

**CAPITOL ZONING DISTRICT COMMISSION
STAFF REPORT
5/15/20
BIM**



Petitioner: CZDC Director
Location: CZDC Administrative Rule
Proposal: Various rule updates

Description: Staff receives ongoing feedback and suggestions from constituents and stakeholders regarding agency rules believed to be outdated, unclear, or unduly stringent. Staff has collected this feedback from the last two to three years into a list of potential updates to the rules.

The rule promulgation process begins with an initial review by the Department Secretary and then the Governor's office. Next comes series of a legal ads, a 30-day comment period, and a public hearing. Then comes a vote by the Commission whether to adopt the proposed rules, followed by a final review by the Arkansas Legislative Council. This entire process can take three to six months if no items are considered controversial.

Staff Recommendation: Staff requests the Commission vote to initiate the rulemaking process.

***** UPDATE (7/16/20) ***** The Commission did not review these changes at their May meeting. A discussion at during the June meeting led to a request that staff inquire about the possibility a new master plan. Conversations with Department leadership confirmed that, in light of the covid pandemic, funding to undertake a new master planning process seems unlikely in the near future.

Since the June meeting, staff has added a new rule suggestion from Commissioner Anders (page 3). Written citizen communication is now attached at the end of the document. Proposed changes were previously listed in the order that they appear in the Rules, but they have be re-arranged slightly in this document to fit more items onto each page.

PROPOSED RULES (MARK-UP)

Capitol Zoning District Commission Rule, Section 2-105, C2. *Conditional Use Permits* (p.9)

a. The Commission shall grant a Conditional Use Permit to permit a use of land not permitted by right under the zoning applicable thereto, provided that the conditional use in question is permitted for that zone **and the proposed use substantially complies with any other applicable review criteria**, but may attach additional conditions that will serve to make the proposed use more compatible with the surrounding neighborhood and the District as a whole.

This change makes explicit what is already in practice – a conditional use permit is not automatic; it still must meet all the other requirements.

**** suggested by Dan Cook ****

Capitol Zoning General Standards, Section 3-201, *Zoning Requirements* (p.24-25)

Z7. Zone N “Neighborhood Commercial”

2. Ground coverage ratios

Lot area per dwelling unit, by right = minimum ~~2,500~~**1,200** square feet

Lot area per dwelling unit, with Commission review = minimum ~~1,200~~**600** square feet

Z8. Zone O “General Commercial”

2. Ground coverage ratios

Lot area per dwelling unit, by right = minimum ~~1,200~~**600** square feet

Lot area per dwelling unit, with Commission review = no minimum

4. Permitted uses

Allowed by right = Residential ~~1~~**2**, Office 1, Commercial 1

Allowed with Commission review (conditional uses) = Residential ~~2~~**1**, Office 2, Commercial 2-~~3~~**4**, Civic 1- 3

These changes to dwelling unit requirements would encourage denser residential development in Zones N&O.

**** suggested by Adam Day ****

Adding Commercial 4 to the list of conditional uses in Zone O would allow the Commission to consider automobile-oriented businesses (eg. carwashes, gas stations, and commercial parking lots / decks) in the SOMA area. (This is partly consistent with existing conditions.)s

**** suggested by Cassie Toro ****

Capitol Zoning General Standards, Section 3-203, *Use Groups* (p. 33)

U.1 CIVIC 1 (Unstaffed Facilities)

These uses are not allowed in the Capitol Zoning District.

[Remove Civic 1 from allowed uses in each zone]

This change would disallow any unstaffed civic facilities (eg. bus stops, pipelines, radio towers) in the Capitol & Mansion Areas, other than those in the public right of way

**** suggested by Dan Cook ****

Z9. Accessory uses and structures are allowed by right

2. An accessory structure is a structure built or operated in conjunction with an accessory use, located on the same parcel of land as a principal structure containing the principal use. Accessory Structures must comply with the following requirements:

- a. For staff approval, An accessory ~~building or~~ structure ~~or structures~~ may ~~not~~ occupy ~~not~~ more than thirty percent (30%) of the required rear yard. The Commission will consider, on a case-by-case basis proposals for structures that would cover up to fifty percent (50%) of the required rear yard.

This change would allow the Commission to consider larger backyard outbuildings, such as a two-car carport or garage abutting an alley.

