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Advisory Neighborhood Commission 3/4G
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October 22, 2013

Zoning Commission of D.C.
Office of Zoning
441 4th Street, N.W., Suite 200-S
Washington D.C. 20001

Re: Zoning Commission for the District of Columbia Case No. 08-06A (Title 11, Zoning Regulations – Comprehensive Text Revisions)

Relevant to testimony for:
-- Tuesday, November 5, 2013 (Subtitle B, Definitions)
-- Wednesday, November 6, 2013 (Subtitle D, Residential)
-- Tuesday, November 12, 2013 (Subtitle C, General Procedures/Parking)

Please note that at our duly noticed October 22, 2013 meeting, the Chevy Chase ANC (ANC 3/4G) voted 6 to 0 (a quorum being four) to submit this letter to the Zoning Commission in which the ANC adopts the following report completed by our Chevy Chase ANC Zoning Task Force. Our ANC appoints Commissioners Gary Thompson and/or Randy Speck to appear on our behalf at any of the upcoming Zoning Commission hearings.

The Task Force Report, incorporated herein in full, is as follows:

Background on the Chevy Chase ANC Task Force

The Chevy Chase ANC created this Task Force at its duly organized public meeting of September 23, 2013, by a unanimous vote of 6-0, and in accordance with its by-laws. The purpose of this Task Force is to study and provide written comment regarding the draft zoning regulations set down by the Zoning Commission at its public meeting of September 9, 2013.[1]

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[1] Our ANC borders are (a) *north*: Western Ave.; (b) *east*: Rock Creek; (c) *south*: Military Rd./27th St./Broad Branch Rd./Nebraska Ave.; and (d) *west*: Reno Rd./41st St. Our ANC is half in Ward 3, half in Ward 4.

The ANC appointed Commissioner Gary Thompson (Vice-Chair, ANC 4G02) to Chair the Task Force. An open call for volunteer members from our ANC area was made at the ANC meeting, on the Chevy Chase list serv, and in the minutes as published in the Northwest Current. The following members of the community volunteered:

Commissioner Gary Thompson (ANC 3/4G02)
Commissioner David Engel (ANC 3/4G05)
Commissioner Randy Speck (ANC 3/4G03)
Ron Eichner
Deborah Kavruck
Robert Leland
Jerome Paige
Wanda Reif
Lorrie Scally
Linda Schmitt
Allen Seeber

The Task Force members devoted many hours to study and review of the draft regulations, especially those most relevant to our ANC area. We met twice in person, and ultimately adopted this report. As described below, our report reflects where our Task Force achieved a consensus view on various specific issues. Not every Task Force member necessarily agrees with every point made below, and in some cases, separate individual comments may be submitted to the Zoning Commission.

Preliminary Comments

Our Task Force recognizes and commends the incredible amount of work and input that has preceded this point in time by several years, dating back to the initial public task forces, the work from the Office of Planning ("OP"), input from ANCs and communities like ours (our ANC submitted several detailed comments to OP), oversight by our Council, and many other dedicated people. Overall, the draft regulations that are before the Zoning Commission are an admirable end-product of that effort. We recognize that most of the draft regulations are well crafted, while our focus herein is naturally on those aspects of the draft regulations that we feel still need to be changed or improved. In some cases, we highlight a draft regulation with which we agree so as to emphasize the importance of its adoption as currently drafted.

We thank the Zoning Commission for its review of our comments and for its time and commitment to these issues. We ask that the Commission hear our testimony as an organization, with enough time for due consideration taking into account that this testimony reflects the views of many individuals and our ANC as a body.

Comments on Subtitle D, Residential (Wednesday, November 6, 2013)

1. D201 – "Development Standards." Our Task Force is pleased to see that for R-1 to R-4 zones, the draft regulations retained the 40-foot height maximum, an absolute 3-story limit, and the various lot occupancy maximums and pervious surface minimums.

2. D205.1 – "Front Setback." The draft regulations provide that "a front setback shall be provided in the R-1, R-2, R-3, and R-4 zone that is within the range of existing front setbacks of all structures on the same side of the street in the block where the building is proposed." This is a welcome concept – to maintain a relatively uniform front setback line on any given block, but we suggest some definition to the phrase "within the range." Specifically, D205.1 should cross reference C1002.1, which provides further specific guidance in this respect.

3. D206 ("Rear Setback") and D207 ("Side Setback") – our Task Force is pleased to see the draft regulations revert from prior OP versions to the existing setback minimums for R1 and R2 areas of 25 ft. (rear) and 8. ft. (side).

