

**MEMORANDUM**

TO: District of Columbia Zoning Commission

FROM: Travis Parker, Zoning Review Project Manager *TP*

DATE: August 12, 2010

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

- General Reorganization
- General Height Chapter
- General Use Chapter

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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 Outdated terms like “telegraph office” and “tenement house” are still in our regulations, concepts like parking standards and antenna regulations are based on 1950s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 eight

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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

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.

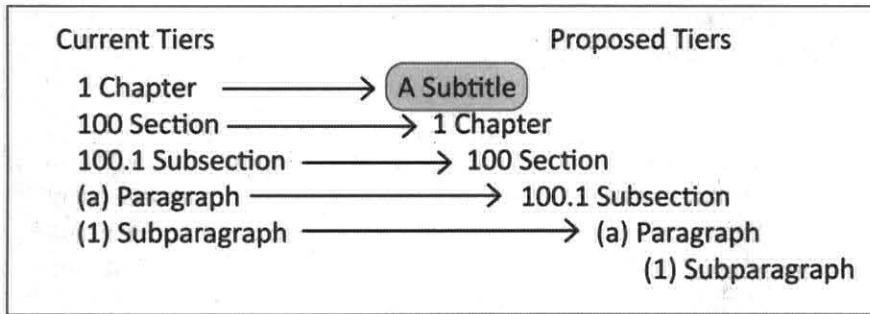


Figure 1: Proposed update to referencing hierarchy.

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.

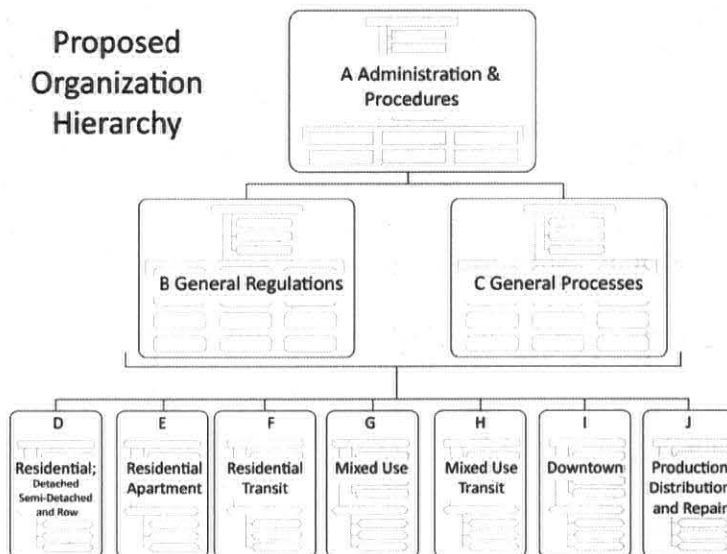


Figure 2: Conceptual diagram of the proposed Subtitle organization.

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

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.

- 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 A: Draft Use Chapter

CHAPTER 2 USE CATEGORY REGULATIONS

200 INTRODUCTION TO USE REGULATION

200.1 This chapter provides general *use* regulations that apply regardless of *zone*.

200.2 The purpose of *use* regulations is to:

- (a) Ensure an efficient mix, concentration, and separation of uses;
- (b) Provide for a systemic method of permission; and
- (c) Effectively balance the competing demands for land.

200.3 The purpose of this chapter is to:

- (a) Organize and regulate uses into categories based on common functional, activity, or physical characteristics;
- (b) Establish rules for assigning and codifying use categories;
- (c) Provide clear guidance to property owners and administrative officials;
- (d) Establish a use system that remains current and is easily updated and minimizes excessive amendments; and
- (e) Establish regulations for the operation of temporary uses.

201 RELATIONSHIP TO LAND USE SUBTITLES

201.1 In addition to the general regulations of this subtitle each land use subtitle shall include a *use categories* regulations chapter containing *use categories* regulations specific to that subtitle, including tables identifying *use* requirements, permissions, conditions, and exceptions specific to each zone.

201.2 Use permissions shall be codified and presented in the appropriate *use category* permission table as follows:

- (a) Each cell in the *use category* permission table shall contain a letter representing the *use category* permission within a specific zone:
 - (1) “P” indicates *uses* that are permitted by-right in the applicable *zone*;
 - (2) “N” indicates *uses* that are prohibited in the applicable *zone*;
 - (3) “C” indicates *uses* that are permitted in the applicable *zone* only when the use complies with listed conditions;

- (4) “S” indicates *uses* that are permitted only upon Board of Zoning Adjustment approval of a special exception; and
- (5) “A” indicates *uses* that are permitted only as an accessory to a permitted principle use.
- (b) Conditions and special exception criteria shall be indicated within the table by a code reference number within the relevant cell for the use; and
- (c) Corresponding lists of conditions and special exception criteria shall be located in the *permitted use by condition*, *special exception use*, or *accessory use* conditions sections.

202 RULES FOR DETERMINING USE CATEGORIES

- 202.1 *Use categories* describe activities being performed on-site. They are groups of uses that have similar activities, functions, physical characteristics, impacts, or operational behaviors.
- 202.2 All individual *uses* shall be included in at least one *use category*, and may be included in multiple *use categories*. On-site and off-site activities may cause a use to be included in more than one category.
- 202.3 *Uses* may have one or more *accessory uses*. Buildings or lots with more than one *principle use* are addressed in § B-203. *Accessory uses* are addressed in § B-204.
- 202.4 Descriptions of *use categories* shall include a definition, examples, and potential exceptions:
 - (a) Definitions are composed of a series of characteristics that include similar activities, functions, physical characteristics, impacts, or operational behaviors;
 - (b) Examples and exceptions are provided to illustrate typical uses within a category, give clarity to the definitions, and assist in determination of an appropriate categorization of a use; they are not intended to be comprehensive lists of *uses*;
 - (c) The following applies to examples:
 - (1) They may include *uses* which may be particularly difficult to classify;
 - (2) They are included based on their operational or functional similarities, or common meanings of terms, they are not included based on business name alone; and
 - (3) Where a term is not defined by the regulations, it will have the meanings given in *Webster’s Unabridged Dictionary*; and

- (d) Definitions should be applied as the sum of their components, using the content of definitions, examples, and exceptions to determine the use category, rather than an individual subsection alone.