**** suggested by Jeff Horton, Brian Minyard ****

Z15. Setbacks

2. The front ~~yard~~ is that portion of a parcel which directly abuts a public street.

- a. In most cases where a parcel is located on the corner of two intersecting streets, the narrowest portion of the lot contiguous to the public street will be defined as the front ~~yard~~.
- b. In some cases where a parcel is located on a corner lot, it may be appropriate to construe the side with the main entrance of an existing or proposed structure as the front. The Commission will make such determinations on a case-by-case basis.

This change would allow the Commission to consider the side with the front door as the front yard.

**** suggested by Patrick Anders ****

U.16 OTHER USES

3. Most of the office and commercial uses listed above (U.7 – U.12) call for complete enclosure within a structure. Proposals for uses extending outside of a structure (such as patio dining area) will be considered by the Commission on a case-by-case basis.

This change makes explicit what is already in practice – the Commission will consider outdoor extensions of primarily indoor uses.

**** suggested by staff ****

R5.5 Maintenance for porches:

- Maintain drainage off of the main roof of the house, as well as off the roof of the porch.
- Channel water away from the foundation of the porch.
- Maintain a good coat of paint on all exposed wood surfaces.
- Wood and concrete are typically appropriate materials for replacing worn or deteriorated front porch steps. Brick or other masonry may also be appropriate when it resembles a building’s foundation material.

This change would allow the Commission to consider brick front porch steps.

**** suggested by Cassie Toro ****

Capitol Zoning General Standards, Section 3-203, Use Groups (p. 33)

U.5 RESIDENTIAL 2 (Multifamily) *Uses in this group may have a maximum of one family per dwelling unit.*

- Triplex, four-plex, five-plex, etc *
- Apartment building *
- Townhouse
- Apartment hotel
- Condominiums *
- Home occupations (max. 1 per dwelling unit)
- Bed and breakfast house (max. of 5 guest rooms; exempt from 1 family/DU maximum)

* Uses in this group marked with an asterisk may be treated as Residential 1 when located in a historic apartment building.

This change would allow historic apartment buildings to be put back into service as apartments without having to first obtain a conditional use permit.

**** suggested by Gabe Holmstrom ****

Rehabilitation Standards for Historic Properties, Section 4-202, Historic Building Materials (p. 68)

*** R2.4 Generally, brick or stone that was not painted historically should remain unpainted.**

- Masonry naturally has a water-protective layer, or patina, to protect it from the elements. Painting masonry walls can seal in moisture already in the masonry, thereby not allowing it to breathe and causing extensive damage over the years.
- Some of the earlier masonry buildings may be constructed of a very soft brick that lacks a water protective outer glaze. In these instances, painting the brick may be appropriate to provide protection. If permitted, the paint color must match that of the original brick.
- The Commission will consider other requests to paint masonry on a case-by-case basis.

This change would allow the Commission to consider painting bricks.

**** suggested by Cassie Toro ****

Rehabilitation Standards for Historic Properties, Section 4-205, Porches (p. 79)

R5.5 Maintenance for porches:

- Maintain drainage off of the main roof of the house, as well as off the roof of the porch.
- Channel water away from the foundation of the porch.
- Maintain a good coat of paint on all exposed wood surfaces.
- Wood and concrete are typically appropriate materials for replacing worn or deteriorated front porch steps. Brick or other masonry may also be appropriate when it resembles a building's foundation material.

This change would allow the Commission to consider brick front porch steps.

**** suggested by Cassie Toro ****

Rehabilitation Standards for Historic Properties, Section 4-207, *Roofs* (p. 84)

***R7.5 Preserve original roof materials.**

- Avoid removing historic roofing material that is in good condition.
- Specialty materials, such as tile or slate, should be replaced in kind when feasible. In-kind replacement of such materials, however, can be sometimes be cost prohibitive. Owners are urged to avail themselves of historic tax credits and other incentives to defray the cost of in-kind replacement. The Commission will consider proposals to replace specialty roofing materials with contemporary materials on a case-by-case basis.

This change would allow the Commission to consider replacement of tile (and other) roofs.

*** suggested by Cassie Toro, Andre Pendleton ***

Rehabilitation Standards, Section 4-201, *Historic Streetscape & Site Design Features* (p. 62-3)

R1.10 A solid fence may be used in a rear or side yard.