4. D1301 ("Development Standards for Accessory Buildings") – our Task Force approves these standards for all Accessory Buildings in R zones (20 ft., 2 stories, etc.), which are independent of whether an "accessory apartment" is or is not located within such Accessory Building (addressed below). We understand D1501.6, which is in a different Chapter, to limit the absolute height of any accessory building, inclusive of any roof structures, to 20 feet ("from the existing grade to the highest point of the roof"). To be clear on this point, D1301 should cross-reference D1501.6.

5. D1501.2 ("Height Regulations") – 1501.2 provides that "a spire, tower, dome, pinnacle, minaret serving as an architectural embellishment, or antenna may be erected to a height in excess of that which this section otherwise authorizes," *i.e.*, above the 40-foot roof height limit for residential zones. D1502.2 and D1502.3 then limit to 10-feet "in height above the roof upon which they are located" certain "structures" such as antennas, pergolas, and penthouses. We recommend that in any R-zone, there be an absolute 10-foot extra height limit for *any* structure or other embellishment that sits above the roof on which it is located, whatever rooftop item might be called (spire, tower, dome, etc.). As drafted, certain rooftop items like a "spire" technically have no height limit.

    a. Making this matter somewhat confusing, C505 contains a series of overlapping height requirements for the same series of "roof structures." Again, certain structures set forth in 505.1(a) to (c) (spires, towers, domes, etc.) fall through the cracks and technically

have no height limit. This should be remedied by adoption of an overall 10-foot excess height limit, at least for residential areas.

b. Also, it should be made express that any structures on the roof, such as a penthouse, be "non-inhabitable."

6. Compounding the confusion for building heights in residential areas, C502 sets forth other rules specifically for "residential" zones. C502 is a chapter that logically goes in Subtitle D but for some reason sits within Subtitle C. The Chapter should be moved from Subtitle C to Subtitle D. Thus, we comment on C502 here, in the context of residential issues.

    a. Further compounding the confusion regarding building heights in residential zones, Subpart B also has a self-standing definition for "Building Height, Residential Zones" that essentially repeats the substance of C502. The redundant Subpart B definition should be deleted.

7. C502.3 addresses the building height measuring point (BHMP). Whatever side is selected as the front, the measurement should be taken "from the existing grade at the mid-point of the front lot line," not from "the existing grade at the mid-point of the building façade of the principal building that is closest to a street lot line." Using the middle of the "lot" is a fixed point, whereas using the middle of the closest "building façade" would allow the design placement of the building facades themselves to alter the height allowance.

8. In lieu of draft section C502.5 (or similar language in the Subpart B definition) – which relates only to residential rules – our Task Force favors an *absolute height limit* for residential buildings, with language such as that used for flat roofs in C502.4: "the building height shall be measured from the Base Height Measuring Point to the highest point of the roof or parapet, excluding parapets and balustrades not exceeding four feet (4 ft.) in height." This would replace the confusing "average level" requirements of C502.5. C502.5 has a confusing "averaging regime" that could allow the absolute residential height to be manipulated, in some cases, to well over 50 feet from finished grade.

    a. Given the 3-story limit, 40-feet is ample space in which to construct three stories (approx. 30 feet) and also allow leeway for various types of roofs. This would not create an undue incentive for builders to design flat roofs at the full 40 feet because the three floor limit will tend to limit home height (absent a roof) to well under 40 feet.

9. C502.8 (and the Subpart B definition) provides that in residential areas, "if a building fronts on more than one (1) street, any front may be used to determine street frontage; but the basis for measuring the height of the

building shall be established by the street selected as the front of the building." This is sometimes called the "mix-and-match" rule, allowing a builder to select one street frontage to generate the height limit, but then apply that height limit to a different frontage that is "selected as the front of the building," thus allowing for a height limit that would be in excess of that permitted from either frontage. Our Task Force believes that whatever side is selected to determine the height limit must be the same side where that height limit is applied. This will avoid permitting as-of-right residential buildings that are out of scale with the surrounding streets and neighborhood. Thus, the language should read, in effect, as follows: "starting with the effective date of these regulations, if a building fronts on more than one (1) street, any front may be used to determine street frontage for height purposes; but the basis for then measuring the height of the building shall be established by the same front selected to determine such height."

a. We note that this is one of the issues regarding the proposed "Cafritz building" at 5333 Conn. Ave. Whatever the outcome of that issue, we believe this issue should be clarified once and for all for future corner-lot residential developments.

b. We are aware that under the federal height statutes for D.C., the D.C. Corporation Counsel has for 60 years interpreted similar language to provide for the "mix-and-match" rule. This Commission may believe that it is bound to follow the D.C. Corporation Counsel opinion. In the end, this may be a matter for a Court to decide, but this Commission should take whatever steps are available to rectify what we believe is an erroneous interpretation of the statute and unwise public policy.

