

NOTICE OF PROPOSED RULEMAKING

Z.C. Case No. 20-19

Office of Planning

(Text Amendment to Subtitles B, D, E, and F for Accessory Building Requirements)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2018 Repl.), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of its intent to amend the following sections of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified), with the specific text at end of this notice:

- Subtitle B, Definitions, Rules of Measurement, and Use Categories - §§ 100, 308
- Subtitle D, Residential House (R) Zones - § 1209, Chapter 50
- Subtitle E, Residential Flat (RF) Zones - Chapter 50
- Subtitle F, Residential Apartment (RA) Zones - Chapter 50

Setdown

On September 4, 2020, the Office of Planning (OP) filed a petition (Petition) to the Commission proposing the amendments to clarify and provide consistency in the regulations governing accessory buildings across zones.

At its September 14, 2020, public meeting, the Commission voted to grant OP's request to set down the proposed text amendment for a public hearing and authorized flexibility for OP to work with the Office of the Attorney General to refine the proposed text and add any conforming language as necessary.

Public Hearing

OP filed a December 11, 2020, report proposing minor technical changes to the Petition, including clarification that penthouses and rooftop structures are not permitted above the matter of right height and number of stories on accessory buildings.

ANC 6C filed a December 18, 2020, letter (ANC 6C Report) that raised concerns about the following aspects of the Petition, in addition to some numbering errors:

- Maximum height of sheds – concerned that the Petition's proposed ten foot (10 ft.) maximum was too high, given that most prefabricated sheds are eight feet (8 ft.) tall and proposing an alternative maximum height of nine feet (9 ft.);
- Lower measuring point for accessory building height – concerned that the Petition's use of "finished grade" as the lower measuring point for calculating height would allow the manipulation of height by changing the grade, and proposing instead to adopt "the lower of finished or natural grade" as had been adopted by the Commission in Z.C. Case No. 17-18 for principal buildings;

- Upper measuring point for accessory building – concerned that the Petition did not clearly state that parapets and penthouses are included within the maximum building height; and
- Alley centerline setback – concerned that this requirement only applied to accessory buildings, but not fences and rollup gates or to sheds under the Petition.

At its December 21, 2020 public hearing, the Commission heard testimony from OP in support of the Petition, as well as from ANC 6C’s authorized representative. In response to the issues raised in the ANC 6C Report and testimony, and to questions from the Commission, OP:

- Explained that the Petition’s ten-foot (10 ft.) maximum height for sheds was based on the rules of the Department of Consumer and Regulatory Affairs (DCRA) governing replacing a derelict structure, which do not require review if the existing structure is less than 10 feet (10 ft.) tall, but also confirmed that this ten-foot (10 ft.) maximum height was to the highest point of a shed roof;
- Agreed to clarify that the maximum height of accessory buildings includes parapets;
- Agree to adopt the ANC 6C’s proposed lower measuring point for accessory building height as the lower of finished or natural grade at the base of the accessory building, or, per the Commission’s suggestion, at the grade of an alley, if higher; and
- To correct the numbering errors identified by the ANC 6C Report.

“Great Weight” to the Recommendations of OP

The Commission must give “great weight” to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

The Commission finds persuasive OP’s recommendation that the Commission take proposed action to adopt the Petition and concurs in that judgment.

“Great Weight” to the Written Report of the ANCs

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

The Commission finds the ANC 6C Report’s issues and concerns persuasive and concurs that:

- That parapets and penthouses should be included within the maximum height of accessory buildings; and
- The lower measuring point should be based on the lower of finished or natural grade, except if the alley grade is higher.

The Commission did not agree with the ANC 6C Report's proposed maximum nine-foot maximum building height for sheds, based on OP's explanation that the Petition's ten-foot (10 ft.) maximum aligned with DCRA's administrative processes and OP's confirmation that this maximum height was to the highest point of the roof.

Proposed Action

At the close of its December 21, 2020, public hearing, the Commission voted to take **PROPOSED ACTION** to grant the Petition, as amended to respond to the concerns of ANC 6C and the Commission to clarify that the maximum height of accessory buildings includes parapets and is based on the lower of finished or natural of the building or alley grade, to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (December 21, 2020): 5-0-0 (Peter G. May, Robert E. Miller, Anthony J. Hood, Peter A. Shapiro, and Michael G. Turnbull to **APPROVE**)

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by e-mail at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice of proposed rulemaking in the *D.C. Register*.

