

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



NOTICE OF FINAL RULEMAKING
Z.C. CASE NO. 19-21¹
(Text Amendment – Subtitles D, E, U, & X of Title 11 DCMR)
(Roof Top or Upper Floor Elements Regulations)
September 14, 2020

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2018 Repl.), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of its amendment of the following sections of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified), with the specific text at end of this notice:

- Subtitle D: Residential House (R) Zones - §§ 208, 5207
- Subtitle E: Residential Flats (RF) Zones - §§ 201, 206, 5203, 5207
- Subtitle U: Use Permissions - §§ 301, 320
- Subtitle X: General Procedures - § 1001.3

Setdown

On October 11, 2019, the Office of Planning (OP) filed a petition to the Commission proposing the text amendment to expand the application of solar energy system protections to the R zones, clarify standards, and eliminate duplicative provisions that apply to the protection of roof top solar energy systems in certain zones.

At its October 21, 2019, regular public meeting, the Commission voted to grant OP's request to set down the proposed text amendment for a public hearing, with flexibility to work with the Office of the Attorney General (OAG).

On December 3, 2019, OP submitted a request to modify the proposed text amendment to exclude properties subject to review by the Historic Preservation Review Board (HPRB) or the U.S. Commission on Fine Arts (CFA) from regulation by the text amendment.

At its December 9, 2019, regular public meeting, the Commission accepted OP's proposed modification.

¹ For Office of Zoning tracking only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 19-21.

Public Hearing

OP filed a February 3, 2020, hearing report recommending approval of the proposed text amendment attached to the hearing report, which included revisions based on:

- OP's review of the issues raised by Advisory Neighborhood Commission (ANC) 6C in Z.C. Case No. 19-14 that applied to this proposed text amendment; and
- OP's consultation with the Department of Consumer and Regulatory Affairs (DCRA), the Department of Energy and Environment (DOEE), and OAG.

ANC 6C Report

ANC 6C filed a February 11, 2020, report expressing support for the proposed text amendment. In addition to proposing several corrections and minor edits, ANC 6C's support was provided with the following concerns:

- Objecting to the standards of relief from the five percent (5%) maximum interference with existing operative solar systems on abutting property based on the standard special exception criteria, and instead proposing that such relief only be available as a variance; (Subtitle E § 5207.)
- Objecting to the proposed removal of the prohibition on additions blocking or impeding an existing operative chimney or vent on an abutting property although acknowledging that this prohibition copies the one that included in the Construction Codes; (Subtitle E §§ 206 & 5203.) and
- Proposing alternate language for exemptions from the requirement for special exception relief to significantly alter or replace an existing protected roof top element. (Subtitle E § 206.2)

At its February 13, 2010, public hearing, the Commission heard testimony from OP in support of the proposed text amendment and from the public and ANC 6C. The public comments raised the following concerns:

- The proposed deletion of the 10-foot limitation on rear wall extensions; (Subtitle U §§ 301.2 and 320.2.)
- The proposed exemption for properties subject to historic preservation review from the limitations on altering roof top architectural elements;
- The consolidation of provisions governing roof top architectural elements into the specific subtitles authorizing special exception relief from all roof top architectural element provisions; and
- The proposed deletion of the prohibition on additions impeding chimneys or vents.

ANC 6C testified in support of the proposed text amendment, noting that the current regulations already authorize special exception relief from all roof top architectural elements, that the proposed amendments to Subtitle E § 5203 in particular were needed to address current ambiguities. However, ANC 6C noted that the proposed relief standards for solar shading limitations did not address the impact of the shading, that the duplicative provisions prohibiting the impeding of chimneys and vents should not be deleted, and that the language governing replacement in kind of architectural elements should be refined. The ANC 6C representative also noted, in his individual capacity, that the provisions in Subtitle U §§ 301.2 and 320.2 governing the expansion of existing

apartment houses are inconsistent with regards to the requirement of 900 square feet per dwelling unit.