202.5 The Zoning Administrator shall determine a use to be within the *use category*, or categories, whose definition is most consistent with the activities, functions, physical characteristics, and impacts of the use.

202.6 The following items may be considered by the Zoning Administrator when determining what *use category* a use is within, and whether the activities constitute a *use*:

- (a) The description of the activities in relationship to the definition of each *use category*;
- (b) Similarities in function to the examples given in the definition of each *use category*, based on;
 - (1) The relative amount of site or floor space and equipment devoted to the activity;
 - (2) Relative amounts of sales from each activity;
 - (3) The customer type for each activity;
 - (4) The relative number of employees in each activity;
 - (5) Hours of operation;
 - (6) Building and site arrangement;
 - (7) Number and type of vehicles used;
 - (8) The relative number of vehicle trips generated by the activity; or
 - (9) How the *use* advertises itself; and
- (c) Exceptions which are explicitly excluded from the definition of the use category.

- 202.7 Uses shall be considered to remain within the same *use category* as long as the activities, functions, physical characteristics, and impacts of the occupancy remain consistent with the *use category's* definition. If a use changes the activities, functions, physical characteristics, and impacts of the occupancy to a degree that is inconsistent with the *use category's* definition, the property owner shall apply for a new certificate of occupancy that either changes or adds to the *use categories* applicable to that occupancy.

203 APPLICABILITY OF MULTIPLE USES

- 203.1 When multiple *uses* within a building fall within different *use categories*, each *use* is classified in the applicable category and is subject to the regulations for that category.
- 203.2 If a *use* is determined to fall into multiple *use categories*, the use is subject to the regulations for all applicable use categories.
- 203.3 If there are conflicting conditions or criteria on *uses* in multiple *use categories*, the most stringent conditions must be met.

204 ACCESSORY USES

- 204.1 A use in any *use categories* can also be determined to meet the definition of an *accessory use*.
- 204.2 An *accessory use* is a use that meets the following criteria:
- (a) A use that is subordinate in area, extent, and purpose to the principal use; and
 - (b) Serves a purpose clearly incidental to and customarily associated with a principal use.
- 204.3 Any use allowed as a permitted use shall be allowed as an *accessory use*. Any use allowed as a conditional use shall be allowed as an *accessory use* subject to all conditions.
- 204.4 The following are requirements on *accessory uses*:
- (a) *Accessory uses* shall be allowed only when associated with permitted or conditionally permitted uses;
 - (b) The use shall occupy no more than fifteen percent (15%) of the gross floor area of the building in which it is located; and
 - (c) The use will meet all of the conditions of the appropriate *use category*.

205 TEMPORARY USES

205.1 A use in any *use categories* can also be determined to meet the definition of *temporary uses*.

205.2 A *temporary use* is a use that meets the following criteria:

- (a) Any *use* established for a fixed period of time with the intent that such use will expire automatically unless permission to conduct the *use* is renewed; and
- (b) Examples may typically include but are not limited to circus, or farmers' market.

205.3 The following are requirements on temporary uses:

- (a) The time period of the allowance of the *use* shall be determined by the Certificate of Occupancy; and
- (b) No permanent structures may be erected for a temporary use, although existing permanent structures may be used.

206 DEFINITIONS OF USE CATEGORIES

206.1 This section provides the definitions of *use categories* which govern the regulation of *uses* in all *zones*.

206.2 *Accommodation*

- (a) Definition: Any *use* providing customers with temporary lodging for an agreed upon term of less than thirty (30) consecutive days; any *use* where lodging is offered to the public for compensation, and is open to transient rather than permanent guests. These *uses* differ from the *Residential use category* because of the short tenure of residence;
- (b) Examples include, but are not limited to: hotels, motels, inns, or bed and breakfast establishments; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Emergency Shelter*.

206.3 *Agriculture*

- (a) Definition: Any *use* involving the on-site cultivation, or maintenance of plants, or the breeding or keeping of animals and livestock intended for personal use or eventual sale or lease off-site. Typical products of an agricultural use include produce, field crops, flowers, ornamental crops, livestock, poultry, honeybees, or other animal husbandry; and

- (b) Examples include, but are not limited to: farm, truck garden, beekeeping, greenhouse, dairy, horticultural nursery, or community garden.

206.4 *Animal Sales, Care, and Boarding*

- (a) Definition: Any *use* involving the on-site sale, medical care, or short term boarding of animals for a fee. These *uses* may include licensed veterinary practices such as medicine, surgery, or dentistry for animals, or the provision of animal services such as grooming, training, or care-taking; and
- (b) Examples include, but are not limited to: pet shop, veterinary clinic or hospital, pet grooming establishment, dog day care center, animal boarding facility, animal sales establishment, or animal shelter.

206.5 *Antennas*

- (a) Definition: Any *structure* involving conducting, transmitting, or receiving communication signals. This *use* category encompasses the portions of the *structure* responsible for signal transmission and reception, any associated towers, immediately-related support and stabilizing elements, and rotating or other directional mechanisms;
- (b) Examples include, but are not limited to: commercial broadcast antenna, terrestrial microwave dish, satellite earth station, whip, or yagi antennas; and
- (c) Exceptions: The regulation of this *use* does not include antennas constructed on, or affixed to buildings, penthouses, or other rooftop *structures*. The form and location of antenna *uses* are further regulated in § B-XXX.

206.6 *Arts Design and Creation*

- (a) Definition: Any *use* involving the on-site design and creation of visual, auditory, or performance art. This use may encompass work space for artists, artisans, or craftsman practicing fine arts or applied arts or crafts;
- (b) Examples include, but are not limited to: artist studio, photographic studio, recording studio, radio, or broadcasting studio; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Entertainment, Assembly and Performing Arts, Educational, or Sexually-based Business Establishment*.

206.7 *Basic Utilities*

- (a) Definition: Any *use* involving the commercial or governmental generation, transmission, distribution, or storage of energy, water, stormwater, or telecommunication-related information. This *use* commonly takes the form of

infrastructure services which are provided city-wide. This use may include methods and facilities for renewable energy generation;

- (b) Examples include, but are not limited to: electrical sub-station, telephone exchange, optical transmission node, electronic equipment facility, sewer plant, water treatment plant, or utility pumping station; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Antennas* or *Waste-related Services*.

