

	<p style="text-align: center;"><b>ADVISORY NEIGHBORHOOD COMMISSION 3C</b>  <b>GOVERNMENT OF THE DISTRICT OF COLUMBIA</b>  <i>CATHEDRAL HEIGHTS • CLEVELAND PARK</i>  <i>MASSACHUSETTS AVENUE HEIGHTS</i>  <i>MCLEAN GARDENS • WOODLEY PARK</i></p>
<p>Single Member District Commissioners  01-Lee Brian Reba; 02- Gwendolyn Bole; 03-David Valdez  04- Vacant; 05- Margaret Siegel; 06-Carl Roller  07- Victor Silveira; 08-Catherine May; 09-Nancy MacWood</p>	<p style="text-align: right;">P.O. Box 4966  Washington, DC 20008  Website <a href="http://www.anc3c.org">http://www.anc3c.org</a>  Email <a href="mailto:all@anc3c.org">all@anc3c.org</a></p>

**ANC 3C Resolution No. 2015-032**  
**Regarding Final Notice of Zoning Rewrite Review,**  
**ZC Case No. 08-06A and B.**

Whereas Advisory Neighborhood Commission 3C (“ANC”) has submitted several resolutions approved at noticed, public meetings with a quorum present that recommended changes in draft proposals in the Zoning Rewrite Review (“ZRR”); and

Whereas the Office of Planning changed certain proposals that included some of the areas commented on by the ANC, but other proposals that were the subject of ANC resolutions urging deletion or alterations were approved without change by the Zoning Commission during deliberations that did not mention ANC 3C’s resolutions; and

Whereas the Zoning Commission has issued a Final Notice (published in the DC Register) of the approved changes to the zoning code with a deadline of September 25, 2015 for comments; and

Whereas the ANC has additional comments that are listed in this resolution, and which should be given great weight:

Therefore be it resolved that ANC 3C strongly urges the Zoning Commission to consider the following -

SUBTITLE C

Sec. 201 General Provisions

**-Reinsert existing Sec. 2000.3 that in part states that “all uses and structures incompatible with permitted uses or structures shall be regulated strictly and permitted only under rigid controls.” The emphasis is necessary to direct the BZA and the zoning administrator to treat non-conforming uses and structures as anomalies that should ideally not be present in the zone. The absence of this provision from ZRR signals a change in policy that we don’t think is warranted or intended. We have experience with the ZA not applying the non-conforming regulations strictly and in two recent cases the potential effect was so serious that neighbors are appealing the ZA’s decision.**

Sec. 204 Non-Conforming Use

**-Sec. 204.1 add “ or intensity” at end of “A nonconforming use of land or structure shall not be extended in land area or gross floor area.” The intent is not to expand the use which can have negative impacts on permitted uses in the zone. Increasing the square footage is only one means of expanding the non-conforming use - the existing square footage could be rearranged to result in a much more intense use and that situation should be covered in the regulation.**

-Sec. 204.8 delete and reinsert that changes in the non-conforming use will be reviewed by the BZA. If the intent is to rigidly control non-conforming uses, which has long been zoning policy and is endorsed in area elements of Comprehensive Plan, then the zoning code should not permit matter of right changes from one non-conforming use to another, even if within the same use category. By definition, these are uses incompatible with the zone and communities should have an opportunity to control them through a public regulatory process.

-Sec. 204.9(e) reinsert “at least” between “within” and “hundred feet.” The intention is to require an applicant to show that change in non-conforming use will not adversely affect the character and future development of surrounding area. Applying that burden to an area less than a block long prohibits the BZA from really assessing the extent of a negative impact. For example, a non-conforming trash transfer station has an affect far beyond a ½ block. By inserting “at least” the BZA can effectively capture the degree of the geographic affect.

#### Sec. 304 Subdivision - Rules of Measurement for Lot Width

-Sec. 304.4 should be deleted. It would allow the creation of new lots for single family residences or flats that are only 40% the minimum required width for a lot in the zone. The absolute minimum could be as narrow as 14 feet! It is ludicrous to imagine that you could have a minimum lot width of, for example, 50 feet in an R-1-B zone as measured 30 feet back from the front of the lot (as ZRR is proposing) and a street frontage that is only 14 feet! These two provisions must be reconciled. We recommend that lot width should be measured at the front of the lot in order to preserve block character and not 30 feet back.