OP First Supplemental Report

OP filed a March 19, 2020, supplemental report that responded to the comments raised at the public hearing and in submissions to the record and clarified the intent and purpose of the proposed text amendment. The OP supplemental report emphasized that the current Subtitle U provisions that limit rear wall extensions to 10-feet in conversions, and the alteration or removal of original roof top architectural elements, are proposed to be deleted because they are duplicative of the same provisions in Subtitle E which remain in effect. The OP supplemental report responded to ANC 6C's concerns as follows:

- Relief from the solar shading limitations - proposing revisions to Subtitle D § 208.2 and E § 206.4 requiring that an applicant for special exception relief demonstrate “good cause” and that the shading impacts had been mitigated to the extent possible; and
- Proposed removal of current prohibitions on impeding chimneys or vents – continuing to support this proposed change with detailed citation of the relevant provisions of the Construction Codes that the zoning provision duplicates and sometimes contradicts.

OP accepted several of the corrections.

At its April 27, 2020, virtual public meeting, the Commission expressed concern that the “good cause” and “mitigation to the extent possible” standard for relief from the solar shading limitation proposed in OP's supplemental report was too vague and asked OP to refine further in consultation with OAG.

OP Second Supplemental Report

OP filed a May 4, 2020, second supplemental report that responded to the Commission's concerns with the “good cause” standard for relief from the solar shading limitations and proposed revisions to Subtitle D § 208.2 and Subtitle E § 206.4.²

Proposed Action

At the close of its May 11, 2020, public hearing, the Commission voted to take **PROPOSED ACTION** and to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (May 11, 2020): **5-0-0** (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**)

National Capital Planning Commission (“NCPC”)

The Commission referred the proposed amendment to the NCPC on May 12, 2020, for the thirty-(30) day review period required by § 492 of the District Charter.

² Pursuant to the Commission's grant of flexibility requested by OP to work with OAG on the final language, this language was moved to Subtitle D § 5207.1 and Subtitle E § 5207.2 without any substantive change for organizational consistency and clarity because specific special exception criteria are located in Chapter 52 of each Subtitle.

NCPC did not file a response to the proposed text amendment within this thirty- (30) day period.

Notice of Proposed Rulemaking

The Commission published the proposed amendment as a Notice of Proposed Rulemaking (NOPR) in the *D.C. Register* (67 DCR 7909, *et seq.*) on June 26, 2020.

The Commission received thirty-two (32) comments to the NOPR in the thirty (30)-day period required by Section 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206, as amended; D.C. Official Code § 2-505 (2013 Repl.)) – twenty-eight (28) comments in opposition to part or all of the proposed text amendment with proposed revisions; two (2) in support, including ANC 6C; and OP’s third supplemental report.

Comments in Opposition

Impact on Solar Systems on Abutting Properties

Numerous comments welcomed the extension to the R zones of limitations on additions impacting solar energy systems on properties abutting but sought increased protection for these solar systems, including:

- Opposition to any special exception relief from limits on shading impacts so that variance relief would be required;
- Opposition to any loosening of the current special exception requirements;
- A proposal for a maximum cap on amount of shading impact permitted by special exception;
- A proposal for a sliding scale of permissible shading based on the number of stories proposed for the addition;
- A request that OP research clearer and more effective special exception criteria to evaluate shading impacts;
- A request to separate special exception criteria for relief from shading impacts from limits on altering or removing original rooftop architectural features;
- A request to limit impact of the proposed text amendment, if adopted, to solar energy systems accepted by DCRA after the effective date of the text amendment; and
- Opposition to removing specific special exception criteria of Subtitle U § 320.2(i)-(k) for conversions of residential buildings to apartment houses.

Protection of Original Rooftop Architectural Elements

Multiple comments supported the proposed text amendment’s authorization to replace an original rooftop architectural element provided the replacement is visually indistinguishable from the original element but opposed any special exception relief from the limit on altering or removing original architectural elements so that variance relief would be required.

