



GOVERNMENT OF THE DISTRICT OF COLUMBIA
ADVISORY NEIGHBORHOOD COMMISSION 3D
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Washington, DC 20016

*PALISADES – KENT - SPRING VALLEY - WESLEY HEIGHTS - NEW MEXICO/CATHEDRAL –
THE AMERICAN UNIVERSITY - FOXHALL VILLAGE -BERKELEY*

November 10, 2018

Mr. Anthony Hood
Chair, DC Zoning Commission
441 4th Street, NW, Suite 210-S
Washington, DC 20001

RE: CASE NO. 18-16 (Text and Map Amendments to Change Certain Zone
Names – Mapping Phase)

Dear Chairman Hood:

At its regularly scheduled meeting on November 7, 2018, ANC3D voted to submit the following comments to the Zoning Commission regarding Case No. 18-16. ANC3D suggests specific additions to the changes recommended in this case.

Introduction

At various times between 1958 and 2016, the Zoning Commission established regulations addressing “Overlay Districts.” These overlay zones were intended to highlight the special or unique features of a geographic area; and, the Zoning Code was meant to reflect zoning protections for them in accordance with Comprehensive Plan guidance.

In 2016, the Zoning Commission approved a new set of Zoning Regulations (ZR 16) and it is timely that the zoning maps reflect those changes, but a more thorough identification process is needed. Rather than specifically identify the Overlay Districts, the 2016 Regulations include them as “just another zone district” without any mention of their “overlay” status. Even though the special zoning restrictions

or provisions for each overlay did carry forward into the new regulations and each of the overlay zones has its own chapter, the removal of the term, “Overlay” from their geographic name designation and introductory paragraph omits the special nature of these zone districts and why they are in a standalone chapter. Also, any reference to the Comprehensive Plan in the descriptive paragraph at the front of each overlay district found in the 1958 Zoning Regulations has been removed.

Before the Zoning Commission moves forward and amends the zoning maps, it would be useful to reconsider “the purpose” of each of the former overlay districts to ensure the intended guidance provided by the Comprehensive Plan is not lost or ignored in the zoning text since zoning “shall not be inconsistent” with the Comprehensive Plan. Action Item UD-1.2.A *Review of the Zoning Designations 904.9* recommends that in areas where “zoning may permit excessive density, zoning changes and/or overlay designations as necessary to protect these area.”

The proposed mapping changes, while striving to make the maps and text align or consistent, are also in keeping with Policy IM-1.3.2 *Zone Map Consistency* 2504.4.¹

Nevertheless, the proposed naming and mapping changes seem to dance around the purpose of this exercise as well as the zone districts – there is something unique about each of them, and each property is listed in Subtitle W, but there is nothing in their zone title that indicates why they are singled out and given their own chapter.

Background

In the 1958 Zoning Regulations, all overlay zones and their specific provisions were contained within special overlay chapters. The Preamble to the Miscellaneous Overlay Districts [Section 1500.1] provides the purpose for the establishment of these overlay districts, “Miscellaneous Overlay Districts are created to implement the Comprehensive Plan and other public policy goals and objectives.” With the removal of this language in ZR 16, the specific reference to the Comprehensive Plan and its guidance on the unique character of these districts was eliminated.

¹ Policy IM-1.3.2: Zone Map Consistency: Consistent with the Home Rule Charter, ensure that the Zone Map is not inconsistent with the Comprehensive Plan Future Land Use. Map. Make appropriate revisions to the Zone Map to improve its alignment with the Future Land Use Map and to eliminate clear inconsistencies.

Advisory Neighborhood Commission (“ANC”) 3D is fortunate to have two overlay zone districts within its boundaries: the Wesley Heights Overlay District (WH) and the Chain Bridge Road/University Terrace Overlay District (CB/UT).

Zoning Case No. 90-5 (ZC Order No. 718), Text and Map Amendment – Wesley Heights Overlay District [July 13, 1992], states, “the purpose of which is to preserve and enhance the low density character of Wesley Heights by regulating construction and alteration of residential and other buildings in the area.”

Zoning Case No. 97-6, Text and Map Amendment – Chain Bridge Road/University Terrace – Tree and Slope Protection Overlay District [June 14, 1999], states, “the purpose of which is to protect and preserve the natural topography, mature trees, stream beds, and natural vegetation in the neighborhood and to deter the desecration of a historic cemetery owned by the Union Burial Society. The TSP overlay is also intended to preserve the park-like setting of the area by regulating alterations or disturbances of terrain, destruction of trees, coverage with impervious surfaces, and by providing for widely spaced residences.”

It is notable that ZR 16 moves the TSP provisions into a separate chapter of Subtitle D (R-6 and R-7) which separates the immediate zone purpose from the section dealing with the Chain Bridge Road/University Terrace Residential House Zone (R-21). Also, the R-6 and R-7 chapters appear out of context in Subtitle D which addresses Residential House Zones.

Under *Preserving Steep Slopes and Stream Valleys*, Action Item E-1.4A recommends:

Expand the Tree and Slope Protection Overlay. Work with neighborhood and community groups homeowners and other landowners, and ANCs to identify additional areas where the Tree and Slope Protection (TSP Overlay zone should be mapped.