#### Sec. 305 Theoretical Subdivisions

-Sec. 305.4(c) should substitute measurement of height from “finished grade” to “natural grade” as is required throughout the zoning code. Indeed the follow provision, 305.4(d), clarifies that 305.4(c) would allow a different measurement method for theoretical lots than is required for standard lots in the same zone. Allowing the topography of a series of theoretical lots to be changed - usually to attain more height on at least one side of future structures - is problematic and could alter the character of a block or neighborhood. A developer should expect building heights to rely on natural grade and if the developer wants to alter the grade to achieve more height than would be possible using the natural grade, this should be part of the special exception proceeding.

#### Sec. 701 Minimum Vehicle Parking Requirements

-Sec. 701.5 shows substantial reduction in requirement for multi-family buildings that would result in 66 to 85% reduction in parking spaces without any process that would permit the ANC and the community to protest. The Comprehensive Plan states that reductions in parking requirement can be considered if the specific circumstances of a neighborhood warrant the reduction. There has been no assessment of the transit use in our neighborhood or any consultation with us about our experience with parking demand where minimum parking requirements have been inadequate. We strongly oppose the unilateral matter of right reduction in parking and urge the Zoning Commission to reinstate the current minimums and provide a special exception process to lower on case by case basis.

-Sec. 701.8 (b) and (f) add that permission to locate required parking spaces off-site whether as matter of right or by special exception should partly be premised on the

unavailability of the District's Restricted Residential Parking Program at the on-site and off-site locations. This condition is necessary to protect adjacent and nearby properties from an increase in demand for scarce on street parking supply.

#### Sec. 702 Exemption from Minimum Parking Requirement

-Sec. 702.1(c) permits a 50% reduction in the substantially reduced minimum parking requirement for apartment buildings and commercial establishments based on proximity to metro or high frequency bus lines. The Office of Planning has reported that significant parts of ANC 3C would be affected by this provision. We oppose this provision and urge a special exception process to determine if reductions are warranted and, if so, what level of parking is appropriate based on neighborhood conditions of supply and demand. There have been no changes to public transit in ANC 3C and thus, no new transit use or vehicle use patterns that convince us that this matter of right reduction is reasonable or responsible. On the contrary, our experience is that metrobus is unreliable and inefficient and the metro is too far from many of the areas eligible for 50% reduction to expect that residents will not need or want cars -- and those cars must be parked off-street!

#### Sec. 703 Special Exceptions from Minimum Parking Requirements

-Sec. 703.2(f) should be deleted because it allows developers to base waiver of all or part of minimum parking requirements on the provision of a "significant proportion" of affordable housing units. First, this is a vague construct that begs for interpretation. Second, it declares that either low income residents don't own cars or worse, they should not own cars. Many low income residents rely on cars, rather than public transportation, to travel to shift work, to take children to day care or schools away from the neighborhood or jobs, and to reach other necessary services that are often not found in low income neighborhoods.

#### Sec. 708 Car-Share Parking Space Provisions

-708.4 delete because this permission allows a commercial use that is not a home occupation on residential property. In addition, it has potential to turn a rear yard into a parking lot since these spaces would be in addition to required spaces for the principal dwelling. It would add congestion to an alley that is used by residents and where commercial uses are not zoned. There are myriad locations for car-sharing from dedicated on street locations to dedicated spaces in every type of development. Promoting this commercial enterprise on residential property is unwarranted.

### SUBTITLE X

#### Sec. 105 School Plan Requirements

-105.2 add ANC into application referrals from Office of Zoning

#### Sec. 201 Chancery Use Criteria

-Define "area" narrowly since this extraordinary authorization for a foreign government to avoid zone restrictions by essentially creating a geographic boundary that is more beneficial to establishing an undesirable use potentially undermines the intent of zone regulations.

-Sec. 203.4 add ANC into application referrals

### SUBTITLE Y

#### Sec. 102 Organization

-Sec. 102.2 delete authorization for staff of Zoning Commission to serve on Board of Zoning Adjustment. The Zoning Commission has no staff, unless the Office of Zoning personnel are considered the staff, but there should be no delegation of this important function to staff. The DC members of the Zoning Commission are appointed by the mayor and confirmed by the Council after a public hearing and there is no similar process for staff to be vetted for their qualification to represent DC residents on this important regulatory body.

