

Testimony for ZC case #08-06A, Zoning Regulations Review
Subtitle F, Apartment 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 F of the Zoning Regulations Review.

Summary

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.

Corner stores

The corner store proposal only applies in RF zones (in Subtitle E) and not in A zones. A zones often contain similar building stock to RF zones, only with less restrictive zoning. Some of the uses of corner stores are also allowed in some A zones with some conditions, but in addition, if a store could locate in an RF zone under the corner store rules, it would be logical to also make A zones eligible for the same.

Allow a special exception for theaters (subtitles D, E, and F)

In my neighborhood of Dupont Circle, two well-regarded theaters have needed to seek variances to continue operating. The Spooky Action Theater operates out of a church basement on 16th Street, but needed (and received) a use variance (BZA application #18471). The Keegan Theater will also need a use variance for its operations on my own block of Church Street.

With strong ANC support, Spooky Action had little trouble gaining its variance, and we hope so will Keegan. However, a strict reading of the rules may not justify such variances. Indeed, in its report on the Spooky Action case, OP said it “cannot recommend approval of the use variance... because the application did not sufficiently establish any uniqueness or exceptional or undue hardship.”

The BZA granted the variance despite OP’s position, which is the best outcome for the neighborhood whether or not the legal text strictly justifies it. I believe the current BZA in fact often grants variances even when it may have to stretch the letter of the law on variances because BZA feels the rules are inappropriately restrictive. However, the true solution to this problem is not an extremely flexible BZA but a better-tailored zoning rule.

Certainly, residents should have an opportunity to comment at a formal hearing before a theater use opens up in their neighborhood. However, the special exception standard seems to be the right one, not

the variance standard, and I urge the Commission to ask OP to engage in a subsequent process to devise conditions under which some Entertainment, Assembly, and Performing Arts uses can be allowed with a special exception in the R, RF, and A zones (perhaps limited to live artistic performance, and with other limits similar to those for corner stores).

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 word being capitalized and prominent.

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