



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Public Hearing on CASE NO. 18-06 (Office of Planning – Text Amendment to Subtitle G Creating a New MU-4A Zone and Renaming MU-4 to MU-4B)

July 23, 2018

The Committee of 100 (“C100”) advocates responsible planning and land use in Washington, DC. Our work is guided by the values inherited from the L’Enfant Plan and McMillan Commission, which give Washington its historic distinction and natural beauty, while responding to the special challenges of 21st century development. We pursue these goals through public education, research and civic action, and we celebrate the city’s unique role as both the home of the District’s citizens and the capitol of our nation.

As the Zoning Commission is aware, both Laura Richards and Alma Gates, C100 members and former appointees to the ZRR Task Force, testified in ZC 07-11, the genesis of ZC Case No. 18-06.

The C100 applauds the Zoning Commission for moving forward with its commitment to continue to review ZR-16 and correct omissions or implement changes through text amendments and the public hearing process as outlined in Subtitle X, Chapter 13 § 1300.1. The Zoning Commission is also reminded of its commitment to establish Customized Zones as was done for certain commercial areas of Georgetown. This text amendment provides an opportunity to establish a low density mixed use zone in areas which abut low density [R-1-A and R-1-B] zones, and while not customized in the traditional sense, the MU-4A zone is more right-sized for some areas than current MU-4 zones.

The changes proposed for the MU-4 Zone need some additional consideration. While the recommendation to subdivide the existing MU-4 zone into MU-4A and MU-4B is worthwhile, limiting the MU-4A zone to only one site is inconsistent with the purpose of the MU-4 classification, which is intended to apply citywide.

If custom zoning was intended, this rezoning should have gone forward as an NC zone, specifically for this site. The C100 understands that the affected community suggested this and was informed very decisively that OP wanted to design a zone of citywide applicability. There is one site-specific provision in the draft text, which further underscores that this text-amendment was intended to be a zone of general applicability.

The Code is structured to provide for both zones of general applicability and custom zones for areas that require individualized treatment in order to comply with Comprehensive Plan provisions regarding respect for neighborhood character.¹ To be faithful to the structure of the Zoning Code, and to meet a buffering need that exists throughout the city, C100 recommends the Zoning Commission apply the MU-4A zone citywide in areas where low to moderate density mixed use zones meet, abut or confront low density residential zones [at a minimum, R-1-A and R-1-B]. This would provide more protection for existing low density residential zones which was not afforded in ZR-16 changes; and, would be more consistent with the guidance provided in the Land Use Element of the Comprehensive Plan and illustrated on the Future Land Use Map.

Building upon the outline provided in the Notice of Public Hearing, C100 recommends the following revisions to Section 400.3 of Subtitle G; and, would specifically address the MU-4A and MU-4B zones:

Subtitle G, MIXED USE (MU) ZONES, CHAPTER 4, MIXED USE ZONES MU-3, MU-4, MU-5, MU-6, MU-7, MU-8, MU-9, MU-10, AND MU-30.

Amend Subtitle G § 400.3 as shown in highlighted text:

400 PURPOSE AND INTENT

400.3 The MU-4 ~~zone~~ **is zones** are intended to:

- (a) Permit **low to** moderate-density mixed-use development;
- (b) **Provide facilities for shopping, business and service needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; provided that the development is appropriately scaled to the density of the surrounding residential zone district.**
- (c) **The MU-4 Zone shall be divided into an MU-4A and an MU-4B zone;**
 - (1) **The MU-4A zone shall be located in low-density residential areas with limited access to rapid transit stops and include office, retail and other service-oriented uses; and**
 - (2) **The MU-4B zone shall** be located in moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers.

¹ Applying a citywide designation to a single site is tantamount to spot zoning. “The term ‘spot zoning’ has frequently been used by the courts and text writers when referring to changes limited to small areas.” *Walker v. Elkin*, 254 N.C. 85, 118 S.E.2d, 1 (1961). This antiquated term is no longer included in zoning text. In this case, however, it appears that this text amendment would resurrect spot zoning for particular lots on Square 5539.

The C100-proposed text distinguishes between the character of low and moderate density mixed use zones which lends itself to the establishment and definition of the MU-4A and MU-4B zones. The proposed text also distinguishes between those areas which are and are not well served by rapid transit. Many outlying areas of the city which are predominately low density residential do not have access to day-long rapid transit, and access to Metrorail is greater than one-half mile.

Amend Subtitle G § 402, Density – Floor Area Ratio (FAR), as follows:

402 Density – FLOOR AREA RATIO (FAR)

402.1 The maximum permitted FAR in the MU-3 through MU-10 zones shall be as set forth in the following table: [**C100 will limit its proposed changes to the MU-4A and MU 4B zones**]:

	Existing Zone: R-1-B	Existing Zone: MU-3	Proposed New Zone: MU-4A	Existing Zone: MU-4 (to be MU-4B)
FAR	n/a	1.0 max.	1.5 max.	2.5 max.
FAR with IZ	n/a	1.2 max.	2.0 max.	3.0 max.