The Committee of 100 on the Federal City (C100) submitted a comment that criticized the rulemaking process in this case, asserting that:

- The insufficient public notice was provided because the proposed text amendment proposed a major substantive change by allegedly removing a “blanket” prohibition on alteration of original rooftop architectural features;

- The NOPR gave too much attention and consideration to the ANC 6C Report vis-à-vis other opposition comments, asserting that the “great weight” to issues and concerns of an ANC should not outweigh the comments of other residents and organizations in a text amendment that would apply citywide; and
- The NOPR should be withdrawn and revised for further public comment.

Comments in Support

One resident submitted a comment in support to remove limits on owner’s ability to construct on roofs and to streamline regulations limiting housing production and renovation.

ANC 6C Supplemental Letter

ANC 6C submitted a July 27, 2020, letter reaffirming its support for the proposed text amendment. The ANC appreciated the efforts of OP and the Commission to clarify the applicable specific special exception criteria in response so the ANC’s concerns (shared by other comments), including adopting some of the ANC’s proposed revisions to the proposed text amendment. The ANC noted its preference to only allow relief from shading impacts by a variance, instead of the current special exception as clarified by the proposed text amendment but understood the Commission’s decision to adopt the special exception instead of variance relief.

OP Third Supplemental Report

OP filed a September 4, 2020, report that responded to the various public comments, as follows:

- Opposed expanding the scope of the text amendment to address broader concerns about conversions in the RF zone and noted that OP is working on a text amendment to address rear wall extensions.

Impact on Solar Systems on Abutting Properties

- Opposed eliminating current special exception relief from limits on shading impacts because the text amendment proposed to provide clearer criteria for current special exception relief;
- Opposed limiting special exception relief to a maximum shading impact or to a sliding scale based on number of stories added because of the many variables in cases, including the different impacts of shading on different types of solar panels and shading from trees, that are best addressed by allowing the Board of Zoning Adjustment (Board) to consider specific circumstances of individual cases based on applicant providing illustrations of shading impacts;
- Noted that the text amendment will only apply to construction authorized by permits issued after the effective date of the text amendment;
- Agreed that would monitor relief requests from the solar shading provisions and provide an update to Councilmember Nadeau after a year;

Protection of Original Rooftop Architectural Elements

- Opposed eliminating current special exception relief to remove or alter original architectural rooftop elements because intent was to exempt properties subject to historic preservation review and approval; and
- Noted that the text amendment retains the current provisions in Subtitle E § 5207 that apply to all RF buildings, including conversions, and deletes the same redundant provisions in Subtitle U § 320 that apply only to conversions, which will be subject to general special

exception criteria of Subtitle X § 901 and not the specific special exception criteria applicable to development standards of Subtitle E § 5207.

Final Action

The Commission considered all of the comments in response to the NOPR and notes that it fully complied with the APA by providing notice of the proposed text amendment prior to a hearing and NOPR, as well as by delaying final deliberations to fully consider the comments submitted to the record. As detailed below, District law requires the Commission to give “great weight” to both the recommendations of OP and to the “issues and concerns” of all properly filed ANC reports – but that does not mean that the Commission ignores other public comments or blindly follows either OP or an ANC. The Commission in this case requested OP to revise the initial proposed text, with the revised text responding to the request for more detailed and refined special exception criteria for relief from the solar shading limits; and accepted only some of the suggestions proposed by ANC 6C in its reports.

“Great Weight” to the Recommendations of OP

The Commission must give “great weight” to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

The Commission finds OP’s recommendation that the Commission adopt the proposed text amendment persuasive and concurs in that judgment. The Commission acknowledges the comments in opposition, or proposing revisions to the proposed text amendment, but upon careful consideration finds persuasive OP’s specific recommendations that:

