



MEMORANDUM

2010 SEP 10 PM 4:10

TO: District of Columbia Zoning Commission

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

DATE: September 10, 2010

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

- General Height Chapter
- General Use Chapter

I. Setdown of Draft Chapters

On September 2, 2010, the Zoning Commission considered setdown for two general zoning chapters as a part of the zoning review. After reviewing draft language for proposed height and use chapters, the Commission agreed to set both chapters down for a hearing on September 20 with minor changes. The Commission also addressed some questions to the Office of Planning.

This report provides additional information on the changes made to the proposed text based on Commission suggestions and addresses some of the questions raised at the setdown meeting. For full analysis of the proposals, please see the OP setdown report dated August 12, 2010.

II. General Use Chapter

The Commission offered generally positive comments on the draft use chapter. Both the proposed system and the language of the text received positive reviews. Only two questions came from the Commission that require further action. The first was the addition of “concrete plant” and “asphalt plant” to the examples of PDR use. This change has been made to Section 206.24 in the revised notice of public hearing.

The second question involved temporary uses. Commissioner Selfridge pointed out that the draft section for temporary uses has little or no control on what uses may be located as temporary uses. OP acknowledged this shortcoming and has examined further limitations. Upon review of the proposed use categories, OP recommends that the following use categories not be allowed as temporary uses (except where they might otherwise be permitted as permanent uses):

- Animal Care and Boarding
- Firearm Sales
- Production, Distribution, Repair
- Sexually-Oriented Business Establishment
- Waste-related

This proposal would involve the addition of a new subsection within the Temporary Use section of the Use chapter. The suggested language of the new subsection is:

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205.4 The following uses shall not be permitted as temporary uses in any zone unless the use is permitted as a principal use in that zone:

- (a) Animal Care and Boarding*
- (b) Firearm Sales*
- (c) Production, Distribution, Repair*
- (d) Sexually-Oriented Business Establishment*
- (e) Waste-related*

III. General Height Chapter

The primary issue with the draft height chapter was the decision on whether or not to include Height Act-related zoning height limitations. The chapter proposed by OP created “street-based” height limitations that combined with zone height limitations to incorporate all height regulations into one chapter. At the meeting, the Zoning Commission set down a version of the height chapter that removed Height Act regulations and limited zoning to zone based height controls.

Updated text is attached to this report as Attachment A. In addition to removal of Height Act-related portions of the text, changes made in response to Zoning Commission comments include:

- Combination of Sections 400.1 & 400.3
- Update of Section 400.3 (previously 400.4) to reference the DCRA Height Act language
- Update of Section 402.1 to reference DCRA Height Act language
- Update of Section 402.6 to reference the Height Act

Two sections of the revised hearing notice still mistakenly refer to “street-based” height limitations. Sections 401.3 and 401.5 have been updated to refer to the Height Act rather than street-based height limitations.

Apart from Height Act issues, the Commission also made further recommendations for changes to the text:

- In Section 402.3 the clause “except as provided in §402.4” has been moved to follow the words “adjacent curb.”
- In the list of permitted exceptions to building height, “pergolas and similar architectural embellishments” was removed from paragraph (c) and replaced in paragraph (h) to clarify that pergolas would be subject to roof structure setbacks.

OP also heard comments about roof structure regulations, in particular whether zoning should continue to require that roof structures be under a single enclosure and be of a uniform height. This issue was discussed at some length in the working group in 2008. In that forum, both architects and developers raised concerns with the existing roof structure requirements that included lack of design flexibility and the unintended design consequences that can arise from overly rigid control of rooftop elements, including overly large roof structures. The combined proposals would permit less blocky design of roof structures without additional visual intrusion at street level, because of the 1:1 setback requirement.

Rooftops are used for significantly more uses than they were fifty years ago. Architects have suggested that if multiple pieces of equipment could be stacked atop each other, more roof space would be available for sustainability features, green roofs or recreation areas. Power generation, gardening, water collection, safety equipment, and many other uses have significantly different and constantly changing space requirements. As technology changes, the ability to enclose new building components within a single structure of uniform height may decrease significantly.

There is a consistent pattern of BZA relief resulting from these requirements. OP also analyzed BZA cases over the past six years for variances and special exceptions from roof top requirements. Of the 77 BZA cases since 2004 that have dealt with height-related issues, over 61% have involved relief of roof structure massing requirements. This information combined with a cursory search of earlier BZA cases shows that this provision has been a regular cause of BZA relief cases for years.

OP will continue to examine this issue. At the hearing OP will be prepared to discuss options for regulating roof structures differently by building type, by zone, or by whether the building is at or below Height Act limits.

