

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning




Z.C. CASE NO.: 08-06 (Chapters B-2 & B-4)

As Secretary to the Commission, I hereby certify that on **SEP 7 2010** copies of this Z.C. Amended Notice of Public Hearing were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|---|
| 1. <i>D.C. Register</i> | 7. Zoning Administrator (Matthew LeGrant) |
| 2. All ANC Chairs | 8. Melinda Bolling, Acting General Counsel
DCRA
1100 4th Street, S.W.
Washington, DC 20024 |
| 3. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 9. Office of the Attorney General (Alan Bergstein) |
| 4. All Councilmembers | 10. MLK Library (30 Copies) |
| 5. Office of Planning (Harriet Tregoning) | |
| 6. DDOT (Karina Ricks) | |

ATTESTED BY: _____


Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia

CASE NO. 08-06

EXHIBIT NO. 7

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
AMENDED NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Monday, September 20, 2010, @ 6:30 PM**
 Office of Zoning Hearing Room
 441 4th Street, N.W., Suite 220
 Washington, D.C. 2001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 08-06 (Comprehensive Zoning Regulations Review: Chapters B-2 & B-4)

THIS CASE IS OF INTEREST TO ALL ANCs

This Notice of Public Hearing announces the first of several proposed draft zoning text chapters the Zoning Commission for the District of Columbia (the "Commission") will consider under this docket. Both chapters presented here reflect previous recommendations to the Commission from the Office of Planning that were the subject of public hearings.

This hearing will consider proposed text for changes to the Zoning Regulations in relation to the control of uses and the regulation of height. The proposed uses chapter reflects a new use category system of classification that the Office of Planning has recommended be used to control uses in individual zones. Under the proposal, uses would be divided into 29 categories that will each be separately regulated in each zone. In the general chapter, the classification system is described and a detailed definition is provided for each use category.

The proposed height chapter reflects the consolidation of height regulations from throughout the code into one general height chapter. The version requested by the Zoning Commission at its setdown meeting on September 2, 2010 is somewhat different from the version set forth in the earlier Public Hearing Notice for Case No. 08-06, published on August 6, 2010 at 57 DCR 6975, as the requested version specifically excludes Height Act provisions from the Zoning Regulations. Explicit Height Act interpretations approved by DCRA would, however, be attached to the Zoning Regulations as an appendix. This Amended Public Hearing Notice sets forth the version requested by the Zoning Commission, with what were §§ 403, 404, and 405 deleted, and also includes some minor, non-substantive word changes.

The new chapters are based upon a proposed codification of Title 11 into 10 subtitles. A description of this codification can be found at www.dczoningupdate.org/publicnotices.asp. The Commission has not formally approved this codification system.

This hearing, like all others under this case number, is being scheduled without adherence to the set-down requirements stated at 11 DCMR § 3011 because the Commission waived the requirement at its public meeting held April 14, 2008. The Commission also waived the requirement that a pre-hearing statement be submitted before hearing notices can be published.

More detailed information, discussion, and analysis for the proposed text can be found in the accompanying report prepared by OP. This document can be viewed by clicking on "Height and Use Report" at www.dczoningupdate.org/documentcenter.asp.

Title 11 DCMR (Zoning) is proposed to be amended as follows:

Create new Chapter 2 in Title 11 Subtitle B:

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, nonprofit 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: manufacturing facility, concrete plant, asphalt plant, material salvage, hauling or terminal yard, chemical storage or distribution, outdoor material storage, acetylene gas manufacturing, fertilizer manufacturing, rock quarrying, warehouse, ground shipping 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,

Create a new Chapter 4 in Title 11 Subtitle B:

CHAPTER 4 HEIGHT

400 INTRODUCTION TO HEIGHT REGULATION CHAPTER

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

400.2 The intent of regulating height is to:

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

400.3 In addition to the height limitations of the zoning regulations 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 is located in Subtitle M.

401 RELATIONSHIP TO THE LAND USE SUBTITLES

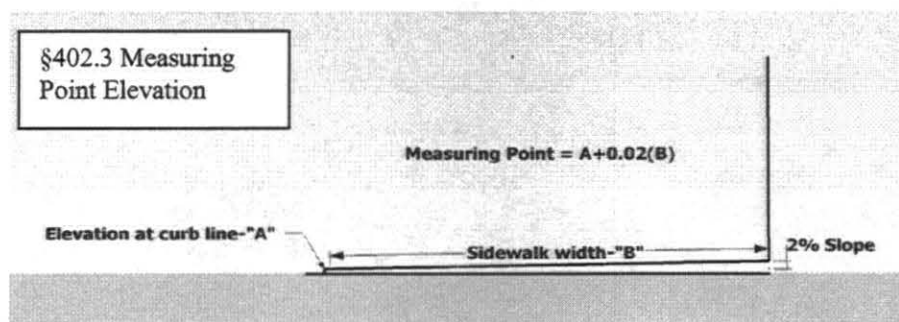
401.1 In addition to the general regulations of this subtitle, each land use subtitle shall include a height regulations chapter containing height regulations specific to the

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.

