

Testimony for ZC case #08-06A, Zoning Regulations Review
Subtitles X, Y, and Z, General Processes and BZA/ZC Procedures
David Alpert, Greater Greater Washington

Dear Chairman Hood and members of the Zoning Commission,

Thank you for your detailed attention to the zoning update process. This very important, complex initiative has been a source of great interest, debate, and sometimes frustration now for over 5 years. I and other stakeholders have been advocating around and arguing about these proposals for so long, though tens of stakeholder working group meetings, 2008 and 2009 hearings before the Commission, numerous DC Council oversight hearings, public meetings, and more.

It is time to move the zoning update forward without further delay. There are significant reforms in the zoning update, even ones that are uncontroversial or relatively so, which have not yet been able to go into effect because of the long process. Therefore, I hope this Commission will advance the zoning update quickly and help it become law as soon as possible.

I encourage you to adopt most of the recommendations from the Office of Planning (OP)'s proposals. At the same time, in its efforts to compromise with opponents, OP has taken a few too many steps to water down its initial recommendations, proposals which this Commission has already approved at its 2008 and 2009 hearings, and which we hope you will restore. In addition, we have some specific suggestions for improvements which OP has not included in its proposals.

In particular, we recommend the following changes:

Subtitle C, chapter 19 (vehicle parking): We recommend adopting the OP proposal, except:

- Modify 1902.1 to eliminate to zero, rather than reduce by 50%, the requirement for buildings near transit (similar to OP's prior proposal). Make 1907.3 then use as the threshold for TDM the underlying parking minimum that would have applied in the absence of transit.

Subtitle C, chapter 20 (bicycle parking): We recommend adopting the OP proposal.

Subtitle D, section 1606 (accessory apartments): We recommend adopting the OP proposal, except:

- Remove the exception for the R-19 and R-20 zones (Georgetown), until and unless there can be a separate hearing where OP and/or neighborhood leaders justify any exception and the Commission takes separate action to approve such. Strike "except the R-19 and R-20 zones" from 1606.2, and delete the entirety of 1606.3 and 1606.5.
- Consider further reducing or eliminating minimum lot sizes in 1606.4(a).
- Combine 1606.4(f)(1) and (8) into a single section that more clearly describes the construction date criteria for eligible accessory buildings. Make the same change to the proposed E 1101.1.

Subtitle E, section 801 (accessory buildings): We recommend adopting the OP proposal to allow a second permitted unit in an accessory building, but also:

- Ask OP and the fire department to justify in more detail their reasons for requiring 24-foot alley access to a unit in an accessory building (and similarly for subtitle D).

Subtitle E, section 1106 (corner stores): We recommend adopting the OP proposal, except:

- In addition to “generally perpendicular streets” (1106.3(a)(1)), allow a store on streets which make a sharp acute angle. Consider specifying a maximum angle, such as 120 degrees, instead of the vague “generally perpendicular.”

Subtitle F: Allow corner stores eligible in subtitle E (RF zones) in similar structures in A zones.

Subtitles D, E, and F: Allow live theatrical performance uses in all residential zones by special exception where today they require a variance.

Subtitles Y and Z, chapter 206 (filing documents electronically): Allow individuals to file testimony by e-mail without needing a signed and scanned PDF. Remove “or by email” from 206.3 (requiring PDF format) and delete 206.5(c) (“contain the signature of the originator”).

Code organization: Create quick reference tables for property owners that summarize development standards and use permissions for a single zone. Consider more descriptive names for zones and more detail in the future about the boundaries between use categories.

This document contains recommendations about procedures and code organization. The other recommendations are part of the documents for other subtitles.

General comments

Many of DC’s most beloved neighborhoods grew up during a different era with a very different zoning code. Harold Lewis, who wrote the original version of the current code, made clear in his report that he was not trying to write zoning to reflect the city’s then-existing form, but to actually force it to drastically change:

PRESENT REGULATIONS are incapable of adapting the physical structure of the city to new forms of urban living. Inability of the central city to adapt to these new forms will almost inevitably lead to its economic decay.