The complete record in the case can be viewed at the Office of Zoning's Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

PROPOSED TEXT AMENDMENT

The proposed amendments to the text of the Zoning Regulations are as follows (text to be deleted is marked in **~~bold and strikethrough~~** text; new text is shown in **bold and underline** text).

I. Proposed Amendment to Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES

Subsection 100.2 of § 100, DEFINITIONS, of Chapter 1, DEFINITIONS, of Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is proposed to be revised to add a new definition of "Shed", to read as follows:

100.2 When used in this title, the following terms and phrases shall have the meanings ascribed:

...¹

Sexually-Oriented Business Establishment: An establishment ...

Shed: An accessory building, not used for habitable or automobile purposes, that does not exceed fifty square feet (50 sq. ft.) in area and is less than ten feet (10 ft.) in overall height.

Short-Term Rental: A use as defined by the Short-Term Rental Regulation Act ...

...

New §§ 308.9 and 308.10 are proposed to be added to § 308, RULES OF MEASUREMENT FOR BUILDING HEIGHT: RESIDENTIAL ZONES AS DEFINED IN SUBTITLE A § 101.9, of Chapter 3, GENERAL RULES OF MEASUREMENT, of Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, to read as follows:

308.9 **The building height of accessory buildings shall be measured from (i) the lower of the finished or natural grade at the middle of the side of the accessory building that faces the principal building, or (ii) the midpoint of the alley lot line if required for vehicular access to the alley, to the highest point of the roof of the building including parapets.**

308.10 **Penthouses and rooftop structures are not permitted above the matter of right height and number of stories on accessory buildings.**

II. Proposed Amendment to Subtitle D, RESIDENTIAL HOUSE (R) ZONES

Section 1209, ACCESSORY BUILDINGS, of Chapter 12, GEORGETOWN RESIDENTIAL HOUSE ZONES – R-19 AND R-20, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be revised by amending §§ 1209.1 and 1209.3 through 1209.4, and by deleting § 1209.5 and adding a new § 1209.5, to read as follows:

1209.1 Accessory buildings ~~in the~~ **shall be permitted within an R-19 and or R-20 zones shall be zone** subject to the ~~development regulations conditions~~ of this section.

1209.2 **The Except for a shed, an** accessory building shall be located facing an alley, or private alley to which the owner has access by an easement recorded with the Recorder of Deeds, and shall be set back a maximum of five feet (5 ft.) from the rear property line or a line perpendicular to the façade of the principal building.

¹ The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the amendment of the provisions does not signify an intent to repeal.

- 1209.3 In the R-19 zone, an accessory building within five feet (5 ft.) of a public or private vehicular alley may have a maximum height of twenty-~~two~~ **22** feet (~~20~~ **22** ft.), a maximum building area of four hundred and fifty square feet (450 sq. ft.) and a maximum number of two (2) stories.
- 1209.4 In the R-20 zone, an accessory building within five feet (5 ft.) of a public or private vehicular alley may have a maximum height of ~~fifteen~~ **twenty-two** feet (~~15~~ **22** ft.), a maximum building area of four hundred and fifty square feet (450 sq. ft.) and a maximum number of ~~one (1) story~~ **two (2) stories**.
- ~~1209.5 In the R-19 and R-20 zones, an accessory building on a property that is not adjacent to a public or private vehicular alley or that is more than five feet (5 ft.) from a public or private vehicular alley may have a maximum height of ten feet (10 ft.) and a maximum building area of one hundred square feet (100 sq. ft.).~~
- 1209.5 In the R-19 and R-20 zones, a shed may be permitted in a required rear or side yard provided it is at least five feet (5 ft.) from a public or private vehicular alley.**
- 1209.6 Roof decks ...