ATTACHMENT A

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.

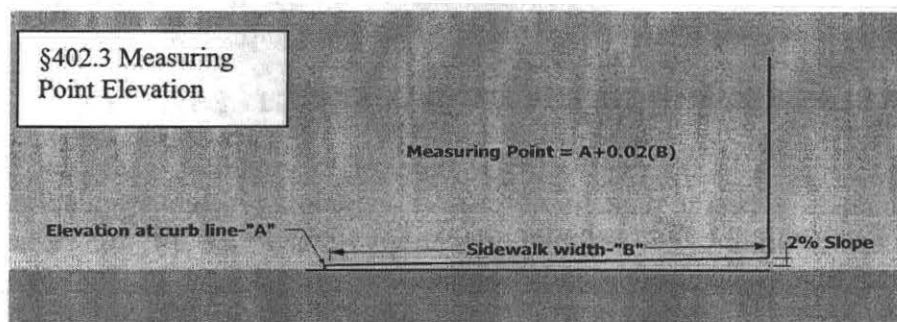
401 RELATIONSHIP TO THE LAND USE SUBTITLES

- 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 Height Act, 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 Height Act limits and the height limits in each zone district apply to structures located in the public space included within the zone district's boundary.

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

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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:

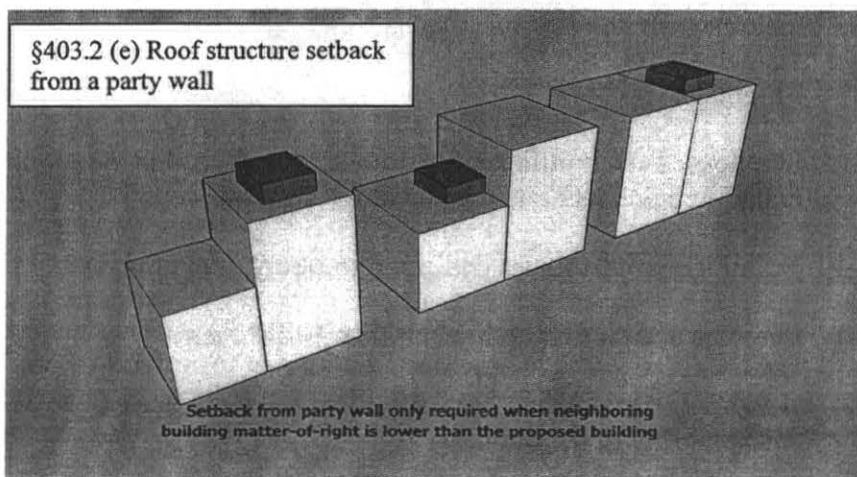
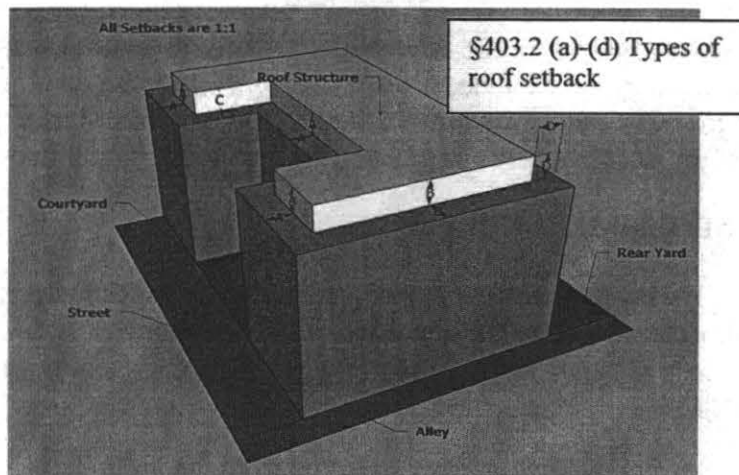
- (a) Spires;
- (b) Towers, including towers erected from the ground;
- (c) Domes, minarets, pinnacles;
- (d) Chimneys or smokestacks;
- (e) Skylights;
- (f) Penthouses over utilitarian features, including, but not limited to, mechanical equipment and its housing, elevators, and stairwells;
- (g) Building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

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- (d) Any wall that maintains a *setback* from and faces a lot line; or
- (e) Any wall that abuts a lot line and that is taller than the greater of the adjacent property's existing or matter-of-right height.



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

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

404 HEIGHT SPECIAL EXCEPTION STANDARDS

404.1 The Board may grant, by special exception, relief from §§ 403.2 (b) 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.