PUBLIC SENTIMENT in Washington is apparently not ready to back a thorough zoning effort in depth for the salvation of the downtown area and, pending the completion of further study and planning, limited zoning revision, as proposed, appears to be the best prospect.

THE AVERAGE size of 3,800 semi-detached house lots studied was only 2,480 square feet compared with a minimum standard recommended by the American Public Health Association

of 3,650 square feet; this represents the worst abuse of single-family standards to be found in the District.

IF THE TREND toward blight and slums is to be arrested, all new construction must be the kind that will encourage the continued residence of the most sensitive and scrupulous elements of the population.

GROWING USE of the automobile provides a reasonable prediction that the trend toward its universal use as the principal means of transportation will continue.

<http://greatergreaterwashington.org/13843/>

Planners of the time believed that neighborhoods like Shaw, Mount Vernon Square, Capitol Hill, Southwest and Buena Vista were “obsolete” and had to be forcibly reconfigured (<http://greatergreaterwashington.org/15499>). NCPC had a plan for Shaw that involved tearing down almost all of the extant buildings and replacing them with the “towers in the park” designs then in vogue.

Fortunately for DC, few such urban renewal projects actually went forward. Unfortunately, the 1958 code did lock in a number of rules that rendered the built form of many neighborhoods illegal. Newer neighborhoods could not have the basement apartments historic neighborhoods did and do. New construction had to include large amounts of surface or garage parking, which forced less human-oriented designs. Corner stores, once an integral part of the neighborhood, not only faded because of changing retail practices (malls, suburban strips, and later the Internet) but also because of zoning prohibitions.

In most cases, the Office of Planning proposals seek to once again legalize a built environment similar to that of our historic neighborhoods.

Allow Zoning Commission and BZA testimony via email (subtitles Y and Z)

The Office of Zoning currently requires any residents wishing to submit written testimony to either mail or fax a signed letter, or email a scanned PDF file of a signed letter. This imposes an undue burden on residents. Not all have easy access to a fax, printer, or scanner, and this multi-step process adds to the time necessary to provide opinions to the Zoning Commission.

At the oversight hearing this spring on the Office of Zoning, I raised this issue (<http://greatergreaterwashington.org/17975>). OZ director Sara Bardin said this rule arose from one case about 10 years ago, when, she said, someone sent an email which falsified the name. Therefore, OZ now requires a signature on all letters; without one, Bardin said, “we can’t authenticate it should somebody come back later” and say the testimony is false.

DC Council Chairman Phil Mendelson seemed skeptical. "It might be worth looking at that some more," he said. He pointed out that if someone brings a petition signed by a number of residents, OZ doesn't necessarily authenticate them either.

The presence of a wiggly line at the bottom of a piece of testimony does little to authenticate it. I used Photoshop to draw a picture of my name in cursive to end this document. What does that add to its authenticity? Why would it matter if I printed, wrote the same in pen, and scanned?

A small minority of residents feels so strongly about an issue to actually show up in person. A larger, but still small minority, will jump through hoops to submit scanned and signed testimony. More people would provide their views if they could send a simple e-mail message.

Mendelson suggested at the hearing that perhaps OZ wants to forestall the mass email campaigns where elected officials are often subject to a deluge of almost-identical messages from residents. That is understandable, though it's important to note that this indeed tells elected officials about the views of their voters.

I also empathize with OZ's desire to ensure that testimony comes from people who actually live or work in the District. For this reason, it seems entirely fair to allow email testimony but ask that any message include a real name, address, and other contact information as Y 206.5(a) specifies. OZ or commissioners can thus authenticate testimony just as well as they can if it contains a wiggly line as well.

There is precedent for this. The National Capital Planning Commission, for example, allows public comments on its proceedings by email using a standard email address and online using a very simple form.

Therefore, we recommend the Commission remove "or by email" from subtitles Y and Z, section 206.3, allowing an email document not to use PDF format, and remove 206.5(c), which requires that an emailed document contain a signature.

