

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF LIMITED PUBLIC HEARING
September 8, 2014

**CASE NO. 08 06A (Alternative Language to Certain Advertised Text –
Title 11, Zoning Regulations – Comprehensive Text Revisions**

Alma Hardy Gates
Neighbors United Trust

These questions, which have serious consequences, remain after review of the proposed text. The proposed text is out of context and it was clear from the hearing that many questions remain. Thank you for the opportunity to add additional comments to those that have been raised by the Zoning Commission.

When did the Zoning Regulation Review become Comprehensive Text Revisions as noted in the hearing announcement?

Does the limited scope of this hearing imply that other text, reviewed prior to September 8, has been approved?

When would the public have an opportunity to review the full body of proposed text; and, would there be opportunity for additional comment?

Will the Zoning Commission actually review the “Record,” which closes on September 15, or has OP been assigned that responsibility?

Is the Zoning Commission making sure that what is being proposed is not inconsistent with the Comprehensive Plan, given the amendment cycle has not begun?

SUBTITLE B: DEFINITIONS

The definitions listed below either need clarification or are missing from the proposed list of Definitions submitted on June 16, 2014 and set down by the Zoning Commission on July 10, 2014:

Alley Dwelling – “Alley” is defined but "alley dwelling" is not. Is an alley dwelling a permanent or temporary structure? (See “**Camping**.”)

Berm – Definition missing in current regulations and no definition is found in the Definition section. The term is used in current code in § 413 and in ZRR, Subtitle C, § 502.3.

Camping – need definition for clarification purposes.

Large Format Retail – The new definition might reference “Big Box Stores,” the more common term of use with regard to these types of retail establishments.

Community Service Center - Only "Community Center, Private" is listed, however Subtitle K, § 414.8 (a) refers to Community Service Center. It appears both private and public community centers are allowed but only one is defined. “Community Service Use” is not being brought forward into the ZRR text.

Department Store - need definition if other types of stores are defined.

Emergency Shelter - need definition.

Green Area Ratio – include definition in the Definitions section of the code as well as in the Subtitle.

Healthcare Facility - definition in current regulations is found under *definition of* Community-based residential facility. It is not clear what kinds of facilities are included in healthcare facilities and if these include residential facilities. A fuller definition would bring clarity to these different types of facilities.

Household Staff – definition is needed to clarify that this is a person receiving a routine pay check and benefits from the homeowner.

Museum – definition needed.

Public Food Concession Stand – definition needed. (Would this include lemonade stands?)

Retaining Wall – a definition needs to be brought forward from the current zoning text into the list of ZRR definitions.

Vehicle Service or Repair – a definition is needed to clarify what is and what is not included in this category. Is it the same as garage, repair? Does it include

Gasoline Service Stations that have vehicle service bays? What about Motorcycle Repairs? How does this definition relate to "**Automobile, truck, or motorcycle accessory sales, including installation?**"

Zones – definitions of each zone district are absent from the list of definitions. Given the rewrite and reorganization of the Zoning Regulations, complete zone definitions are needed in one place (as well as at the front of each text section) as a “reference guide.”

SUBTITLE C: GREEN AREA RATIO

“In cities, the presence of nature – whether interspersed among our streets, buildings and yards or more organized into parks – connects us with growth and with the seasons, providing a softness to complement the concrete of our streets and sidewalks and the brick and wood of our houses.”¹

As the Commission is aware, favorable testimony was given when GAR was initially presented; and, its inclusion in the zoning regulations is crucial if sustainability of quality and quantity of environmental performance is to be realized in the long-term. This is not the time for the Commission to be shy or withhold implementation measures necessary to strengthen this new area of the code.

Much of the city’s current urban landscape is covered with impervious surfaces and prone to the creation of giant heat islands and flooding from inadequate stormwater management practices.² City trees, shoved into unrealistic and minimal growing medium struggle to survive much less provide a shade canopy even though a young, healthy tree is equivalent to ten room-size air conditioners operating 20 hours a day. One acre of forest absorbs six tons of carbon dioxide and puts out four tons of oxygen. These are the kinds of benefits that should be the driving force behind GAR. It’s not clear the current iteration of revised text requires implementation of effective sustainable environmental protections.

3402.8 Landscape Elements of the GAR

¹ April 23, 2014, NRDC *Switchboard*.

² The urban landscape can be a Green Filter, filtering pollution as stormwater slowly sinks into the ground or a Gray Funnel, which allows pollutants and toxins to be washed into local rivers and the Chesapeake Bay.

If GAR is to be an effective tool for increasing the quantity and quality of environmental performance of the urban landscape there must be constancy and consistency. Given the seasonal nature of Washington, DC's climate, vegetated walls, some plantings, some vegetated roofs, and some landscaped areas will most likely not survive intense cold or heat and will fail to meet the overall goal of GAR on a year-round, long-term basis. For example, will a vegetated wall function in January? Will the vegetation remain for four seasons or should vegetated walls be removed from the list because they are seasonal elements? Most ground cover is a year-round survivor. The multipliers assigned to vegetated walls and ground cover appear skewed, given ground cover is not seasonal.

