

STAFF RECOMMENDATION



C.Hart

NCPC File No. ZC 08-06-1

PROPOSED RULEMAKING COMPREHENSIVE ZONING REGULATIONS REWRITE: CHAPTER B-2 USE CATEGORIES AND CHAPTER B-4 HEIGHT

Washington, DC

Submitted by the District of Columbia Zoning Commission

December 30, 2010

Abstract

The District of Columbia has undertaken a comprehensive review of its zoning regulations, which have not been updated since the 1950s. Regulations on height and permitted uses are two of the many subject areas included in this Zoning Regulation review. The existing “use” section in the Zoning Regulations includes over 650 distinct uses, which has led to confusion. The Office of Planning (OP) has conducted research nationally to analyze best practices and determine ways to simplify the existing “use” section. This research has led OP to propose a shift to a different system that includes 29 “use categories” that are intended to contain all uses, but not specifically by name. These use categories will be combined with five permission levels in a matrix that will delineate which uses are allowed in particular zone districts.

Changes to the height regulations are also being proposed at this time. The Height of Buildings Act of 1910, as amended (the Height Act) established the overall height limit in the District of Columbia and the Zoning Regulations provide greater delineation and further restrictions on heights by zone district. The District has decided that while the Height Act will be referenced in the new height regulations, all District of Columbia interpretation of the Height Act provisions will be located in Subtitle M, a special new section of the District of Columbia Municipal Code Title 11 based on the Zoning Administrator’s interpretations. NCPC has not been provided a copy of Subtitle M, so the exact content of this subtitle is unknown.

Commission Action Requested by Applicant

Approval of report to the Zoning Commission of the District of Columbia pursuant to 40 U.S.C. § 8724(a) and DC Code § 2-1006 (a).

Executive Director's Recommendation

The Commission:

Advises the Zoning Commission that the proposed language establishing a set of use categories as described in the rulemaking will not adversely affect any federal interests.

Notes that relative to the proposed text on building height that the federal interest would not be adversely affected, if the following changes to the proposal are made:

- Reflect in §404 that the Height Act does not provide a mechanism for relief to be granted by the Board of Zoning Adjustment from the Height Act provisions for maximum building heights.
- add "...public or private street..." at the end of the sentence in §402.2.
- add "...the height of a building shall not be measured from the human-constructed elevation, but shall be measured..." in §402.4.

Notes that recommendations of the Office of Planning's setdown report dated August 12, 2010 concerning the following: street frontage measuring points; streets fronting on open spaces; business and residential street definitions; single and multiple/connected buildings definition and the exterior wall definition, however were not incorporated in the Zoning Commission's proposed action. Instead they will be considered by the Department of Consumer and Regulatory Affairs (DCRA) in a new Subtitle M to the Zoning Regulations. Because Subtitle M has not been provided for NCPC review, staff is not able to determine whether the content of Subtitle M will be adverse to the federal interest.

Therefore **requests** that DCRA provide a draft of Subtitle M for NCPC review as soon as it is available and incorporate into Subtitle M the recommendations of the Office of Planning's setdown report dated August 12, 2010 for the following: street frontage measuring points; streets fronting on open spaces; business and residential street definitions; single and multiple/connected buildings definition and the exterior wall definition, as these recommendations satisfactorily reflected NCPC staff input.

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BACKGROUND

History of Zoning Regulations

The current Zoning Ordinance of the District of Columbia was approved in 1958. While there have been numerous text and map amendments during the past 50 years, the District has never undertaken a comprehensive zoning revision. As this is a 50-year-old document, there are substantial changes needed to reflect the current thinking about land use including adding concepts like sustainable development. In addition, some concepts like parking standards and antenna regulations are based on 1950s ideas and technology, and the use of outdated terms like “telegraph office” and “tenement house” clearly need to be changed. For years the Zoning Commission has experienced a steady increase in the number of text and map amendments submitted for approval. New overlay requests, zoning consistency actions, and changes to the text are also increasingly common.

Many of the building-form standards in the current regulations are based on standards proposed in a 1965 report written by Harold Lewis, a New York planning and zoning consultant, on zoning changes for the District of Columbia. The standards proposed in the Lewis Report for building and lot controls were often based on the average of existing conditions in the District. While this approach set a good target for new development, it automatically made half of the existing buildings in D.C. non-conforming to zoning. The Zoning Commission has encountered challenges trying to address these non-conformities for the past 50 years and this zoning revision is being proposed to address these challenges.

Zoning Update Process

A comprehensive review of zoning regulations was identified as a goal in the 2006 *District Elements of the Comprehensive Plan for the National Capital*. The Zoning Review process officially began in 2007 with a pair of public roundtables before the Zoning Commission and the formation of a citywide task force. Since then, the District of Columbia Office of Planning (OP) has organized eighteen public working groups by subject area and held over 150 public meetings. NCPC staff attended many of these meetings. Each subject area has been reviewed in consultation with a public working group that discusses issues identified in the Comprehensive Plan as well as issues arising from the existing Zoning Regulations.

Recommended changes were forwarded to the 24-member task force, appointed by City Council members, for further review and input. Finally, recommendations for most subject areas were made available for public review including at least one public hearing before the Zoning Commission. After the conclusion of public review for each subject areas, OP has been working with the Office of the Attorney General to draft zoning language to reflect the proposed policy changes.

OP used the proposed reorganization of the Zoning Regulations and the conceptual recommendations previously approved by the Zoning Commission as a framework for developing updated text for each section of the regulations. Each section of text will be reviewed by the Zoning Commission and heard at public hearings separately over the course of

the next year. After text sections have been approved by the Zoning Commission, these separate text sections will be unified into a proposed set of zoning regulations that will be the subject of a final public review.

The District of Columbia Office of Attorney General has determined that the new structure of Title 11 of the District of Columbia Municipal Regulations will include numerous subsections, including the following:

- Subtitle A - Administration and Procedures section;
- Subtitle B - General Regulations
- Subtitle C - General Processes
- Subtitles D to J will contain all land use requirements and permissions for the various zones
- Subtitle M will contain the Zoning Administrator's interpretations, including the District of Columbia's interpretation of the provisions of the Height Act

NCPC has been meeting with OP over the past two years, as well as participating in public meetings regarding many of the proposed text changes. Staff submitted several letters to the Zoning Commission on the height regulation changes outlining NCPC concerns and in some instances adding proposed text changes, with the most recent letter submitted on September 14, 2010 just prior the Zoning Commission's more recent public hearings on the changes to height and use. In this letter, NCPC outlined two outstanding issues: the types of structures allowed on top of roofs and the ability for the Board of Zoning Adjustment to approve special exceptions for non-conforming rooftop elements relative to the provisions of the Height Act. NCPC staff also requested two clarifications to language regarding public vs. private streets and the use of measuring points from human-constructed elevations. These concerns are further elaborated herein.

PROPOSED RULEMAKING

In its setdown report, dated August 12, 2010 (Attachment B), OP describes the existing “use” and height sections in the Zoning Regulations, the main issues with each topic area as well as a framework for possible changes to update the current language to address the identified issues. The following is a summary of this report outlining the reasons for the text changes and a description of the proposed changes.

Proposed Use Categories

Currently, the Zoning Regulations lists all of the uses that are allowed by zone - in what OP setdown report refers to as “nesting.” Currently there are 650 distinct uses identified in the Zoning Regulations. This nesting is “...dependent on an initial list of allowed, permitted, or not permitted uses in a lower intensity zone. As the zones increase in intensity and additional uses are allowed, the higher intensity zones must add uses to their lists in the section or chapter and refer back to earlier, less intense, zones for the full list of permitted uses. Many uses that are nominally allowed as a “matter of right” in fact have conditions that limit their permission in some but not all zones. The lists of matter-of-right uses mix uses allowed without particular conditions with uses that have conditional permission, without distinction.”¹

OP also stated in its August 2010 setdown report that the existing conditions described above lead to many problems regulating “uses.” The following is a list of issues that were identified in the public review process and which OP stated in its setdown report were addressed with the proposed text.

- Cohesive information about permissions needed
- Information about determining use type and definition needed
- Conditions, standards and criteria to classify uses are needed
- Guidance needed about how to administer mixed or multiple uses
- Confusion between accessory uses and building types
- Multiple conflicting permission standards for the same use
- Regulation of uses by expansive lists requires constant updating
- Incomplete and inconsistent definition of uses
- Uses are regulated in zones of increasing intensity by referring to permissions of uses in lower intensity, and adding additional uses, which is known as “nesting.”
- Combination of uses that are permitted by condition with uses that are permitted as a matter-of-right in a single list mixes different types of permission together
- Excessive repetition of information

Based on research nationally, OP is proposing to shift to a different system than the existing “use” list and has identified 29 broad “use categories” that are intended to contain all uses, but not specifically by name. OP is proposing this system in order to reduce confusion and the need to frequently update the use category list.

¹ Office of Planning, *Setdown Report for Portions of ZC 08-06 – Zoning Regulations, Review for general reorganization, general height chapter and general use chapter*, August, 12, 2010.

These new use categories are:

- Agriculture
- Animal sales, care and boarding
- Antennas
- Arts design and creation
- Basic utilities
- Chancery
- Commercial Parking
- Community-based Institutional Facility
- Daytime Care
- Education
- Emergency Shelter
- Entertainment, Assembly, and Performing Arts
- Firearm Sales
- Food and Alcohol
- Health Care
- Institutional
- Lodging
- Local Government
- Marine
- Motor vehicle-related
- Office
- Parks and Recreation
- Production, Distribution and repair
- Residential
- Retail
- Service
- Sexually-oriented business
- Transportation and Infrastructure
- Waste-related services

This proposal to update the use regulations consists of seven subsections which are summarized as follows:

Introduction to Regulation of Uses and Relationship of the General Chapter to Land Use Subtitles – This section is to provide information about the proposed system of use categories in order to add clarity for users.