206.8 *Chancery*

- (a) Definition: The principal offices of a foreign mission used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), including the site and any building on such site that is used for such purposes;
- (b) Examples include, but are not limited to: chancery or embassy; and
- (c) Exceptions: This term does not include uses which more precisely meet the definition of Residential, such as an ambassador's residence.

206.9 *Commercial Parking*

- (a) Definition: Any use involving the on-site short or long-term storage of motor vehicles, when such storage is made available to the public for a fee. *Commercial parking uses* may occur in a variety of formats on surface lots or within *structures*. *Commercial parking uses* may be operated by private commercial or public entities. Separate standards that delineate the form, size, and number of parking spaces allowed as *accessory uses* to other use categories can be found in General Subtitle § B-XXX;
- (b) Examples include, but are not limited to: public parking lot or public parking garage; and
- (c) Exceptions: This term does not include rental of private parking to a car-share company.

206.10 *Community-based Institutional Facility*

- (a) Definition: Any *use* providing monitored care to individuals who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living; been assigned to the facility; or are being detained by the government, other than as a condition of probation;
- (b) Examples include, but are not limited to: adult rehabilitation home, youth rehabilitation home, or detention or correctional facilities; and

- (c) Exceptions: This term does not include uses which more precisely meet the definition of *Emergency Shelter*.

206.11 *Daytime Care*

- (a) Definition: Any *use* involving the non-residential licensed care, supervision, counseling, or training, for a fee, of individuals who are not related by blood, adoption, or marriage to the caregiver, and who are present on the site for less than twenty-four (24) hours per day;
- (b) Examples include, but are not limited to: child care centers and programs, pre-schools, nursery schools, before-and-after school programs, or elder care centers and programs; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Health Care*, or *Parks and Recreation*. This use does not refer to home-based care given by parents, guardians, or relatives of the individuals requiring care which does not require a Certificate of Occupancy.

206.12 *Education*

- (a) Definition: Any use including education and academic institutions at the elementary, middle, junior high, or high school level that provide District or state mandated basic education or educational uses of higher learning which offer courses of general or specialized study leading to a degree. These uses may include accessory play areas, dormitories, cafeterias, recreational, or sports facilities;
- (b) Examples include, but are not limited to: private schools, public schools, charter schools, colleges, community colleges, universities, or boarding schools; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Daytime Care*.

206.13 *Emergency Shelter*

- (a) Definition: Any *use* providing thirty (30) days or less of temporary housing to indigent, needy, homeless, or transient individuals. Emergency Shelter uses may also provide ancillary services such as counseling, vocational training, or similar social and career assistance; and
- (b) Exceptions: This term does not include *uses* which more precisely meet the definition of *Residential*.

206.14 *Entertainment, Assembly, and Performing Arts*

- (a) Definition: Any *use* involving facilities designed primarily for public assembly that enables patrons to experience visual, auditory, performance, or literary art; attend sporting events or conferences; or to participate in active leisure activities. These uses may be characterized by activities and structures that draw large numbers of people to specific events or shows;
- (b) Examples include, but are not limited to: bowling alley, miniature golf, movie theatre, concert hall, or stadium; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Arts Design and Creation*, *Sexually-based Business Establishment*, or *Parks and Recreation*.

206.15 *Firearm Sales*

- (a) Definition: Any *use* engaged in the on-site sale, lease, or purchase of firearms or ammunition. A firearm is defined as a gun, pistol, or any other weapon capable of firing a projectile and using an explosive charge as a propellant. This *use category* has been established to identify those *uses* which offer sales of goods whose impacts are incompatible with the intended health, safety, and welfare of other *uses* of land; and
- (b) Examples include, but are not limited to: gun store, ammunition sales, pawn shop carrying guns, or weaponry store.

206.16 *Food and Alcohol Services*

- (a) Definition: Any *use* involving the sale of food, alcoholic drinks, or refreshments prepared on the premises and sold to customers for immediate consumption on or off the premises;
- (b) Examples include, but are not limited to: prepared food shop, café, delicatessen, restaurant, fast food establishment, bar, nightclub, ice cream parlor, or coffee shop; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Sexually-based Business Establishment*.

206.17 *Health Care*

- (a) Definition: Any *use* involving the on-site licensed provision of medical diagnosis, treatment, or prevention of illness or disease of humans. These facilities may provide medical or surgical care to patients or offer overnight care;

- (b) Examples include, but are not limited to: dentist, doctor, optician, hospitals, clinics, or medical offices; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Community-based Institutional Facility* or *Emergency Shelter*.

206.18 *Institutional*

- (a) Definition: Any non-governmental *use* involving the public assembly of people or provision of services for social, cultural, or religious purposes. These uses may include uses of a public, nonprofit, or charitable nature generally providing local service on-site to people of a local community;
- (b) Examples include, but are not limited to: private clubs, private libraries, non-profit social service providers, or religious facilities; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Chancery, Education, Entertainment, Assembly, and Performing Arts, Local Government, Service, Office, or Parks and Recreation*.

206.19 *Local Government*

- (a) Definition: Any *use* involving services owned, managed, or provided by local government and associated with providing neighborhood-scaled services to meet the community needs of the directly adjacent areas;
- (b) Examples include, but are not limited to: public community centers, police stations, libraries, or fire stations; and
- (c) Exceptions: This term does not include large-scale government uses with a regional or larger service area or *uses* which more precisely meet the definition of *Emergency Shelter, Parks and Recreation, or Motor Vehicle-related*.

206.20 *Marine*

- (a) Definition: Any *use* in which proximity to the waterfront constitutes an integral aspect of its function; or *uses* which depend upon access to the water for their effectuality. This *use category* includes activities associated with water and marine-based travel, movement, storage, and related activities;
- (b) Examples include, but are not limited to: marina, boathouse, boat launch, dock, or pier, boat repair facility, or water facilities; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Motor Vehicle-related*.

206.21 *Motor Vehicle-related*

- (a) Definition: Any *use* engaging primarily in the on-site sale, rental, service, maintenance, or refueling of motor vehicles or their components. These *uses* include the sale, installation or repair of parts, components, accessories, or fuel for motor vehicles;
- (b) Examples include, but are not limited to: gas service station, auto repair facility, carwash, automobile sales, boat sales, or motorcycle sales; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Motor-Vehicle Parking*.