10. D1505.3/1506.3 -- for pre-May 12, 1958 homes, these provisions allow a matter-of-right extension or addition that follow existing non-conformities for rear and side setbacks. Our Task Force approves this improvement, as these account for the vast number of existing variances requested of our ANC (where there are many additions to pre-1958 homes following the same setback lines). It appears that these sections should cross-reference similar provisions at C302.

11. D1509.2 mistakenly cross-references D1607 when it clearly means to cross-reference D1606.

12. D1606 addresses accessory apartment conditions. Our Task Force favors allowing interior accessory apartments as a matter of right, subject to the various D1606 conditions that apply, both within D1606.4(e) and otherwise. Experience may reveal the need for future additional conditions that may be necessary to protect the homeowner from difficult tenant situations.

13. However, our Task Force disfavors allowing accessory apartments in exterior accessory buildings other than by a special exception that is reviewed by the ANC. Presently D1606.4(f) requires a special exception in certain cases, but not others. We believe that the rationale for requiring a special exception applies equally to an external accessory apartment in an existing structure as in a new or materially modified structure. Thus, the language in D1606.4(f) should be modified to require a special exception in all cases.

    a. The rationale here is that a residential community, through its ANC, should continue to have input on whether an exterior accessory apartment should be allowed, which is the current rule (with narrow exceptions). This would also facilitate communication and dialogue with the community.

    b. Our caveat is that an ANC's judgment in this regard should be guided by some *objective* criteria beyond the conditions set forth in subsections D1606.4(f)(1), (3), (4), (5), (6), and (7). Such objective criteria would provide a guide to ANCs and guard against any arbitrary judgments that an ANC might make in this regard. These criteria should be guidelines, to be applied to a specific circumstance, and would include a consideration of any impact the apartment occupancy would have on: (i) the purposes set forth in D200.1; (ii) nearby parking; or (iii) interference with the use and enjoyment of adjacent properties.

14. D1606.2 would also need to be deleted or altered to reflect the overall revisions to D1606.

15. D1606.4(g) – this subsection allows the Board to "modify or waive" any two requirements in D1606.4(a) to (f), with essentially one exception (the owner-occupancy requirement). This is ambiguous given the multiple sub-sections within (e) and (f) (e.g., does the ability to waive requirements apply to any two such sub-sections?). Importantly, our Task Force does not understand this leeway provided to the Board to override any of the careful and detailed requirements set forth in (a) to (f). If these are "requirements," they should be requirements. The Board should not have unfettered discretion to simply waive any of them.

    a. At a minimum, the subsection (e) and (f) requirements (inclusive of (1) through (9)) also should be non-waivable by the Board (or at a minimum, (f)(5) regarding access should be non-waivable).

    b. At a minimum, D1606.4(g) should contain a sub-section (3) which reads "subject to input from the affected ANC," in order to ensure that the Board provides due deference to the ANC if such waivers are permitted.

Comments on Subtitle C, General Procedures/Parking (Tuesday, November 12, 2013)

1. Subtitle C has many sections that apply to both residential and commercial areas. In many respects, there is ambiguity between Subtitles C and D regarding residential requirements. It seems that many of the residential-only related requirements contained with Subtitle C would be better placed within Subtitle D. Certain obvious example are noted above, such as C502 related to height limits in residential areas.

2. Our comments on C502 and C505 are addressed above.

3. C1201.3(d) addresses required rear yard setback for a principal building. We think subsection (d) should be amended as follows: "Where there is more than one rear lot line generally parallel to the front lot line but separated by a lot line generally perpendicular to the rear lot lines, then the rear setback shall be measured from the rear lot line more distant from the front lot line, and measured across the full width of the property to where it intersects both side lot lines; however, in no case shall the rear setback be less than the required side yard setback."