Rules for Determining Use Categories – This section is to provide an explanation of rules on which to base determinations and definitions of use categories.

Applicability of Multiple Uses – This section is to provide an explanation of regulating mixed or multiple uses in a single development.

Accessory Uses – This section is to provide an explanation of regulating accessory uses.

Temporary Uses – This section is to provide an explanation of regulating temporary uses.

Definitions of Use Categories – This section is to establish uses by broad use categories, including all of the existing uses.

In addition, the Zoning Regulations will include “use” permission tables in each of the zoning district subtitles that will provide guidance on how to find “use” permission and associated conditions for each individual zone. There are five permission levels for each zone: Permitted, Not Permitted, Conditional, Special Exception, and Accessory. The Zoning Administrator is responsible for determining uses to be allowed within each category. Once these determinations are made, they will be incorporated into each use subsection in the Zoning Regulations.

Proposed Height Regulations

OP stated in its August 12, 2010 setdown report that the largest issue in drafting the height regulations has been the relationship of the Zoning Regulations to the Height of Buildings Act of 1910, as amended (Height Act). The Height Act sets the height parameters within which the District's zoning regulations are permitted, but the Height Act itself is not part of the zoning regulations. In a document entitled *Recommendations Regarding Measurement and Regulation of Height*, dated September 15, 2008, OP recommended that the Zoning Commission include the Height Act within a single height chapter in the Zoning Regulations. This recommendation has evolved since that 2008 recommendation after working with the 24-member zoning task force. OP has since undertaken several drafts of the height chapter based around three different options, as follows:

1. Height chapter contains new street-based zoning height regulations that correspond to but do not directly reference the Height Act.
2. Height chapter directly contains Height Act language and interpretations in plain language. Height Act portions would be part of the chapter text, but would not be officially part of the zoning regulations.
3. Height chapter would not contain any Height Act language, but only refer to the Act by reference. Height Act regulations and interpretations would be attached to the Zoning Regulations as an Appendix. [OP SELECTED OPTION]

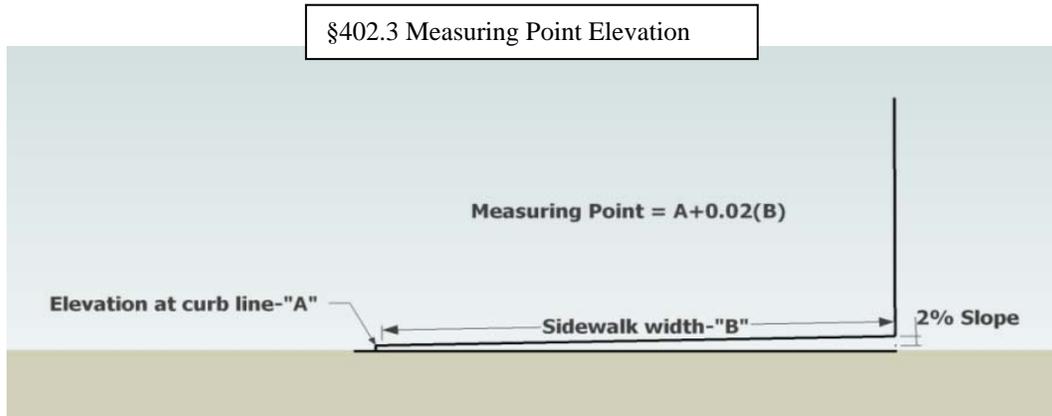
The District has decided to use the third option listed above for the framework of the Zoning Regulation regarding height, and will include the Height Act only by reference in the zoning height section of the regulations and attach an appendix of the Zoning Administrator interpretations to the Zoning Regulations.

The current proposal for general height regulations consists of four subsections that are summarized as follows (full text is attached to this report in Attachment A):

- Relationship to the Land Use Subtitles – This section is to provide background information about how height regulations will be codified and used.
- General Rules of Measurement – This section is to provide clear guidance for how zoning height is to be measured.
- Height Limit Exceptions – This section is to provide clear guidance for the type of structures allowed above zoning height limits and the rules for those structures.
- Height Limit Special Exception Standards – This section contains a list of sections of the height regulations that may be waived by special exception and the criteria for special exception review.

The following images which have been developed by OP, align with NCPC staff input on height concerns, and are included with the proposed text to graphically demonstrate how several of the height regulations will be addressed. The first illustration describes how to determine the

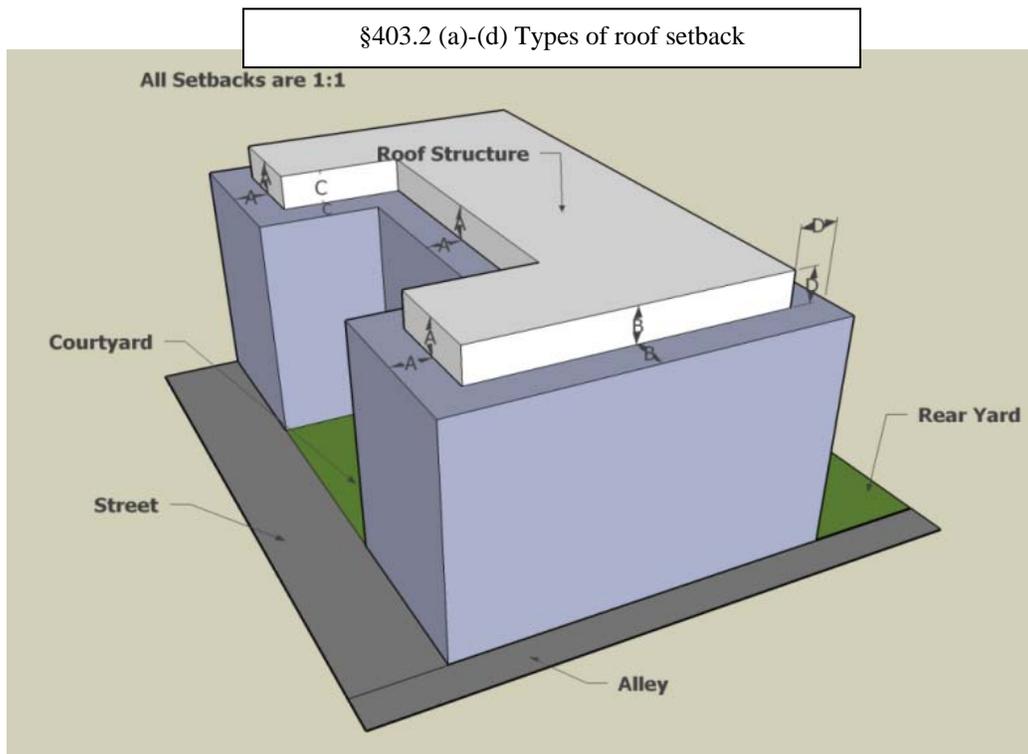
measuring point elevation from the sidewalk which can include a two percent slope from curb to property line, with a maximum change of 12 inches.

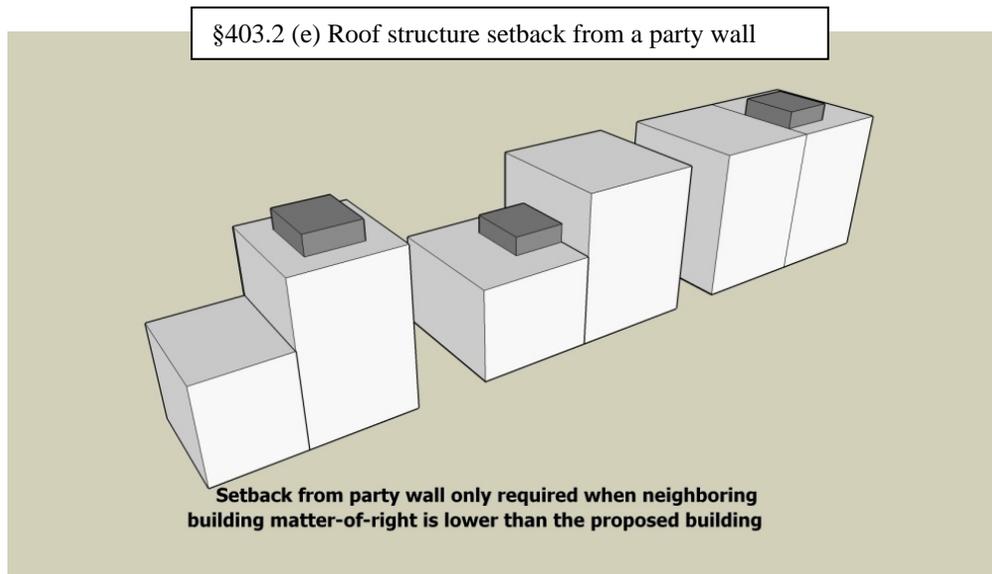


The next two illustrations delineate setback requirements for allowable rooftop structures. Below is an illustration that indicates all of the locations where setbacks are required including:

- (A) any wall facing a public street
- (B) Any wall facing a public alley
- (C) Any wall facing a courtyard open to a public street
- (D) Any wall that maintains a setback from and faces a lot line.