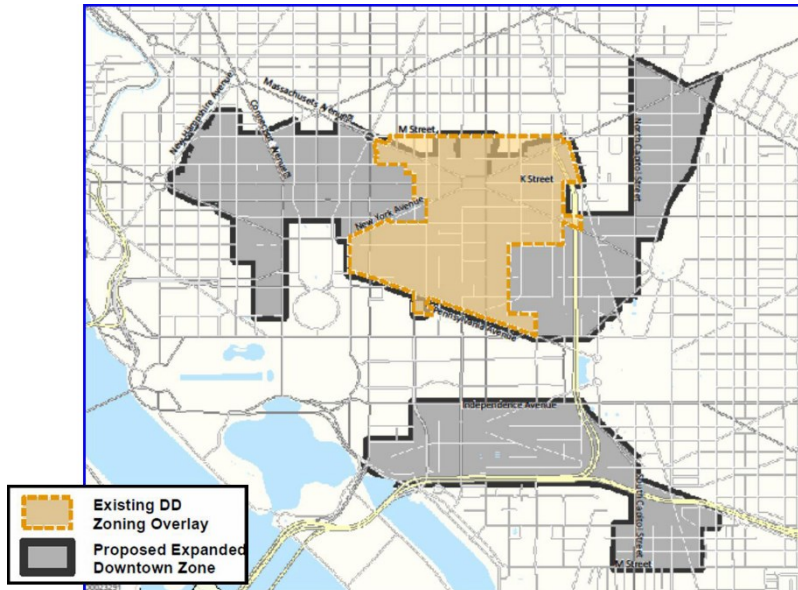
Vegetated wall, planting on a vertical surface – multiplier of 0.6

Ground covers, or other plants less than 2 ft. at maturity – multiplier of 0.3

Regardless of whether a vegetated wall or ground cover is indicated, lot line to lot line building coverage precludes environmental performance of the urban landscape. The downtown area of the city, already densely constructed and, which is about to expand three-fold, will be mostly exempt from any GAR requirements and continue to act as a Grey Funnel, allowing pollution and toxins to be washed into local rivers and the Chesapeake Bay. (See proposed Downtown map below.)

The changes proposed by the Office of Planning to the Green Area Ratio subtitle are minor tweaks. The Zoning Commission must ask how the GAR will benefit the city in the long-term if the land area to be included is so limited and the proposed solutions are so minimal; how does GAR move the city from a grey funnel to a green filter; and, which agency will be charged with ensuring GAR is implemented on a long-term basis?

Map of proposed downtown area is shown on the follow page.



[Source: Office of Planning Setdown Report on Subtitle I]

SUBTITLE D: ACCESSORY APARTMENTS

Accessory apartments have been one of the most controversial and contested elements of the ZRR. Not only does the current text remove major protections, which were included in earlier ZRR text, such as a five year waiting period for conversion of an accessory building; but, there is no requirement for a C of O for internal rental apartments. Roof decks, balconies and projecting windows have been reintroduced - §1606 9(c) (1), despite the fact these elements were strongly opposed when initially introduced and were removed.

It is difficult to maintain consistency and purpose in regulations when an accessory dwelling unit would be permitted to occupy the same lot with a single family dwelling. In the R-1-A and R-1-B zones, the most likely zones for these accessory units, a two-story residential accessory unit on the same lot with a main dwelling unit would be allowed. These zones are designated single-family, low density and would become two-unit residential lots. It is also noteworthy that the term “single family” has been replaced with “household.”

The Comprehensive Plan directs the Zoning Commission and Office of Planning to:

Protect and conserve the District’s stable, low density neighborhoods and ensure that their zoning reflects their established low density character. Carefully manage the development of vacant land and the alteration of

existing structures adjacent to single family neighborhoods in order to protect low density character, preserve open space, and maintain neighborhood scale. 309.10³

There really isn't any way around § 309.10 of the Comprehensive Plan's Land Use Element which provides overarching direction for the use of land throughout the city and specifically in low density residential zones. It rules. An action by the Zoning Commission that makes zoning inconsistent or in conflict with the Comprehensive Plan needs to be avoided. Maintaining low density character and scale must be a priority for the Zoning Commission.

When initially introduced into the zoning regulations in 1958, living quarters for household staff were permitted as a second story over the garage - § 2500.5. These accessory housing units were not intended for the paper boy as OP has asserted, but for live-in household staff. What is being proposed in the ZRR in terms of "housing" in external accessory dwelling units is a very different concept than what was envisioned in 1958, as the individuals to be housed may have no relationship to the owners of the lot other than a rent check.

Section 1606 (b) the term "lot" is replaced with "property." This change in terminology, while subtle, appears to promote the subdivision of residential lots to allow the creation of individual lots for ADUs. As long as external ADUs are proposed for lots in residential zones, the term lot should be used consistently throughout the entire Subtitle. The Zoning Commission needs to be clear that under no circumstances would external ADUs be permitted on a lot without a principle dwelling unit, i.e., lot subdivision for an accessory dwelling unit would not be permitted under any circumstance either by special exception or variance.

