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March 14, 2005

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By Hand

Ms. Gerrily Kress
Director
District of Columbia Office of Zoning
441 4th Street, N.W.
Suite 210 South
Washington, DC 20001

Re: *BZA Appeal No. 17285*

Dear Ms. Kress:

Enclosed for filing in the above-referenced Appeal, and for distribution to the members of the Board of Zoning Adjustment, is the original and twenty-one copies of Appellant's Supplemental Submission Concerning the Legislative History and Applicability of 11 DCMR § 2503. Please circulate this to the members of the Board of Zoning Adjustment in advance of tomorrow afternoon's hearing in this Appeal.

Please return to my courier one of the copies with a date-stamp confirming its filing. Thank you for your cooperation.

Sincerely,

Patrick J. Carome

Encl.

cc w/ enclosure (by e-mail and first-class mail):
Richard L. Aguglia, Esq., Hunton & Williams (By Hand)
Alma Gates, ANC
David Murphy, U.S. Park Service
Jeffrey Bernstein, U.S. Dept. of the Interior
Lisa Bell, DCRA (By Hand)

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BZA
Case No. 17285
Exhibit No. 48

Board of Zoning Adjustment
District of Columbia
CASE NO. 17285
EXHIBIT NO. 48

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal of Patrick J. Carome of Building Permit No. B460927 4825 Dexter Terrace, NW Frank & Dina Economides, Owners	BZA Appeal No. 17285 Hearing Date: March 15, 2005

APPELLANT'S SUPPLEMENTAL SUBMISSION CONCERNING THE LEGISLATIVE HISTORY AND APPLICABILITY OF 11 DCMR § 2503

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Counsel for Appellant

March 14, 2005

Appellant Patrick Carome hereby submits certain observations regarding the origins and drafting history of one of the key provisions of the Zoning Code applicable to this appeal, 11 DCMR § 2503, which strictly limits the types and heights of structures that may be located in required rear and side yards. Appellant understands that Intervenor National Park Service ("NPS") very recently obtained from the Office of Zoning a complete copy of the Office's file regarding Case No. 76-15, a Zoning Commission proceeding that took place in 1976 and 1977. Appellant is separately submitting that file into the record of this Appeal. Case No. 76-15 was the proceeding in which the Zoning Commision ultimately originated, in January 1977, the amendments to the Zoning Code that are now codified at 11 DCMR §§ 2503.1 through 2503.4. The "legislative history" of these 1977 amendments strongly supports Appellant's position that the Economides' Walled Platform Structure violates Section 2503.

I. Analysis of the 1977 Zoning Code Amendments

The legislative history of the 1977 amendments demonstrates that the zoning rules that are now codified in §§ 2503.1 through 2503.4, coupled with a simultaneous amendment to the Code's definition of "yard," were designed to close a loophole in the pre-existing Zoning Code. That loophole had been interpreted as allowing structures of virtually any size and type to be built in required yards, so long as no part of the structure projected above "the level of the main floor joists" of the main building on the property.[1] In describing this pre-existing loophole, the Director of the Municipal Planning Office (predecessor to the Office of Planning) said at the time:

> Consequently, buildings and structures could occupy 100 percent of a lot, including all required yards, if the building and structures were below the level of the main floor. Since many dwellings in the District have basements, the ceiling of which may be from four feet to eight feet out of grade, the level of the main floor may also be well out of grade.[2]

The Director noted that this loophole was especially problematic in situations, akin to that found at 4825 Dexter Terrace, where "a lot slopes down from front to back, [resulting in] the main floor [being] more than one story out of grade at the rear of the house."[3] In those situations, very tall structures could be erected in required rear and side yards, and could occupy up to all of a required rear yard.

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1 Memorandum from Ben W. Gilbert, Director, Municipal Planning Office (predecessor to Office of Planning) to D.C. Zoning Commission, Sept. 1, 1976, at page 2. A copy of this memorandum is attached hereto at Tab A.

2 *Id.*

3 *Id.*

To close this loophole, the Zoning Commission amended the Zoning Code in 1977 in two critical and interrelated respects:

(1) It added a new Section 7602.2, which declared that "Except for the following structures, every part of a yard required under the provisions of these regulations shall be open and unobstructed to the sky from the ground up." The new subsection set out only three narrow exceptions, including one for "a structure, not including a building, no part of which is more than four feet above the grade at any point" (§ 7602.21), and another for "fences or retaining walls constructed in accordance with the Building Code" (§ 7602.22).

