

**MEMORANDUM**

**TO:** District of Columbia Zoning Commission

**FROM:** Matt Jesick, Development Review Specialist  
*JLS*  
Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation

**DATE:** July 6, 2020

**SUBJECT:** ZC Case #19-13 – Public Hearing Report for Proposed Text Amendments to the Zoning Regulations Governing Alley Lots

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**I. RECOMMENDATION**

The Office of Planning (OP) recommends text amendments to alley lot regulations contained in several subtitles of the Zoning Regulations. The amendments would clarify the regulations, reconcile divergent text in similar sections, streamline the text and make it more user friendly.

The amendments would also facilitate the conversion of appropriate tax lots to record lots, revise the alley centerline setback requirement, and allow artists operating in an alley building to stage shows or performances in their studios. OP recommends approval of the text as shown in the public hearing notice, with the updates shown in this report.

**II. SUMMARY OF AMENDMENTS**

The following list summarizes the proposed text amendments:

- Amendments for consistency, ensuring that different subtitles with identical sections use identical language for those sections;
- Amendments for clarification, including, but not limited to clarifying rules of measurement for alley building height in Subtitle B and clarifying the definition of “Alley”;
- Amendments to allow pre-’58 alley tax lots over 450 square feet to convert to record lots as a matter-of-right, and to allow alley tax lots created prior to 2016, of any size, to convert by special exception;
- Reducing the alley centerline setback from 12’ to 7.5’, to comport with Board of Zoning Adjustment precedent and to match the existing minimum requirement for a dwelling unit on an alley lot;

- Permitting five performances or art shows per year in an artist studio on an alley lot.

The amendments would not alter development standards such as height, yards, lot occupancy or pervious surface.

### III. BACKGROUND

The Office of Planning and the Office of the Zoning Administrator (OZA) have encountered issues involving the regulations governing alley lots, and have noted areas where the text could be improved to increase clarity and usability for staff, the Commission, the Board of Zoning Adjustment (BZA) and the public. Staff has also identified regulations that could be amended to allow greater use of alley lots where appropriate, in order to achieve District policy goals.

When processing matter-of-right building permit applications, OZA has encountered applicants confused about the intent or meaning of the regulations. OZA has stated that clarifying alley lot rules is one of their priority amendments for the Zoning Regulations. Also, OP has reviewed BZA applications where the use of alley lots, which could be acceptable for development in other respects, is hindered by the fact that they are tax lots and not record lots. The proposed amendments attempt to make the Regulations more useable for all parties, and beneficial for the livability of the city.

### IV. RESPONSES TO ZONING COMMISSION QUESTIONS FROM SETDOWN

At the Setdown meeting the Commission asked for a few items of additional background and information:

- Past BZA Cases

The Commission asked OP to summarize past BZA cases, including specifically two cases from 2018 which requested subdivisions of tax lots but were denied by the BZA. The Commission also asked OP to summarize the issues brought up by neighbors in those cases, as examples of issues that might be raised in the present Zoning Commission text amendment case.

A vast majority of past alley lot cases have been supported by ANCs and approved by the Board. Of the 33 alley lot cases decided by the Board since 2004, ANCs supported 26 and opposed four, while the Board approved 28, denied two and dismissed one.

	Approve / Support	Deny / Oppose	Dismissed
ANC	26	4	-
BZA	28	4	1

BZA #19683 – The location of the property is 260 Lincoln Court, which is an alley between 2<sup>nd</sup> and 3<sup>rd</sup> Streets, SE, and between Pennsylvania Avenue and C Streets, SE. The site is zoned RF-3.

The properties fronting on 3<sup>rd</sup> Street, adjacent to the site, are improved with rowhouses. Most of the remainder of the square is a mix of commercial uses.

Case number 19683 was a request to convert an alley tax lot to a record lot and construct a single-family residence. As the Regulations are presently written, the alley in question does not meet the alley-width requirements for subdivision, and the subject lot does not meet the lot size requirements for subdivision (Subtitle C §§ 303.3(a) and (b), respectively). In addition to the subdivision relief, the application requested relief from rear yard so the proposed new house could abut the adjacent two-story garage, and alley centerline setback relief.