- Although the use of transparent fences is also encouraged in rear and side yards, a solid stockade fence may be used where privacy is a concern. The Commission will consider requests for masonry (brick or stone) privacy fences on a case-by-case basis.
- ~~Privacy fences~~ used in back yards and along alleys should be 72 inches (6 feet) or less.
- For the purposes of this section, the rear and side yards are those portions of a parcel not covered by the main structure or defined as a front yard, above.
- A backyard fence on corner lot with an adjoining property to the rear should be set back from the right-of-way according to either the front yard setback for that zone, or coplanar with the front façade of the building behind it (if any) on an adjoining property, whichever is less. The Commission will consider requests to reduce this setback on a case-by-case basis. To reduce the impact of backyard fences on the pedestrian experience, such requests should feature a lower (less than 6') fence, a transparent (picket) fence, and/or a small setback to allow for a planting strip or other landscaping between the fence and sidewalk.

This change makes explicit what is already in practice – the Commission will allow for backyard fences on corner lots to be placed closer to the sidewalk.

*** suggested by staff ***

Mansion Area Design Standards, Section 8-202, *Traditional Development Characteristics in Zone "O"* (p. 188-9)

The primary entrances to some buildings are recessed, providing a shaded area that helps to define doorways and to provide shelter to pedestrians. This feature should be ~~repeated-considered~~ on new infill buildings along Main Street.

G. Entries ~~Most~~ Some primary entrances to buildings are recessed, providing a shaded area that helps to define doorways and to provide shelter to pedestrians. Entrance doors were topped with transom windows that enhanced the vertical emphasis of these openings. The repetition of primary entrances along the street contributes to the traditional or human scale of the area, and should be ~~continued-considered~~ in future projects.

Mansion Area Design Standards, Section 8-203, *Design Standards for Zone O* (p. 192)

O12. ~~Maintain~~ Note the pattern created by recessed entry ways.

- Setting the door back from the front an adequate amount ~~to-can~~ establish a distinct threshold for pedestrians.

This change makes explicit what is already in practice – new construction in Zone O does not necessarily require recessed storefront entries.

*** suggested by Ed Sergeant ***

Capitol Zoning General Standards, Section 3-601, Tree Protection (p. 52-3)

Mature trees contribute to the unique character and dignity of the Capitol Zoning District. These trees constitute a distinctive feature of the District and are important to preserve whenever feasible. *The letter “T” precedes each of the standards in this section to indicate they are tree protection requirements.*

~~T1. Removal of an existing tree is not allowed unless:~~

~~1. The tree is less than four inches in diameter at a point four and half feet (4.5’) above grade (or 12 inches in diameter at ground level if a point at 4.5’ is not available to measure); or~~

~~2. The tree has been damaged by a recent natural event to such an extent that CZDC staff finds it is clearly and plainly an imminent threat to life, property, or public safety.~~

~~3. A registered forester (licensed by the Arkansas State Board of Registration for Foresters), a Certified Forester (certified by the Society of American Foresters), or a Certified Arborist (certified by the International Society of Arboriculture) has affirmed in writing that:~~

~~a. the tree is dead or so badly damaged or diseased so as to be an imminent threat to life, property, or public safety; or~~

~~b. the tree is of an invasive or undesirable species; or~~

~~c. removal of the tree is otherwise consistent with sound arboricultural or urban forestry practices; or~~

~~4. The tree is being removed to accommodate approved new construction, and~~

~~a. Removal will not reduce the lot’s tree canopy coverage below 20% in residential zones (B, M, and N), or less than 10% in commercial zones (A, C, and O); or~~

~~b. A plan to mitigate the removal with a new tree or trees has been approved by the Commission. The new tree or trees must be of the same species as the removed tree, or of a species recommended in the in the City of Little Rock Landscape Ordinance, as it existed on January 1, 2017.~~

~~T2. No pavement may be installed, no parking spaces may be designated, and no vehicles or heavy equipment may be stored within the drip line or critical root area (whichever is larger) of any tree not approved for removal.~~

~~T3. Tree pruning shall be done in accordance with accepted industry standards that maintain both the appearance and health of the tree:~~

~~1. Trimming that does not remove more any portion of the trunk and less than ten percent (10%) of the canopy shall be construed as ordinary maintenance, and shall not require a permit. For staff level approvals, pruning shall not involve a portion of the trunk, nor more than twenty five percent (25%) of the canopy. The Commission will consider requests for more extensive pruning on a case by case basis.~~

~~2. The practice of “tree topping” — removing the entire top of a tree, or all its trunks and large branches above a certain height — is specifically prohibited.~~

Rehabilitation Standards for Historic Properties, Section 4-201, Historic Streetscape and Site Design (p. 64)

R1.17 Preserve mature trees when feasible.