(2) It amended the definition of "yard" (then codified at §1202) so as to spell out that a "required yard" must be "open to the sky from the ground up, and shall not be occupied by any building or structure except as specifically provided in these [Zoning] regulations." It also added a new sentence to this definition, stating that "No building or structure shall occupy more than 50 percent of a yard required by these Regulations."[4]

These 1977 Amendments have been carried forward into the current Zoning Code, without any substantive change, as 11 DCMR §§ 2503.1 through 2503.3, and as the definition of "yard" set forth in 11 DCMR § 199.1.

Several key points are evident from the 1977 Amendments and their accompanying drafting history, including the following:

- One of the two overarching purposes of the amendments was to limit the *height* of structures that may occupy required yards, and especially to close the pre-existing loophole that had enabled owners of lots that slope downward from front to back to erect tall structures in their rear yards. As the Executive Director of the National Capital Planning Commission observed when recommending approval of the amendments, "[t]he thrust of of these changes is to allow *low* structures, fences and stairs in yards as a matter of right."[5]

- The second overarching purpose of the amendments was to prohibit any of the "low" structures that are permitted in required yards from ever occupying more than 50 percent of any required yard.[6] In other words, even the specially excepted

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4 *See* Zoning Commission's Proposed Zoning Regulation Amendment, December 9, 1976, Zoning Commission Case No. 76-15.

5 Executive Director of the National Planning Commission's Recommendation Concerning Proposed Amendments to the Zoning Regulations Relating to Occupancy of Yards, Case No. 76-15, Jan. 13, 1977 at page 1 (emphasis added).

6 *Id.*

structures allowed in required rear and side yards — such as "fences and retaining walls constructed in accordance with the Building Code" and other structures that are less than four feet above grade — cannot occupy more than half of those yards.

- The new provision allowing "fences and retaining walls constructed in accordance with the Building Code" was intended, first and foremost, to *incorporate into the Zoning Code* the height limitations set forth in the Building Code for fences and walls. The Director of the Municipal Planning Office described this new subsection as allowing, as a matter of right, "[a] fence or retaining wall *up to the heights established by the Building Code*."[7] The legislative history thus leaves no doubt that the question about whether a fence or fence wall meets the Building Code's height limits *is within the purview of Zoning authorities and the BZA.*

- It was clearly intended, for purposes of these new provisions, that the height of a structure would have to be measured from the pre-existing grade level(s) within the required yard, not from some higher point at or near the front of the lot.[8]

- It is crystal clear from the drafting history that the only structures that fit within the exception specified in § 2503.2 are structures that *both* (a) are not a building and (b) do not at any point project more than four feet above the pre-existing grade of the yard. This is underscored by the presence, in all of the predecessors of § 2503.2, of a comma after the word "building." The omission of this comma in the current printing of § 2503.2, which renders the provision somewhat difficult to parse, was a typographical or administrative error, *not* a substantive change.[9]

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[7] Memorandum from Ben W. Gilbert, Director, Municipal Planning Office to D.C. Zoning Commission, Sept. 1, 1976, at page 4.

[8] *Id.* at Figures 1 to 4 (showing that, for purposes of § 2503, heights of structures in required yards must be measured from the level of the pre-existing grade within required yard, not from any high grade level that may exist at or near the front of the dwelling).

[9] Both as originally adopted in 1977 and as it existed in the 1982 edition of the Zoning Code, Section 7602.21 included a comma after the word "building." *See* July 1982 Provisional Edition of the Zoning Code at page 189 (attached at Tab B); *see also* Executive Director of the National Planning Commission's Recommendation Concerning Proposed Amendments to the Zoning Regulations Relating to Occupancy of Yards, Case No. 76-15, Jan. 13, 1977 at page 2. None of the subsequent amendments to this this provision called for deletion of this comma, and so it appears its omission in the current edition of the Code is simply a typographical error or other non-substantive change. (*See* Source materials for the current version of § 2503, attached at Tab C.) The comma sets off the phrase "not including a building," thus clarifying that § 2503.2's narrow exception for structures in required yards does not include either any structure that is a building or any structure that projects more than four feet above the grade. Since there has never been any official action to alter the meaning of this section, the current version of Section 2503.2 obviously must be accorded the same interpretation.