Gaining approval of the overlay zoning classification was no easy feat; however, all the time, effort and importance of the establishment of these overlay districts is not recognized in the 2016 Zoning Regulations. There is nothing in the text to identify overlay zones as being different from other residential zones except a few different development standards and their own chapters in various Subtitles. The rich history of these zones and why they were granted “special” overlay status has been erased in ZR 16. According to the Office of Planning, “*There are no more overlays.*”

Zoning Case No. 18-16

A review of the proposed amendments in this case may add geographic identifiers on the zoning maps but the zoning text - the chapter names for the applicable zones - continue to lack the term, “overlay.” The prehearing filing from the Office of Planning (“OP”) states,

The proposed new names will result in specific benefits:

- Present a naming scheme familiar to the previous 1958 base zone plus overlay scheme;
- Reduce duplication of development standards:
The primary development standards will be located within the base zone chapter and only those standards that are different will be detailed in the modified zone chapter.

ZC Case No. 18-16 provides an opportunity for the Zoning Commission to correct some ZR 16 omissions. The addition of identifying “initial” lettering rather than the word “overlay” in the title does not accomplish much, other than to tie or bring consistency between the existing zoning text and the zoning maps. A more thorough approach would be for the Commission to renew the “Purpose and Intent” section for each overlay by including the actual text from the 1958 Zoning Regulations for each of the overlay zone districts, i.e., “*The purpose of the XXX overlay zone is to...*”

For example:

1541.1 The Wesley Heights (WH) Overlay District is established to preserve and enhance the low density character of Wesley Heights by regulating construction and alteration of residential and other buildings in the area.

1565.1 The Chain Bridge Road/University Terrace (CB/UT) Overlay District is established to preserve and enhance the park like setting of the Chain Bridge Road/University Terrace area by regulating alteration or disturbance of terrain, destruction of trees, and ground coverage of permitted buildings and other impervious surfaces, and by providing for widely spaced residences.

These kinds of descriptive paragraphs do not exist in ZR 16. “Purposes,” found in the 1958 Zoning Regulations, were more “emphatic” than what carried forward in ZR 16.

Also, in the 1958 Zoning Regulations, the individual lot numbers included within each of the overlay zone districts are found within the descriptive section of the overlay. Since the same format and descriptive language for each of the overlays did not carry forward into ZR 16, lot numbers for various overlay districts are found in Subtitle W – a different Subtitle, and, are not referenced in the various Subtitle base zones. This text omission, referencing individual properties in former overlay zones, should be amended by adding new text under the Purpose and Intent section of each Subtitle, for example Subtitle D, Chapter 8, Wesley Heights Residential House Zone (R) Zones:

Section 800. Purpose and Intent.

Section 800.4 Specific Zone Boundaries for Properties included in the Wesley Heights Residential House zones (R-14 and R-15) are listed in Subtitle W §121.1.

What’s at Risk

Is it reasonable to think that overtime, what was once designated as an “Overlay Zone” will have the same stature it once did? Probably not!

DCRA has not been following some of the Wesley Heights Overlay requirements and has issued permits for houses that have been turned on the lot and do not meet the setback requirements; or, permits for new houses that do not meet the front yard setback requirements which are designated in the Wesley Heights Overlay; and some houses may not even meet the requirements regarding FAR. The Wesley Heights House Zone is the only R-1 zone with FAR. As time passes and institutional memory disappears, there is nothing to make reviewers or inspectors take the time necessary to treat the properties in the overlay any different from plain R-1 residential properties.

In the case of the Chain Bridge Road/University Terrace Overlay, DCRA issued permits for a number of trees to be moved elsewhere on the property. While this is preferable to tree removal, it is not a consideration found in the overlay regulations. This “loop hole” needs closing, but until it is, the overlay is in jeopardy of further clever interpretation to end run the zoning regulations.

As time passes and institutional memory disappears, there is nothing to make reviewers or inspectors take the time necessary to treat the properties in the overlay any different from plain R-1 residential properties. The changes recommended in this resolution will help prevent this from happening.

Conclusion

ANC 3D recognizes the purpose of the hearing is NOT to change substance in the zoning regulations, however the omission in ZR 16 of the term “overlay” in zone titles and the omission of a link in the base zone to individual properties found in Subtitle W needs to be changed.

In terms of “volume of the of the ZR 16,” this finding or comment is not new. Given the changes and additions made to the 1958 Zoning Regulations, the volume of ZR 16 needed to increase, but perhaps there are areas where it can be tightened. The complaint regarding ZR 16 structure most often heard is that there is too much flipping back and forth between sections of the code and that it is difficult to execute on-line for that reason.


Overlay districts may not be the place to start omitting text which is intended to protect these unique areas of the city. However, changing certain zone names and adding a small amount of additional text will not affect the overall bulk of the zoning regulations.

ANC 3D is pleased to submit its comments on Case No. 18-16 (Text and Map Amendments to Certain Zone Names – Mapping Phase) and looks forward to submitting further comments when the Zoning Commission set down the proposed text for a hearing.

In that spirit, ANC 3D

- Urges the Zoning Commission to restore the term “overlay” to the title of each zone district previously so designated;
- Recommends the “Purpose and Intent” section for each overlay be added to the appropriate zone district by including the actual text from the 1958 Zoning Regulations for each of the overlay zone districts in ZR 16; and
- Recommends new text be added to ZR 16 for each overlay zone which links or identifies individual properties within the overlay to the appropriate section of Subtitle W.

For the reasons outlined in this submission, ANC 3D asks that its opinions be given the Great Weight to which it is entitled under DC Law.



Charles L. Elkins
Vice-Chair