The final illustration, on the next page, describes the roof setback for building along party walls





While the proposed height regulations included in the revised Zoning Regulations include partial text or concepts taken from the Height Act, the exact provisions in the Act are not included as part of the proposed regulations. The proposed height regulations do not include the following areas:

- Street frontage measuring point
- Streets fronting on open space
- Business and residential street definitions
- Single and multiple/connected buildings definition
- Exterior wall definition

It is the decision of the District of Columbia that the Zoning Administrator, based in DCRA, is the entity charged with the District of Columbia interpretation of the Height Act provisions. OP has been working with DCRA to have Subtitle M completed prior to final approval of the full zoning text. Subtitle M is not expected to be available for public review until sometime next year. OP has provided NCPC with its recommendations to the Zoning Administrator on the interpretation of the provisions of the Height Act. NCPC has not been provided a copy Subtitle M, so the full content of this subtitle is unknown.

PROJECT ANALYSIS

Use Categories

Staff has reviewed the proposed general “use category” regulations and finds that there are no federal interest concerns regarding the proposed text. Staff also commends the Office of Planning for the community process that it used to develop the proposed text changes. Staff finds that OP has undertaken a thorough analysis of the issues, provided case studies on best practices and used this knowledge to develop a “use category” system that will provide flexibility and more clearly organize all of the various “uses” that currently exist and that may be used in the future. Therefore staff recommends that the Commission **advise the Zoning Commission that the proposed language establishing a set of use categories as described in the rulemaking will not adversely affect any federal interests.**

Height Regulations

Staff has reviewed the proposed height regulations and has determined that the main federal interest is if this section conforms to the provisions of the Height of Buildings Act of 1910, as amended. NCPC staff has participated in the Zoning Regulations Rewrite process over the past two years on a number of concerns that pertain to the Height Act. However, several sections that pertained to interpretations of the Height Act were not included in the height regulations rulemaking following the Zoning Commission public hearing on September 20, 2010. These removed sections included the following:

- Street frontage measuring point
- Streets fronting on open space
- Business and residential street definitions
- Single and multiple/connected buildings definition
- Exterior wall definition

These sections are expected to be included in Subtitle M, a special section in the Zoning Regulations for the Zoning Administrator’s interpretations. Staff is unsure how the District will interpret the provisions of the Height Act that will be included in Subtitle M.

Staff raised several additional concerns regarding height regulations in a letter from the Executive Director sent to the Zoning Commission dated September 14, 2010 (Attachment C). In addition, staff is interested in understanding more about Subtitle M, as many of the Height Act interpretations are expected to be included in it.

NCPC letter to Zoning Commission dated September 14, 2010

Staff included two main concerns about the proposed height regulations in a letter to the Zoning Commission dated September 14, 2010. This first concern centered on the apparent conflict between the proposed height regulations in §403.1 and allowable rooftop structures that are

included under the provisions of the Height Act. Also included in the letter was a request for more clarification to be included in the proposed zoning regulations for several items including the delineation of private vs. public streets, the measurement from artificial elevations, and the need for Subtitle M to be completed to ensure that it is fully consistent with the proposed height regulations.

Staff finds that the first issue raised in the September 14, 2010 letter was adequately addressed in the new text included in §403.1: Height Limit Exceptions. This section which the Zoning Commission has taken a proposed action on includes the following change "...The following structures may be built above the zone height limitations, subject to the conditions of this section and the Height Act:..." to the proposed text. Staff finds this language addresses the concerns that have been raised.

The second issue raised in the September 14, 2010 letter is the apparent conflict between the Height Act and the height regulations in §404: Height Special Exception Standards. This section establishes the parameters for the Board of Zoning Adjustment to use in determining if an applicant is able to seek relief from §§403.2 (b) through (e) or § 403.4 of the proposed height regulations.

PROPOSED TEXT – § 404.1

- 404.1 The Board may grant, by special exception, relief from §§ 403.2 (b) though (e) or §403.4 if, in addition to meeting the general requirements of [§ 3104], the applicant demonstrates that granting the relief would not:
- a. Be incompatible with the purpose and intent of height regulations listed in §400.2; or
 - b. Result in adverse impact on:
 1. Existing solar or wind power generation facilities in the immediate vicinity; or
 2. The visual character of the surrounding neighborhood.

The Executive Director also stated in his September 14, 2010 letter that:

The Height Act provides specific requirements for rooftop structures and the manner in which they should be set back once a building is at the maximum height permitted. However, the law does not allow for relief to be granted from these requirements by the Board of Zoning Adjustment. For consistency with the requirements of the Height Act, the Zoning Regulations should reflect this.

The Office of Planning did not propose any text changes to clarify this because its view is that local zoning has to provide for a mechanism for relief and it does this by outlining how this relief will be granted. Under the Height Act, no relief mechanism is allowed above the limit of height. Therefore staff recommends that OP include a sentence or phrase in the proposed text acknowledging that the Height Act does not include a mechanism for relief from its rooftop setback provisions.

In addition, two other sections need clarification. The Height Act establishes a strong relationship between street-widths and building heights. In §402.2, the proposed regulation currently only identifies public streets, but should also include private streets that are publicly accessible, such as those private streets located in subdivisions. Making this change will reinforce the building-height to street-width relationship established in the Height Act as it would allow for height to be taken from these private streets as well. In §402.4, additional clarification is necessary to strengthen where height may not be measured from in its description. Staff supports language that was identified in the OP report dated September 15, 2008 which stated "...Where natural elevation is interrupted by a bridge, viaduct, embankment, ramp abutment tunnel or other type of artificial elevation, the height of a building will not be measured from the human-constructed elevation...". Staff finds that by adding where the measurement will not be taken, strengthens the language.

Therefore staff recommends that Commission **note that relative to the proposed text on building height that the federal interest would not be adversely affected, if the following changes to the proposal are made:**

- **Reflect in §404 that the Height Act does not provide a mechanism for relief to be granted from the Height Act provisions by the Board of Zoning Adjustment.**
- **add "...public or private street..." at the end of the sentence in §402.2.**
- **add "...the height of a building shall not be measured from the human-constructed elevation, but shall be measured..." in §402.4.**

Subtitle M

The District is developing Subtitle M, a special section in Title 11 of the District of Columbia Municipal Regulations, to address Zoning Administrator interpretations, including those of the Height Act provisions. Since staff has not had the opportunity to review Subtitle M, formally or informally, the full content of this section is unknown. Staff, however, is aware of some of the interpretations that may be included in Subtitle M because the following were included in the OP setdown report from August 12, 2010, but not included in the proposed action taken by the Zoning Commission on this case. These items include:

- Street frontage measuring point
- Streets fronting on open space
- Business and residential street definitions
- Single and multiple/connected buildings definition
- Exterior wall definition

While the Zoning Administrator has not provided staff with a copy of Subtitle M, OP has submitted additional background information on its recommendations to DCRA with respect to the areas listed above and other concerns. Staff finds this additional background information helpful, however the recommendations are only OP preferences, not what the Zoning Administrator may ultimately allow.

It is unclear to staff if the Zoning Administrator will adopt the text from the August 12, 2010 version of the height regulations for Subtitle M or if the Zoning Administrator will propose other text. Therefore staff recommends that the Commission:

- **Notes that recommendations of the Office of Planning's setdown report dated August 12, 2010 concerning the following: street frontage measuring points; streets fronting on open spaces; business and residential street definitions; single and multiple/connected buildings definition and the exterior wall definition, however were not incorporated in the Zoning Commission's proposed action. Instead they will be considered by the Department of Consumer and Regulatory Affairs (DCRA) in a new Subtitle M to the Zoning Regulations. Because Subtitle M has not been provided for NCPC review, staff is not able to determine whether the content of Subtitle M will be adverse to the federal interest.**
- **Therefore requests that DCRA provide a draft of Subtitle M for NCPC review as soon as it is available and incorporate into Subtitle M the recommendations of the Office of Planning's setdown report dated August 12, 2010 for the following: street frontage measuring points; streets fronting on open spaces; business and residential street definitions; single and multiple/connected buildings definition and the exterior wall definition, as these recommendations satisfactorily reflected NCPC staff input.**

ATTACHMENT A

Z.C. NOTICE OF PROPOSED RULEMAKING
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400 INTRODUCTION TO HEIGHT REGULATION CHAPTER

400.1 This chapter provides height regulations for the District. The provisions of this chapter apply to all zones.

400.2 The intent of regulating height is to:

- (a) Promote successful transitions between areas of differing density;
- (b) Ensure adequate light and air to neighboring properties and zones; and
- (c) Provide vertical control to accommodate appropriate density and good design.

400.3 In addition to the height limitations of the zoning regulations, all buildings are also subject to and shall conform with the limitations of the Act to Regulate Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, D.C. Official Code §§ 6-601.01 to 6-601.09 (2001) (“Height Act”). The regulatory interpretation of, and rules pertaining to, the Height Act adopted by the District Department of Consumer and Regulatory Affairs (“DCRA”) are located in Subtitle M.¹

401 RELATIONSHIP TO THE LAND USE SUBTITLES

401.1 In addition to the general regulations of this subtitle, each land use subtitle shall include a height regulations chapter containing height regulations specific to the zones within that subtitle, including tables identifying zone-specific height maximums, conditions, and exceptions.

401.2 Zone height limitations shall be codified and presented in the development standards table within each land use subtitle.

401.3 Where the maximum height permitted within a zone differs from the maximum height permitted by the Height Act, the more restrictive maximum height shall apply.

¹ DCRA has not yet proposed such rules or determined where in the DCMR they would be codified.