#### Sec. 103 Meetings and Hearings

-Sec. 103.5 replaces 4 day notice of public meeting agenda with current requirement (3105.7) of 7 day notice. Four days is not reasonable public notice.

#### Sec. 203 Evidence

-Sec. 203 add that burden of proof is on applicant, which is currently required (3119.2), but has been deleted in this final version.

#### Sec. 302 Zoning Appeal Filing Requirements

-Sec. 302.17 replace 14 days with 7 days, which is current requirement (3115.1). It is an unreasonable burden to require ANCs that meet on a set monthly schedule to produce appeal responses 14 days before the hearing rather than the current 7 days in advance.

#### Sec. 703 Consent Calendar

-Sec. 703.2 delete modifications of consequences from zoning order changes decided without public hearing because Sec. 703.5 defines the category broadly to include changes in conditions and design that could be among the most highly contentious issues considered during the hearing on the application. The parties should have an opportunity to be heard and not be subject to an unreasonable 10-day period to file opposition response. This requirement, Sec. 703.10, is particularly onerous for an ANC.

-Sec. 704.6 Ten (10) days between notice and filing response is not adequate or reasonable for an ANC. It may be presumed that ANC has reviewed the original application and authorized a commissioner to represent it on the application. However, ANCs cannot be expected to have anticipated what modifications of consequence an applicant may request after the decision. It may be associated with some aspect of the application that was fine originally but that is not fine as modified and the ANC would have to vote at a public meeting to have the authority to offer a response. The timing of the response if limited to 10 days deprives the ANC of opportunity to represent the neighborhood on the matter.

### SUBTITLE Z

#### Sec. 405 Referrals to and Reports of Public Agencies

-Sec. 405.7 seems to separate the level of meaningfulness of great weight afforded to the Office of Planning comments on zoning cases and the great weight afforded to ANCs in Sec. 406.2. The former is vague about when Commission must honor the great weight of OP comments, but the latter provision clearly states that the ANC's comments will only be given great weight after deliberations and the issuing of a proposed decision. It is only at a pro forma second vote, or final action, that the Commission would honor the ANC great weight requirement that is articulated in the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000. The amendments state that "the issues and concerns raised in recommendations of ANC shall be given great weight during deliberations by the government entity." Thus, there should be no qualification on which deliberations

of the Commission require great weight - in fact, all deliberations should include great weight consideration of ANC recommendations. Sec. 406.2 must be changed to make this requirement clear and unambiguous.

Sec. 504 Reports of Public Agencies

-Sec. 504.5 and Sec. 505.1 present the same inconsistent treatment of great weight afforded to the Office of Planning and the Advisory Neighborhood Commissions. It effectively permits the Commission to ignore the ANC recommendations until all meaningful deliberations are finished and only the final rubber stamp of a decision is scheduled. This downgrading of ANC great weight versus Office of Planning great weight is not the intent of the authorizing law and the Commission should correct this second class treatment of ANCs before the ZRR is finalized.

Sec. 703 Consent Calendar

-Sec. 703.1 delete authorization that petitions for modifications of consequence can be decided without public hearing on consent calendar. By definition, these petitions are material to the facts that led to the Commission's decision on the original application in a contested case. Parties should have an opportunity on the public record to oppose changing conditions in the final order and/or altering exhibits that all parties and the Commission relied on. In addition, the example listed in Sec. 703.4 that "a change in position on an issue discussed by the Commission that affected its decision" should be deleted. This appears to be a reconsideration of the decision and it should not be allowed using modification rules.

Sec. 703.6 add to list of examples of modifications of significance "change to public benefits or amenities or required covenants."

Be It Further Resolved that ANC3 supports all of the comments in the previously submitted attached resolutions, which were approved at a noticed public meeting where a quorum was present;

Be It Further Resolved that the Chair and that all the ANC 3C Commissioners are authorized to represent the commission on this matter.

Attested by



**Carl Roller**

Chair, on September 21, 2015

*This resolution was approved by a voice vote, on September 21, 2015 at a scheduled and noticed public meeting of ANC 3C at which a quorum (a minimum of 5 of 9 commissioners) was present.*