Chapter 50, ACCESSORY BUILDING REGULATIONS FOR R ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be revised by revising various sections, deleting §§ 5000.4, 5003, and 5004, and renumbering, to read as follows:

5000 GENERAL PROVISIONS

- 5000.1 Accessory buildings ~~may~~ **shall** be permitted within an R zone subject to the conditions of this section.
- 5000.2 An accessory building shall ~~be~~:
- (a) Be subordinate to and located on the same lot as the principal building, to which it is accessory; provided, that an accessory building may contain a parking space accessory to, and required for, a use on another lot where specifically permitted under other provisions of this title;**
 - (b) and shall be Be used for purposes that which are incidental to the use of the principal building; provided that no more than one (1) accessory apartment shall be allowed;**
 - (c) Be secondary in size compared to the principal building;**

(d) Be constructed after the construction of a principal building on the same lot; and

(e) Not be constructed in front of the principal building.

5000.3 An accessory building shall be ~~secondary in size compared to the principal building included in the calculation of lot occupancy~~ and shall comply with all ~~required~~ yards required for accessory buildings ~~based on~~ in the zone ~~in which they are located.~~

~~5000.4~~ ~~Notwithstanding Subtitle D § 5000.3, an accessory building shall not be located in the front yard of a lot in an R zone developed with a residential building.~~

~~5000.5~~ 5000.4 A private garage permitted in an R zone as a principal use on a lot other than an alley lot, shall open directly onto an alley, and shall not be located within fifty feet (50 ft.) of the front building line or within ~~twelve~~ seven and one-half feet (12 7.5 ft.) of the ~~center line~~ centerline of the alley upon which it opens.

5001 DEVELOPMENT STANDARDS

5001.1 The bulk of accessory buildings in the R zones shall be controlled through the development standards in Subtitle D §§ 5002 through 5006.

5002 HEIGHT

5002.1 The maximum height of an accessory building in an R zone shall be two (2) stories and twenty ~~two~~ feet (~~20 22~~ ft.), ~~including the penthouse. The height of an accessory building permitted by this section shall be measured from the finished grade at the middle of the side of the accessory building that faces the main building to the highest point of the roof of the building.~~

~~5003~~ **LOT OCCUPANCY**

~~5003.1~~ ~~An accessory building in an R zone as a principal use on a lot other than an alley lot shall be exempt from the requirements for minimum lot dimensions, but shall be subject to the limitation on percentage of lot occupancy of the zone in which the lot is located.~~

~~5006~~ 5003 **MAXIMUM BUILDING AREA**

~~5006.1~~ 5003.1 The maximum building area for an accessory building in an R zone shall be the greater of thirty percent (30%) of the required rear yard or four hundred and fifty square feet (450 sq. ft.).

5004 REAR YARD

5004.1 An accessory building ~~in an R zone other than a shed~~ may be located within a rear yard in an R zone provided, ~~where abutting an alley, that the accessory building is:~~

~~(a) Not in a required rear yard; and~~

~~(b) it shall be set Set~~ back at least ~~twelve~~ seven and one-half feet (~~12~~ 7.5 ft.) from the ~~center line centerline~~ of the any alley.

5004.2 A shed may be located within a required rear yard of a principal building.

5005 SIDE YARD

5005.1 ~~No minimum side yard is required for an An~~ accessory building ~~in a R zone, other than a shed unless the accessory building is may be~~ located ~~beside the principal building, whereby it shall be~~ in a side yard in a R zone, provided that it is removed from the side lot line a distance equal to the required side yard and from the principal building a minimum of ten feet (10 ft.).

5005.2 A shed may be located within a required side yard of a principal building.

~~5006 [RESERVED]~~

5007 5006 SPECIAL EXCEPTION

~~5007.1~~ 5006.1 Exceptions to the development standards of this chapter shall be permitted ~~as a special exception~~ if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle D § 5201.

III. Proposed Amendment to Subtitle E, RESIDENTIAL FLATS (RF) ZONES

Chapter 50, ACCESSORY BUILDING REGULATIONS FOR RF ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be revised to read as follows:

5000 GENERAL PROVISIONS

5000.1 Accessory buildings shall be permitted within an RF zone subject to the **following** conditions: of this section.