The C100 recommends that the new MU-4A and MU-4B zones be identified in the Low Density Commercial areas of the Future Land Use Map (FLUM) and the General Land Use Policy Map with appropriate definitions and zone designations indicated by a specified color on both Maps. This is recommended also because the overall scale of commercial buildings in the Low Density Commercial (MU-4) areas are meant to correspond appropriately to the low density residential areas they serve – *Their common feature is that they are comprised primarily of one- to three-story commercial buildings.*

TRANSITION SETBACK REQUIREMENTS

The C100 believes the MU4-A zone should be mapped automatically in zones where low-density residential zones and commercial zones share a zone boundary or are separated by an alley or by a street. This is consistent with buffering affecting PDR zones that are located proximately to residential zones: in those instances, buffers apply when the zones are separated by an alley or street as well as when the zones share a boundary line. *See* 11 DCMR J-207, providing for PDR buffers.

The C100 recommends the Zoning Commission codify the definition of the term “abut” by formally adopting one of the definitions found in Webster’s International Dictionary.² The term is used throughout the proposed new Subtitle G § 411 text and has been subject to various interpretations because a definition has not been formalized. The term “abut,” as applied to an area separated by a street or alley, has been interpreted by the Zoning Administrator as outlined in the attached memo from BZA Case No. 18669, December 18, 2013. The situation of R-1-B homes separated from an MU-4 zone by an alley is not unlike the situation presented in ZC 07-11; yet, in Case No. 18669 the Zoning Administrator specifically ruled that those two zones “confront” rather than “abut” each other. Subtitle D, Residential House Zones, Chapter 51, Alley Lot Regulations for R Zones, Section 5106.1, specifically uses the term “abuts”, i.e., “A required twelve-foot (12 ft.) setback from the centerline of all alleys to which the alley lot abuts shall be provided.”³

Given this opportunity to clarify the term “abut,” C100 strongly recommends the Zoning Commission resolve the meaning of the term through a codified definition and include it in Subtitle B § 100 DEFINITIONS.

CONCLUSION

The C100 supports the proposed changes to Subtitle G provided the revised text amendments are accepted; the MU-4A Zone is not limited to Square 5539; the term “abut” is codified; and that these changes are incorporated in ZR-16.

The C100 will be represented before the Zoning Commission by Alma Gates.



Stephen Hansen
Chair

Attachment (1)

² Abut: (1) to touch along a border or with a projecting part; (2) a: to terminate at a point of contact; b: to lean for support.

³ Attached memo from the Zoning Administrator from BZA Case No. 18669, December 18, 2013.

Attachment

Varga, Stephen F. (DCOZ)

From: Goldstein, Paul (OP)
Sent: Wednesday, December 18, 2013 3:38 PM
To: Varga, Stephen F. (DCOZ)
Subject: Fwd: Zoning Question

Begin forwarded message:

From: "Goldstein, Paul (OP)" <Paul.Goldstein@dc.gov>
Date: December 18, 2013, 1:12:39 PM EST
To: "Goldstein, Paul (OP)"^R <Paul.Goldstein@dc.gov>
Subject: Fwd: Zoning Question

Begin forwarded message:

From: "LeGrant, Matt (DCRA)"^I <matthew.legrant@dc.gov>
Date: December 5, 2013, 3:56:51 PM EST
To: "Goldstein, Paul (OP)" <Paul.Goldstein@dc.gov>
Cc: "Beeton, Kathleen A. (DCRA)"^R <kathleen.beeton@dc.gov>, "Lawson, Joel (OP)" <joel.lawson@dc.gov>, "Mordfin, Stephen (OP)" <stephen.mordfin@dc.gov>
Subject: RE: Zoning Question

Paul — I agree that when separated by an alley that the subject property is not abutting a property across from said alley, instead it is confronting the other property, and therefore Section 735.2 does not apply.

Best Regards,

Matthew Le Grant

Zoning Administrator
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EXHIBIT N

CASE NO. 18669

IT NO.35

From: Goldstein, Paul (OP)
Sent: Thursday, December 05, 2013 2:59 PM
To: LeGrant, Matt
(DCRA) Subject:
Zoning Question

Hi Matt,

I hope that you are doing well. I wanted to ask you a brief interpretation question about an issue which has apparently become a point of contention in an upcoming BZA case.

Section 735 (animal boarding) provides:

S 735.2 The animal boarding use shall not abut a Residence Zone.

The proposed animal boarding use will be located in a commercial zone and separated by a 16 foot wide public alley from a residential zone. It is my understanding in talking with Steve Mordfin (the author of the regulation) that because there is an intervening public alley, the rule's intent was that the animal boarding use would not be considered as abutting a residence zone, and therefore satisfy 5 735.2. Steve mentioned that the alley is not zoned and is therefore an intervening buffer between the commercial and residential zone. I wanted to make sure that you all have a similar interpretation in case this issue is raised by the Board.

Thank you.

Paul W Goldstein

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