

Testimony for ZC case #08-06A, Zoning Regulations Review
Subtitle D, Residential House zones
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. Here is my testimony for Greater Greater Washington on Subtitle D of the Zoning Regulations Review.

Summary

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.

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

General comments

Whom should zoning serve?

A philosophical disagreement over this question is at the heart of the controversies over the DC zoning update. Understanding this disagreement will enable us to look beyond the fights over specific policy prescriptions and illuminate the underlying forces.

A number of activists feel that zoning should do the utmost to ensure change does not impact residents in our most privileged neighborhoods. They describe many of the confusing or complex provisions of the current zoning code as bulwarks, sometimes hard-fought, that stand against potentially undesirable change.

The Office of Planning does not feel this way. Rather, planners have sought to balance two forces: the value of preserving the qualities of neighborhoods today, and the imperative to accommodate the real needs of tomorrow. OP has given enormous deference to incumbents, in some cases too much so, but also recognizes specific, targeted future needs that zoning must address.

The District faces a fundamental economic reality that since the latter half of the 20th century, walkable urban places have become highly desirable. The District is blessed with many such places, which means that our city is in greater demand than at any time since before our current zoning code came into being.

This desirability manifests itself in upward pressure on housing prices. In some ways, this is beneficial: neighborhoods where few chose to invest have now become appealing. People are purchasing and fixing up formerly-vacant properties, and unsightly vacant lots or parking lots become lively structures that knit back together our neighborhood fabric.

But if we do not keep up with demand, as we have not been doing, this trend can also be harmful. Housing prices have skyrocketed, so that lower-income residents find themselves unable to afford to remain in the communities their families have long called home. Even highly-educated young professionals find many neighborhoods far out of reach, especially when looking for housing that can accommodate a growing family.

Analysis by George Mason University's Lisa Sturtevant (<http://greatergreaterwashington.org/16470>) predicts that the District needs 122,613 new housing units by 2030 to keep up with demand. That demand is for more multifamily units than our current housing stock, and for more units in the \$200,000-600,000 price band than the District's current inventory.

This has never before been the primary dynamic. When our region was building its single-family neighborhoods at DC's edges and in Maryland and Virginia, these new homes accommodated middle-class families. Now, middle-class families find these same neighborhoods as gated communities full of "keep out" signs, the signs being real estate asking prices far beyond their means, the gates, our zoning rules.

I find this morally abhorrent and dangerous policy-wise. It is abhorrent because it should be one of our most fundamental values that our city is stronger when it welcomes those who wish to be a part of it. We cannot let whole swaths of the city "opt out" of basic hospitality and close their gates to the rest. It is dangerous because the ultimate effect is to worsen pressures on more needy sections of the city. Gentrification will happen more rapidly. Affordable housing will be scarce.

The Office of Planning recognizes this with elements of its proposals. It does not seek to remake, wholesale, single-family neighborhoods, since it recognizes that many people want to live in neighborhoods of this form. However, it also seeks to accommodate the growth that is coming, one way or another, and in fact, has tailored recommendations to do so in the way that will least change the built environment in single-family neighborhoods.

Has OP struck the right balance? In my view, these proposals are very important to the future of the city, though planning officials have been at times too obsequious toward the gated community viewpoint.

They offered Georgetown a unilateral exemption from an excellent policy of allowing homeowners to rent out garages, basements, and other spaces (“accessory apartments”). They repeatedly backed off initial proposals to get zoning out of the business of forcing more space for car parking than property owners feel necessary, a policy which drives up costs.

OP had to contend with an intense backlash from a group of residents who vocally opposed the zoning update from its very inception. Some of the same groups that now oppose the zoning update asked the mayor and council to stop it before the first recommendation even emerged. They said they did not trust OP to write new rules that protect neighborhoods against change.