5000.2 ~~(a)~~—An accessory building shall ~~be~~:

- (a) ~~Be~~ subordinate to and located on the same lot as the building to which it is accessory; provided, that an accessory building may contain a required accessory parking space ~~may be permitted accessory to, and required for, a use~~ on another lot, where specifically permitted under other provisions of this title;
- (b) ~~An accessory building shall be~~ Be used for purposes ~~that which~~ are incidental to the use of the principal building ~~but may house; provided that~~ no more than one (1) principal dwelling unit shall be allowed;
- (c) Be secondary in size compared to the principal building;
- ~~(e) (d) An accessory building shall not be~~ Be constructed ~~prior to a~~ after the construction of the principal building ~~on the same lot;~~ and
- ~~(d) (e) An accessory building shall not~~ Not be constructed in front of the principal building.

~~5000.2 5000.3~~ The An accessory ~~buildings~~ building shall be ~~secondary in size compared to the principal building. and shall be considered within the~~ included in the calculation of lot occupancy, pervious surface, and as applicable, the floor area ratio (FAR) of the RF zones, and shall comply with all required yards for accessory buildings in the zone.

~~5000.3 5000.4~~ A private garage permitted in an RF zone as a principal use on a lot other than an alley lot, shall open directly onto an alley, and shall not be located within fifty feet (50 ft.) of the front building line or within ~~twelve~~ seven and one-half feet (12 7.5 ft.) of the ~~center line~~ centerline of the alley upon which it opens.

5001 DEVELOPMENT STANDARDS

5001.1 The bulk of accessory buildings in the RF zones shall be controlled through the development standards in Subtitle E §§ 5002 through 5006.

5002 HEIGHT

5002.1 The maximum height of an accessory building in an RF zone shall be twenty-~~two~~ two feet (~~20 22~~ ft.) and two (2) stories, ~~including the penthouse.~~

5003 LOT OCCUPANCY BUILDING AREA

5003.1 The maximum ~~lot occupancy~~ building area for an accessory building in an RF zone shall be the greater of thirty percent (30%) of the required rear yard or four-hundred and fifty square feet (450 sq. ft.).

5004 REAR YARD

5004.1 ~~No minimum rear yard is required for an~~ An accessory building other than a shed may be located within a rear yard in an RF zone provided that the accessory building is:

(a) Not in a required rear yard; and

(b) except when abutting an alley, where it shall be set Set back at least twelve seven and one-half feet (~~12~~ 7.5 ft.) from the ~~center line~~ centerline of the any alley.

~~5004.2 An accessory building shall be permitted in a required rear yard of a principal building pursuant to the following conditions:~~

~~(a) The accessory building is less than ten feet (10 ft.) in height; and~~

~~(b) The accessory building is less than one hundred square feet (100 sq. ft.) in gross floor area.~~

~~5004.3 If the required rear yard of the principal building in which the accessory building will be placed abuts an alley, the accessory building shall be set back at least twelve feet (12 ft.) from the center line of the alley.~~

5004.2 A shed may be located within a required rear yard of a principal building.

5005 SIDE YARD

5005.1 ~~No minimum side yard is required for an~~ An accessory building other than a shed may be located within a side yard in an RF zone provided that the accessory building is

~~5005.2 An accessory building shall be permitted in a required side yard of a principal building pursuant to the following conditions:~~

~~(a) The accessory building is less than ten feet (10 ft.) in height;~~

~~(b) The accessory building is less than one hundred square feet (100 sq. ft.) in gross floor area; and~~

~~(c) If the required side yard of the principal building in which the accessory building will be placed abuts an alley, the accessory building shall be set back at least twelve seven and one-half feet (~~12~~ 7.5 ft.) from the ~~center line~~ centerline of the any alley.~~

5005.2 A shed may be located within a required side yard of a principal building.

5006 MISCELLANEOUS [RESERVED]

~~5006.1 The development standards that permit the following uses are located in Subtitle U, Chapter 3:~~

~~(a) A permitted principal dwelling unit in an RF zone within an accessory building; and~~

(b) ~~— A private vehicle garage that is an accessory building in an RF zone.~~

5007 5006 SPECIAL EXCEPTION

~~5007.1~~ **5006.1** Exceptions to the development standards of this chapter shall be permitted ~~as a special exception~~ if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle E §§ 5201.

IV. Proposed Amendment to Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES

The title of Chapter 50, ACCESSORY BUILDING REGULATIONS (RA) ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be revised to read as follows:

CHAPTER 50 ACCESSORY BUILDING REGULATIONS FOR (RA) ZONES

Chapter 50, ACCESSORY BUILDING REGULATIONS FOR (RA) ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be revised to read as follows:

5000 GENERAL PROVISIONS

5000.1 Accessory buildings shall be permitted within an RA zone subject to the ~~following~~ conditions: of this section.