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401.4 *Zone* height limits shall be stated in terms of feet, and shall be evenly divisible by five (5).

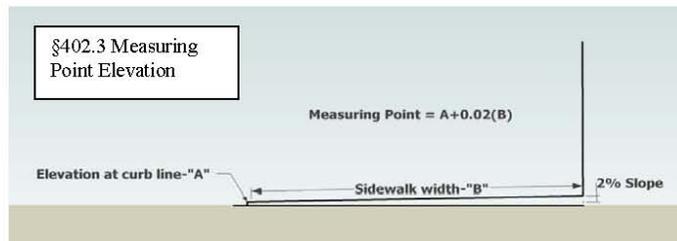
401.5 The height limits in each zone district apply to structures located in the public space included within the zone district's boundary.

402 GENERAL RULES OF MEASUREMENT

402.1 This section provides rules of measurement for the purpose of determining compliance with zone height limitations. Unless otherwise stated, the rules of this section are identical to DCRA rules for the measurement of building height under the Height Act, which appear in Subtitle M.

402.2 The height of a *building* shall be measured from its midpoint along any abutting *street frontage*. Where no *street frontage* exists, the height of a *building* shall be measured from its midpoint along its façade nearest to a public street.

402.3 The measuring point for determining height shall be the elevation at the midpoint of the adjacent curb except as provided in §402.4, plus a two percent (2%) gradient between the curb and the property line, up to a maximum height difference of twelve inches (12 in.). When an adjacent curb does not exist, the elevation for the measuring point shall be the elevation at the property line midpoint, where the street right of way meets the property line.



402.4 When the curb grade has been artificially changed by a bridge, viaduct, embankment, ramp, abutment, excavation, tunnel, or other type of artificial elevation or depression, the height of a *building* shall be measured using the first of the following four methods that is applicable to the site:

- (a) An elevation or means of determination established for a specific zone elsewhere in this title.

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- (b) An elevation for the site that was determined prior to the effective date of this section by the Zoning Administrator, or the Redevelopment Land Agency, its predecessors or successors;
 - (c) A *street frontage* of the building not affected by the artificial elevation; or
 - (d) A level determined by the Zoning Administrator to represent the logical continuation of the surrounding street grid where height is not affected by the discontinuation of the natural elevation.
- 402.5 One- and two-family dwellings, and any building setback from all lot lines by a distance at least equal to its own height, shall be measured from the ground level at the midpoint of the building face closest to the nearest public right-of-way.

402.6 *Building* height shall be measured to the top of the roof including any parapet or balustrade on exterior walls, or any other continuation of the exterior walls. For purposes of calculating the *zone*-specific height, a parapet or balustrade of up to four feet (4 ft.) may be excluded from the height measurement. This exclusion does not apply in calculating maximum height under the Height Act.

403 HEIGHT LIMIT EXCEPTIONS

403.1 The following *structures* may be built above the zone height limitations, subject to the conditions of this section and the Height Act

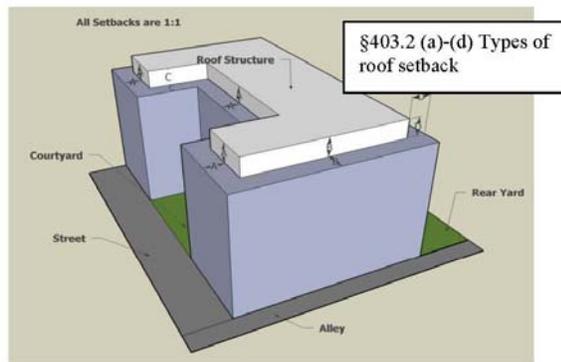
- (a) Spires;
- (b) Towers, including towers erected from the ground;
- (c) Domes, minarets, pinnacles;
- (d) Chimneys or smokestacks;
- (e) Skylights;
- (f) Antennas;
- (g) Penthouses fully or partially enclosing utilitarian features, including, but not limited to, mechanical equipment and its housing, elevators, and stairwells;
- (h) Building appurtenances dedicated to safety, including safety railings;

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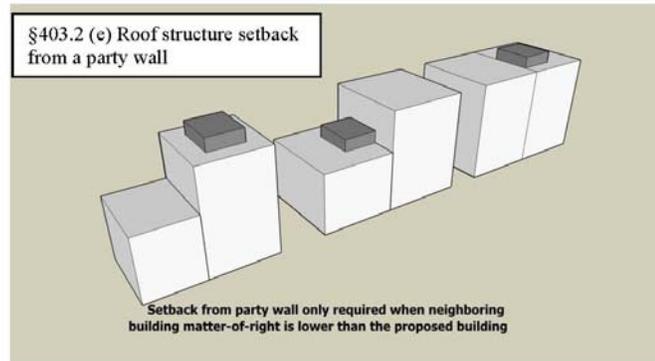
- (i) *Pergolas* and similar architectural embellishments;
- (j) Building components or appurtenances dedicated to the environmental sustainability of the building; and
- (k) Penthouses fully or partially enclosing accessory amenity features, such as communal recreation space, and structures accessory to outdoor recreation space.

403.2 A *structure* listed under § 403.1 (g) through (k) must be *setback* greater than or equal to its height above the roof on which it is situated from:

- (a) Any wall facing a public street;
- (b) Any wall facing a public alley;
- (c) Any wall facing a *courtyard* open to a public street;
- (d) Any wall that maintains a *setback* from and faces a lot line; or
- (e) Any wall that abuts a lot line and that is taller than the greater of the adjacent property's existing or matter-of-right height.



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403.3 Structures listed under § 403.1 (f) through (k) shall not rise more than twenty feet (20 ft.) above the roof.

403.4 Space enclosed by walls on a roof is limited to forty percent (40%) of the building's total footprint.

404 HEIGHT SPECIAL EXCEPTION STANDARDS

404.1 The Board may grant, by special exception, relief from §§ 403.2 (b) though (c) or 403.4 if, in addition to meeting the general requirements of [§ 3104], the applicant demonstrates that granting the relief would not:

- (a) Be incompatible with the purpose and intent of height regulations listed in §400.2; or
- (b) Result in adverse impact on:
 - (1) Existing solar or wind power generation facilities in the immediate vicinity; or
 - (2) The visual character of the surrounding neighborhood.

ATTACHMENT B**MEMORANDUM**

TO: District of Columbia Zoning Commission

FROM: Travis Parker, Zoning Review Project Manager

DATE: August 12, 2010

SUBJECT: Setdown Report for portions of ZC #08-06 – Zoning Regulations Review

- General Reorganization
- General Height Chapter
- General Use Chapter

Why Update the Regulations?

The current Zoning Ordinance of the District of Columbia was approved in 1958. The only major city in the U.S. with an older zoning ordinance is Philadelphia. Many of the problems with the current regulations are those that you would expect from a 50 year old document. Outdated terms like “telegraph office” and “tenement house” are still in our regulations, concepts like parking standards and antenna regulations are based on 1950s technology, and sustainable development had not even been envisioned. For several years, the District has seen a steady increase in the number of text and map amendments presented to the Commission. New overlay requests, zoning consistency actions, and changes to the text are increasingly common.

Many of the building form standards in the current regulations are based on standards proposed in the 1956 Lewis report. The standards proposed in that report for building and lot controls such as yards and lot width were often based on the average of existing conditions in the city. While this approach set a good target for new development, it automatically made half of the existing buildings in D.C. non-conforming to zoning. Dealing with these non-conformities has been a challenge for the past 50 years and recognizing them is an important part of updating the regulations.

The countless amendments to the ordinance over the last half century have served to keep the regulations relevant. However, piling amendment on top of amendment over the years has problems of its own. Even the simplest of text amendments have become extremely complicated as 50 years of changes have made it very difficult to cross-reference interwoven sections and prevent unintended consequences.

All of these issues have led to the recognition that an overhaul of the zoning code is needed. The Comprehensive Plan that calls for “substantial revision and reorganization, ranging from new definitions to updated development and design standards, and even new zones.” The Office of Planning has committed to undertake this effort and is leading the public review of our zoning regulations.

Zoning Review Process to Date

The Zoning Review process began in 2007 with a pair of public roundtables before the Zoning Commission and the formation of a citywide Taskforce. Since then, OP has organized eighteen

public working groups by subject area and held over 150 public meetings. Each subject area has been reviewed in consultation with a public working group that discusses issues identified in the Comprehensive Plan as well as issues arising from the existing Zoning Regulations.

Recommended changes have been forwarded to the 24-member appointed Task Force for further review and input. Finally, recommendations for most subject areas have been made available for public review including a public hearing before the Zoning Commission. After the conclusion of public review for each subject areas, OP has been working with the Office of the Attorney General to draft zoning language to reflect the proposed policy changes.

OP is in the process of drafting portions of text based on the proposed reorganization of the code and the conceptual recommendations previously approved by the Zoning Commission. Each section of text will be brought forward and heard at public hearings separately over the course of the next year. After all sections of text have been heard by the Commission, those separate text sections will be unified into a proposed set of zoning regulations that will be the subject of a final public review process.

Report Content

This report contains three major sections:

- Explanation of the general code reorganization
- Explanation of the proposed general Use chapter
- Explanation of the proposed general Height chapter

The first section describes the reasons for reorganizing the code and describes the proposed organization.

The second and third sections describe two of the proposed chapters in the new code. Draft text is attached to this report for proposed Use and Height chapters from proposed Subtitle B (General Regulations). For each chapter, the report provides an explanation of the policy and organizational changes that are proposed. These sections of this report explain the major organizational and policy changes that are based on previously approved recommendations to the Zoning Commission. For each proposed chapter the report will explain each policy change, the existing practice in the current code, why a change is necessary, and the proposed text.