That is unfortunate, because zoning does not stop change, and never has. Change has already come to much of the city, totally independent of any revisions to our zoning code. We can stick our heads in the sand, or we can try to proactively shape and guide this change. Despite fears, many of the proposals in the zoning update will in fact allow for changes in the way that best preserves desirable qualities of our neighborhoods.

The zoning update is incremental, not revolutionary. It fixes some of the worst mistakes of the 1958 zoning code, and in fact legalizes elements of the form of our most historic neighborhoods that the 1958 code forbade. It tries to help the city strengthen its walkable places and add needed housing with minimal impact.

Zoning serves many needs for many people. It must consider the needs not of the homeowner who is financially secure enough to own his or her house and sees no need for anything to change nearby. But it also must consider and serve the homeowner on a fixed income who struggles to make mortgage payments and needs the opportunity to gain extra revenue from renting out unused space. It must consider the recent graduate who wants to seek a career in government or a nonprofit and who cannot compete with a double law firm salaried couple.

Zoning must accommodate the suburban retiree who finds driving increasingly difficult and wants to move to an urban village near transit, restaurants, and museums. And it must not forget to the low-income renter in a neighborhood where housing prices have risen. That resident finds cold comfort in the common arguments from some far more exclusive communities that growth is good but should go somewhere else in the city.

Accessory apartments

The District needs to be able to accommodate more residents, or face continued, drastic run-ups in price. Yet residents, often understandably, want to maintain many qualities of the built environment around them. Can the two go hand in hand? Accessory apartments are the answer.

Accessory apartments do not change the physical shape of a neighborhood, and the current proposal has many rules to ensure this, such as limits on forward-facing exterior doors or balconies from carriage houses that face another property. They do not change the fundamental owner-occupied quality of a neighborhood, because owners must live on any property with an accessory apartment.

An accessory apartment is a beautiful approach because it simultaneously addresses two problems. On the one hand, many seniors have houses bigger than they need, but limited incomes which may not be adequate to keep up maintenance and taxes on a large home. Yet these residents would love to stay in their longtime homes. At the same time, other people want to live in these wonderful neighborhoods but cannot afford to.

The solution is simple and elegant. Let the homeowner with too much space and too little money rent space to the single or couple or new family that needs space.

Accessory apartments will not “destroy” neighborhoods

There have been numerous flyers and emails circulated in the District’s more exclusive neighborhoods spreading alarm about changes. They warn about new “20-foot tall” accessory buildings popping up in single-family neighborhoods. Some of them raise the specter of “renters” coming into communities, which, the flyers suggest, will lead to more trash-strewn neighborhoods or even more crime.

Let’s consider each of the fears.

New accessory buildings. OP has carefully crafted this proposal to NOT encourage any new accessory buildings. Under the original proposal, a property owner could build a new garage building, as zoning already allows, and then immediately convert it. Instead, the rules now do not allow this.

A property owner will have to have an existing carriage house or other accessory structure to convert into a unit. Alternately, if someone builds a garage today, after 5 years they can decide to convert it, but it is extremely unlikely anyone would build a garage now just in hopes of making it a rental 5 or more years in the future.

Crime. David Moon, a Montgomery County resident, has followed a similar debate there and wrote:

I think people are scared of "poor" people moving into their neighborhood -- even though "poor" might simply mean young professionals who are just getting started in the County or seniors on fixed incomes. Further proof that the hysteria against accessory apartments is unfounded lies in the fact that the proposed MoCo rules [like the District’s] would require the home to be owner-occupied. After all, what homeowner is going to rent to a crackhead or criminal, if they have to live under the same roof? ***Ain't gonna happen, folks!***
(<http://www.marylandjuice.com/2012/05/spotlight-issue-of-race-in-montgomery.html>)

Trash. Even if crime is just extreme hype, what about trash? Would mixing rentals in among owner-occupied houses lead to people taking less care to keep their blocks clean?