206.22 *Office*

- (a) Definition: Any *use* engaging primarily in on-site administrative, business, professional, research, or laboratory-based activities. These *uses* are characterized by activities in an office setting that focus on the provision of off-site sale of goods or on-site information-based services, usually by professionals. *Office uses* may have infrequent contact with the public, and when applicable, perform service activities off-site;
- (b) Examples include, but are not limited to: real estate agent, attorney, accountant, advertising agency, stockbroker, or laboratory; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Health Care; Education; Local Government; Retail; Production, Distribution, and Repair; or Chancery*.

206.23 *Parks and Recreation*

- (a) Definition: Any *use* involving publicly-accessible passive or active open space or recreation spaces available to the public. This term includes any area, structure, or facility under the jurisdiction of a public agency that is used for community recreation activities. These uses may consist of public plazas or mostly-vegetated landscaping, outdoor recreation, community gardens. *Parks and Recreation* facilities may include accessory kitchen facilities.
- (b) Examples include, but are not limited to:
 - (1) Activities such as picnicking, boating, fishing, bicycling, tennis, or swimming;
 - (2) Classes and services relating to health and wellness, culture, arts and crafts, or education;

- (3) *Structures* or other recreation facilities such as auditorium, multi-purpose room, gymnasium, meeting space, open space, playground, playing court, golf course, playing field, or swimming pool; and
- (c) Exceptions: This term does not include uses which more precisely meet the definition of *Entertainment, Assembly, and Performing Arts, Arts Design and Creation, Health Care, or Service*.

206.24 *Production, Distribution, and Repair*

- (a) Definition: Any *use* involving the on-site production, distribution, repair, assembly, processing, or sale of materials, products, technology, or goods intended for a wholesale, manufacturing, or industrial application. *Uses* may include firms that provide centralized services or logistics for retail uses. These *uses* typically have little contact with the public;
- (b) Examples include, but are not limited to: material salvage, hauling or terminal yard, chemical storage or distribution, smelting, outdoor material storage, acetylene gas manufacturing, fertilizer manufacturing, rock quarrying, warehouse, ground shipping facility, manufacturing facility, or wholesale sales; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Retail, Service or Waste-related Services*.

206.25 *Residential*

- (a) Definition: Any *use* offering habitation to one or more *households* on a continuous basis of at least thirty (30) days. The continuous basis is established by tenancy with a minimum term of a month or property ownership. This use category also includes residential facilities which provide housing and supervision for persons with disabilities. This may include twenty four (24) hour on-site supervision, lodging, and meals for individuals who require supervision within a structured environment, which may include specialized services such as medical, psychiatric, nursing, behavioral, vocational, social, or recreational services;
- (b) Examples include, but are not limited to: single dwelling unit, multiple dwelling units, community residence facilities, retirement homes, substance abusers' home, youth residential care home, assisted living facility, floating homes, and other residential uses; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Accommodation, Education, or Community-based Institutional Facility*.

206.26 *Retail*

- (a) Definition: Any use engaging primarily in the on-site buying or selling of goods, wares, or merchandise directly to the consumer or persons without a resale license. These *uses* include goods, commonly sold to individuals in small quantities for their direct use. These *uses* may have moderate to frequent contact with the public;
- (b) Examples include, but are not limited to: antique shop, drugstore, card shop, grocery store, jewelry store, fabric store, or bicycle shop; and
- (c) Exceptions: This term does not include wholesale goods commonly sold to businesses in bulk or *uses* which more precisely meet the definition of *Arts Design and Creation, Automobile-related, Firearm Sales, Marine, Production, Distribution, and Repair, or Sexually-based Business*.

206.27 *Service*

- (a) Definition: Any *use* engaging primarily in the on-site buying, selling, or renting of work performed for a fee by a person or machine that does not in itself result in a tangible commodity. These uses may provide personal services or provide small-scale product repair or services for consumer and business goods on-site. These *uses* may have moderate to frequent contact with the public. *Service uses* which provide services off-site are typically *Office uses*;
- (b) Examples include, but are not limited to: bank, appliance repair, travel agency, fitness center, yoga studio, tailor shop, or parcel delivery service; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Food and Alcohol Services, Entertainment, Assembly, and Performing Arts, Local Government, Parks and Recreation, Animal Care and Boarding, Motor Vehicle-related, Accommodation, Daytime Care Facility, Health Care, Sexually-based Business Establishment, Arts Design and Creation, Marine, or Waste-related Services*.

206.28 *Sexually-based Business Establishment*

- (a) Definition: Any *use* involving goods, services, or live performances that are characterized by their emphasis on matter depicting, describing, or related to specified sexual activities. Specified sexual activities include, but are not limited to: acts of sexual stimulation or arousal including human genitals in a discernibly turgid state, human masturbation, sexual intercourse, sodomy, or bestiality; or any erotic touching of human genitals, pubic region, buttock, or breast. This *use category* has been established to identify those *uses* which offer services or goods whose sexually-oriented impacts are incompatible with the intended health, safety, and welfare of other uses of land; and

- (b) Examples include, but are not limited to: sexually-themed bookstores, newsstands, theatres, and amusement enterprises.

206.29 *Transportation Infrastructure*

- (a) Definition: Any *use* involving structures or conveyances designed for individual mode or multimodal public transportation purposes. These uses may include land or facilities for the movement or storage of transportation system components;
- (b) Examples include, but are not limited to: streetcar or bus passenger depots, transportation rights of way, Metro stations, mass transit stations, bus stops, bicycle paths, bus transfer stations, accessways, airports, bicycle facilities, multi-use paths, pedestrian connections, or streets; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Basic Utilities*.