- The scope of this text amendment remains focused on solar shading impacts and alterations or removal of original rooftop architectural elements and that rear wall extensions and conversions should be addressed in future text amendments;
- Relief from limits on shading impacts on solar energy systems on abutting properties should remain by special exception, although with clearer specific special exception criteria that address shading impacts;
- Special exception relief from the shading impact limits should not be constrained by a maximum cap or by a fixed sliding scale based on number of stories proposed to be added, as proposed by various public comments, because the multiple variables, including different performances of solar panel types, tree shading, and the specific circumstances of individual properties, are better evaluated by the Board on a case-by-case basis considering the specific circumstances of each application;
- The proposed specific special exception criteria for solar shading impacts, which are now distinct from those for rooftop architectural element relief and which OP improved in response to the Commission’s concerns, did not require additional research by OP, which would monitor and report on how relief was reviewed under these criteria;
- No special vesting for the solar shading provisions is needed because any shading impact over five percent (5%) will protect owners of existing solar energy system by requiring an applicant seeking to build within its otherwise matter-of-right building envelope to

demonstrate to the Board's satisfaction that it has made its best efforts to mitigate and minimize the shading impact as is reasonably practical, based on illustrations showing the impact of various possible layouts of the proposed addition, and so balance the District's need for housing with its sustainability goals;

- The limit on altering or removing original rooftop architectural elements should extend the protection of these elements to the R zones, with an exemption for properties that are otherwise subject to historic preservation review, and should remain subject to the current special exception relief; and
- The specific special exception criteria of Subtitle U § 320.2(i)-(k) are appropriate for relief from the original rooftop architectural features limits and so should be moved to the new Subtitle E § 5207.1(a)-(c), while conversions under Subtitle U § 320.2 should remain subject to the general special exception criteria of Subtitle X § 901.

“Great Weight” to the Written Report of the ANC

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016); *see Kopff v. Alcoholic Beverage Control Board*, 381 A.2d 1372, 1380-1381 (D.C. 1977) (“great weight” to ANC issues and concerns applies to both legislative and adjudicative cases)).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

ANC 6C was the only ANC to respond to the proposed text amendment. The Commission welcomes ANC 6C's support for the proposed text amendment, as reaffirmed by ANC 6C's supplemental letter, and finds persuasive ANC 6C's concern that the standards for relief from the solar shading limitations address the shading impact, which the Commission believes are addressed by OP's proposed revisions. However, the Commission is not persuaded by ANC 6C's concerns to retain the current prohibition on impeding chimneys and vents, because this prohibition is duplicative, as the ANC agreed, based on the OP Supplemental Report's detailed citations to the various Construction Code provisions that overlap and potentially conflict with the zoning provisions. The Commission is also not persuaded by ANC 6C's concern that the provision governing replacement in kind of architectural roof top elements needed to be further refined as the Commission believes that the proposed language clearly defines the parameters of this provision. The Commission appreciates ANC 6C's supplemental letter reaffirming its support of the proposed text amendment as revised by OP, which the Commission believes demonstrates that the issues raised by ANC 6C have been addressed, even if the Commission did not adopt all of ANC 6C's proposed revisions.

At the close of its September 14, 2020, virtual public hearing, the Commission voted to take **FINAL ACTION** and to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (September 14, 2020): 5-0-0 (Michael G. Turnbull, Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Peter G. May to **APPROVE**)

The complete record in the case, including the OP and ANC reports and transcript of the public hearings, can be viewed online at the Office of Zoning website, through the Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

The following amendments to the text of the Zoning Regulations are hereby adopted.

I. Amendments to Subtitle D, RESIDENTIAL HOUSE (R) ZONES

A new § 208 is added to Chapter 2, GENERAL DEVELOPMENT STANDARDS (R), of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, to read as follows:

208 ROOF TOP OR UPPER FLOOR ELEMENTS

208.1 Any new semi-detached or row building, or an alteration or addition to an existing semi-detached or row building, including a roof structure or penthouse (the “proposed construction”), at the time of application, shall not be designed or constructed such that it will significantly interfere with the operation of a solar energy system on an abutting property, subject to the following:

- (a) “Time of application” shall mean the earlier of either:
 - (1) the Department of Consumer and Regulatory Affairs officially accepts as complete the application for the building permit for the proposed construction; or
 - (2) the Office of Zoning officially accepts as complete an application for zoning relief for the proposed construction;
- (b) “Solar energy system” shall mean a solar energy system of at least 2kW in size that, at the time of application, is either:
 - (1) Legally permitted, installed, and operating; or
 - (2) Authorized by an issued permit; provided that the permitted solar energy system is operative within six (6) months after the issuance of the solar energy system permit not including grid interconnection

delays caused solely by a utility company connecting to the solar energy system;