OP recommended denial of the subdivision relief based on the applicant not having demonstrated any uniqueness or exceptional condition about the property resulting in a practical difficulty, and concluding that lot area relief would harm the intent of the Regulations. ANC 6B supported the application. The immediately adjacent neighbors expressed at the public hearing concerns about light and air impacts on their rear yards and patios, as well as to their planned solar panels (see BZA transcript dated February 21, 2018, starting on p. 315). Other concerns included security, rodents, sight lines in the alley, and impacts on trees on adjacent properties.

The Board denied the case, stating that while they felt the proposed building was not out of character with the alley environment around it, the applicant had not met the three-part variance test. The Board did not seem to place credence in the arguments that the building might interfere with light and air on adjacent properties (see BZA transcript dated May 9, 2018, starting on p. 5). During the discussion, the Zoning Commission representative on the Board suggested that the issue of converting tax lots to record lots is something that the Commission should look at again, with the possibility that there should be a path for lots to convert that do not meet the standard subdivision criteria.

The present text amendment would eliminate the need for the centerline setback relief but would otherwise not change the zoning requirements for the bulk of the building. The proposed text amendment would allow the lot to convert to a record lot as a matter of right, as it was created prior to 1958 and is greater than 450 square feet.

BZA #19629 – The address of the property is 1665 Harvard Street, NW, although the tax lot in question is actually located behind 1701 Harvard Street, across a pedestrian alley from the street-facing lot at 1665 Harvard. The site is zoned RF-1 and the entire block is improved with rowhouses.

Case number 19629 was a request to convert an alley tax lot to a record lot and construct a garage. As the Regulations are presently written, the alley in question does not meet the alley-width requirements for subdivision, and the subject lot does not meet the lot size requirements for subdivision (Subtitle C §§ 303.3(a) and (b), respectively). In addition to the subdivision relief, the application requested relief from alley centerline setback, rear yard, side yard, and maximum size for a garage.

OP recommended denial of the subdivision relief based on the applicant not having demonstrated any uniqueness or exceptional condition about the property resulting in a practical difficulty, and concluding that relief could be detrimental to the public good and would harm the intent of the Regulations. ANC 1D opposed the application. The immediate neighbors cited issues such as impacts to light and air available to their back yard, the looming visual presence, deviation from neighborhood character, and creating tight spaces in the alley. Concerns raised by others testifying included negative impacts to security in the pedestrian alley and snow and ice build-up in the alley (see BZA transcript dated February 21, 2018, starting on page 209).

The Board denied the case, stating, as with case 19683, that the applicant had not met the three-part variance test (see BZA transcript dated May 9, 2018, starting on p. 13). The present text amendment would eliminate the need for the centerline setback relief on the north side of the lot but not the east. Otherwise the proposed text amendment would not change the zoning requirements for the bulk of the building. The proposed text amendment would allow the lot to convert to a record lot as a matter of right, as it was created prior to 1958 and is greater than 450 square feet.

- Auto Turning Radii and Garage Entry

The Commission requested additional information about automobile access to garages, should a centerline setback of 7.5' be adopted. OP consulted with an architect who has designed a number of accessory buildings, such as garages and carriage houses, as well as alley dwellings. The architect has not used turning diagrams in the past to examine turning movements, but did note that maximizing garage-door width is helpful to accommodate vehicle entry. OP also consulted with DDOT about turning movements in alleys. They stated that 16' was a common minimum width that they looked for in new or expanded alleys, but that that dimension was based on trucks travelling through the alley. DDOT felt that 15' should be sufficient for auto maneuvers into garages. DDOT also stated that they would not object if a vehicle had to make two movements to get into a garage.

Finally, OP sought the input of a transportation consultant who provided the turning diagrams below which show a typical medium-sized sedan backing into and pulling into a garage<sup>1</sup>. The vehicle sweep lines in the diagrams are very faint. The consultant agreed with DDOT that 15' is adequate width for the turning movements of an average vehicle. From a 15'-wide alley, a medium-sized sedan can back into a typical garage in one movement. Depending on the size of the garage door, to park head-in might take two movements; For a single head-in movement the minimum garage door size would be 12'-wide.

