

# Review and Discussion of Working Group 1 and 2 Recommendations

## Public Working Group Meeting

October 13, 2010



District of Columbia Office of Planning



# **Chapters 30 and 31**

## **ZC and BZA Rules of Practice and Procedure**



## Recommendation 1

# Chairperson



### Issue

As a common practice, the Chairperson of each body is one of the District resident Mayoral appointees. The DC Official Code, however, simply states that the Chairperson is chosen from “among the members.”

## Recommendation 1

# Chairperson



## Recommendation

Chairperson of the ZC/BZA must be a Mayoral appointee.



## Why?

There is a perception of too much Federal involvement in the zoning process in the District. This would codify a common practice. The Vice Chairperson could still be a Federal representative, and this provision could always be waived.

## Recommendation 2

# Proponents/Opponents in Rulemaking Cases



## Issue

Individuals often wish to discuss positive and negative aspects of a petition when testifying in a Rulemaking before the ZC or BZA, yet are forced to come out either in favor or in opposition to the petition.

## Recommendation 2

# Proponents/Opponents in Rulemaking Cases



## Recommendation

Eliminate proponents and opponents in Rulemaking cases.



## Why?

While parties and sides are necessary for contested cases (which can be appealed to the DC Court of Appeals), there is no rationale for why individuals must take a side in a Rulemaking case. By eliminating parties, individuals will be able to provide any type of comment, including clarifying statements, without forcing them to take a side.

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## Recommendation 3

# Consent Calendar for BZA



### Issue

Requests for technical corrections are made to the Office of Zoning, and if agreed to, corrected internally without comment from the Board. Requests for modifications are not identified as “minor” or actual modifications. Such requests are simply brought to the Board.

## Recommendation 3

# Consent Calendar for BZA



## Recommendation

Add a Consent Calendar (which exists for the ZC) to the BZA Rules.



## Why?

Much like with the ZC, the BZA should be the authority that determines whether to grant a request for a technical correction. Regarding modifications, a party should be able to request a minor modification and have that request heard at a BZA meeting. If determined to be an actual modification, the Board could decide to schedule a hearing. 8



## Recommendation 4

# Language Clarification Regarding ZC Powers



### Issue

While the ZC can hear all cases that the BZA can hear, it is not stated anywhere in the ZC or BZA Rules.

## Recommendation 4

# Language Clarification Regarding ZC Powers



### Recommendation

Add language to ZC Rules about how ZC can hear all cases that BZA can hear.



### Why?

There should be more clarity for applicants that cases properly before the BZA but more appropriately before the ZC can in fact be heard by the ZC. For example, a project where an applicant seeks a variance and a map amendment may be more appropriately consolidated and heard by the ZC, rather than by both bodies separately.

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## Recommendation 5

# ANC Setdown Form



### Issue

Only the Office of Planning (OP) may submit a report to the ZC to be considered at setdown. ANCs cannot weigh in independent of going through OP.

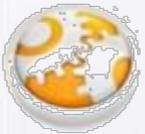
## Recommendation 5

# ANC Setdown Form



## Recommendation

Allow ANCs to submit an ANC Setdown Form.



## Why?

ANCs often have useful information to convey that can be of value to the Commissioners in deciding whether to set down a case, whether the case should be set down as contested or as a rulemaking, and whether there are items the Commissioners should ask to be addressed at the hearing (or by the time of the hearing).

## Recommendation 6

# Affidavit of Maintenance of Posting for ZC



### Issue

For the ZC, an Affidavit of Posting is required to be filed 30 days prior to the hearing. There is no evidence submitted before the hearing that the applicant has ensured that the posting has been properly maintained.

## Recommendation 6

# Affidavit of Maintenance of Posting for ZC



## Recommendation

Require that applicants in ZC cases submit an Affidavit of Maintenance of Posting between two (2) and four (4) days prior to the hearing.



## Why?

To ensure that the posting remains in place during the time leading up to the hearing, the applicant must submit this Affidavit. This will ensure that it is received before the hearing, and give the Office of Zoning a chance to contact the applicant if not timely received to obtain a request of waiver form from the applicant for the ZC to consider.

