

**Report of the Economic Development and Zoning Committee of ANC 6A
November 20, 2013**

Present: Members: Laura Gentile, Charmaine Josiah, Justin Thornton, Michael Hoenig, Dan Golden, Cody Rice, Missy Boyette, Brian Carlson
Commissioners: Andrew Hysell, David Holmes

Dan Golden chaired the meeting.

Community Comment

There were no community comments.

Status Reports

Resolution of Previously Heard BZA/HPA Cases: Dan Golden reported that the ANC adopted the EDZ Committee's recommendations in the following cases:

- 1) the ANC supported unanimously the requested variances for 903-907 Florida Avenue, NE, from the lot size and on-site parking requirements, and the BZA also agreed; and
- 2) the ANC supported by a vote of 6 to 1 the requested variance for Toddlers on the Hill, LLC, located at 800 11th Street, NE, from the on-site parking requirements.

Vacant Properties: 211 17th Street, NE was scheduled for inspection by DCRA on November 27th. Heather Vargas is Rueben Pemberton's replacement.

H Street Business Liaison Report: Charmaine Josiah reported that she attended the AIA Training Session and that it was worthwhile and that the attendance was strong.

Future Projects: Dan Golden met with Carderock Development about their acquisition and proposed development of 1301 H Street. Carderock is looking at some potential uses that include possibly a bank or a "fast casual" eatery such as a Panera. Dan also said he was meeting with the owner of the Jimmy's Tire property this coming Saturday (along with several of the neighboring property owners and Commissioner Omar Mahmud) regarding his plans for the property.

Old Business

Dan Golden also reported that DCRA gave Ben's Chili Bowl the FAR credit they requested despite the complete removal of the building's façade. Because of their efforts to save the original brick and other steps costing approximately \$100K, the credit was given. Representatives of Ben's Chili Bowl were present at the meeting and acknowledged and expressed regret they hadn't adequately communicated with the ANC.

New Business

1. **BZA Order No. 18247 (1309 and 1311 H Street, NE):** Applicant seeks an extension of the referenced order, which granted variances from requirements for 1) FAR; 2) rear yard; 3) off-street parking; and 4) loading requirements for a period of two years. Owner's (Big City Development) attorney presented that an extension was proper due to client's efforts to secure financing that had been unsuccessful. Attorney referenced a letter from Industrial Bank stating that owner had sought

financing. According to attorney, once Big City Development completed an ongoing project located on Rhode Island Avenue, Industrial Bank—their usual lender—would provide the requested financing. The Committee voted 9-0 in favor of recommending the ANC support the extension of the referenced order.

2. 1329 Constitution Ave, NE (HPA 14-043): Applicant seeks approval from HPRB for the proposed three-story addition. Eric Peterson presented for the applicant that the existing two story brick building will be renovated and that a rear storage building will be eliminated. The building's ceiling elevation will be maintained while lowering the overall profile by compressing the structure. The third story addition will not be visible from the street. The Committee voted 9-0 in favor of writing a letter to the ANC supporting the approval of the HPRB.

3. 1300 H Street, NE (R.L. Christian Library Site): Developer gave a presentation regarding the status of redevelopment efforts for this site. Before Brandon Jenkins from Rise presented, Reyna Alorro from the Office of the Deputy Mayor for Planning and Development walked through the history of the project, including how and why the Rise project design was selected over others. The Rise proposal expanded opportunities for small retailers, and provided a rare form of crowd-funding allowing small investors to buy portions of the development in increments of \$100. Ms. Alorro also stated that the City Council would be approving the use of the surplus land in the next few weeks.

Rise is seeking two changes to their original proposal. First, they propose to add a 5th floor that still would comport with the H Street overlay. Second, Rise is seeking to eliminating the below grade parking level and replacing it with street level parking with a reduction of parking spots from 17 to 7 or 9. The reason for the decision not to include below-grade parking was the desire to avoid paying for environmental remediation associated with over 100 years of on-site pollution from a coal manufacturing plant, a gas station, and the neighboring dry cleaner. Mr. Jenkins stated that while Rise was aware of the environmental contamination, they didn't realize the extent or degree and the attendant remediation costs. According to Mr. Jenkins, any excavation for the parking would require the removal of additional dirt over fifty feet down plus the installation of an impermeable barrier in order to ensure contamination did not seep upwards into the development. Rise has unsuccessfully sought a "no further action letter" from the District Department of Environment (DDOE) and as a result, it believes it will greatly expand its potential liability if it undertakes to excavate for below-grade parking.