In addition to the information in this report, OP has made available a summary spreadsheet of all proposed text changes, whether policy-based or simply technical corrections. This spreadsheet is organized based on the proposed text and shows the origin of all proposed text, whether new or based on existing text. It will be updated as each new chapter is released and, as additional sections are added, it will help ensure that all elements of the previous code are accounted for and that all proposed changes can be tracked. The spreadsheet can be viewed at www.dczoningupdate.org.

I. Overall Code Reorganization

Why reorganize the code?

When the Zoning Code was initially written in the 1950s it was organized around elements of height, use, and area standards that were combined to create mapped zones. As the code changed over time, additional zones were created using this method and more standards were added to the requirements. In the 1970s the first overlays provided customized additional requirements added

on top of the already existing base zone requirements in some geographic areas. At present, the code contains 126 different combinations of zones and overlays.

The development of overlays is an indication that the existing zones did not adequately address or anticipate the desire for local changes to zoning. Moreover, the location of information throughout the code is not uniform or consistent which can lead to confusion, conflicts between sections, and a lack of knowledge of all applicable regulations for infrequent users. For example, the owners of a single-family home in the R-1-B zone currently must look in six parts of the code in order to find all the applicable regulations for their property. This series of incremental additions over time has led to a lack of clear organization and hierarchy.

In addition, there have been inconsistencies with the language used to write the code. Very often, the code does not include the intent or purpose of a regulation, which makes interpretation and understanding difficult. Over time, portions of the code have been written by dozens of authors, resulting in inconsistent wording and language choices, which can make it unclear whether these differences were intentional or errors. For example, the same phrase regarding emissivity of glass frontages occurs in four locations (§1722.2; §1803.3 (e); §1804.3(e); §1903.4) in the current code, each with slightly different language. Another issue that leads to confusion in the current language is the practice of regulating through exemption. This occurs when the code states that a particular regulation applies in a certain area or situation, and then exempts certain circumstances. This leads to confusion for many users, and difficulty in understanding permissions allowed.

Goals of reorganizing

The following goals were established for organizing the new code after analyzing the current code organization, studying national best practices, consulting with other city agencies, hearing from the public at two round tables, and consulting with task force and the Zoning Commission:

- Logically organize information so it is easily found and understood by all users;
- Remove conflicts between policy objectives which do not necessarily work in conjunction with one another (e.g., building form standards and use requirements);
- Avoid regulatory contradiction;
- Avoid unnecessary repetition;
- Anticipate modern technology as a means of accessing the code;
- Create a system that accommodates change and establishes clearly understandable processes for introducing amendments to the code;
- Allow for effective implementation of plans; and
- Easily accommodate the transfer of the current zoning text into the new system.

Proposed organization

The current code is a single title (Title 11), with no subtitles. An additional level of hierarchy has been added in the proposed organization to make the code more consistent with the requirements of the Office of Documents and Administrative Issuances. The proposed code will have different subtitles for different elements of the code. Subtitles allow for clearer organization and the inclusion of more headings. See Figure 1 below.

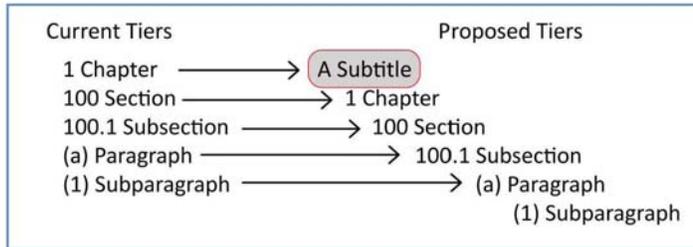


Figure 1: Proposed update to referencing hierarchy.

In the proposed organization, there will be ten subtitles, based on the functional element of the code: Administration and Procedures, General Regulations, General Processes, and seven Land Use subtitles. Subtitle A (Administration), Subtitle B (General Regulations), and Subtitle C (General Processes) will all contain general requirements of the code, and are followed by land use subtitles which will be similar to existing zone district chapters.

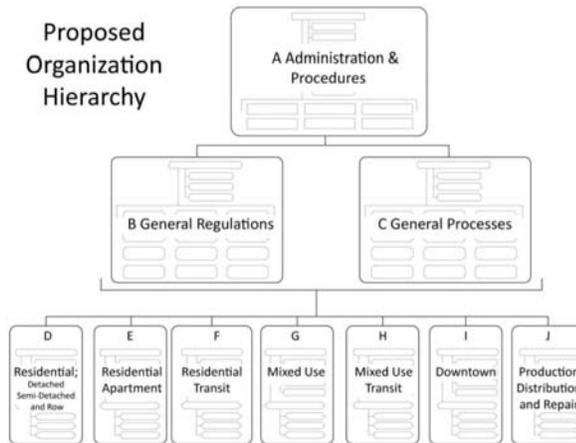


Figure 2: Conceptual diagram of the proposed Subtitle organization.

Subtitle A will contain:

- the legal authority and general applicability of zoning
- codifying rules for Title 11
- general rules of interpretation
- administration and enforcement, amendments
- rules for non-conforming structures
- Zoning Commission procedures

- Board of Zoning Adjustment procedures
- definitions

Subtitle B will contain all general zoning regulations, including:

- uses
- subdivisions
- height and building planes
- floor area ratio
- lot occupancy
- side, rear, and front setbacks
- courtyards
- plazas
- green area ratio
- landscaping and buffering
- motor vehicle parking
- bicycle parking
- loading
- street frontages
- inclusionary zoning

Subtitle C General Processes will contain processes for special exceptions, variances, campus plans, and other zoning processes.

Subtitles D through J will contain land use requirements and permissions in the various zones, and would be the approximate equivalent of what are now the chapters of zones (such as Chapter 7 for Commercial Districts). Within each subtitle, chapter and section, there will be a consistent organization. Each level of the hierarchy will follow the basic format of:

- Introduction and intent
- organization
- general rules
- core regulations
- exceptions

There are several advantages to a more consistent hierarchy. It allows for better consistency in code maintenance, which results in better understanding of where different elements of the code can be expected to be located. Better organization can also facilitate the use of technology, such as mapping applications to aid users in finding all the information they need about zoning on a certain property.

Within the land use subtitles, there will still be the ability to customize elements of zoning in lieu of a system of overlays. The standards from the existing overlays in the current code will be incorporated into new local zones. In essence, the requirements of the existing overlays and base zones will be combined so that they are all found in a single location, rather than in two disparate locations in the code. The intent of this change is to maintain ability to zone more closely to local policy objectives in a manner that is more efficient and effective.

The intended outcome of these organizational and language changes is improved administration and implementation. The changes should make the code faster to draft and amend. Standardized organization ensures information is easier to find and the process is predictable and clear. The use of standardized language should ensure the appropriate and intended application of regulations.

II. General Use Chapter

The proposed use chapter within Subtitle B is attached to this report as Appendix A. A sample of how this system would manifest in a land use subtitle is attached as Appendix B. This outline provides an overview of recommended changes to the zoning use regulations.

This report consolidates information from previous recommendations and more recent proposed text regarding the proposed use regulations. Information pertaining to uses can be found in two major organizational locations of the proposed code: Subtitle B (General Regulations) and Subtitles D through J (the land use subtitles). Subtitle B contains an explanation of the system of use regulation, use categories, and definitions of use categories. The range of land use subtitles each contain zone specific permissions, conditions, and requirements that relate to uses. The conceptual basis for these proposed changes arose from the use recommendations issued as a part of the Retail Working Group and Low-Moderate Density Residential Working Group. These recommendations were given conceptual approval by the Zoning Commission at public hearings in 2008 and 2009.

Existing Practice

The current code contains nearly 650 distinct uses. There are definitions for some but not all of these uses, and some uses have multiple definitions. Often regulations or restrictions on a particular use are included in the use's definition, mixing restrictions on a particular use with the actual definition of a use. Definitions are inconsistently located, occurring both in the general glossary as well as throughout the code text.

Lists of uses in the current code are outdated and frequently contain uses that may no longer occur, such as tenement house, tanneries, or telephone exchanges. Lists of uses have been frequently updated in order to include new or emerging uses such as technological uses, animal care, and age related care facilities and various civic uses.

The current code lists allow uses by zone, in a nested manner of use regulation. This method of regulating uses is dependent on an initial list of allowed, permitted, or not permitted uses in a lower intensity zone. As the zones increase in intensity and additional uses are allowed, the higher intensity zones must add uses to their lists in the section or chapter and refer back to

earlier, less intense, zones for the full list of permitted uses. Many uses that are nominally allowed as a “matter of right” in fact have conditions that limit their permission in some but not all zones. The lists of matter-of-right uses mix uses allowed without particular conditions with uses that have conditional permission, without distinction.

In some zones or overlays, there is both a list of permitted and prohibited uses, raising the question: are uses on neither list permitted? This system has proven to be bulky and inefficient while offering inadequate guidance to the Zoning Administrator.

Issues

The existing conditions described above can lead to many problems regulating uses. The following list contains issues that have been identified in previous working groups and public testimony that are addressed in the proposed text.