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## Recommendation 7

# Ethics Section



### Issue

There is no ethic section in the ZC or BZA Rules discussing disqualification or disciplinary responsibilities of Commissioners and Board Members.

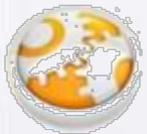
## Recommendation 7

# Ethics Section



### Recommendation

Add an ethics section to both ZC and BZA Rules.



### Why?

It is critical that rules pertaining to disqualification and disciplinary responsibilities be codified to preserve the integrity of the zoning process. The *Conduct for the District of Columbia Courts* (1995) provides Canons that can be used as a model.

## Recommendation 8

# Non-Waiveable Provisions



### Issue

All ZC sections can be waived by the Zoning Commissioners. The only BZA sections that cannot be waived by the Board Members are §§ 3100 through 3105, 3121.5 and 3125.4.

## Recommendation 8

# Non-Waiveable Provisions



### Recommendation

Review Rules to determine if additional sections should be non-waiveable by the Commissioners and Board Members.



### Why?

There are sections that are critical and should not be waived, regardless of circumstance. Such provisions may include the ZC sections on jurisdiction and organization, a newly created ethics section, etc.

## Recommendation 9

# Stay of Final Decision Pending Reconsideration



### Issue

The ZC and BZA may choose to stay a final decision pending reconsideration, but the Rules do not contemplate such action

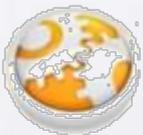
## Recommendation 9

# Stay of Final Decision Pending Reconsideration



## Recommendation

Add section providing for ZC/BZA to be able to stay final decision pending reconsideration.

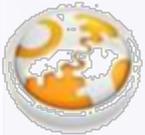


## Why?

If this is a power that the ZC/BZA has, it should be spelled out, along with the four-part test that makes up the parameters that each body uses to make such a determination.

## Recommendation 9

# Stay of Final Decision Pending Reconsideration



## Why?

The test includes:

- (1) whether there is a substantial likelihood of success on appeal;
- (2) whether the denial of the stay would result in irreparable injury (\$ damages are not irreparable);
- (3) whether granting the stay would prejudice other parties; and
- (4) the public interest.



# **Chapter 20**

## **Nonconforming Uses and Structures**



## Recommendation 10

# Chapter 20 - Organization



## Issue

Chapter 20 has overlap between use and structure regulations.

- 2000 General Provisions
- 2001 Nonconforming Structures Devoted to Conforming Uses
- 2002 Nonconforming Uses Within Structures
- 2003 Changing Uses Within Structures
- 2004 Destruction of Structure Devoted to Nonconforming Uses
- 2005 Discontinuance

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## Recommendation 10

# Chapter 20 - Organization



## Recommendation

Clarify the organization of Chapter 20 through the separation of Use and Structure regulations.



## Why?

Pursuant to the overall Zoning Review goals of clarity and ease of use, providing rules for uses alone and structures alone will make this chapter more user-friendly.

## Recommendation 11

# § 2001.3 – Additions to Nonconforming Structures



### Issue

- Additions may be made to the structure provided:
  - The existing structure conforms to lot occupancy;
  - No expansion of existing nonconformities;
  - No new nonconformities.
- Current regulations for lot occupancy were averages over the entire city.

## Recommendation 11

# § 2001.3 – Additions to Nonconforming Structures



### Issue

- Doesn't recognize variable size of lots, especially due to DC's angled streets.
- 18% of buildings in R-1 – R-5-B are over lot occupancy;
- 33% of buildings in R-4 – R-5-B are over lot occupancy.
- Want to allow homeowners to make reasonable improvements and expansions of their homes.

## Recommendation 11

# § 2001.3 – Additions to Nonconforming Structures



## Recommendation

Delete 2001.3(a), which states that the existing building must be conforming with lot occupancy.