- (c) “Significantly interfere” shall mean that the proposed construction increases the shading incident on the solar energy system by more than five percent (5%) as determined by a comparative solar shading study acceptable to the Zoning Administrator; and
- (d) All applications for the proposed construction, whether for a building permit or for zoning relief, must include one of the following:
 - (1) An affidavit by the applicant stating that there is no solar energy system on an abutting property;
 - (2) A comparative solar shading study which meets the minimum standard established by the Zoning Administrator for the purpose of determining the increased annual incident solar shading by percent; or
 - (3) A written agreement executed by the owner of the impacted solar energy system accepting the interference with the solar energy system.

208.2 Relief from the requirements of Subtitle D § 208.1 may be approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, and subject to the conditions of Subtitle D § 5207.

A new § 5207 is added to Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, to read as follows:

5207 SPECIAL EXCEPTION CRITERIA ROOF TOP OR UPPER FLOOR ELEMENTS

5207.1 The Board of Zoning Adjustment may grant relief from the requirements of Subtitle D § 208.1 as a special exception under Subtitle X, Chapter 9, and subject to the following conditions:

- (a) The application demonstrates the applicant has made its best efforts to minimize and mitigate the potential shading impact to solar energy systems on abutting properties to the extent reasonably practical, including possible design alternatives to the application’s proposed construction and potential solar access easements;

- (b) The application shall include illustrations of the shading impact on solar energy systems on abutting properties
 - (1) as proposed by the application,
 - (2) as allowed as a matter of right, and
 - (3) of possible design alternatives considered by the applicant; and
- (c) The Board may require special treatment and impose reasonable conditions as it deems necessary to mitigate shading impacts identified in the consideration of the application.

II. Amendments to Subtitle E, RESIDENTIAL FLATS (RF) ZONES

Subsection 201.7 of § 201, DENSITY – LOT DIMENSIONS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLATS (RF) ZONES, is deleted in its entirety.

The title of § 206, ROOF TOP OR UPPER FLOOR ADDITIONS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLATS (RF) ZONES, is amended as follows:

206 ROOF TOP OR UPPER FLOOR ELEMENTS

Section 206, ROOF TOP OR UPPER FLOOR ELEMENTS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLATS (RF) ZONES, is amended as follows:

- 206.1 Except for properties subject to review by the Historic Preservation Review Board or their designee, or the U.S. Commission of Fine Arts, a roof top architectural element original to a principal building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size; provided that:
- (a) For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure's rear lot line; and
 - (b) For all other lots, the roof top architectural elements shall include identified roof top architectural elements on all sides of the structure.

206.2 For the purposes of Subtitle E § 206.1, ordinary repairs to a roof top architectural element shall be permitted. Ordinary repairs may include the replacement of an original roof top architectural element when the Zoning Administrator has determined, based on photographs provided by the owner and other evidence acceptable to the Zoning Administrator, that:

- (a) the original roof top architectural element is substantially eroded or damaged due to no overt actions of the owner or affiliates, and
- (b) the replacement will be visually indistinguishable from the original in style, dimensions, profile, and appearance when viewed from a public right of way.

206.3 Any new building, or alteration or addition to an existing building, including a roof structure or penthouse (the “proposed construction”) at the time of application, shall not significantly interfere with the operation of a solar energy system on an abutting property, subject to the following:

