighth Street Southeast Neighborhood Mixed Use Zone (N-6) — Four Squares (906, 907, 929, and 930) below the Southeast Freeway on either side of 8th Street SE, currently the “Eighth Street Southeast Neighborhood Mixed Use District,” would become the Eighth Street Southeast Neighborhood Mixed Use Zone (N-6) under the revised code.

(1) *ANC 6B supports this conversion* of the Eighth Street District to a special N-6 Zone provided that the terms of this special zone include the same limitation on eating establishments as in the current district, namely that food and drinking establishment use be limited to 50 percent by lot frontage linear foot and fast food be further limited to half of the 50 percent of linear feet for eating establishments (10-0 vote). The Zoning Regulation Review appears to create a conflict between a general policy and a specific N-6 policy as regards the limitation on fast food. To accomplish ANC

6B's objective, *ANC 6B requests (9-0 vote) that the text of Subtitle H should exempt the N-6 zone from 1101.3(b)(1) or amend it to read:*

"These uses shall occupy no more than twenty-five percent (25%) of the linear street frontage within a particular N zone (*fifty percent (50%) in the N-6 zone*), as measured along the lots that face designated roadways in the particular district; and"

(2) ANC 6B reviewed the list of Uses [section 1102] that would apply to the N-6 zone. Uses are either permitted by-right, with conditions or by special exception. One use permitted by right—Parking—stands out. The "Parking" use definition is in Subtitle B: Definitions, Section 201.26. Currently, within the four Squares (906, 907, 929, and 930), there are three commercial surface parking lots and one temporary private surface parking lot. In order to prevent the addition of more surface lots in this small area, *ANC6B requests that surface lots require a special exception in the N-6 zone (9-0 vote).*

Subtitle G: Mixed Use (M) Zones

Fast food establishments – The current code allows fast food establishments in C-2-A areas with a special exception (§733). In the Zoning Regulation Review, in Subtitle G: Mixed Use (M) Zones, there are three M zones relevant to 6B:

M-4/C-2-A – Pennsylvania Avenue SE past 12th Street SE

M-26/C-2-A/CHC – Pennsylvania Avenue SE between 4th and 12th, and along 7th and 8th Streets SE

M-27/C-2-A/CHC – 200 & 300 blocks of Pennsylvania Avenue SE

The proposal would *prohibit* (i.e. a change from a special exception) fast food establishments, among other places, in M-4 and M-27 Mixed Use zones (that is, the east and west ends of 6B's portion of Pennsylvania Avenue SE, as follows:

Subtitle G §1414.2(a)(1): In the M-4, M-25 and M-27 zone a fast food establishment, a drive-through, drive-in operation or food delivery business shall not be permitted.

For reasons that are unclear and unexplained, however, the proposed Section 1414.2(a)(1) quoted above does not include Mixed Use Zone M-26, the middle segment of Pennsylvania Avenue SE through the Hill including the 7th and 8th Street SE commercial corridors. It may be that the omission of the M-27 zone was an oversight and thus subject to a technical correction. *In any case, ANC 6B requests that the same standard apply in all three M zones (4, 26 and 27) and that the standard be that fast food establishments need a special exception (9-0 vote).*

APPENDIX

ANC 6B conveys the following "technical corrections" comments (8-0 vote):

1. Accessory dwellings: There appears to be some confusion in Subtitle E as regards accessory dwellings. In E, Section 200.2, in a RF-1 zone, two dwelling units may be located within the

principal structure or one each in the principal structure and an accessory structure. Then in Section 204: “Number of Permitted Dwelling Units” reads as follows:

Section 204.1: The maximum number of permitted dwelling units in the RF-1 zone shall be two (2).

Section 204.2: The maximum number of permitted dwelling units shall include both principal and accessory units. *No accessory apartment shall be permitted in any dwelling unit in any RF zone.* (emphasis added)

The same problem arises in RF-3.

Section 400.3: The RF-3 zone (R-4/CAP) permits a maximum of two dwelling units which may both be located within the principal structure or one dwelling unit each may be located within the principal structure and an accessory structure.

Further on:

Section 404: Number of Permitted Dwelling Units

Section 404.1: The maximum number of permitted dwelling units in the RF-3 zone shall be two (2).

Section 404.2: The maximum number of permitted dwelling units shall include both principal and accessory units.