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<sup>1</sup> The vehicle sweep lines in the diagrams are very faint.

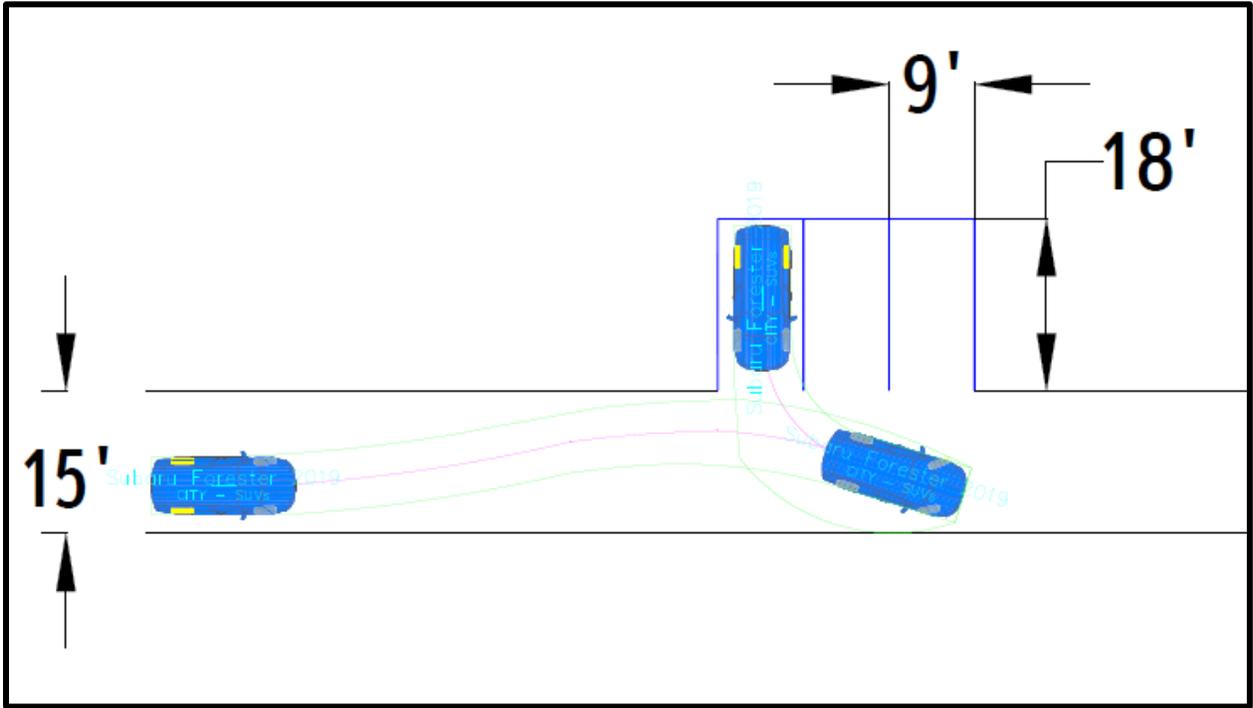


Image courtesy Gorove Slade Transportation Planners and Engineers.

Typical sedan backing into a garage from a 15' alley.