Commissioners Holmes voiced concerns that Rise previously was aware of the pollution. Mr. Jenkins responded that the degree of contamination and the cost of remediation wasn't clear from initial tests. There was a suggestion by the Committee that someone from DDOE should make a presentation regarding this property and to respond to questions about how a hold harmless letter could be acquired. A community member suggested that possibly the residents of the new building could be prohibited from acquiring zone 6 parking permits. Commissioner Hysell praised the project and voiced his support to find a way to allow Rise to move forward. Co-Chair Golden expressed concern that the developers were simultaneously seeking to include additional units on the new Fifth Floor, while simultaneously reducing on-site parking to a significant degree. Missy Boyette suggested some architectural changes to improve the project's aesthetics.

4. Zoning Code Update - Review and approve report to ANC 6A regarding planned updates to DC's Zoning Code with an emphasis on issues of concern to the Community.

Co-Chair Golden, Cody Rice, Michael Hoenig, and Laura Gentile provided a written analysis of some key issues taken from the proposed Zoning Code update. The Committee voted on the following recommendations to ANC 6A in response to the discussion of those issues.

1. The Committee first considered the zoning update's proposal to permit as a matter of right the construction of a single residence on alley lots that abut a twenty-four foot alley (and to permit such construction with a special exception in narrower alleys). Recognizing that Ward 6 has 29% of city's alley lots, three potential alternative recommendations were voted on. First, a recommendation that a use variance be required for every request to build in an alley no matter what the size of the alley received zero votes. Second, a recommendation that a special exception be required for any alley-lot construction regardless of alley width received two votes. Third, a recommendation that property's abutting an alley twenty-four feet or greater need to receive a special exception while smaller alleys would require use variances received seven votes. This third alternative will be included in the Committee's recommendations to the ANC.
2. The Committee voted 9 to 0 to recommend to the ANC that it endorse the Zoning update's allowing for the use of row houses for neighborhood-serving corner stores and other limited uses (but not for office uses).
3. The Committee voted 9 to 0 to recommend to the ANC that it support the proposal to allow two dwelling units to be located either within the current structure or one each in the current structure and an accessory structure.
4. The Committee vote 9 to 0 to recommend to the ANC that it support the proposal to allow existing lots that meet the rear setback and lot occupancy requirements to proceed to building permit without the need for zoning relief despite being lots of less than 1,800 square feet.
5. The Committee voted 9 to 0 to recommend to the ANC that it support the proposal to no longer count side yards and courts less than 5 feet in width when calculating lot occupancy.
6. The Committee voted 9 to 0 to recommend to the ANC that it suggest that the issue of pop-up heights be addressed in the Office of Planning zoning update in the interest of avoiding incongruous building heights on a single block.

The Committee's recommendations will be transmitted to the ANC in the written report attached to these minutes.

Additional Community Comment

None.

**Next Scheduled ED&Z Committee Meeting:
Wednesday, December 18, 2013
7-9 PM
640 10th St NE
Sherwood Recreation Center, 2nd Floor**

Report to ANC 6A on DC Zoning Regulations Review

What is the zoning regulations review?

The Comprehensive Plan calls for “substantial revision and reorganization” of the zoning code, including the possible creation of new zones. These revisions will help to implement the policy objectives of the Comprehensive Plan. The last major revision of the code occurred in 1958.

From 2007 to November 2013, Office of Planning (OP) held more than one hundred meetings to develop the new zoning regulations that are now under consideration by the Zoning Commission. Hearings on various topics related to the new regulations have been taking place throughout the month of November 2013.

The overall goal of the zoning regulations review is to improve the clarity, relevance, and ease of use of the regulations. However, there are many substantive changes as well. Several of the proposed changes with the greatest potential to affect ANC 6A are described below.

Alley Lots (Subtitle E, Sections 1104 and 1105)

The updated zoning regulations propose to reduce restrictions on improvements to alley lots. These changes will have the largest impact on Ward 6, which has the most alley lots at 501, or 29% of the total number of lots in the city. (Ward 2, which has the next highest number of lots, has 335, or 20% of the total number of lots.) Alley lots are properties that face an alley and have no direct street access or frontage. The zoning code currently allows only limited use of alley lots in residential zones (such as for parking, artist studios, and storage). Single-family alley dwellings are currently permitted only on those alley lots accessible via a 30-foot wide alley network, and are generally limited to a height equal to the adjacent alley’s width. Any new single-family residence located on a sub-30-foot alley network or new multi-family housing requires a “use variance” from the Board of Zoning Adjustment (BZA), which imposes a heavy burden on the applicant seeking relief, even if alley dwellings are common in the area.