My own block in Dupont Circle, currently mostly zoned R-5-B/DC (where apartments are legal as of right without any of the rules for accessory apartments), contains a mixture of single-family townhouses (such as my own), multi-family owner-occupied condo townhouses, entire houses for rent, apartments in townhouses for rent, and large apartment buildings of condos and apartments.

In my experience, the houses which are entirely for rent are very different from the houses where an owner rents out a part of a house. In the latter, the owner takes great care of his or her property and even, in the case of my own neighbor, gardens a strip of land behind a large condo building. This neighbor, a senior, rents out two spaces in his house, his basement and his top floor (as well as his parking space – see the parking section of my testimony). Enabling him to continue to live on the block and make some income enormously enhances our block, rather than diminishing it.

On the other hand, the rental houses without an owner present do tend to give less attention to the condition of their yards or how well they insulate their trash against rats. Therefore, the owner-occupation rule is key. I would sympathize with nervous residents if OP were advancing a proposal without that rule (though our block is a wonderful place even though no such restriction exists). But fears about a home with a renter in the garage or basement changing the character of a neighborhood are unfounded.

Traffic and parking. Some fear that accessory apartments will bring people who sometimes own cars, and therefore compete for road and parking space. However, accessory apartments are in fact the best way to welcome new residents without adding to traffic and parking. Rather than concentrate the impacts, the accessory apartment rules diffuse them throughout a neighborhood. At most, a block will get a small handful of new residents. Even if those residents bring cars, they will be few (and many will not). Any other effects on the neighborhood will also be minor.

If residents of the exclusive, effectively gated neighborhoods of the District really wish to bar any new residents, then certainly they would oppose accessory dwellings. If, however, we were to agree that each neighborhood should contribute to the District's need for new housing, OP's accessory apartment proposal accommodates these new residents in the least impactful way possible.

Georgetown should not be exempt

Accessory apartments are such a valuable and appropriate policy tool that we should look very skeptically upon any suggestion that one neighborhood could opt out. Unfortunately, OP has given this privilege to one of our most exclusive and privileged neighborhoods, Georgetown, without adequate reason.

In designing the zoning update process, OP said that they would sit down with neighborhoods to craft a "customized zone" that meets each neighborhood's needs. This is a good idea. Some neighborhoods will want a build-to line or a setback line, while others will not. Some may want to allow more than 2 units in a house while keeping a primarily row house character. And so on.

However, as with everything in the zoning update, we must balance the wishes of the vocal residents in a neighborhood against the greater citywide policy needs. OP has not done this with the Georgetown customized zone. It was inappropriate to exclude the Georgetown zones (R-19 and R-20) from the standard accessory apartment policy.

Georgetown residents deserve the same right to rent out a basement or carriage house as residents elsewhere. If OP believes there is a compelling reason to distinguish Georgetown from other neighborhoods, it should explain in great detail. Thus far, it has not, and while I have asked this question to OP staff in emails, they have provided no such justification. Nor is it addressed in OP's report on Subtitle D, filed October 28, 2013.

Instead, the only justification is that OP met with Georgetown residents, engaged in a collaborative process, and agreed upon a set of policies. But OP apparently made a very political calculation to seek the support of powerful Georgetown residents early in the process. That may or may not have been wise, but it should not be a basis for a policy decision by the Zoning Commission.

Nor does the Citizens' Association of Georgetown (CAG) report on the Georgetown Customized Zone justify an exemption for accessory apartments. Instead, it simply asserts that CAG has consented to allow accessory apartments by special exception instead of the current variance requirement. It states reasons to loosen accessory apartment rules from the current status quo, but not reasons to limit them to a tighter standard than will apply elsewhere.

Assuming this commission approves the accessory apartment proposal (and it would be a travesty not to), then that will be the baseline policy for all neighborhoods currently zoned R-1 through R-3. If, in the future, another neighborhood then wishes to override the policy and exempt itself, the proponents of such a change will have to justify to OP, and then to the Zoning Commission at a special hearing, why they need such an exemption. The presumption would be for the baseline accessory apartment language.

But for Georgetown, and only for Georgetown, this presumption is reversed. OP is not justifying an exemption because it is written in from the start. That is unfair and inappropriate.

Georgetown's history weighs strongly for matter-of-right accessory apartments

In fact, there is a greater reason for allowing accessory apartments in Georgetown than elsewhere. Whereas many neighborhoods have not previously had rental carriage houses, this is the historic pattern for Georgetown.

Black Georgetown Remembered: A History Of Its Black Community From the Founding of "The Town of George" in 1951 to the Present Day (Lesko, Babb, Gibbs, 1991) describes how a lively community (mainly African-American) thrived in many of the alleys of Georgetown until the mid-20th century.

This changed as a result of several factors. Concern over public health in places that then lacked indoor plumbing led to regulations limiting alley dwellings. (Today, building codes ensure that accessory apartments do not stoop to the conditions of that day, and the proposed rules limit the number of people in an accessory apartment far below the level at that time). Wealthier (and whiter) residents began buying up and renovating the properties in a very beautiful and conveniently-located neighborhood.

And, sadly, there was an organized effort by the then-all white, all-male Georgetown Citizens' Association, one of the two forerunners of today's Citizens' Association of Georgetown (CAG), to drive black residents away through restrictive zoning and "redlining."

Lesko, Babb, and Gibbs write:

Ironically, during the next twenty years, many of these alley dwellings were not razed but restored, then renamed 'coach houses,' and sold to affluent newcomers. (82) ... Blacks residing in Georgetown at the time disputed the defining of 'slum' areas. ... In retrospect, it is obvious that the GCA was, in effect, dislocating the black community while seeking to eliminate substandard low-income housing. (92)

Many families simply could not afford to comply with new zoning restrictions and were forced out by renovation costs. Often black families had to close the boarding houses that provided both their incomes and **cheap, affordable rentals** for their black tenants as well. **Such houses were now required to become single-family dwellings.** Moreover, **the average price of houses all over Georgetown doubled** between the 1930s and the 1950s. ... The black population of Georgetown fell from nearly thirty percent of the general population in 1930 to less than nine percent by the 1960 census, and the racial diversity that had been so much a part of Georgetown's historical character was virtually lost. (97)

I relate this not to cast any aspersions on the motivations of today's Georgetown activists, whom I am sure lack any such biases. Almost surely, their reasons for wanting to require a hearing to establish any accessory apartment come from their view of the neighborhood independent of race or class. However, we cannot ignore that Georgetown's current exclusivity arose through an unsavory period of history, and to give that neighborhood a unique right to propagate that exclusivity should face a greater burden of proof.

Just because Georgetown leaders are politically powerful enough to get special consideration from OP, as they were in the mid-20th century, is no reason to make that neighborhood less accessible to potential new residents and residents of lower incomes than any other.

Therefore, I urge this Commission not to exempt R-19 and R-20 from the citywide accessory apartment proposal at this time. The Commission can simply approve accessory apartments in the zoning update and apply the standard language to R-19 and R-20 by striking "except the R-19 and R-20 zones" from 1606.2 and deleting the entirety of 1606.3 and 1606.5.

Then, the Commission can entertain a petition to create special, different accessory apartment rules for R-19 and R-20 in a separate proceeding. OP can write a report on the matter, as it typically does, and residents can submit testimony and testify in favor or against. If this Commission feels there is indeed a strong basis for a special exemption, it can then approve one, as it can for other neighborhood activists if they make a sufficiently persuasive case.

Perhaps I, too, would be convinced by OP's and/or CAG's rationale at that time. It is inappropriate and unjust, however, to opt one neighborhood out without demanding such a rationale, especially a neighborhood that is already more exclusive than most and with its particular history.

Further reduce minimum lot sizes

OP's hearing report on Subtitle D revised the minimum size for lots eligible for accessory apartments in current R-2 and R-3 zones (1606.4(a)) after discovering that the originally-proposed minimum, 4,000 square feet, would exclude all but 23% of R-2 and 15% of R-3 lots.

OP's report says that these minimum values were simply copied over from the minimum conforming lot sizes from the old code. But to my knowledge there was never an explicit discussion during the workgroup meetings or Commission hearing on this issue determining that only lots meeting the conforming minimum size should be eligible for accessory apartments. Why? Why not half the conforming minimum lot size, say?

In fact, much of the zoning update revolved around efforts to bring zoning into compliance with the actual conditions on the ground, rather than an oft-unattained ideal. Zoning staff told early workgroup meetings that the 1958 zoning code simply chose a typical or average value for many lot parameters, rendering large numbers, often even half, of lots nonconforming.

While it may make sense to disallow accessory apartments in particularly small buildings, it is not appropriate to set up such an important policy yet make the majority or nearly a majority of properties ineligible. Even with OP's new proposed 3,000 and 2,000 square foot minimums, according to the report, still 57% (in R-2) and 54% (in R-3) of lots will not meet the minimum. A minimum which excludes over half of the properties is not the right minimum.

Further, there are already other, more minimums for accessory apartments more directly tailored to exclude unusually-small spaces. Apartments inside a main building require the building itself to have 2,000 square feet of space and the apartment cannot occupy more than 30% of the building. For an external building, to construct a new one requires enough lot size to satisfy lot occupancy rules. These rules already ensure that an accessory apartment is truly accessory and there is no need to also exclude over half of properties at a stroke.

In R-1 zones, OP has not issued a report listing how many properties are ineligible due to the lot size requirements, but likewise if this rule excludes more than a small fraction of properties, then it is likely too restrictive.

Fix confusing drafting

The rules for accessory apartments (R zones) or residential use of accessory buildings (RF zones) have some drafting errors. OP's intentions seem to be clear, and I support their intent. In R zones, they intend for the text to say that an accessory building is eligible to be used for an accessory apartment if it was in

existence before January 1, 2013, or five years after it has been constructed, but would require a special exception if it was constructed more recently and the “grace period” has not passed.

Unfortunately, the drafting is not as clear. D 1606.4(f) says:

An accessory building that houses an accessory apartment shall comply with the following conditions:

- (1) The accessory building was in existence on January 1, 2013;
- ...
- (8) An accessory building constructed as a by right accessory building after January 1, 2013 shall not be used as, or converted to, an accessory apartment except by special exception for a period of five years after the approval of the building permit for the accessory building;

These two are either conflicting or confusing, because these conditions are additive; to be legal, a unit must comply with all of them simultaneously. But it is not possible for a building constructed after January 1, 2013 to comply with all provisions since it cannot comply with provision (1). The authors of (8) apparently intended it to supersede (1), but it does not clearly say so.

There are many ways to clearly write this section. I think the simplest would be to combine (1) and (8) into a new section, such as:

- (1) The accessory building was in existence on January 1, 2013, or for a building constructed as a by right accessory building, at least five years have elapsed since the approval of the building permit for the accessory building.

The same problem exists in OP’s proposed section 1011 for subtitle E. OP proposes a section 1101.1 to read:

An accessory building that houses a dwelling unit shall comply with the following conditions:

- (a) The accessory building was in existence on January 1, 2013;
- ...
- (f) An accessory building constructed as a by right accessory building after January 1, 2013 and that is located within a required setback shall not be used as, or converted to, a dwelling unit for a period of five years after the approval of the building permit for the accessory building, unless approved by special exception;

This could be much better written as something like:

- (a) If the accessory building is located within a required setback, the accessory building was in existence on January 1, 2013, or for a building constructed as a by right accessory building, at least five years have elapsed since the approval of the building permit for the accessory building.

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 letter of each name being capitalized and prominent.

David Alpert
Founder and editor-in-chief
Greater Greater Washington