206.30 *Waste-related Services*

- (a) Definition: Any *use* involving the collection, transportation, recycling, or elimination of trash or other refuse. Disposal or processing may be on-site or transfer to another location. This term may include the collection of sanitary wastes or *uses* that produce goods or energy from wastes; and
- (b) Examples include, but are not limited to: solid waste handling facility or non-intensive recycling facility,

Appendix B: Sample Use Chart and Conditions

100 USE PERMISSIONS IN SAMPLE ZONES

100.1 The table below identifies citations to regulations applicable to Sample-1, Sample-2 and Sample-3 zones:

Use Category	S-1	S-2	S-3
<i>Accommodation</i>	P	P	P
<i>Agriculture</i>	P	P	P
<i>Animal Sales, Care, and Boarding</i>	P	C (101.2)	C (101.2)
<i>Antennas</i>	P	P	P
<i>Arts Design and Creation</i>	C (101.3)	P	P
<i>Basic Utilities</i>	C (101.4)	C (101.4)	C (101.4)
<i>Chancery</i>	P	P	P
<i>Commercial Parking</i>	P	P	P
<i>Community-based Institutional Facility</i>	S (102.4)	S (102.5)	P
<i>Daytime Care</i>	P	P	P
<i>Education</i>	P	P	P
<i>Emergency Shelter</i>	C (101.5)	C (101.5)	P
<i>Entertainment, Assembly, and Performing Arts</i>	S (102.7)	P	P
<i>Firearm Sales</i>	N	C (101.6)	C (101.6)
<i>Food and Alcohol Services</i>	C (101.7)	C (101.7)	P
<i>Health Care</i>	P	P	P
<i>Institutional</i>	P	P	P
<i>Local Government</i>	P	P	P
<i>Marine</i>	N	N	N
<i>Motor Vehicle Parking</i>	P	P	P
<i>Motor Vehicle-related</i>	A (103.2)	S (102.9)	C (101.8)
<i>Office</i>	P	P	P
<i>Parks and Recreation</i>	P	P	P
<i>Production, Distribution, and Repair</i>	N	C (101.9)	C (101.9)
<i>Residential</i>	P	P	P
<i>Retail</i>	P	P	P
<i>Service</i>	C (101.10)	P	P
<i>Sexually-oriented Business</i>	N	N	N
<i>Transportation and Infrastructure</i>	P	P	P
<i>Waste-related Services</i>	N	N	N

P = Permitted Use Category

N = Not Permitted Use Category

C = Permitted only by Condition

S = Permitted only by Special Exception

A = Permitted only as Accessory

Appendix B: Sample Use Chart and Conditions

101 CONDITIONS FOR USES PERMITTED BY CONDITION IN MIXED-USE ZONES

101.1 This section identifies lists of conditions that shall be applied to *use categories* permitted by condition.

101.2 *Animal Care and Boarding uses* are permitted as a matter of right upon compliance with the following list of conditions:

- (a) No more than fifty percent (50%) of the gross floor area shall be used for the boarding of animals;
- (b) The lot upon which the use operates shall contain no external yards;
- (c) The lot upon which the use operates shall not abut a *Residential use* or *Residential zone*; and
- (d) *Animal Care and Boarding uses* not meeting conditions may be permitted by special exception. Refer to §102.2 for special exception criteria.

101.3 *Arts Design and Creation uses* are permitted as a matter of right upon compliance with the following list of conditions:

- (a) All operations and storage of materials shall occur inside the *building*.

101.4 *Basic Utilities uses* are permitted as a matter of right upon compliance with the following list of conditions:

- (a) The use shall not occupy the ground floor of a building;
- (b) There shall be no advertisement of the use on the structure; and
- (c) *Basic Utilities uses* not meeting conditions may be permitted by special exception. Refer to §102.7 for special exception criteria.

101.5 *Emergency Shelter uses* are permitted as a matter of right upon compliance with the list of conditions in this subsection.

- (a) The use shall house a maximum of four (4) persons.
- (b) *Emergency Shelter uses* not meeting conditions may be permitted by special exception. Refer to §102.6 for special exception criteria.

Appendix B: Sample Use Chart and Conditions

- 101.6 *Firearm Sales uses* are permitted as a matter of right upon compliance with the following list of conditions:
- (a) No portion of the establishment shall be located within three hundred feet (300 ft.) of a *Residential zone*, *Institutional use*, or *Parks and Open Space use*.
- 101.7 *Food and Alcohol Services uses* are permitted as a matter of right upon compliance with the following list of conditions:
- (a) If food is cooked on-site, the following conditions must be met:
 - (1) No drive-through is permitted;
 - (2) All food consumed on-site shall be served on reusable, non-disposable tableware;
 - (3) At least 75 percent (75%) of food sold must be consumed on-site; and
 - (4) Customers shall not pay until after food is consumed, except carry-out items.
 - (b) Refuse shall be housed in a three (3) sided brick enclosure with an opaque gate; and
 - (c) Must provide and maintain a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick along the length of its lot line if abutting a *Residential zone*.
 - (d) *Food and Alcohol Service uses* not meeting conditions may be permitted by special exception. Refer to §102.8 for special exception criteria.
- 101.8 *Motor Vehicle-related uses* are permitted as a matter of right upon compliance with the following list of conditions:
- (a) The use shall not be located within twenty-five feet (25 ft.) of a *Residential zone* unless separated from the *Residential zone* by a street or alley;
 - (b) The use and all its accessory facilities shall be located within a *building*;
 - (c) Signs or displays indicating the existence of the use shall not be visible from the outside; and
 - (d) If public carwashing services or facilities are provided, at least fifteen (15) queuing spaces must be provided.

Appendix B: Sample Use Chart and Conditions

101.9 *Production, Distribution, and Repair uses* are permitted as a matter of right upon compliance with the following list of conditions:

- (a) The use shall not exceed twenty-five hundred square feet (2,500 ft.²) of gross floor area.

101.10 *Service uses* are permitted as a matter of right upon compliance with the following list of conditions:

- (a) The use shall not exceed twenty-five hundred square feet (2,500 ft.²) of gross floor area.
- (b) *Service uses* not meeting conditions may be permitted by special exception. Refer to §102.10 for special exception criteria.

102 CONDITIONS FOR SPECIAL EXCEPTION USES IN SAMPLE ZONES

102.1 This section identifies lists of conditions that shall be applied to *use categories* permitted as a special exception, if approved by the Board of Zoning Adjustment subject to compliance with the regulations of Section §C-XXX.

102.2 *Animal Care and Boarding uses* shall be permitted if approved by the Board of Zoning Adjustment, subject to the following conditions in addition to the general special exception criteria of Section §C-XXX:

- (a) The use shall not abut a *Residential zone*;
- (b) The applicant shall demonstrate that any external yard or facility:
 - (1) Is fenced off for the safe confinement of the animals;
 - (2) Is located entirely on private property; and
 - (3) Is located a minimum of two hundred feet (200 ft.) from an existing *Residential use* or *Residential zone*.
- (c) All animal waste shall be kept in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly.
- (d) Odors shall be controlled by means of an air filtration system (for example, High Efficiency Particulate Air "HEPA" filtration) or an equivalently effective odor control system; and
- (e) The Board may impose additional requirements pertaining to the location of buildings or other structures; entrances and exits; buffers, barriers, and

Appendix B: Sample Use Chart and Conditions

fencing; waste storage and removal (including frequency); the species and/or number and/or breeds of animals.