402 GENERAL RULES OF MEASUREMENT

- 402.1 This section provides rules of measurement for the purpose of determining compliance with zone height limitations. Unless otherwise stated, the rules of this section are identical to rules applicable for the measurement of building height under the Height Act, which appear in Subtitle M.
- 402.2 The height of a *building* shall be measured from its midpoint along any abutting *street frontage*. Where no *street frontage* exists, the height of a *building* shall be measured from its midpoint along its *façade* nearest to a public street.
- 402.3 The measuring point for determining height shall be the elevation at the midpoint of the adjacent curb except as provided in §402.4, plus a two percent (2%) gradient between the curb and the property line, up to a maximum height difference of twelve inches (12 in.). When an adjacent curb does not exist, the elevation for the measuring point shall be the elevation at the property line midpoint, where the street right of way meets the property line.



402.4 When the curb grade has been artificially changed by a bridge, viaduct, embankment, ramp, abutment, excavation, tunnel, or other type of artificial elevation, 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 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. This exclusion does not apply in calculating maximum height under the Height Act.

403 HEIGHT LIMIT EXCEPTIONS

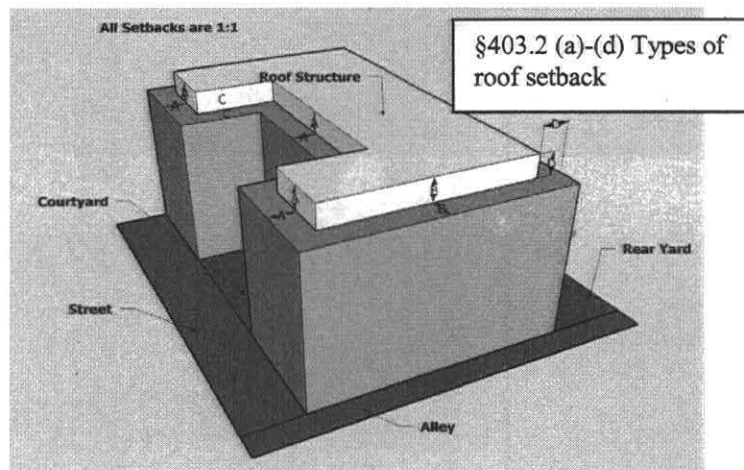
403.1 The following *structures* may be built above the street-based or zone height limitations, subject to the conditions of this section:

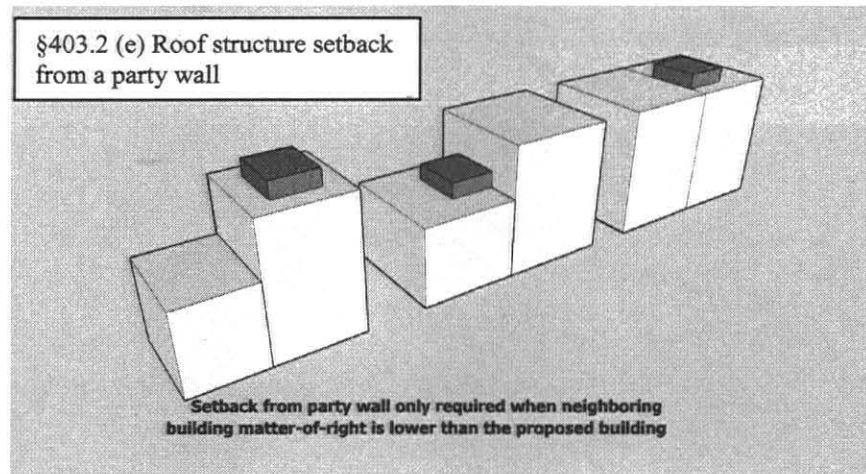
- (a) Spires;
- (b) Towers, including towers erected from the ground;
- (c) Domes, minarets, pinnacles;
- (d) Chimneys or smokestacks;
- (e) Skylights;

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

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

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





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

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

404 HEIGHT SPECIAL EXCEPTION STANDARDS

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

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

PROCEDURES

The public hearing on this part of Case No. 08-06 will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations,

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Title 11, Zoning. The Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, Suite 200-S, 441 4th Street, N.W., Washington, D.C. 20001. Please include the number of the particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, KONRAD W. SCHLATER, GREG M. SELFRIDGE, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JAMISON L. WEINBAUM, FAIA, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.