Code organization

OP has taken laudable steps to make the zoning code more understandable. Combining overlays into unique underlying zones is a good step because in the former code, an owner in an R-5-B zone with the DC overlay (such as myself) would have to look in two separate places with often conflicting provisions. Someone who simply looked at the R-5-B code might believe that the rear yard setback is one standard, when unbeknownst to them, the DC overlay supersedes it with a different standard.

Bring back quick-reference tables

However, I agree with some other points in submitted testimony that it may have reduced, rather than increased, clarity to rename all zones in one category to simply R-1, R-2, R-3, and so on to R-20. The current R-3 zones, for instance, share a lot of commonality, but it will be much less obvious if those zones are now R-4, R-13, R-16, and R-20.

It should be possible to simultaneously ensure that a property owner in a zone can look at a single set of text. The R-13 zone could continue to bear a name that tells us that it is a low-density row house zone (and perhaps also that it is in the Naval Observatory area) while still combining all development and use standards into one place instead of two.

In addition, earlier versions of the zoning update provided single tables of information for particular zones, a development standards table and a use table. This was helpful because a property owner in a particular zone would not have to figure out what chapters of the code contained their zone's information, but could simply look up that zone in 2 tables. (The extra "use category" letters (R-16-F or whatever) perhaps added complexity, however, and are not necessary). However, this also did lead to significant duplication of text, where the same standard appeared in multiple places, potentially opening the door to mistakes in drafting.

In the latest round of revisions, OP has removed this organizational tool. Instead, zones are grouped into "zone groups" that match the old overlays, and the use rules are now separated into chapters for by-right uses, special exception uses, and so on. Further, the use rules for the RF zone simply incorporate by reference all of the uses in the R zone. This makes the text shorter, but now means that again a property owner in an RF zone will have to also read the R zone chapter.

Rather than re-reorganize the code again, OP could restore this simplicity by also creating tables for each zone as a reference. The table could, for each individual zone, list all of the development standards with a reference to the section of the main code which contains the standard. Another table could list every use category, like the tables in the previous versions, along with whether that use is permitted, not permitted, permitted with conditions or permitted by special exception, and a reference to the code section(s) containing the specific language.

This could be, essentially, a "quick reference card" for a property owner in any particular zone type, so that such property owner does not have to do a search through the entire text of the code to find all rules that apply to his or her zone.

Use categories

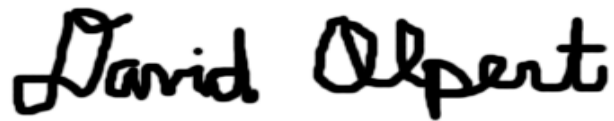
The new use categories are also a significant step forward. They make it easier to determine which rules apply to a particular type of use. The one potential improvement would be to, over time, add more clarity about the boundaries between types. For example, Arts Design and Creation (B 201.5) says, "Exceptions: This use group does not include uses which would typically fall within the Entertainment, Assembly and Performing Arts, Educational, or Sexually-based Business Establishment use groups." But Entertainment, Assembly, and Performing Arts (B 201.15) says, "Exceptions: This use group does not include uses which more typically would fall within the Arts Design and Creation, Sexually-based Business Establishment, or Parks and Recreation use groups."

A one-way pointer, such as from both to Sexually-based Business Establishment, makes sense. The code is saying, essentially, that if something seems to be both Entertainment and Sexually-based, it is to be considered Sexually-based (as it should be). However, it does not add clarity to say that Arts Design and

Creation (AD&C) excludes Entertainment, Assembly, and Performing Arts (EA&PA) and, at the same time, EA&PA excludes AD&C. If someone believes their use could qualify under either and the set of examples given does not specifically address it, which is it? They will have to consult the Zoning Administrator.

That is perhaps inevitable, but over time it would be helpful to actually amend the code to clarify these gray areas rather than leave them fuzzy in the text of the code.

Thank you again for your attention to these complex and important issues.

A handwritten signature in black ink that reads "David Alpert". The script is fluid and cursive, with the first name "David" and last name "Alpert" written in a single continuous line.

David Alpert
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Greater Greater Washington