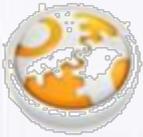


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## Recommendation 11

# § 2001.3 – Additions to Nonconforming Structures



## Why?

- A large number of homes in the District are already over lot occupancy, and those owners are forced into variance relief for even very small additions.
- Any additions permitted by this change would be within the MOR building envelope.

## Recommendation 12

# § 2003 – Changing Between Nonconforming Uses



### Issue

- Current system based on hierarchy of uses together with zones;
- Use categories cannot be used to determine which zone has more intense uses;
- Keep the same intent as current system.

## Recommendation 12

# § 2003 – Changing Between Nonconforming Uses

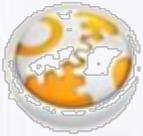


## Recommendation

- Require changes of non-conforming uses between use categories to first obtain approval of the BZA.
- The BZA will use evaluative criteria similar to those currently in § 2003.

## Recommendation 12

# § 2003 – Changing Between Nonconforming Uses



### Why?

- The BZA has the ability to review and judge the impacts of the proposed use relative to the proceeding use, and ensure that the new use has equal or lesser impacts;
- Gives the public the same opportunity to present testimony.

## Recommendation 13

# Rules for “Nonexpandable Conforming” Uses



## Issue

- Working group raised concerns about “grandfathered” uses
  - Hotels in R-5
  - Pepco facilities in areas formerly zoned industrial

## Recommendation 13

# Rules for “Nonexpandable Conforming” Uses



## Recommendation

Create a new section to address rules for “Nonexpandable Conforming” uses.



## Why?

- These uses need conforming status to get insurance and financing
- Nonconforming = Can't expand, can't rebuild
- Nonexpandable conforming = Can't expand, can rebuild

# **Chapter 25**

## **Miscellaneous Zoning Requirements**

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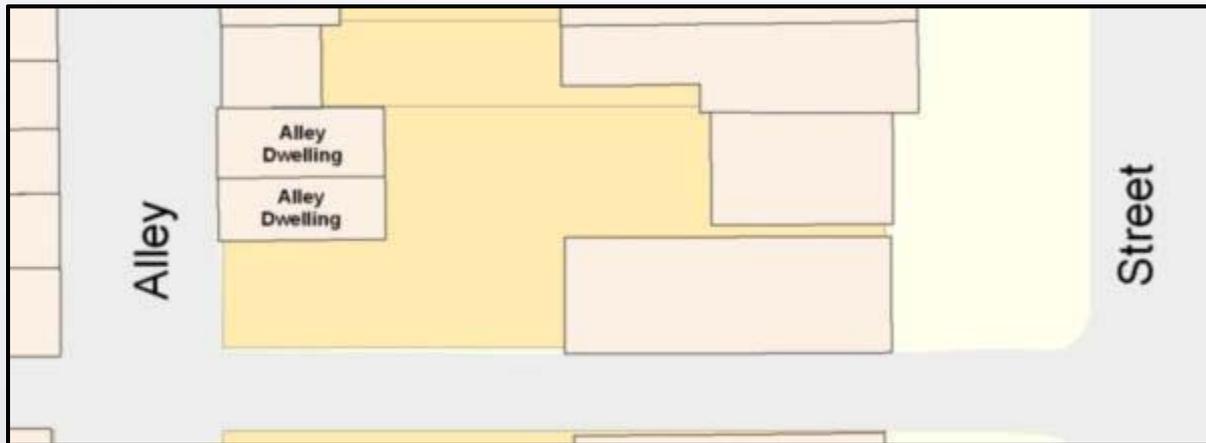
## Recommendation 14

# § 2507 – Alley Lots – Record Lot Required



## Recommendation

Clarify that a record lot is required to obtain a building permit on an alley lot, and that if the lot does not meet minimum dimension standards that a variance is required.



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## Recommendation 14

# § 2507 – Alley Lots – Record Lot Required



### Why?

- The regulations should prevent, to the extent possible, the creation of new alley lots.
- Many tax lots exist without a corresponding record lot underneath.