- 102.3 *Basic Utilities uses* shall be permitted if approved by the Board of Zoning Adjustment, subject to the following conditions in addition to the general special exception criteria of Section §C-XXX:
- (a) The Board may establish requirements for setbacks and screening.
- 102.4 *Community-based Institutional Facility uses* shall be permitted if approved by the Board of Zoning Adjustment, subject to the following conditions in addition to the general special exception criteria of Section §C-XXX:
- (a) The use is limited to a maximum of fifteen (15) persons, not including resident supervisors or staff and their families.
- 102.5 *Community-based Institutional Facility uses* shall be permitted if approved by the Board of Zoning Adjustment, subject to the following conditions in addition to the general special exception criteria of Section §C-XXX:
- (a) The use is limited to a maximum of twenty (20) persons, not including resident supervisors or staff and their families.
- 102.6 *Emergency Shelter uses* shall be permitted if approved by the Board of Zoning Adjustment, subject to the general special exception criteria of Section §C-XXX.
- 102.7 *Entertainment and Performing Arts uses* shall be permitted if approved by the Board of Zoning Adjustment, subject to the following conditions in addition to the general special exception criteria of Section §C-XXX:
- (a) The use shall not be within twenty-five feet (25 ft.) of a *Residential zone* unless separated from the *Residential zone* by a street or alley.
- 102.8 *Food and Alcohol Services uses* shall be permitted if approved by the Board of Zoning Adjustment, subject to the following conditions in addition to the general special exception criteria of Section §C-XXX:
- (a) No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a *Residential zone* unless separated by a street or alley.
- (b) If any lot line abuts an alley containing a *Residential zone* boundary line, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line. The brick wall shall not be required in the case of a building that extends for the full width of its lot.
- (c) Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater.

Appendix B: Sample Use Chart and Conditions

- (d) The entrance to the enclosure shall include an opaque gate. The entrance shall not face a *Residential zone*.
- (e) The use shall not include a drive-through.
- (f) There shall be no customer entrance in the side or rear of a building that faces a street or alley containing a *Residential zone* boundary line.

102.9 *Motor Vehicle-related uses* shall be permitted if approved by the Board of Zoning Adjustment, subject to the following conditions in addition to the general special exception criteria of Section §C-XXX:

- (a) Any auto repair or service and all its accessory facilities shall be located within a building;
- (b) No portion of the use shall be located within fifty feet (50 ft.) of a *Residential zone*; and
- (c) If public carwashing services or facilities are provided, at least fifteen (15) queuing spaces must be provided.

102.10 *Service uses* shall be permitted if approved by the Board of Zoning Adjustment, subject to the general special exception criteria of Section §C-XXX.

103 CONDITIONS FOR ACCESSORY USES IN MIXED-USE ZONES

103.1 This section identifies lists of conditions that shall be applied to *use categories* permitted as *accessory uses* only.

103.2 *Motor Vehicle* uses are permitted as a matter of right as an *accessory use* subject to the following conditions:

- (a) The use shall only be allowed as an accessory to a retail use involving auto parts.
- (b) No part of the accessory use or the entrance to it shall be visible from a sidewalk.

Appendix 3: OP Recommendations Pertaining to Use

Retail Recommendations – from Public Hearing Report for the Zoning Commission 08-06-5 on October 20, 2008.

Recommendation 2. Consolidation of Use Lists

Existing Practice

Currently each commercial zoning district contains a list of retail and other uses that are permitted in that zone. Overall, the zoning regulations contain over 1,200 different listed uses. Approximately 700 of those are commercial uses, including over 250 retail uses.

Issues

Long lists of uses are unwieldy, complicated, and continually out of date. Separating uses by general type and impact offers a simpler and more relevant way to regulate building uses and their impacts.

Recommendation

Consolidate the current retail, service and miscellaneous use lists contained in Chapter 7 into broad categories. Proposed commercial categories include: Retail, Service, Office, Accommodation & Food Service, Entertainment, and Arts. Categories would be permitted or prohibited in each zone with conditions for each use (such as hours of operation, radius requirements, and the amount of gross floor area occupied) established for each district.

Analysis

Examples of problems that exist due to current use lists include: multiple separate names for the same use, different uses existing under the same name, new uses are not identified, old uses clutter the lists, many uses appear only in one overlay and are not mentioned or referenced elsewhere, and organization of uses happens differently in separate overlays and districts.

Revising the regulations to be more user-friendly and to provide clearer guidance to property owners has been a recurring theme expressed throughout the process. Combining existing lists into one single list applicable throughout the regulations will eliminate hundreds of inconsistencies and much confusion. The adoption of this recommendation will further the general Zoning Review goals of increased clarity and ease of use.

In addition to making use classification easier through broader distinctions, a system of use categories would ease the pressure on the Zoning Administrator to classify mixed uses, or make a distinction between primary and accessory uses. Uses with components of two categories would have to meet the requirements of both categories. For example, a convenience store with gas pumps would constitute both a retail use and an auto use and only be allowed where both uses are permitted; it would not have to be determined to be either one or the other.

Individual districts could permit uses, permit them with conditions, or prohibit them. Depending on the type of zone, possible conditions on uses could include gross floor area (GFA) maximums, hours of operation, and limits on certain types of activities. Uses would be subject to the conditions of the zone with a special exception required to vary GFA and a variance required to relieve any other condition.

OP has examined the existing lists of over 700 commercial uses and tentatively proposes commercial categories with the definitions given below. If the Zoning Commission approves this change, these definitions will need further refinement including insuring that all categories are mutually exclusive.