~~5000.2~~ (a) ~~— The An~~ accessory building ~~is shall:~~

(a) Be subordinate to and located on the same lot as the building to which it is accessory; provided, that an accessory building may contain a required accessory parking space ~~may be permitted~~ accessory to, and required for, a use on another lot, where specifically permitted under other provisions of this title;

(b) ~~An accessory building shall be~~ Be used for purposes ~~that which~~ are incidental to the use of the principal building; ~~and~~

(c) Be secondary in size compared to the principal building;

(e) ~~(d) An accessory building shall not be~~ Be constructed ~~prior to~~ after the construction of a principal building on the same lot; and

(e) Be constructed behind the principal building.

~~5000.2~~ **5000.3** ~~The An~~ accessory ~~buildings~~ building shall be ~~secondary in size compared to the principal building. and shall be considered with the~~ included in the calculation

of lot occupancy, green area ratio (GAR), and as applicable, the floor area ratio (FAR) of the RA zones; and shall comply with all ~~required~~ yards required for accessory buildings ~~based on in~~ the zone ~~in which it is located~~.

~~5000.4~~ A private garage permitted in an RA zone as a principal use on a lot other than an alley lot, shall open directly onto an alley, and shall not be located within fifty feet (50 ft.) of the front building line or within seven and one-half (7.5 ft.) of the centerline of the alley upon which it opens.

~~5001~~ **DEVELOPMENT STANDARDS FOR ACCESSORY BUILDINGS**

~~5001.1~~ The bulk of accessory buildings in the RA zones shall be controlled through the development standards in Subtitle F §§ 5001 through 5004.

~~5002~~ **HEIGHT**

~~5002.1~~ The maximum permitted height for an accessory building shall be twenty-~~two~~ two feet (~~20~~ 22 ft.) and two (2) stories.

~~5003~~ **REAR YARD**

~~5003.1~~ ~~No rear yard shall be required for an~~ An accessory building other than a shed may be located within a rear yard in an RA zone provided that it is:

(a) Not in a required rear yard; and

(b) except where abutting an alley a minimum rear yard of Set back at least twelve seven and one-half feet (12 7.5 ft.) from the center line centerline of the any alley.

~~5003.2~~ A shed may be located in a required rear yard of a principal building.

~~5004~~ **MISCELLANEOUS**

~~5004.1~~ ~~The lot upon which a private garage is located shall be exempt from the requirements for minimum lot dimensions, but shall be subject to the limitation on percentage of lot occupancy.~~

~~5004.2~~ ~~Accessory buildings on any lot shall be included in the maximum lot occupancy and GAR requirements and if applicable, the FAR, as listed and conditioned in this subtitle and the development standards of the penthouse regulations in Subtitle C, Chapter 15.~~

~~5004.3~~ ~~A private garage that is an accessory building in an RA zone:~~

~~(a) May be located either within a rear yard or beside the main building; provided, if the garage is located beside the main building, it shall be removed from the side lot line a distance equal to the required side yard and from all building lines a distance of not less than ten foot (10 ft.) and~~

(a) ~~Where abutting an alley, it shall be set back at least twelve feet (12 ft.) from the center line of the alley.~~

~~5004.4 A private garage permitted in an RA zone as a principal use on a lot other than an alley lot shall open directly onto an alley, and shall not be located within fifty feet (50 ft.) of the front building line or within twelve feet (12 ft.) of the center line of an alley.~~

5004 SIDE YARD

5004.1 An accessory building other than a shed may be located in a side yard in an RA zone provided that the accessory building is removed from the side lot line a distance equal to the required side yard and from the principal building a minimum of ten feet (10 ft.).

5004.2 A shed may be located in a required side yard of a principal building.

5005 SPECIAL EXCEPTION

5005.1 Exceptions to the development standards of this chapter shall be permitted ~~as a special exception~~ if approved by the Board of Zoning Adjustment ~~as a special exception~~ under Subtitle X, **Chapter 9**, and subject to the provisions and limitations of Subtitle F § 5201.