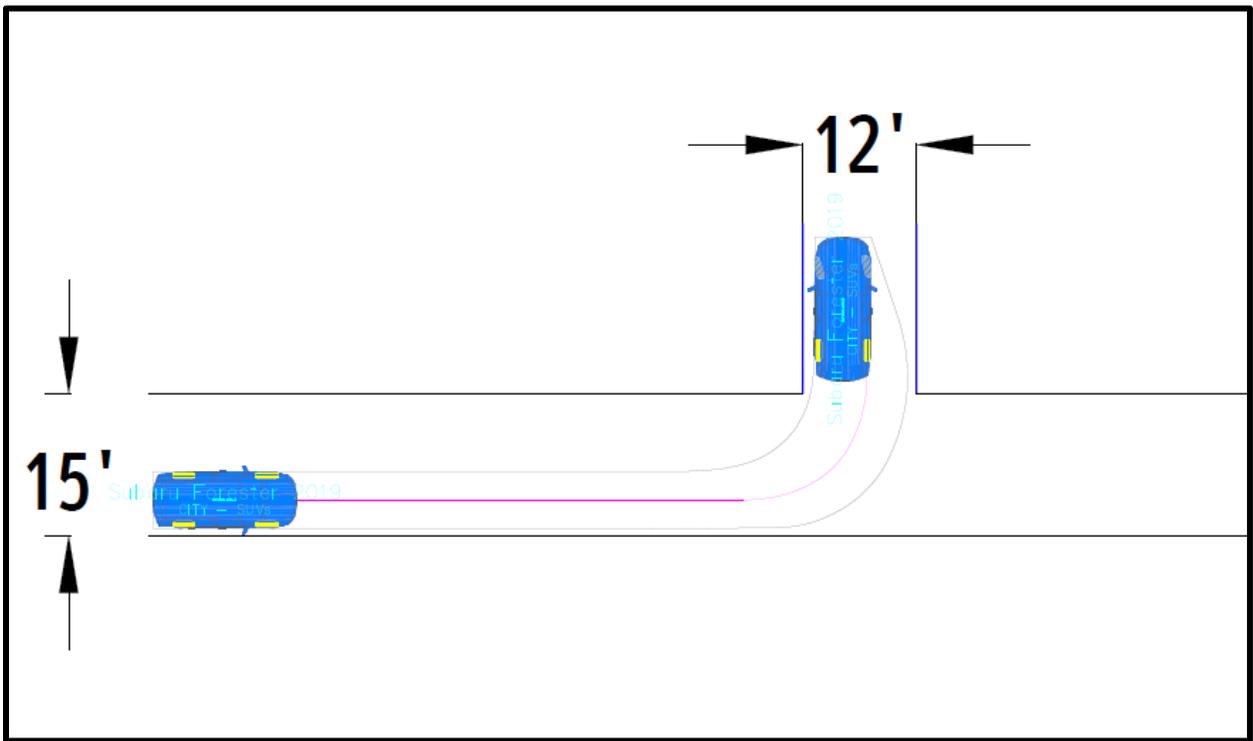


Image courtesy Gorove Slade Transportation Planners and Engineers.

Typical sedan pulling into a garage from a 15' alley.

- Number of Art Shows / Performances Per Year

The Commission asked for additional information about the number of art shows permitted per year. OP proposed five art shows or performances as a matter of right in order to match the number of yard, garage or home sales permitted as a matter of right in a home occupation (U § 251.1(1)). That number of sales was brought forward from the 1958 Regulations (1958 Regulations, § 203.6). OP proposes with the draft regulations a special exception process for art studios that do not meet the matter of right conditions for that use. An artist, therefore, could have additional shows or performances per year, but would need to seek special exception approval, and would need to demonstrate that the use would not be objectionable to surrounding neighbors (proposed regulation U § 601.1(b)).

## **V. PROPOSED TEXT AMENDMENTS**

### **Amendments for Consistency**

Many of the proposed text amendments are simple edits for consistency. Chapter 51 in Subtitles D (R zones), E (RF zones) and F (RA zones) presents development standards for alley lots in the respective zones, and while identical sections in Chapter 51 in each subtitle should be identical, it was found that they were often not. Rear yards, for example, sometimes have a “minimum” and other times have a “required” depth. The amendments attempt to reconcile those differences.

### **Amendments for Clarification**

A number of proposed amendments also seek to add clarity to the regulations, but not change the substance of the existing rule. For example, the Zoning Administrator informed OP that applicants are sometimes confused because their subject property is on a named alley, and they therefore believe it to be a street. A proposed change to the definition of “Alley” would reinforce that it is the records of the Surveyor of the District of Columbia that determine whether a right-of-way is an alley, not whether it is named or not.

A further amendment to Subtitle B §§ 307 and 308 would clarify the building height measuring point (BHMP) for alley buildings. Those sections presently only contemplate street-facing lots. The amendments would establish a BHMP for alley lots at the mid-point of the property line facing an alley.

A number of amendments for clarification that were proposed with this case at the time of setdown were subsequently incorporated into other text amendments such as #19-14 and #19-21, including changes to § 5201 and changes to criteria for height relief.