- A lack of cohesive information about permissions leads to confusion about which uses are allowed in a zone. The failure to explain the different types of use permissions leads to confusion about the processes that a user may have to go through in order to legally undertake a use.
- A lack of information about determining use type and definition leads to some uses being incorrectly classified.
- The lack of conditions, standards and criteria to classify uses, results in determinations made on an ad hoc basis.
- There is a lack of guidance about how to administer mixed or multiple uses, putting the onus on the Zoning Administrator to develop informal guidance about multiple and mixed use situations.
- Confusion between accessory uses and building types lead to inaccurate regulation.
- There are multiple conflicting permission standards for the same use can lead to confusion.
- Regulating uses by lists requires constant updating to remove outdated uses and add emerging uses. Categories of use allow for easy adaptation of a range of uses without constant changing of the overall categories of use.
- Incomplete and inconsistent definition of uses places a burden on the Zoning Administrator to determine which definition a use fits.
- Uses are regulated in zones of increasing intensity by referring to permissions of uses in lower intensity, and adding additional uses which is known as nesting. Nesting of uses leads to complications when finding or changing the allowed uses in a particular zone. Since other higher intensity zones are dependent on lower intensity zone use lists, changing the permissions of one zone can necessitate a change in permissions for many other zones. Any zones above the lowest intensity referenced zone must always refer to multiple code locations to find all the permitted uses in their zone.
- Combining uses that are permitted by condition with uses that are permitted as a matter of right in a single list mixes different types of permission together and makes the system more difficult to follow.
- Excessive repetition of information can lead to inconsistent maintenance of the text over time.

Text Changes**1. Sections 200 and 201 - Introduction to Regulation of Uses and Relationship of the General Chapter to Land Use Subtitles**

Provide background information about the proposed system of use categories in order to add clarity for users.

- Section 200 states the purpose of regulating uses.
- Section 201 contains information about use regulations is located in the Title, and the types of use permissions.
- The impetus for this text comes from Low-Moderate Density Residential Working Group Recommendation 2 (All previous recommendations about use are attached as Appendix C).

2. Section 202 – Rules for Determining Use Categories

Provide an explanation of rules on which to base determining which use category should regulate a use.

- Section 202 contains an explanation of use category definitions, examples of determining use category, characteristics on which to base the determination of use and the role of the Zoning Administrator in determining use.
- The impetus for this comes from Low-Moderate Density Residential Working Group Recommendation 2.

3. Section 203 - Applicability of Multiple Uses

Provide an explanation of regulating mixed or multiple uses in a single development.

- Section 203 contains an explanation of overlaps between use categories, how to regulate mixed or multiple uses by categories, and the applicability of accessory uses.
- The impetus for this comes from Low-Moderate Density Residential Working Group Recommendation 2.

4. Section 204 - Accessory Uses

Provide an explanation of regulating accessory uses.

- Section 204 contains both criteria for being an accessory use and additional general requirements on accessory uses.
- The impetus for this comes from Low-Moderate Density Residential Working Group Recommendation 2.

5. Section 205 - Temporary Uses

Provide an explanation of regulating uses temporarily.

- Section 205 contains both criteria for being a temporary use and additional general requirements on temporary uses.
- The impetus for this comes from Low-Moderate Density Residential Working Group Recommendation 2.

6. Section 206 - Definitions of Use Categories

Regulate existing use lists by use categories instead.

- Section 206 lists all the definitions of all the use categories. Each use category definition contains a basic definition based on activities associated with those uses, provide examples of typical uses and outlier uses, and some definitions provide examples of exceptions from that particular use category.
- This proposed text contains a paradigm shift in how uses are regulated. The current code use system presumed that a use was not allowed unless it is explicitly listed as an allowed use. The proposed use system assumes that every use can be found in one of the use categories. Every category of use is given a type of permission. The result of this should be that a user of the code no longer has to guess whether a use is permitted in a zone.
- The impetus for all of the above comes from Low-Moderate Density Residential Working Group Recommendation 2 and Retail Recommendation 2 (Consolidation of use lists into broad categories).

7. Land use Subtitles - Use Permission Tables

Produce guidance about how to find use permission and associated conditions in a table that will follow.

- Each land use subtitle will display all use permissions in a table to allow users to find all permissions in a single location, and compare permissions across different zones. A sample of a use permission table within a land use subtitle is found in Appendix B.
- All use categories will be regulated as:
 - permitted matter of right,
 - permitted by condition,
 - permitted by special exception,
 - not permitted, and
 - permitted as accessory only.
- In every zone, the use permissions tables list every use category, and every use category is given a level of use permission. This reduces ambiguity, and makes it very quick to find whether or not a use is permitted.
- Where additional conditions on the permission exist, the table provides a reference to the section of text with the applicable conditions.
- Conditions on Permitted uses, Special Exception use conditions, and Accessory use conditions are referenced in the permission table, and the text of the conditions follow the table.
- Providing lists of conditions on permitted uses, special exception use conditions, and accessory use conditions allows the conditions that are the same across several zones to be listed once and referenced in the table, rather than repeating the information in text multiple times. Excessive repetition of information can lead to inconsistent maintenance of the text over time.
- All conditions will be based on existing conditions on use but where possible the language will be standardized and made as enforceable as possible, rather than “feel good statements.” For example, a condition might be noise “not to exceed 85 decibels,” rather than noise that is “not objectionable.”

- The use section of each land use subtitle contains lists of conditions, organized by use category. Where there are different types of conditions in different zones, there may be several lists of conditions for the same use category.
- General special exception processes and conditions will not be found in land use subtitles, but rather in Subtitle C (General Processes). These general processes and conditions for special exceptions will essentially transfer the existing rules in § 3104.

III. General Height Chapter

The proposed Height chapter within Subtitle B is attached to this report as Appendix D. This outline provides an overview of recommended changes to the Title 11 zoning regulations on height. These policy and organization changes pertain to only general height regulations. The height limits of individual zones as well as rules applying only to individual zones will be located in relevant land use subtitles.

General Background and Recommendations on Height

This document consolidates information from previous recommendations and more recent proposed text regarding the proposed height regulations. Information pertaining to height can be found in two major organizational locations of the code, Subtitle B (General Regulations) and Subtitles D-J (the land use subtitles). Subtitle B contains an explanation of how height is regulated, how it is measured, and the types of exceptions and relief available. The basis for these proposed changes arose from the height recommendations that were issued as a part of the Height Working Group and reviewed by the Zoning Commission at a public hearing in 2008.

Height Act

The largest issue in drafting the height regulations has been the relationship of zoning to the Height Act. The Height Act sets the height parameters within which the District's zoning regulations are permitted operate, but the Act itself is not part of the zoning regulations. The original recommendation to the Commission was to include Height Act regulations within a height chapter in order to include all building height limits in one location. Working with the taskforce, OP has gone through several drafts of the height chapter based around three different variations:

1. Height chapter contains new street-based zoning height regulations that correspond to but do not directly reference the Height Act.
2. Height chapter directly contains Height Act language and interpretations in plain language. Height Act portions would be part of the chapter text, but would not be officially part of the zoning regulations.
3. Height chapter would not contain any Height Act language, but only refer to the Act by reference. Height Act regulations and interpretations would be attached to the Zoning Ordinance as an Appendix.

All three versions depend on the adoption of plain language interpretations on Height Act provisions by the Department of Consumer and Regulatory Affairs. OP is currently working with DCRA to have this completed prior to final approval of zoning text.

The first variation has been submitted with this report. The second variation, while perhaps cleaner in directly importing DCRA's interpretation of Height Act provisions into the regulations, is potentially more troublesome in that some sections of Title 11 will not officially be zoning regulations. The third variation is the most akin to the current code and maintains the most separation between Height Act and zoning; the two would be in the same volume, but not located together for easy reference.

Zoning Focus

After several drafts and much review by the Zoning Review Taskforce, the attached proposed height chapter clarifies how height is measured and calculated for zoning purposes. It is very common that municipal zoning regulations identify how height is calculated similar to the way regulations identify how building setbacks, courts, and yards are measured.

Currently the rules for measuring building height are included in Section 199 under definitions. The new general chapter expands and updates the "definition" for measuring height and provides rules of measurement for all building types - single family detached residence, accessory buildings, high-rise commercial building, etc.; it establishes a maximum zoning height limit based on street width that would be read in combination with the existing zone district maximums, and the most restrictive would continue to apply.

Documenting how to measure height through zoning is not only a legitimate zoning practice, it is nearly the exclusive tool used by cities throughout the country. All eight of the best practice cities studied by OP had zoning codes describing all rules related to height, including height measurement for all building types, rules of interpretation for height measurement, and all height maximums applicable in the city.

While some on the Taskforce have argued that this clarification simply creates a third height control and does not prevent the need to consult the Height Act, OP concludes that to not include it does not achieve the transparency and predictability goals of the regulation review.

1. Section 400& 401 - Introduction and Relation to Land Use Subtitles

a. Existing Practice

- The existing code does not provide the intent of height regulations, unified guidance for finding and using height regulations, or information on how to measure height,

b. Issues

- Height regulations are currently spread throughout the existing code and there are over two dozen sections dedicated to cross-referencing different height provisions.
- There is a lack of guidance for how height regulations are located and used in the code.

c. Text Change

Provide background information about how height regulations will be codified and used.

- The introduction section contains statements of the intent of the height regulations.

- Section 401 (Relationship to Land Use Subtitles) contains guidance on how height regulations are located and used in land use subtitles.
- Section 401 is an organizational change designed to ease use of the code.