Appendix 3: OP Recommendations Pertaining to Use

Retail

Businesses devoted to the on-premise sale of tangible goods

Examples: Book store, drug store, pharmacy, shoe store, grocery store

Service

Businesses devoted to the provision of general services other than industrial or public services

Examples: Bank, tailor, real estate, bike repair, tax service, yoga studio

Office

Administrative, professional, research, or similar organizations and laboratories having limited contact with the public

Examples: Law firm, brokerage, think tank, corporate office, lobbyist office

Accommodation & Food Services

Establishments providing customers with lodging and/or prepared meals, snacks, and beverages for immediate consumption

Examples: Hotel, bed & breakfast, restaurant, coffee shop, ice cream parlor

Entertainment

Both participatory and spectator venues for sports or art

Examples: Hockey rink, bowling alley, stadium, theater, auditorium

Arts Production & Display

Uses where artists create or display their work

Examples: Artist studio, gallery, museum

Automobile Related

Uses involving, the on-site service, repair, or fueling of automobiles

Examples: Gas Station, auto-body shop, inspection station

Remaining Issues

While the categorization of uses is most important for retail and other commercial uses, it must be accompanied by a system-wide change. It would not make sense to have commercial use categories but have long use lists for the non-commercial uses. Based on the existing uses and use types in the regulations, OP would recommend that the ZC also consider the following proposed categories of non-commercial uses:

Residential

Dwelling units providing human habitation for periods of at least one month

Examples: Single family home, rowhouse, apartment building, voluntary CBRF

Institutional

Uses involving the assembly or habitation of people for religious, social, educational, or corrective purposes

Examples: Church, private school, university, hospital, involuntary CBRF

PDR (Industrial)

Use involving the production, distribution, repair, or processing of materials, products, or technology

Appendix 3: OP Recommendations Pertaining to Use

Examples: manufacturing, warehousing, light industry, recycling, material storage

Local Government

Uses operated by the District of Columbia government

Examples: Police station, fire station, library, public school

There are some uses that do not fit easily into the categories outlined above. Other minor categories of uses might include:

Non-building Uses:

Any functional, social, or technological activity that is imposed or applied to land or structures on the land

Examples: Antenna, truck garden, soccer field

Marine Uses

Uses adjacent to and associated with riverways

Examples: Marina, water taxi, houseboat

Animal Boarding Uses

Uses entailing the boarding of animals as pets or livestock

Examples: Veterinarian, dog boarding, stable

Transportation Uses

Infrastructure for public transportation systems

Examples: Metro stations, bus stops, bus transfer stations

Supplemental Report to Zoning Commission - on December 1, 2008

Recommendation #2 Consolidate the current retail, service and miscellaneous use lists contained in Chapter 7 into broad categories. Proposed commercial categories include: Retail, Service, Office, Accommodation & Food Service, Entertainment, and Arts. Categories would be permitted or prohibited in each zone with conditions for each use (such as hours of operation, radius requirements, and the amount of gross floor area occupied) established for each district.

At the hearing, the Commission asked for further information regarding how a system of use categories would work as opposed to the existing system of listing individual uses. There are two attachments to this memo that provide additional insight.

Attachment One includes text from the use category section of the Portland, Oregon ordinance. This document shows the basic rules that Portland uses to distinguish uses and define use categories. The second page includes two use categories ("office" and "major event entertainment") as examples of how the category descriptions in that ordinance are organized.

Attachment Two contains a table showing the eight cities researched in the HNTB best practice study. These eight cities have use groups or lists that range from five uses to 128 uses. When compared to D.C.'s current list of 607 unique uses, this begins to show how outdated and complicated our existing system has become. The table contains brief descriptions of the use system in each of the best practice cities and compares them to the OP proposal for D.C. In addition to this information, the Commission also asked for more analysis of how parking requirements could address different uses within the same

Appendix 3: OP Recommendations Pertaining to Use

use category. OP has looked into the other cities that have general use categories. For the most part, the system translates well to parking and the requirements are given by square footage for all of the uses within a category. Where there are specific uses within a category that have unique parking requirements, those uses are called out individually (or the use category is further divided) to provide the more detailed requirements as needed. For example, some cities with a general category for office uses call out medical and/or dental offices for different parking requirements than general office.

Zoning Commission Guidance on December 8, 2008

Recommendation 2. Consolidation of use lists

Consolidate existing lists of uses throughout the code into limited set of use categories.

Most retail and service uses would be permitted in all Commercial zones, and controlled through GFA limits and standardized performance measures, such as hours of operations. Performance measures, including GFA, would thus be use-specific rather than general residential\non-residential FAR limits as is now the case.

Special exceptions would be used for a use that would exceed the maximum GFA permitted by up to a certain percent.

Requests to waive a performance standard or exceed GFA beyond the special exception limit would require an area variance.

Low-Moderate Density Residential Recommendations

10. Permitted uses.

Existing Practice

Residential districts are regulated by lists of uses that are allowed as of right or by special exception. Most non-residential uses are tightly limited to those customarily seen in residence districts, such as schools, churches, etc.

Issues

Current regulations limit flexibility for local neighborhoods to allow for a wider variety of home occupations, neighborhood serving uses including corner stores, or other non-residential uses that would promote a walkable city and healthy lifestyles.

Recommendation 10

In shifting to a system of use control by general category rather than use lists, control the establishment of retail, service, institutional, and office uses (including home occupations) through performance measures. Within general limits, performance measures that apply to each category could be customizable to meet the needs of particular neighborhoods (i.e. hours of operation, maximum GFA, etc.)

Many areas of the city were historically built with a strong presence of neighborhood retail and service uses. As the city strives to promote more local food availability, walkable neighborhoods, reduced reliance on the automobile, and healthy urban environments there will be increased demand for corner stores and home businesses that allow for sustainable living.

Appendix 3: OP Recommendations Pertaining to Use

Moreover, the existing home occupation regulations have a very limited list of possible home occupation uses. As traffic increases and technology evolves, there will be increased pressure and opportunities to telecommute and to do an increasing amount of work from home. There will be a need to allow and promote a wide variety of home occupations and allow some local customization of the standards.

OP recommends that local residential neighborhoods have the flexibility through the planning process to allow for limited commercial uses. These uses would be controlled and regulated by impact through performance measures as described in the broader discussion of uses as part of the Retail subject area.

The appropriateness of an area for such neighborhood uses would be determined on a local basis by small area plan, with reference to the Comprehensive Plan and historic preservation constraints.

Low-Moderate Density Residential Zoning Commission Guidance – on June 8, 2009

Recommendation 10. Permitted Uses

Establish strict baseline limits for matter-of-right non-residential uses in each residential zone. In shifting to a system of use control by general category rather than use lists, control the establishment of retail, service, institutional, and office uses (including home occupations) through performance measures. Within general limits, performance measures that apply to each category could be customizable to meet the needs of particular neighborhoods (i.e. hours of operation, maximum GFA, etc.)