4. C1901.5 contains the minimum parking requirements for apartment buildings in residential zones ("Residential, Multi-Household"), requiring "1 per 3 dwelling units in excess of 4 units, except 1 per 2 dwelling units for any zone within Subtitles D or E...." What this means along our Conn. Ave. commercial corridor is that an apartment building with less than 4 units need provide no parking, and an apartment building with 9 units need provide only one parking space (one for the three units in excess of four, with the remainder of two more units not yielding an additional parking spot requirement). Our Task Force disagrees with this relaxed parking requirement – it should be a simple rule of *one spot for every three units.*

5. C1902.1 troubles our Task Force, in that a WMATA-declared "Priority Corridor Network Metrobus Route" would by itself relax all the parking requirements of C1901.5 by a full 50%. We think it is inappropriate to let a decision by WMATA to determine the parking requirements applicable under D.C. zoning regulations, and would argue that such decisions should be made by an agency of the District government. We recommend eliminating such an alteration by WMATA unless pursuant to a process that involves the ANC and the Zoning Commission.

    a. The problem with such relaxed parking requirements, of course, is that apartment building tenants more often than not have cars, which they then park on nearby residential streets. Recently constructed apartment buildings (including near Metro stops) provide a ratio of

approximately 2 spots for every 3 units, far more spots that the draft 1-for-3 requirement. In other words, a 2-for-3 ratio is the market reality.

b. We believe the Zoning Commission needs to take into account the *realities* of how apartment dwellers in many neighborhoods live (they tend to have cars), not idealistic hopes of how policy makers *wish* they would behave (forgo cars and rely on public transit). A disconnect between the foreseeable reality now and an ideal future would result in even less parking available on nearby residential streets.

6. C1902.3(a) – our Task Force agrees with the parking exemption for a single family home that does not have access to an alley.

7. C1907 provides that if an owner chooses to provide more than 1.5 times the minimum parking spaces required, the owner must implement certain "Transportation Demand Management Features" (TDMF) intended to reduce the number or mitigate the impact of private vehicles. While we understand the impetus for this approach, our Task Force has concerns with the specifics. First, the absolute minimums can be significantly lower than the current market provides, as noted above. Second, an owner may want to provide more than 1.5 times the minimum parking because of obvious tenant-market demands for in-building parking. But the penalties could discourage the provision of such parking, defeating market forces, and also shifting tenant parking onto nearby residential streets. We propose that the trigger for the TDMF should be two-times the base minimum parking requirement, unaffected by any reduced requirements that may be in place through C1902.1.

   a. This is more reasonable because if the current market provides approximately 2-for-3 parking, and the new requirement is 1-for-3 parking, then two-times the minimum is simply what the current market demand suggests, and there should not be a penalty for a builder than simply builds to market demand.

Comments on Subtitle B, Definitions (Tuesday, November 5, 2013)

1. See our comments above regarding the redundant and unnecessary definitions of "Building Height, Residential Zones" and "Building Height, Non-Residential Zones."

2. "Cellar" is defined as "that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade." This should be amended to read "...above the existing grade." "Existing" is easier to define than "finished," which can be altered. Such an edit would be consistent with C502 and the "Building Height" definitions which expressly provide that "berms or other forms of artificial landscaping shall not be included in measuring the

high point of the adjacent finished grade." This edit to "existing" would prevent the manipulation that can take place by a builder simply constructing a berm around a building in order to re-label what is clearly a "floor" a "cellar," thus taking the "cellar" area out of the allowed FAR square footage.

a. The Cafritz building at 5333 Conn. Ave. presents this anomalous situation, whereby what appears to be ground "floor" units might be re-cast as "cellar" units because of an artificial berm that will ring the area. Whatever the outcome of the adjacent residents challenge to the Cafritz building in this regard, this anomaly should be cured by editing the definition of "cellar" as noted above.

Comments on Subtitle Y, BZA Rules (Monday, November 4, 2013)

1. Y604.8 should be amended to read "For purposes of this chapter, a decision or order shall be and become final upon its filing in the record and service upon the parties within XXX days [45, 60, 90 days].

Conclusion

Thank you for your attention. We welcome your questions and are available to work further with OP or others that may be implementing changes requested by the Zoning Commission.

Respectfully Submitted,

Gary Thompson
Chair, Chevy Chase Zoning Task Force

Jim McCarthy /s/ GT
Jim McCarthy,
Chair, Chevy Chase ANC

cc: Mayor Vincent Gray
D.C. Council Chair Phil Mendelsohn
Ward 3 Councilmember Mary Cheh
Ward 4 Councilmember Muriel Bowser
At-Large Councilmember Anita Bonds
At-Large Councilmember David Catania
At-Large Councilmember David Grosso
At-Large Councilmember Vincent Orange
The Chairs of our nearby ANCs in Wards 3 and 4
Chevy Chase list serv