The proposed regulations would allow the construction of a single residence by-right on those alley lots in the current R-4 and commercial zones that: 1) abut a twenty-four-foot wide alley; and 2) have access to a street through an alley (or alleys) not less than twenty-four feet in width. If the lot is located in an alley that does not meet the twenty-four-foot width requirement, a special exception will be required (in contrast to the current regulations, which require a variance). To qualify for the special exception the alley lot must nevertheless be at least 450 square feet in area. It also must abut an “improved alley” twenty-four feet (24 ft.) or less in width or have access to a street through an alley (or alleys) twenty-four feet (24 ft.) or less in width. It is not clear how the regulation proposes to define an “improved alley.” In considering an application for a special exception, BZA must also consider factors related to waste management, safety, and parking. Finally, BZA also must

determine that there will be no adverse impact to adjoining properties and that adequate public utilities and safety can be provided to the residents of the proposed dwelling and adjoining properties.

Additional controls would limit potential impacts of alley lot improvements. An alley lot would need to be at least 450 square feet in area to permit its use as a residence. Height of an alley-lot structure would be limited to a maximum of twenty (20) feet (*i.e.* 2 stories). Lot occupancy of an alley-lot structure could be 80 to 100%, depending on lot size, but with a minimum of 10% pervious surface. Setback of five (5) feet from lot lines of all abutting non-alley lots and twelve (12) feet from abutting alley lots also would be required. Allowable lot occupancy is generous in comparison with a standard row dwelling (80-100% vs. 60%), perhaps due to the limitation on height (20 feet vs. 40 feet).

The Office of Planning (OP) has identified roughly 500 alley lots in Ward 6. However, there are only three Alley systems in ANC 6A in which alley dwellings could be built or used by-right (*i.e.* without the need for a special exception). They are: Square 988 (Walter Houp Court NE) (which has a 30-foot alley between 11 and 12 Streets NE); Square 1026 (Wylie Court NE) (which has a 25 foot alley from 13th Street NE); and Square 4546 (the square with new “17 Solar” townhomes) (which has a partial 40 foot alley from 18th Street NE). The majority of other squares in ANC 6A have alley lots but they are connected to the public streets by an alley that is fewer than twenty-four feet wide. Therefore any residential use on those alley lots would require a special exception from BZA.

The requirement that an alley lot be located on a 24-foot wide alley that is directly connected to the street is the main zoning limitation on by-right residential development of alley lots. One of the main non-zoning impediments to residential uses of alley lots is the cost to the developer of installing running water and sewer lines. Nevertheless, in the event these new regulations are promulgated, the ANC may expect to see more special exception requests for residential uses of alley lots.

Further information is provided in the OP fact sheet on alley lots that is attached to this report.

EDZ Committee Recommendation:

- That the ANC support requiring only a special exception, and not a use variance, for constructing residences on alley lots located on alleys that are at least 24 feet wide and are directly connected to the street or connected to the street by an alley or series of alleys that are each at least 24 feet wide.
- That the ANC support requiring a use variance for constructing residences on alley lots located on alleys that are less than 24 feet wide or are connected to the street by at least one alley that is less than 24 feet wide.

Corner Store Lots (Subtitle E, Section 1106)

Many DC neighborhoods, including Capitol Hill, have a tradition of corner stores. A corner store is defined by the zoning regulations as a limited commercial and service use in residential rowhouse zones, intended to service the immediate neighborhood. The existing regulations do not allow

commercial uses in residential districts. Although existing corner stores are “grandfathered,” new ones or changes to existing ones require BZA approval.

The proposed regulations would allow limited neighborhood-serving commercial, service, and arts uses in rowhouse residential areas. (The proposed regulations do not appear to contemplate the use of corner properties as offices.) Such a use would be permitted on a lot that is at the intersection of two streets; or other lot if the building was constructed prior to 1958 for a non-residential use. A corner store would have proximity limitations related to other commercially zoned property, eating establishment uses, and other corner store uses. A corner store also would not be permitted within any building or on any lot that contains more than one dwelling unit. The foregoing location conditions could be modified by BZA through special exception.

A corner fresh food market or grocery store would be permitted by right as long as it does not operate between 9:00 p.m. and 7:00 a.m. and has only one external sign on the building’s facade, provided that the sign is not illuminated and is flush-mounted. Additionally, a corner grocery store would not be permitted to: 1) be more than 1200 square feet in area; 2) sell alcoholic beverages for on-site consumption; 3) devote more than 15% of floor area to sale of alcohol for off-site consumption; 4) cook food on-site or install grease traps; or 5) have outdoor storage of materials or trash including the on-site use or storage of dry-cleaning chemicals. Any other type of corner store use in a residential zone would require a special exception from BZA.

For further reference, an OP fact sheet on corner stores, including a map of locations that meet the proximity conditions, is attached to this report.