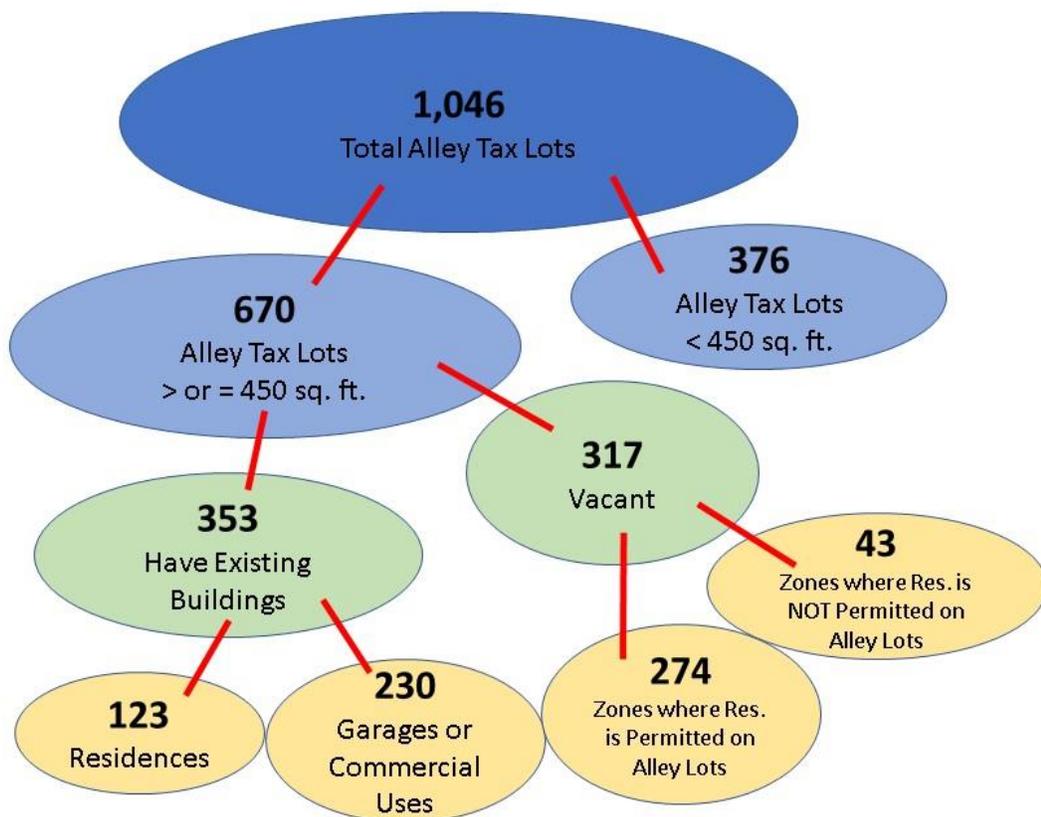
### **Tax Lots**

For the sake of clarity, OP proposes to remove the subdivision requirements for alley lots from the existing § 303, Lot Frontage, of Subtitle C. Instead, OP proposes to move the text to a new C §

306, titled New Alley Record Lots, which would more clearly spell out lot frontage and alley width requirements.

In addition to the existing text taken from C § 303, the new section 306 would include language that would allow tax lots of greater than 450 square feet and existing on or prior to May 12, 1958 to convert to record lots as a matter-of-right. Tax lots of less than 450 square feet, or tax lots created after May 12, 1958, but before the enactment of ZR-16 on September 9, 2016, may be converted to record lots if approved as a special exception by the BZA. Such relief would consider comments from relevant government agencies, including FEMS, MPD, DC Water, DPW and DDOT.

Since the adoption of ZR16 there have been only four BZA cases requesting relief to convert an alley tax lot to a record lot. While the proposed text amendment would make it easier to convert tax lots – both as a matter-of-right or by special exception – there is a limited universe of tax lots. A GIS analysis of alley lots has identified 1,046 alley tax lots, of which 670 have a size of 450 square feet or greater. Of those 670, the data indicates that 353 are already improved with a structure, 123 of which are used as residences. The remaining developed lots are used mostly for garages, with a small number used for commercial purposes. 317 tax lots of the 670 are undeveloped. And of the 317, 274 are in zones where residential on alley lots are permitted. The other 43 are in the R-1 or R-2 zones.