## Recommendation 15

# § 2516 – Modifications to One Dwelling



### Issue

- § 2516 allows, by special exception, more than one building on a residential record lot.
- The working group raised the issue of making modifications to a single building within an approved § 2516 application.

## Recommendation 15

# § 2516 – Modifications to One Dwelling



## Recommendation

When modifying an approved § 2516 application, an individual homeowner may apply for an expedited review.



## Why?

Although § 2516 cases are approved as one unit and must be modified as such, simple additions to a single residence should be reviewed very quickly and easily.

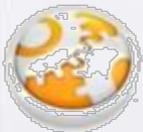
## Recommendation 16

# § 2516 – Institutional Uses



## Recommendation

Exempt institutions or schools reviewed through the special exception or campus plan process from § 2516 requirements.



## Why?

For institutions that require special exception or campus plan review, a further review is not necessary.

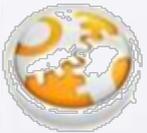
## Recommendation 17

# § 2516 – FAR Calculations



## Recommendation

Clarify that the land area of private rights-of-way may not be used in FAR calculations.



## Why?

- Public rights of way are not counted toward land area for FAR calculations.
- When private rights-of-way are counted toward land area for FAR calculations, it skews the numbers to allow the total floor area to be higher.

## Recommendation 18

# § 2516 – Standards for Private Drives



## Issue

Concerns about infrastructure:

- Functionality of fire hydrants
- Access for fire engines
- Water and sewer maintenance



## Recommendation 18

# § 2516 – Standards for Private Drives



## Recommendation

For applications under § 2516, establish private drive standards that ensure safety.

- Require public utilities
- Maximum limit on SF homes on private drives



## Why?

By limiting the private maintenance of infrastructure, public safety will be enhanced.

## Recommendation 19

# § 2522 – Zoning Administrator Flexibility



## Recommendation

Work with the Zoning Administrator to:

- Consolidate flexibility standards, to the extent possible, into one location in the regulations
- Establish consistency between flexibility across different types of orders
- Determine any criteria by which flexibility should be granted

## Recommendation 19

# § 2522 – Zoning Administrator Flexibility



### Why?

- Combining the sections would simplify the regulations.
- Having the ability to accommodate very minor deviations during permit review would prevent unnecessary BZA hearings.
- Criteria will help determine if flexibility meets the intent of the regulations.

# **Chapter 32**

## **Administration and Enforcement**

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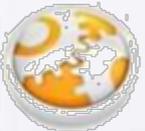
## Recommendation 20

# Sunset Clause for Setdowns



## Recommendation

Institute a 2-year sunset clause for setdowns.



## Why?

- A sunset clause for setdowns would give a level of certainty to property owners regarding the processing of building permits and certificates of occupancy.
- The 2-year duration is the same as building permits, PUD orders, BZA orders.

## Recommendation 21

# § 3202 – Building Permits

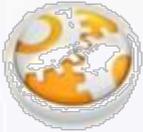


## Recommendation

- Describe which building permits vest the zoning regulations for a property.
- 12 DCMR § 105.1.4:
  1. New construction, including constructing, adding to or moving a building or structure;
  7. Erect an awning, canopy, tent or other membrane structure;
  9. Erect a radio, television or other telecom. tower.
  13. Change of use or occupancy, increase in load or mod. of floor layout.

## Recommendation 21

# § 3202 – Building Permits



### Why?

This change would clarify that certain minor permits such as erecting a fence or retaining wall would not vest property owners in a previous zoning classification.



# Next Steps

## Administration, Enforcement & Procedures Recommendations

- Finalize Recommendations and Analysis **October 2010**
- Submit Recommendation Report to the Taskforce **November 2010**
- Taskforce Meeting on Recommendations **December 2010**
- Zoning Commission Guidance Hearing **February 2011**
- Submit Draft Text to Taskforce **March 2011**
- Second Taskforce Meeting **March 2011**
- Zoning Commission Setdown **April 2011**
- Zoning Commission Hearing **June 2011**



# Contact Information



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