• Removal of mature trees is strongly discouraged.

• ~~See General Standards for Tree Protection.~~

These changes repeal the Commission’s 2016 rules regarding tree removal.

**** suggested by Cassie Toro ****

Citizen Communication

From: Danny Cook <danrcook@swbell.net>
Sent: Wednesday, July 15, 2020 1:27 PM
To: Julie Chavis
Cc: Boyd Maher; David Collins; Melissa Goff
Subject: Rule change evidence

Ms Chavis, would you please see that each member of the Commission is given a copy of this letter before the proposed rules are taken up. Thanks

Members of the Capitol Zoning District Commission,

Director Maher has submitted two proposed rule changes on my behalf and requested the initiation of rule making proceedings on both. He did this without consulting me or allowing me the opportunity to review his "markups" before they were submitted.

More importantly, he did not ask me for any evidence to support my conclusion that these rules submitted on my behalf needed to be changed. However, when I learned of his efforts to bring these and other rules before the Commission, including those for other citizens, I sent an email to Mr. Collins which included my reasons for or against my "suggesting" the changes. This was done on or about May 25th.

During the June 18th meeting, two different Commissioner wanted to know why I suggested the changes to existing rules. Director Maher had that information readily available and could have told them my reasoning for suggesting the changes but chose instead to withhold the information I had given in the May email.

Since the Commission is obligated, under Arkansas Code Section 25-15-204 (b), to base its decision on evidence concerning the need for the rules and since Director Maher has identified me as a proponent of the rules, I am obligated to provide evidence for each of the two rules I have suggested. I am submitting my comments in writing, because of ongoing family obligations that prevent me from participating in the meeting.

With regard to suggested rule change to Section 2-105, I would ask that it be withdrawn. Since Director Maher has indicated the rule change is not necessary because my suggestion, "is already in practice." I have no evidence to prove otherwise.

As to the change in use group U1. Civic 1, I offer the following comments. The uses in this use group were part of the original use groups adopted by the new Commission in the middle part of the 1970's. They were not adopted as permitted uses of land within any zone until 2012, when the Commission, at the recommendation of Director Maher, decided to expand the use of land in the Capitol Zoning District. Having attended the meeting related to the 2012 revision of the master comprehensive plan for the District, I can attest to the fact that there was no evidence the rule change was need, including the reason stated by the Commission's director during the June hearing.

While, some of the uses may be appropriate in the Capitol Area, they are not appropriate in the Mansion Area. First, the uses do not conform with the land use plans for each zone in the Mansion Area. The land use plans were not taken into consideration in 2012, but since I am offering the land use plans as evidence now, those plans must be taken into consideration.

Second, Arkansas Code Section 22-3-304 (7) specifically authorizes the Commission to include, "restriction of noisy and polluting processes or those endangering the health and safety of the citizens of the zoning district."

Third, Commissioner Minyard opposition was based on his concern about an existing electric substation located in the 2300 block of Spring St. His concern, I believe is unfounded as restriction on the uses does not “include existing streets, alleys or utilities, and shall not include the maintenance, service, or improvements thereof.” Ref. Arkansas Code 22-3-306 (b) (2). Arkansas Code Section 22-3-306 (d) allows the use to continue even if it does not conform to the land use plan for the zone. In addition, the statute allows extension of the use and allows structural alterations upon approval of the commission. Legal counsel expressed concern about stepping on big toes. I do not have a reply for that remark.

Fourth, while there may be some exceptions, I am not aware of any person requesting a permit for any of the uses within the use group. This should demonstrate there was no evidence concerning the need to adopt the use group as a permitted use of land within any zone of the Capitol Zoning District within the first place.

I urge you to initiate rule making proceedings on the land use rules and allow for the withdrawal of the proposed rule for Section 2-105.

Respectfully submitted,
Danny R Cook
1700 Louisiana St.