The proposed change could help in the isolated cases where the potential non-residential uses of a vacant lot are minimal, and residential could be an appropriate use.

### Alley Centerline Setback

OP proposes an amendment to reduce the required alley centerline setback for alley lots from 12 feet to seven feet-six inches (7'6"). Seven feet-six inches would be in line with the 15-foot minimum alley width for dwellings stated in Subtitle U.

Since the implementation of ZR16, there have been a total of 22 BZA cases dealing with alley centerline setback – both alley lot cases and accessory building cases. The vast majority of those were supported by ANC's and approved by the BZA. Two Board denials were based on broader subdivision requests and not focused on the accompanying centerline setback relief. The average alley centerline setback requested in those cases was eight feet. Only five of the requests were for less than 7.5 feet; Two of those cases were for the side of a building<sup>2</sup>, one was an existing condition being continued, and one was for a roll up gate, for which a setback is not even required.

	Approve / Support	Deny / Oppose
ANC	18	2
BZA	19	3

### Artist Studios

The Regulations presently permit artist studios on alley lots but are silent on performances or art shows in the studio space. A proposed text amendment to Subtitle U would allow a maximum of five (5) performances or art shows per year in an artist studio, with additional performances permitted by special exception. The performances would remain limited by the noise regulations applicable to the studio, from DCMR Title 20, as well as the occupancy limits of DCMR Title 12H, the Fire Code.

### Text Updated From the Public Hearing Notice

Since the public hearing notice (PHN) was published OP has continued to work with OAG to refine the proposed zoning text, specifically Subtitle C § 306.4. OP recommends the following changes which would more clearly implement the intent of the text amendment. The text below is redlined from the PHN draft.

**306.4 An Alley Tax Lot not meeting the requirements of Subtitle C §§ 306.1 through 306.3 that was recorded with the Office of Tax and Revenue prior to September 6, 2016, may be converted to an Alley Record Lot if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, and subject to the following requirements:**

<sup>2</sup> Under the 1958 regulations, the centerline setback only applied to building faces with garage openings. See Section 2300 of the 1958 Regulations. The setback was changed to apply to all alley façades as part of ZR 16.

~~(a) The Alley Tax Lot has a minimum square footage of four hundred and fifty square feet (450 sq. ft.);~~

~~(b) (a) The Alley Tax Lot connects to an improved public street through an improved alley or system of alleys that provides adequate public safety, and infrastructure availability; and~~

~~(e) (b) The Office of Zoning shall refer the application to the following agencies for their review and recommendation, if filed to the case record within the forty (40) day period established by Subtitle A § 211:~~

~~(1) Department of Transportation (DDOT);~~

~~(2) Department of Public Works (DPW);~~

~~(3) Metropolitan Police Department (MPD);~~

~~(4) Fire and Emergency Medical Services Department (FEMS);~~

~~(5) DC Water (WASA); and~~

~~(6) If a historic district or historic landmark is involved, the Historic Preservation Office (HPO).~~

~~(d) The Applicant shall include with the application for relief a statement, supported by a plat depicting the proposed Alley Record Lot and its existing record lot, that states if the remainder of that existing record lot without the proposed Alley Record Lot would comply with Subtitle C § 302 in addition to all other applicable requirements.~~

OP also proposes the following conforming amendment to Subtitle C § 711.7:

711.7 **Except for alley lots, when** ~~When~~ parking spaces are provided within a building or structure, all vehicular entrances or exits shall be set back at least twelve feet (12 ft.) from the center line of any adjacent alley for a minimum height of ten feet (10 ft.).

## VI. COMPREHENSIVE PLAN AND OTHER DISTRICT POLICY

The proposed text amendments would further the following policies of the Comprehensive Plan, as well as other District policy guidance.