Section 404.3: *No accessory apartment shall be permitted in any dwelling unit in any RF zone.* (emphasis added)

What does the text highlighted in italics mean? It appears to directly contradict the prior sentence.

2. The proposal in Subtitle H: Neighborhood Mixed Use Zones appears to create a conflict between a general policy and a specific N-6 policy as regards the limitation on fast food. ANC 6B requested in its March letter to OP that the revised code continue the current limitation on fast food now contained in the Lower Eighth Street Overlay. To accomplish this in context with OP’s final proposal, the text of Subtitle H. They should exempt the N-6 zone from 1101.3(b)(1) or amended it to read

"These uses shall occupy no more than twenty-five percent (25%) of the linear street frontage within a particular N zone (fifty percent (50%) in the N-6 zone), as measured along the lots that face designated roadways in the particular district; and"

3. Eighth Street Southeast Neighborhood Mixed Use Zone (N-6), Subtitle H-15. To be consistent with the RF-1 requirement regarding side setbacks, Section 606.2 should read “five feet” rather than “eight feet”.

4. Mixed Use Zones – The proposal replaces C-2-A with M-4 and creates four new zones out of the combinations of the Capitol Interest Overlay (CAP) and the Capitol Hill Commercial Overlay (CHC):

M-24 (SP-2/CAP) (in NE, does not apply to ANC 6B)

M-25 (C-2-A/CAP) (1st Street between D and NC - i.e. Tortilla Coast & Bullfeathers)

M-26 (C-2-A/CHC) (Penn between 6th and 12th plus 7th and 8th)

M-27 (C-2-A/CAP/CHC) (Penn between 2nd and 4th)

In this regard, we ask the following question about FAR for M-26. The current code states:

§1572.3: Except as provided in §1572.4, the maximum permitted floor area ratio for a building or structure in the CHC Overlay District shall be 3.0 for all permitted uses. But Subtitle G, §601.1 has

the M-26 (C-2-A/CHC) with a total permitted FAR of 2.5 (3.0 IZ) and maximum non-residential use as 3.0. To be consistent with existing code, shouldn't total permitted FAR be 3.0 without the IZ bonus?

Similarly, we have a question about FAR for M-27. The current code states:

§1572.4: Notwithstanding §1203.3, the maximum permitted floor area ratio for a building or structure located in both the CHC Overlay District and the CAP Overlay District shall be 2.5 for all permitted uses.

The Section 1203.3 referred to here is the FAR limit in the CAP Overlay District and thus overrides those limits for the combined CHC/CAP zones. But Subtitle G, §601.1 says that M-27 (C-2-A/CAP/CHC) has a total permitted FAR of 1.8 (2.16 IZ) and maximum non-residential use as 1.5. To be consistent with existing code, shouldn't this be a FAR of 2.5 for all uses?

5. It appears a clarification is needed on the change from Community-Based Residential Facilities to Community-Based Institutional Facilities (CBIF)? If key definitional concept is "treatment, rehabilitation, assistance, or supervision," then why are substance abusers' home and youth residential care home included under "Residential"? Aren't substance abusers' home and youth residential care home part of "supervision"?

Clarification is also needed on the categorization of halfway houses. The language implies that they are "Residential" but are they part of "supervision." It seems to state that uses where the individual is assigned to a facility, as a condition of probation is not a CBIF.

6. According to the proposal, the minimum lot size in Subtitle E: Residential Flats (RF), Chapter 10: General Development Standards, Section 1010 (30 foot lot width and 3000 square foot minimums for semi-detached dwellings and 18 foot width and 1800 square feet for row houses) will only apply to the creation of new lots. (Earlier drafts had set 18 foot width and 1800 square feet for all buildings including semi-detached dwellings and row houses.) Given that 59% of the lots in R-4 city-wide are less than 1800 square feet, this will mean that many existing buildings will no longer need to seek a special exception or variance. Does applies to lot width or just lot size?

7. Pervious surfaces – There is no pervious surfaces provision in the RF-3 zone. Was this intentional or an oversight? The section on pervious surfaces in RF-1 zone refers to "Chapter 9". This reference should be to Chapter 10 (specifically section 1005).

8. Usage table HE (subtitle K) in section 412 has wrong reference to following sections (e.g. section 405.1 rather than correct section 413.1).