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.

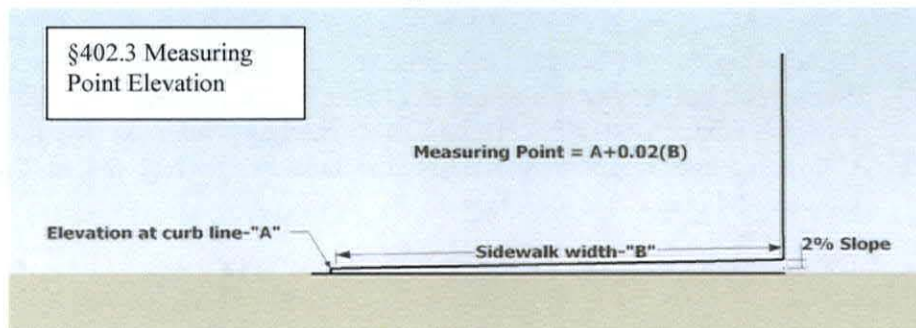
401.4 *Zone* height limits shall be stated in terms of feet, and shall be evenly divisible by five (5).

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) 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.
- 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

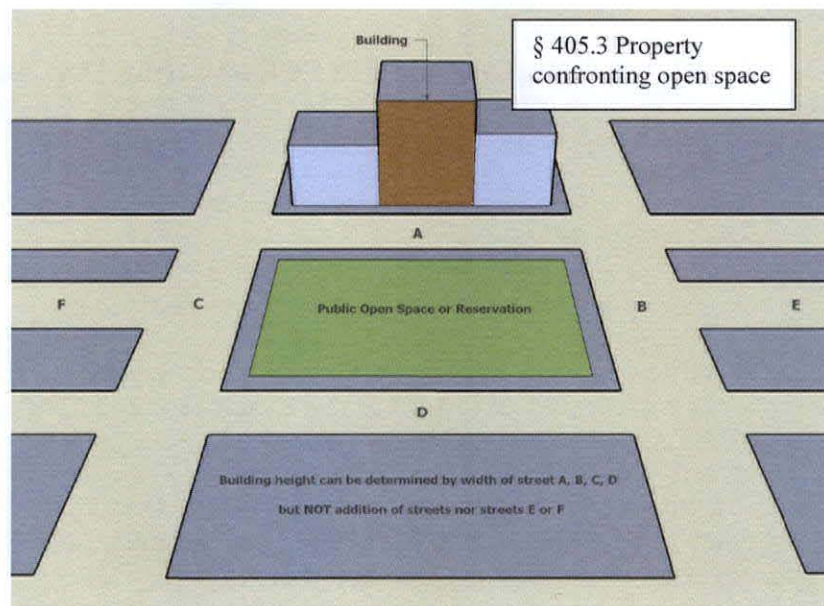
404.3 The street-based height limit for a *building* with frontage/building face on the north side of Pennsylvania Avenue N.W. between 1st and 15th Streets N.W. shall be one hundred -sixty feet (160 ft.).

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;

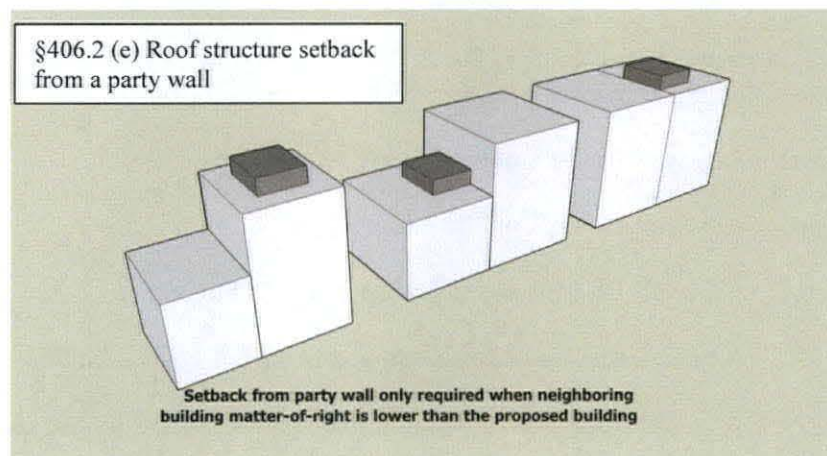
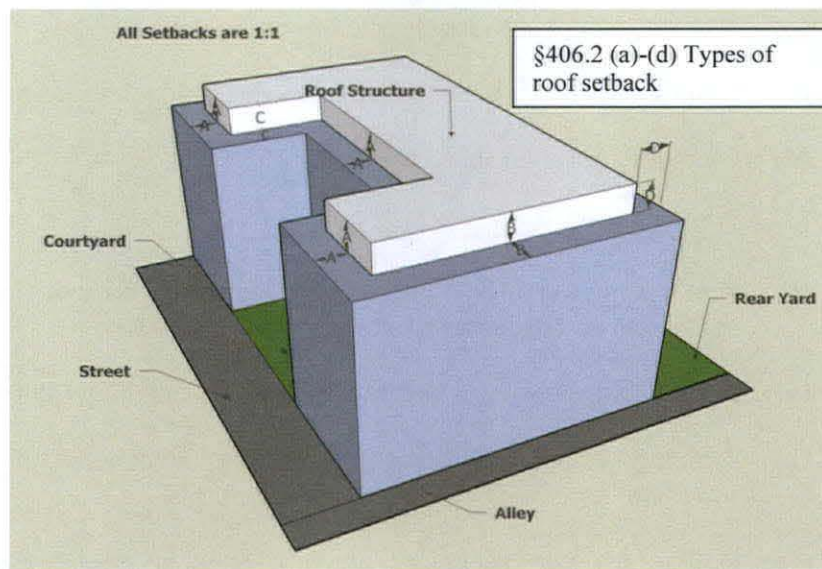
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- (b) Towers, including towers erected from the ground;
- (c) Domes, minarets, pinnacles, pergolas and similar architectural embellishments;
- (d) Chimneys or smokestacks;
- (e) Skylights;
- (f) Penthouses over utilitarian features, including, but 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.

Appendix D: Draft Height Chapter



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) though (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

Appendix D: Draft Height Chapter

- (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.