### Comprehensive Plan Land Use Element

The Comprehensive Plan encourages neighborhood infill development and notes that in residential areas “infill sites present some of the best opportunities in the city for ‘family’ housing and low-

to moderate-density development” (Comprehensive Plan, Land Use Element, § 307.2). Policies of the Plan also address more specifically the ability to develop vacant lots:

**Policy LU-1.4.2: Long-Term Vacant Sites**

Facilitate the reuse of vacant lots that have historically been difficult to develop due to infrastructure or access problems, inadequate lot dimensions, fragmented or absentee ownership, or other constraints. Explore lot consolidation, acquisition, and other measures which would address these constraints. 307.6

## **Comprehensive Plan Housing Element**

In addition to the acute need generally in the City for market rate and affordable housing, the Comprehensive Plan recognizes a need for a diversity of housing types in the District and notes the need for smaller units for young professionals, couples without children, or empty-nesters (Comprehensive Plan, Housing Element, § 505.4). Removing some barriers to housing on alley lots could provide another means for addressing the housing issues of the city, especially on lots that likely would have very little other viable use. Specifically, the Plan suggests that zoning regulations that impede the development of new housing, and “zoning regulations which may not reflect contemporary housing trends” should be amended.

**H-1.5 Reducing Barriers to Production**

The development of housing may be hampered by both governmental and non-governmental constraints. Governmental constraints include lengthy delays in permit processing and plan approval, insufficient coordination among agencies and utilities, zoning regulations which may not reflect contemporary housing trends, and even prohibitions on certain types of housing. Non-governmental constraints include the high cost of land and rising interest rates. Although much progress has been made in the last five years, serious barriers still exist. Fear of these barriers keeps some developers from undertaking projects in the city at all. 507.1

**Policy H-1.5.1: Land and Building Regulations** Ensure that the District’s land regulations, including its housing and building codes, its zoning regulations, its construction standards, and its permitting fees, enable the production of housing for all income groups. Avoid regulations which make it prohibitively expensive or difficult to construct housing. 507.2

**Action H-1.5.B: Changes to the Zoning Regulations** Explore changes which would facilitate development of accessory apartments (also called “granny flats” or in-law units), English basements, and single room occupancy housing units. Any changes to existing regulations should be structured to ensure minimal impacts on surrounding uses and neighborhoods. 507.7

## **Mayor's Order on Housing**

On May 10, 2019, the Mayor issued Order #2019-036, Housing Initiative, which describes and quantifies the need for additional affordable housing in the District and the region and provides direction to city agencies on how to meet the housing targets. Among other priorities, the Mayor tasked OP with identifying “*regulatory impediments to producing market rate and affordable housing*” (p.3). While a small amount of development on alley lots would not solve the overall housing shortfall, the proposed zoning text changes should allow some additional dwelling units on currently underutilized lots.

## **Comprehensive Plan Arts and Culture Element**

The Arts and Culture Element of the Comprehensive Plan seeks to ensure that all areas of the District have exposure to the arts. It also emphasizes the need to have a variety of types of spaces for artists to practice and for performance and events. The proposed text amendment, while conservative in the number of performances permitted per year, would provide another outlet for artistic expression and neighborhood cultural enrichment.

### **Policy AC-1.1.6: Performance and Events in Non-Traditional Settings**

Encourage the provision of spaces for performances and art events in neighborhood parks, community centers, schools, transit stations, residential developments and public areas in private development. This can help reach new audiences and increase access to the arts for people in all parts of the city. 1403.7

## **DC Cultural Plan**

The DC Cultural Plan notes that “*artists and creators add vibrancy to communities across the District*”, but that they are vulnerable to financial pressures, including for production, presentation and living space. The number of artists in the region has gone up significantly over the past decade, but has remained flat in the District, in part due to the high cost of production space (Cultural Plan, pp. 107-108). The plan goes on to provide specific policy direction regarding arts spaces:

### **Cultural Spaces Policy 3.0: Promote a Range of Cultural Spaces Throughout the City**

The District and its partners should continue to review opportunities for any type of space to serve as a temporary or permanent platform for cultural production, expression and consumption.

The Regulations already make provisions for artist studios, but by accommodating performances and consumption of the arts, the proposed text amendment would help to more completely achieve these policy goals.