EDZ Committee Recommendation:

- That the ANC support relaxing the restrictions on corner stores in residential areas, subject to the conditions outlined in the proposal
- That the ANC support residential use for the upper floors of buildings with corner stores in residential areas, as outlined in the proposal

Number of Dwelling Units in Residential Areas

Currently, two dwelling units are allowed to exist by-right in a principal structure located in the R4 (to be renamed RF-1) zone. The new regulations would continue to allow two dwelling units per lot, but one of the units could be located in an accessory building, such as a garage.

EDZ Committee Recommendation:

- That the ANC support the proposal to allow two dwelling units to be located either within the current structure (as currently allowed) or one each in the current structure and an accessory structure (e.g., garage) in the RF-1 zone.

Rear Additions

Rear additions to residential properties are a fairly common subject of applications for zoning relief. At present, 59% of residential lots in R4 zones across the city are non-conforming in that they are less than 1800 square feet in area. In these instances, the construction of a rear addition requires an area variance (and possibly other zoning relief).

OP is proposing changes to the residential zoning requirements that would reduce review requirements for rear additions. The minimum lot dimension requirement (1800 square feet in the current R4 zone) would apply only when a new lot is created or an existing lot is subdivided. Existing lots that meet rear setback (20 feet) and lot occupancy (60%) requirements could proceed to building permit without the need for zoning relief.

EDZ Committee Recommendation:

- That the ANC support the proposal to apply the minimum lot dimension requirement only when a new lot is created or an existing lot is subdivided.

Courts/Lot Occupancy

In R4, OP is proposing to no longer count side yards and courts (a.k.a. doglegs) less than 5 feet in width when calculating lot occupancy. This proposed change to the regulations is intended to eliminate the incentive to fill these areas in when a rear addition is constructed. This proposed change may result in new rear additions extending further back (because of the net increase in permitted lot occupancy when the side yard or court is no longer counted), however, rear additions would continue to be limited by the rear setback requirement.

EDZ Committee Recommendation:

- That the ANC support the proposal to no longer count side yards and courts less than five in width against lot occupancy.

Neighborhood Commercial Overlay Districts

In the new zoning regulations, Subtitle H is created for Neighborhood Mixed Use zones, such as the H Street NE Neighborhood Commercial Overlay District. No changes are proposed to boundaries, uses, purposes or conditions.

EDZ Committee Recommendation: None necessary

Height/Pop-Ups

The proposed zoning regulations do not change the maximum height for row dwellings and flats (40 feet/3 stories). In many areas of existing building stock, the current regulations would continue to permit new construction and "pop-up" additions that are incongruous with the height and appearance of existing buildings on the same block. In another part of the proposal on front yards, Office of

Planning has proposed establishing minimum and maximum setback lines based on existing residential buildings to reduce variation from existing front setbacks. OP has not yet proposed anything similar for height, but in a recent hearing Zoning Commissioner Peter May requested a proposal to limit pop-up additions saying “There’s no reason why some of these things go up all the way to 40 feet when they’re in a row of 25-foot-tall houses.” This is an area of the proposed regulations that may continue to evolve based on the request from Mr. May and related comments made by Councilmember Graham during the same hearing.

EDZ Committee Recommendation:

- That the ANC support amending the proposed regulations to address the construction of improvements to real property that result in incongruous building heights on a single block.

Parking for Residential Uses

OP is proposing the following requirements for parking related to residential uses:

- Single Household Residential Dwellings and Flats: Retain the existing one space per lot requirement, except when there is no alley access.
- Multi-Household Residential: Standardize the minimum parking requirement at 1 space for every 3 dwelling units more than 4 units, instead of the varying standards of 1 space per either 2, 3, or 4 units.

OP is also proposing to allow a by-right 50% reduction in required parking for any use on a site located close to transit (1/2 mile from a metro station, or 1/4 mile from a streetcar line or WMATA bus route identified as part of the Priority Corridor Network). This reduction would not apply in the Residential Flat zones, but would apply along H Street NE and in other commercial zones. To put this in the context of a 42-unit RL Christian development, an apartment or multiple dwelling in the C-2-A zone would now require 21 spaces (1 per 2 units) under current C-2-A zoning. Under the proposed regulations, this same building would require 14 spaces (1 per 3 units) or 7 spaces (1 per 6 units) due to transit proximity.

BZA will be allowed to grant partial or full relief of parking requirements by special exception.

Further information is provided in the OP fact sheet on parking that is attached to this report.

EDZ Committee Recommendation:

- The EDZ Committee did not reach a recommendation on the proposed regulations regarding parking. The information above is provided on an FYI basis.

Additional Materials

Additional information on the zoning regulations review is available at the DC Zoning Update Document Center website, <http://www.dczoningupdate.org/documentcenter.asp?area=dcr>.