- (a) “Time of application” shall mean the earlier of either:
 - (1) the Department of Consumer and Regulatory Affairs officially accepts as complete the application for the building permit for the proposed construction; or
 - (2) the Office of Zoning officially accepts as complete an application for zoning relief for the proposed construction;
- (b) “Solar energy system” shall mean a solar energy system of at least 2kW in size that, at the time of application, is either:
 - (1) Legally permitted, installed, and operating; or
 - (2) Authorized by an issued permit; provided that the permitted solar energy system is operative within six (6) months after the issuance of the solar energy system permit not including grid interconnection delays caused solely by a utility company connecting to the solar energy system;
- (c) “Significantly interfere” shall mean that the proposed construction increases the shading incident on the solar energy system by more than five percent (5%), as determined by a comparative solar shading study acceptable to the Zoning Administrator; and

- (d) All applications for the proposed construction, whether for a building permit or for zoning relief, must include one of the following:
 - (1) An affidavit by the applicant stating that there is no solar energy system on an abutting property;
 - (2) A comparative solar shading study that meets the minimum standard established by the Zoning Administrator for the purpose of determining the increased annual incident solar shading by percent; or
 - (3) A written agreement executed by the owner of the impacted solar energy system accepting the interference with the solar energy system.

206.4 Relief from the requirements of Subtitle E §§ 206.1 and 206.2 may be approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, and subject to the conditions of Subtitle E § 5207.

The title of § 5203, BUILDING HEIGHT, of Chapter 52, RELIEF FROM DEVELOPMENT STANDARDS, of Subtitle E, RESIDENTIAL FLATS (RF) ZONES, is amended to read as follows:

5203 SPECIAL EXCEPTION CRITERIA BUILDING HEIGHT

Section 5203, SPECIAL EXCEPTION CRITERIA BUILDING HEIGHT, of Chapter 52, RELIEF FROM DEVELOPMENT STANDARDS, of Subtitle E, RESIDENTIAL FLATS (RF) ZONES, is amended as follows:

- 5203.1 The Board of Zoning Adjustment may grant as a special exception under Subtitle X, Chapter 9, and subject to the conditions of this subsection, a maximum building height of up to forty feet (40 ft.) for a principal residential building and any additions thereto located on a non-alley lot subject to the following conditions:
- (a) The proposed construction shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:
 - (1) The light and air available to neighboring properties shall not be unduly affected;
 - (2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and

- (3) The proposed construction, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street or alley;
- (b) In demonstrating compliance with paragraph (a), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed construction's height to adjacent buildings and views from public ways; and
- (c) The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block.

A new § 5207 is added to Chapter 52, RELIEF FROM DEVELOPMENT STANDARDS, of Subtitle E, RESIDENTIAL FLATS (RF) ZONES, to read as follows:

5207 SPECIAL EXCEPTION CRITERIA ROOF TOP OR UPPER FLOOR ELEMENTS

5207.1 The Board of Zoning Adjustment may grant relief from the requirements of Subtitle E § 206.1 as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:

- (a) The proposed construction shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:
 - (1) The light and air available to neighboring properties shall not be unduly affected;
 - (2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and
 - (3) The proposed construction, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the street or alley frontage;
- (b) In demonstrating compliance with paragraph (a), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed construction to adjacent buildings and views from public ways; and

- (c) The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block.

5207.2 The Board of Zoning Adjustment may grant relief from the requirements of Subtitle E § 206.3 as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:

- (a) The application demonstrates the applicant has made its best efforts to minimize and mitigate the potential shading impact to solar energy systems on abutting properties to the extent reasonably practical, including possible design alternatives to the application’s proposed construction and potential solar access easements;
- (b) The application shall include illustrations of the shading impact on solar energy systems on abutting properties:
 - (1) as proposed by the application;
 - (2) as allowed as a matter of right; and
 - (3) of possible design alternatives considered by the applicant; and
- (c) The Board may require special treatment and impose reasonable conditions as it deems necessary to mitigate shading impacts identified in the consideration of the application.

III. Amendments to Subtitle U, USE PERMISSIONS

Section 301, MATTER-OF-RIGHT USES (RF), of Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, of Subtitle U, USE PERMISSIONS, is amended by revising §§ 301.2 and adding new §§ 301.3, 301.4, and 301.5, to read as follows:

301.1 The following uses shall be permitted as a matter of right ...³

301.2 The conversion of an existing non-residential building or structure to an apartment house shall be permitted as a matter of right in an RF-1, RF-2, or RF-3 zone subject to the following conditions:

³ The use of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

- (a) The building or structure to be converted is in existence on the property at the time the building permit application for the conversion is accepted as complete by the Department of Consumer and Regulatory Affairs; and
- (b) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per each existing and new dwelling unit.