Section 1606.5 (d) (8) – the five-year waiting period for conversion to an accessory dwelling unit has been eliminated in the July 16 text. This is a mistake and may encourage teardowns in neighborhoods where there is older building stock on larger lots to allow construction of both principle dwelling unit and ADU.

NOTE: Two-thirds of the external ADUs in Vancouver have been built by developers on *speculation*. *They keep housing prices high -- and they are advertised as "mortgage helpers."* Most of these houses with accessory units have been built following teardowns of older, more affordable homes on larger lots.

³ 2007, The Comprehensive Plan for the National Capital: District Elements. Chapter 3, Land Use Element, Policy-LU-2.1.5 Conservation of Single Family Neighborhoods.

Section 1606.8. Without a C of O requirement for internal ADUs, the inspection requirement is basically meaningless -- no penalties or enforcement mechanism. As the Commission is aware, these illegal units exist across the city. They lack any assurance they are safe, the wiring is up to code, there aren't bars on doors and windows, as we the case in the Georgetown tragedy that took the life of a student. Is there a problem with the Zoning Commission ensuring "safety" is integral to the regulations by requiring a C of O for internal ADUs?

The proposal to permit accessory units has the potential to change zone definitions, create objectionable conditions, increase lot density, create more off-street parking demand; impact the environment and failing infrastructure; but, the proposal has the real potential to create conflict with the Comprehensive Plan by undermining neighborhood character and scale.

Omit external ADUs as proposed in the ZRR text and maintain the current regulations in § 2505.5 for use by household staff.

SUBTITLE D: CORNER STORES – addition of suggested text

1605.13 Any Corner Store use within the Retail, General Service, Arts Design and Creation, or Eating and Drinking Establishment uses that is not permitted by-right pursuant to D § 1605.12, shall be permitted by special exception subject to the following conditions:

1605.13 (a) (1) – (13) as listed. (Maintain)

Propose:

1605.13 (b) An applicant for a corner store liquor license for on-site consumption of alcohol shall sign an ABRA approved Voluntary Agreement with the presiding ANC to ensure compliance with the provisions of § 1605.13 (a).

SUBTITLE J: STANDARDS OF EXTERNAL EFFECTS – PDR

The Standards of External Effects (§ 305) have been changed and now reference other DCMR Titles. For example, "volume of sound" is no longer outlined in the proposed text, it requires the applicant or user to refer to Title 20, Chapter 28.

Section 305.6 is the identical text that is found in current § 825.10 and has been carried forward into the proposed Standards of External Effects: “No objectionable amounts of cinders, dust, or fly-ash shall be permitted to escape or be discharged from any use permitted in a P District.” This regulation would be strengthened considerably by removing the word “objectionable.” Who determines what is and is not an objectionable amount of hazardous discharge? This is another opportunity for the Zoning Commission to strengthen safety standards in the zoning regulations that ensure the wellbeing of those living adjacent to a PDR District as well as lessening impacts on the environment.

Section 305.10 would be strengthened considerably if limited to only Section (a). As proposed, the new § 305.10 would read: Any back-up generators or power systems shall be fully enclosed within the principle structure. By limiting generators to within the principle structure, external and environmental impacts are reduced considerably.

The Zoning Commission needs to do a careful side-by-side comparison to ensure the Standards of External Effects have not been changed in a way that limits the Commission’s ability to enact conditions these protections are meant to ensure.

SUBTITLE K: Overlays

No text provided. This section should not be considered or approved until viewed in context.

SUBTITLE X: Private Schools

The list of requirements found in Proposed § 103 Private School Plan does not include current § 206.3 or any language that specifies “Ample parking space, but not less than that required in chapter 21 of this title, shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.” If, as has been proposed by OP, there will be no changes to parking requirements for schools and churches, parking requirements for private schools need to be included in this Chapter.

Neighborhood spillover parking is one of the “most objectionable” conditions cited in every BZA case dealing with private school zoning relief applications. Because there is nothing in the proposed regulations that references the number of spaces or

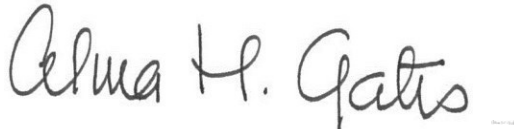
method by which spaces would be calculated, it is impossible to know what is being brought forward for consideration. Under § 104 the location of parking facilities is noted, however, “*Any other relevant information*” does not adequately imply or address “parking formulas.” Specific formulas need to be included in the School Plan Requirements of § 104.

SUBTITLE Z – Party Status

Perhaps a slight reorganization of § 404 might be considered. It is difficult to distinguish which provisions that apply only to those requesting an early party status determination from those requesting party status within the 14 day timeframe, and which apply to both.

In general, the proposed language in §§ 404.1 and 404.2 meets the spirit of what was requested by the public.

Respectfully submitted:

A handwritten signature in cursive script that reads "Celma H. Gatis". The signature is written in dark ink and is positioned above the printed name of the administrator.

Administrator