2. *Section 402 - Rules of Measurement*

a. Existing Practice

- The existing code provides incomplete guidance on how height is to be measured.
- Rules of Measurements are listed as a definition in Section 199 but differentiate the rules based on the potential height of a building which is established in a zone district.

b. Issues

- Height regulations are currently spread throughout the existing code and there are over two dozen sections dedicated to cross-referencing different height provisions.
- There is a lack of guidance for how height regulations are located and used in the code.

c. Text Change

Provide clear guidance for how zoning height is to be measured.

- Rules include when a building with connections is considered a single building and the location of top and bottom measuring points.
- These changes are based on recommendations from the Height working group and largely reflect existing practice.

3. *Section 403 - Height Limit Exceptions*

a. Existing Practice

- The existing code provides incomplete and vague guidance on what structures are allowed on top of the roof above the zoning height limit.
- A list in section 411 is provided loosely based on Height Act limits

b. Issues

- The existing list of exceptions is not clear and leaves too much to interpretation.

c. Text Change

Provide clear guidance for the type of structures allowed above height limits and the rules for those structures.

- Section 403 contains a clear list of the type of roof structures allowed.
- The section contains setback, height, and area limits for roof structures.
- The language of this section reflects recommendations from the Height working group.

4. *Section 404 - Height Special Exception Standards*

a. Existing Practice

- Section 411.11 provides special exception relief for roof structure setback requirements.

b. Text Change

- Section 404 contains a list of sections that may be waived by special exception as well as the criteria for special exception review.

Appendix D: Draft Height Chapter

CHAPTER 4 HEIGHT

400 INTRODUCTION TO HEIGHT REGULATION CHAPTER

400.1 This chapter provides height regulations for the District.

400.2 The intent of regulating height is to:

- (a) Promote successful transitions between areas of differing density;
- (b) Ensure adequate light and air to neighboring properties and zones; and
- (c) Provide vertical control to accommodate appropriate density and good design.

400.3 This chapter identifies general limitations, rules of measurement, and exceptions for height. The regulations in this chapter shall apply to all land use subtitles.

400.4 In addition to the height limitations of the zoning regulations described in this chapter, all buildings are also subject to the height limitations of the Height Act, D.C. Official Code 6-601.08. Height Act language adopted by the Department of Consumer and Regulatory Affairs matches the general height limitations of this chapter and is attached as Appendix A.

401 RELATIONSHIP TO THE LAND USE SUBTITLES

401.1 In addition to the general regulations of this subtitle, each land use subtitle shall include a height regulations chapter containing height regulations specific to the zones within that subtitle, including tables identifying zone-specific height maximums, conditions, and exceptions.

401.2 Zone height limitations shall be codified and presented in the development standards table within each land use subtitle.

401.3 Where the maximum height permitted within a zone differs from the maximum height permitted by the street-based limitations, the more restrictive maximum height will apply.

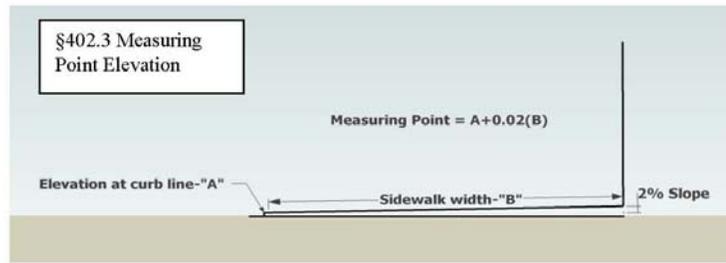
401.4 *Zone* height limits shall be stated in terms of feet, and shall be evenly divisible by five (5).

401.5 Street-based limits and the height limits in each zone district apply to structures located in the public space included within the zone district's boundary.

Appendix D: Draft Height Chapter

402 GENERAL RULES OF MEASUREMENT

- 402.1 This section provides rules of measurement applicable to both the street-based and zone height limitations.
- 402.2 The height of a *building* shall be measured from its midpoint along any abutting *street frontage*. Where no *street frontage* exists, the height of a *building* shall be measured from its midpoint along its façade nearest to a public street.
- 402.3 The measuring point for determining height shall be the elevation at the midpoint of the adjacent curb, plus a two percent (2%) gradient between the curb and the property line, up to a maximum height difference of twelve inches (12 in.) except as provided in §102.4. When an adjacent curb does not exist, the elevation for the measuring point shall be the elevation at the property line midpoint, where the street right of way meets the property line.



- 402.4 When the curb grade has been artificially changed by a bridge, viaduct, embankment, ramp, abutment, excavation, tunnel, or other type of artificial elevation, the height of a *building* shall be measured from either:
- A *street frontage* not affected by the artificial elevation;
 - A level determined by the Zoning Administrator to represent the logical continuation of the surrounding street grid where height is not affected by the discontinuation of the natural elevation;
 - An elevation previously determined by the Zoning Administrator; or
 - An elevation or means of determination established for a specific zone elsewhere in this title.
- 402.5 One-family dwellings and any building setback from all lot lines by a distance at least equal to its own height shall be measured from ground level at the midpoint of the building face closest to the nearest public right-of-way.
- 402.6 *Building* height shall be measured to the top of the roof including any parapet or balustrade on exterior walls, or any other continuation of the exterior walls. For

Appendix D: Draft Height Chapter

purposes of calculating the *zone*-specific height, a parapet or balustrade of up to four feet (4 ft.) may be excluded from the height measurement. This exclusion does not apply in calculating maximum height for the street-based height limitation.

402.7 Structures that are separated from the ground up by common division walls or contain multiple sections separated horizontally, such as wings or additions, are separate buildings for the purposes of determining height, unless such structures are connected. At least one connection must be:

- (a) Fully above grade,
- (b) Completely enclosed;
- (c) Heated and artificially lit; and
- (d) Either:
 - (1) Common space shared by users of all portions of the building, such as lobby or recreation room, or
 - (2) Space that is designed and used to provide free and unrestricted passage between separate portions of the building, such as an unrestricted doorway or walkway.

403 STREET-BASED HEIGHT LIMITS FOR RESIDENTIAL BLOCKS

403.1 A residential block is any *blockface* that:

- (a) Contains a lot, or portion thereof with a [neighborhood residential] *zone* designation; or
- (b) Is entirely located within a [apartment residential] *zone*.

403.2 The street-based height limit on residential blocks abutting a street with a right-of-way width of seventy feet (70 ft.) or more shall be the right-of-way width minus ten feet (10 ft.), to a maximum of ninety feet (90 ft.).

403.3 The street-based height limit on residential blocks abutting a street with a right-of-way width of less than seventy feet (70 ft.) shall be equal to the width of the right-of-way, up to a maximum of sixty feet (60 ft.).

404 STREET-BASED HEIGHT LIMITS FOR BUSINESS BLOCKS

404.1 A business block is any *blockface* that does not meet the definition of a residence block in § 403.1.

404.2 The street-based height limit on business blocks shall be the right-of-way width plus twenty feet (20 ft.), to a maximum of one hundred thirty feet (130 ft.) except as provided in § 104.3

Appendix D: Draft Height Chapter

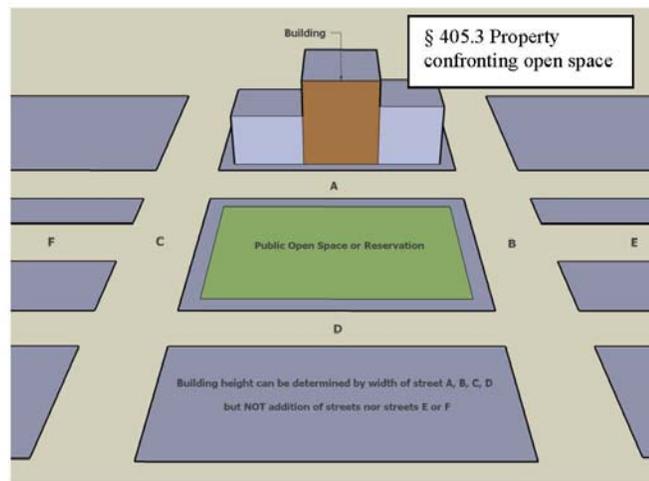
404.3 The street-based height limit for a *building* with frontage/building face on the north side of Pennsylvania Avenue N.W. between 1st and 15th Streets N.W. shall be one hundred -sixty feet (160 ft.).

405 RULES OF INTERPRETATION FOR STREET-BASED HEIGHT LIMITS

405.1 The abutting street with the widest right-of-way shall be used to determine the street-based height limit for a *building*. This need not be the same as the *street frontage* used to measure per § 402.2.

405.2 When the abutting street used to determine the street-based height limit for a *building* varies in width, the maximum height may be determined by using the widest portion of the street along the *street frontage* of the *building*.

405.3 When an open space or reservation is directly across the abutting street that would otherwise be used to determine the general height limit for a *building*, the street-based height limit shall be determined by using the widest portion of any street directly abutting the open space or reservation. The open space or reservation itself shall not be included in the right-of-way width, nor shall the width of two rights-of-way divided by an open space or reservation be combined for height determination purposes.