301.3 An apartment house in an RF-1, RF-2, or RF-3 zone converted from a non-residential building prior to June 26, 2015, shall be considered a conforming use and structure, but shall not be permitted to expand, either structurally or through increasing the number of units, except as provided by Subtitle U § 320.4.

301.4 An apartment house in an RF-1, RF-2, or RF-3 zone that was converted from a residential building either prior to June 26, 2015, or pursuant to Subtitle A §§ 301.9, 301.10, or 301.11, shall be considered a conforming use and structure, but shall not be permitted to expand either structurally or through increasing the number of units, except as provided by Subtitle U § 320.2.

301.5 An apartment house in an RF-1, RF-2, or RF-3 zone that has not been:

- (a) Converted prior to September 6, 2016;
- (b) Converted pursuant to Subtitle U §§ 301.2 or 320.2; or
- (c) Expanded pursuant to Subtitle U §§ 301.4, 320.2, or 320.4;

may renovate or expand so as to increase the number of dwelling units provided that the apartment house has a minimum of nine hundred square feet (900 sq. ft.) of lot area for each existing and new dwelling unit.

Section 320 SPECIAL EXCEPTION USES (RF), of Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, of Subtitle U, USE PERMISSIONS, is amended by revising §§ 320.2 and 320.3 and by adding a new § 320.4, to read as follows:

320.1 The uses in this section shall be permitted as a special exception ...

320.2 The conversion of an existing residential building existing on the lot prior to May 12, 1958, to an apartment house, or the renovation or expansion of an existing apartment house deemed a conforming use under Subtitle U § 301.4 that increases the number of units, shall be permitted as a special exception in an RF zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the following conditions:

- (a) The building to be converted or expanded is in existence on the property at the time the Department of Consumer and Regulatory Affairs accepts as complete the building permit application for the conversion or expansion;
- (b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6; and
- (c) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per each existing and new dwelling unit.

320.3 The conversion of a non-residential building or other structure to an apartment house and not compliant with Subtitle U § 301.2(b), shall be permitted as a special exception in an RF zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the following provisions:

- (a) Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:
 - (1) The light and air available to neighboring properties shall not be unduly affected;
 - (2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and
 - (3) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street or alley;
- (b) In demonstrating compliance with Subtitle U § 320.3(a), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways; and
- (c) The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block.

320.4 An existing apartment house deemed a conforming use under Subtitle U § 301.3 shall be permitted to renovate or expand so as to increase the number of dwelling

units as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the provisions of Subtitle U §§ 320.3(a), (b), and (c).

IV. Amendments to Subtitle X, GENERAL PROCEDURES

Subsection 1001.3 of § 1001, VARIANCE TYPES, of Chapter 10, VARIANCES, of Subtitle X, GENERAL PROCEDURES, is amended by revising paragraph (f), to read as follows:

- 1001.3 Examples of area variances are requests to deviate from:
- (a) Requirements that affect the size ...
 - (b) Minimum parking or loading requirements ...
 - (c) Limitations on the extent to which the gross floor area ...
 - (d) Limitations on the alteration or conversion of certain structures on alley lots ...
 - (e) The prohibition against certain enlargements ...
 - (f) Preconditions to the establishment of a special exception use including, but not limited to, the minimum nine hundred square feet (900 sq. ft.) of land area per dwelling unit required by Subtitle U § 320.2(b) applicable to the conversion of a building to an apartment house as permitted by Subtitle U § 320.2; provided, that the variance would not cause the proposed use to meet the definition of a more intense use.

In accordance with the provisions of Subtitle Z § 604.9, this Notice of Final Rulemaking shall become final and effective upon publication in the D.C. Register; that is, on November 13, 2020.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING