Testimony for ZC case #08-06A, Zoning Regulations Review
Subtitle E, Residential Flat 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 E of the Zoning Regulations Review.

Summary

Subtitle E, section 1106 (corner stores): We recommend adopting the new OP proposal including matter-of-right grocery stores and special exception for other stores, with one suggestion:

- 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 E, section 1101 (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.
- Combine 1101.1(a) and (f) into a single section that more clearly describes the construction date criteria for eligible accessory buildings. Make the same change to D 1606.4(f)(1) and (8).

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.)

Corner stores

OP's corner store proposal fulfills a simple principle: that our zoning code should make it legal for neighborhoods to develop in the same way that our treasured historic neighborhoods have.

Many of DC's neighborhoods historically had locally-serving retail within a short walk of most residents. There is a strong public policy reason to want these amenities, namely to allow people to fulfill basic everyday needs without having to drive (and park!) And the real estate market shows that housing near such amenities is in high demand.

The original corner store proposal, however, was unnecessarily complex. Stores do often have some impact on surrounding neighbors, which are important to mitigate. The original zoning update team sought to define a set of rules for, essentially, a nearly zero-impact store: one which, if it met all of the restrictions, would have nearly no impact on neighbors and thus could happen as-of-right.

However, this forced them to write such a restrictive set of rules, such as very narrow hours of operation, limits on numbers of employees, and so on, that it was likely virtually no such stores would have opened. Further, in order to keep such stores from competing with neighborhood corridors, the original proposal forbade them within 500 feet of a commercial corridor and in any non-corner building (except one historically used for a store), further limiting the pool of available spaces to an almost insignificant number.

The new proposal is far better. Except for small groceries which will be allowed by right with certain restrictions, it is reasonable to have a public hearing before new stores become established in a residential area, but appropriate to use the special exception standard, where the impact on residents is the primary criterion. The 500-foot rule still exists, but (in 1106.4) the BZA can allow a store near a commercial corridor if it is neighborhood-serving and will not damage the corridor.

This is a very good idea because in many cases, certain uses such as restaurants may come to dominate a commercial corridor, leaving no spaces for lower-profit neighborhood-serving retail. Or a mixed-use zoned area might not actually have any retail spaces, as is the case on parts of Florida Avenue and elsewhere. Allowing a neighborhood-serving store near the corridor is very appropriate.

OP has also appropriately removed the limits on number of employees, and relegated the limit on hours to only matter-of-right groceries, while both are factors that the BZA would consider in any proceeding. The criteria which do remain, like limiting alcohol sales and consumption or dry cleaning chemicals, are indeed important restrictions on any store in a residential area.

The corner store section is a great example of one where OP listened to thoughtful feedback from residents who generally supported the aims of the chapter, but who felt the text did not properly achieve it, and crafted better text that will more appropriately fulfill the worthy initial purpose of this proposal.

Generally perpendicular streets

Early proposals for corner stores did not limit them to actual corners. OP later added this restriction because, planners said, corners will have a lesser impact, plus corners are a historic place that such stores typically located. The latest draft defines “corner” as on “generally perpendicular streets.” However, if two streets make an acute angle, perhaps that is an even greater reason to locate a store there (since the acute angle has an even smaller percentage of frontage directly abutting other residential properties).

Accessory buildings

The R-4 (soon to be RF) zones already allow 2 units per lot. However, a variance is required to locate the second unit in an accessory building. In many of these zones, such as on Capitol Hill, there are many carriage houses which have been used (unlawfully) as rental units for some time. OP’s proposal to allow the 2nd unit to use the carriage house simply legalizes what is already a common pattern in these neighborhoods.

The current zoning also creates a perverse incentive for owners to connect their houses to carriage houses, reducing the amount of open space, simply to make the carriage house technically part of the main house. This change will remove that incentive.

The original setdown draft had a few oversights. While property owners could convert a new accessory building into an accessory apartment in an R zone (subtitle D) after 5 years, the same language was not present in subtitle E for RF zones. Likewise, property owners could request a special exception from the alley width requirements in an R zone, but not in an RF zone. OP has recommended fixing this language in its report for Subtitle E, and the Commission should accept that change. However, OP's report proposes adding a new section 1011, but that would then duplicate other text in 801.4, so it is necessary to then eliminate 801.4 or otherwise reconcile the two.

Better justify alley width requirements

The access rules for these units, in 801.4(e) (and similar provisions in subtitle D), are incongruous. There can be an access across private property of only 10 feet in width, but an alley must be a very large 24 feet. This significantly limits the number of carriage houses eligible for this provision.

OP staff have told me that the 24-foot requirement comes from the fire department. Unfortunately, while it is totally understandable that fire departments want to ensure that they can reach residents in case of fire, it is not clear why 24 feet is the right number. I encourage the Commission to ask OP and/or the fire department to release any analysis it has conducted on best practices from other cities regarding alley widths and fire safety, and to better justify this specific number.

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 buiding 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.

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