406 HEIGHT LIMIT EXCEPTIONS

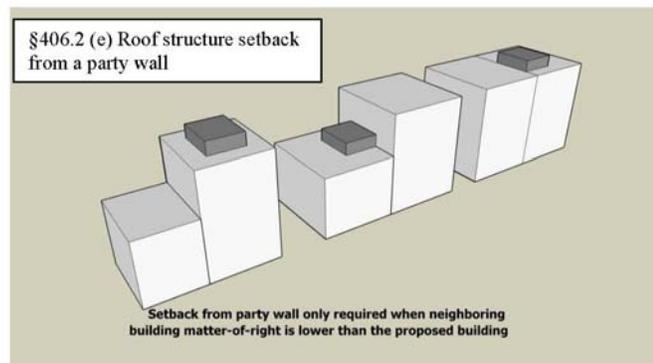
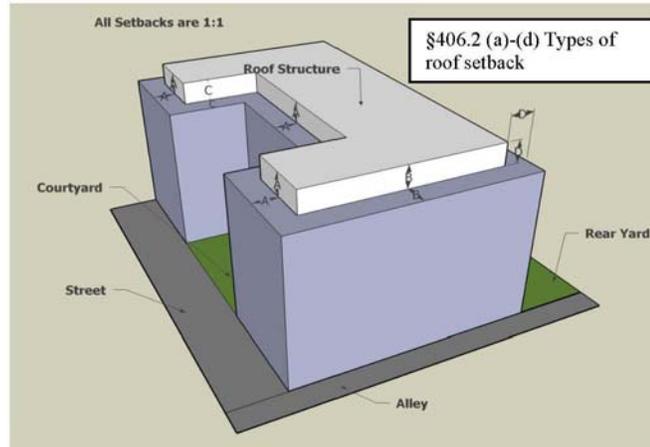
406.1 The following *structures* may be built above the street-based or zone height limitations, subject to the conditions of this section:

- (a) Spires;

Appendix D: Draft Height Chapter

- (b) Towers, including towers erected from the ground;
 - (c) Domes, minarets, pinnacles, pergolas and similar architectural embellishments;
 - (d) Chimneys or smokestacks;
 - (e) Skylights;
 - (f) Penthouses over utilitarian features, including, but not limited to, mechanical equipment and its housing, elevators, and stairwells;
 - (g) Building appurtenances dedicated to safety, including safety railings;
 - (h) Building components or appurtenances dedicated to the environmental sustainability of the building;
 - (i) Penthouses over accessory amenity features, such as communal enclosed recreation space, and structures accessory to outdoor recreation space; and
 - (j) Antennas.
- 406.2 A *structure* listed under § 403.1 (f) through (j) must be *setback* greater than or equal to its height above the roof on which it is situated from:
- (a) Any wall facing a public street;
 - (b) Any wall facing a public alley;
 - (c) Any wall facing a *courtyard* open to a public street;
 - (d) Any wall that maintains a *setback* from and faces a lot line; or
 - (e) Any wall that abuts a lot line and that is taller than the greater of the adjacent property's existing or matter-of-right height.

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- 406.3 Structures listed under § 403.1 (f) through (j) shall not rise more than twenty feet (20 ft.) above the roof.
- 406.4 Space enclosed by walls on a roof is limited to forty percent (40%) of the building's total footprint.
- 407 HEIGHT SPECIAL EXCEPTION STANDARDS**
- 407.1 The Board may grant, by special exception, relief from §§ 406.2 (b) through (e) or 406.4 if, in addition to meeting the general requirements of [§ 3104], the applicant demonstrates that granting the relief would not:
- (a) Be incompatible with the purpose and intent of height regulations listed in § 400.2; or

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- (b) Result in adverse impact on:
 - (1) Existing solar or wind power generation facilities in the immediate vicinity; or
 - (2) The visual character of the surrounding neighborhood.

ATTACHMENT C



401 8th Street, NW North Lobby, Suite 500 Washington, DC 20004 Tel 202.482.7200 Fax 202.482.7272 www.ncpc.gov

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Mayor
District of Columbia
The Honorable Adrian M. Fenty

Chairman
Council of the District of Columbia
The Honorable Vincent C. Gray

Executive Director
Marcel C. Acosta

**IN REPLY REFER TO:
NCPC File No. ZC 08-06**

September 14, 2010

**Chairman Anthony Hood
Zoning Commission of the District of Columbia
441 4th Street NW, Suite 220
Washington, DC 20001**

Re: ZC 08-06, Proposed Building Height Regulations

Dear Chairman Hood:

The staff of the National Capital Planning Commission has reviewed the proposed zoning amendments related to building height that are the subject of the Zoning Commission's hearing scheduled for September 20, 2010. We believe these regulations have improved since the Office of Planning's September 2008 memorandum to the Zoning Commission. However, we are bringing to your attention two areas that remain in conflict with the federal 1910 Height of Buildings Act (the Height Act).

The first area in conflict with the Height Act is in relation to rooftop structures. Section 406.1 of the proposed zoning regulations state, "the following structures may be built above the street-based or zone height limitations, subject to the conditions of the section:

- a) Spires;
- b) Towers, including towers erected from the ground;
- c) Domes, minarets, pinnacles, pergolas and similar architectural embellishments;
- d) Chimneys or smokestacks;
- e) Skylights;
- f) Penthouses over utilitarian features, including, but not limited to, mechanical equipment and its housing, elevators, and stairwells;
- g) Building appurtenances dedicated to safety, including safety railings;
- h) Building components or appurtenances dedicated to the environmental sustainability of the building;
- i) Penthouses over accessory amenity features, such as communal enclosed recreation space, and structures accessory to outdoor recreation space; and
- j) Antennas.

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The 1910 Height of Buildings Act is clear in its prohibition of occupied spaces above the limit of height. Section 5 of the Height Act states: “*that such structures when above such limit of height shall be fireproof and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed.*” Although the proposed regulations rightfully require that all rooftop structures be appropriately setback from all building walls, it appears 406.1(i) would allow for occupied spaces to be constructed above the limit of height permitted under the Height Act. We therefore recommend the Zoning Commission remove this section. Alternatively, a clarification can be made which states that when a building is at the maximum height allowable under the Act, these occupied structures are not permitted.

The second area of concern is Section 404 which allows for relief from the rooftop regulations through Special Exception. The Act provides specific requirements for rooftop structures and the manner in which they should be set back once a building is at the maximum height permitted. However, the law does not allow for relief to be granted from these requirements by the Board of Zoning Adjustment. For consistency with the requirements of the Height Act, the Zoning Regulations should reflect this.

In addition to the two areas that conflict with federal law, there are areas that can be strengthened and we offer the following suggestions. Proposed Section 402.4 states, “when the curb grade has been artificially changed by a bridge, viaduct, embankment, ramp, abutment, excavation, tunnel, or other type of artificial elevation, the height of a building shall be measured from either:

- a) A street frontage not affected by the artificial elevation;
- b) A level determined by the Zoning Administrator to represent the logical continuation of the surrounding street grid where height is not affected by the discontinuation of the natural elevation;
- c) An elevation previously determined by the Zoning Administrator; or
- d) An elevation or means of determination established for a specific zone elsewhere in this title.”

NCPC staff supports the Office of Planning’s intended goal of preventing measurements taken from artificial elevations and believes this is necessary to maintain the iconic horizontal skyline that is so unique to Washington, DC. We believe this language could be made clearer by inserting language previously discussed by DCOP in its September 15, 2008 memo stating “*Where natural elevation is interrupted by a bridge, viaduct, embankment, ramp, abutment, tunnel or other type of artificial elevation, the height of a building will not be measured from the human-constructed elevation...*”. Clarifying where the measurement may not be taken strengthens the language. Further, it appears that Subsection 402.4(c) is intended to prevent the creation of non-conforming structures that do not adhere to the new regulations. However, the regulations should be clear and provide more detail as to when, and in what form, the applicable determination has been made by the Zoning Administrator. It is NCPC staff’s recommendation that 402.4(c) include language such as: “An elevation determined by the Zoning

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Administrator prior to the adoption of these regulations” or language to the same effect. Finally, we have some concern with 402.4(d) as it relates to interpretations in other zones. It is unclear as to the intent of this provision. Allowing differing interpretations in varying zones could lead to inconsistent applications of determining a building’s measuring point and result in confusion as to how a building’s height is measured.

Proposed Section 402.2 states that the height of a building shall be measured from its midpoint along any abutting street frontage. Where no street frontage exists, the height of a building shall be measured from its midpoint along its façade nearest to a public street. NCPC staff generally supports this provision as being consistent with the Height Act but it is unclear how the regulation relates to private streets. The overall goal of the Height Act is to maintain the relationship between buildings and the streets on which they reside. As such, the Zoning Commission should consider including private streets along with public streets as a point of measurement or by defining street frontage as any public or private street.

Finally, Section 400.3 states that “in addition to the height limitations of the zoning regulations described in this chapter, all buildings are also subject to the height limitations of the Height Act, D.C. Official Code 6-601.08. Height Act language adopted by the Department of Consumer and Regulatory Affairs (DCRA) matches the general height limitations of this chapter and is attached as Subtitle M.” As of the writing of this letter, Subtitle M has not been issued from DCRA and it is unclear how this would relate to the proposed zoning regulations. It is imperative that the DCRA language in Subtitle M be consistent with the proposed zoning regulations to avoid inconsistent Height Act interpretations and confusion among users of the zoning code.

The staff at NCPC appreciates the challenge of developing modern zoning regulations that balance the interests of development and preservation. We also appreciate DCOP’s effort to coordinate all of its zoning amendments with NCPC during its public process. The staff of NCPC looks forward to providing input on other areas of the zoning text changes as they come before the Zoning Commission for public hearing. If you have any questions related to these comments, please direct them to Senior Urban Planner David Zaidain at 202-482-7230.

Sincerely,



Marcel C. Acosta
Executive Director

cc: Harriet Tregoning, District of Columbia Office of Planning
Jennifer Steingasser, District of Columbia Office of Planning
Travis Parker, District of Columbia Office of Planning
Lori Monroe, District of Columbia Office of Attorney General