II. Application of the 1977 Code Amendments to This Appeal

The foregoing analysis demonstrates that the Economides' Walled Platform Structure is precisely what the 1977 Amendments to the Zoning Code — which remain embodied in the current Code — were designed to prohibit. Indeed, the Walled Platform Structure has each of the characteristics that the amendments explicitly excluded from matter-of-right construction in required yards.

A. The Walled Platform Structure Violates the Height Limits of Sections 2503.2 and 2503.3.

The Walled Platform Structure directly contravenes the height limitations imposed by the 1977 amendments, both because its platform/terrace projects more than four feet above the grade of the rear yard *and* because its outer walls exceed the Building Code's height limitations for fences and walls. The platform/terrace's violation of the four-foot-above-grade limitation is inescapable because, contrary to the Economides' contention, height "above the grade" must be measured from every point in the required yard that lies below the structure in question. And the violation of the fence/wall height limitation is inescapable because the height of the fence/wall must be measured from the grade at the base of the fence/wall. 12 DCMR § 3110.1.3. These violations were readily apparent from the face of the Economides' application for the permit, which stated that the height of the wall would range up to 30 feet and which included plans showing an enormous elevated platform that would at most points project much more than 4 feet above the required yard's pre-existing grade. The Economides' only counter-argument — which is that the entire structure escapes these height limitations because it is "at or below the grade of the house" (Econ. Br. at 14, 16) — is exactly the argument that the 1977 amendments overruled.

Section 2503.3's explicit cross-reference to the Building Code imports the Building Code's seven-foot height limitation on fences and fence walls into the Zoning Code and makes it fully within the BZA's jurisdiction and responsibility to apply. To rule otherwise would be arbitrary and capricious and contrary to the plain intent of the 1977 amendment to the Zoning Code. It would also strip eight words of Section 2503.3 — namely, the phrase "constructed in accordance with the D.C Building Code" — of all meaning and effect, directly violating the longstanding principle that a statute or regulation should not be interpreted in a way that renders some of its terms superfluous. *Thomas v. Dist. of Columbia Dep't of Employment Servs.*, 547 A.2d 1034, 1037 (D.C. 1988) ("A basic principle is that each provision of the statute should be construed so as to give effect to all of the statute's provisions, not rendering any provision superfluous."); *Veney v. United States*, 681 A.2d 428, 433 (D.C. 1996) (*en banc*) (same).

The Economides' pre-hearing brief appeared to concede that the Building Code's height limitation on fences and walls fully applies to this Appeal. At the preliminary hearing on March 1, however, there was a statement from the Board's staff attorney suggesting that that matters relating to the Building Code are categorically beyond the jurisdiction of the BZA. Appellant respectfully submits that this cannot be true. At least in those rare instances, as in Section 2503.3, where the Zoning Code expressly cross references and incorporates limitations from the

Building Code, the BZA has no choice but to take those limitations into account for the reasons set forth above.[10] This is not a herculean task, for there is only a relatively small number of limitations that the Building Code imposes on fences and walls.[11] Moreover, the Building Code restriction that most obviously applies in this Appeal and that the drafters of the 1977 Amendments had most clearly in mind — namely, the restriction limiting heights to seven feet above grade for fences and walls that are within a ten foot set-back zone — is simple to apply and very similar to the types of rules that D.C. zoning officials and this Board must routinely interpret and apply.[12]

B. The Walled Platform Structure Violates the Lot Occupancy Limit for Required Yards.

The Walled Platform Structure independently violates the Zoning Code's prohibition of any structure that occupies more than 50 percent of a required yard, as provided in the definition of "yard." This violation is at least two-fold, because the structure occupies nearly all of the 25-foot deep required rear yard and more than half of one of the two 8-foot wide required side yards of the subject property.

As discussed above, the 1977 Amendments make abundantly clear that for a structure to legally occupy a required yard, it must *both* fit within one of the exceptions set forth in Section

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[10] Appellant has found only three instances outside of Section 2503 in which the Zoning Code cross-references the Building Code. *See* 11 DCMR § 2506.1 (requiring outdoor signs to comply with the sign regulations in the D.C. Building Code); 11 DCMR § 1705.4 (certain residential buildings made eligible for certain preferred treatment if "brought up to building code"); 11 DCMR § 1706.10 (same).

[11] Indeed, in BZA Case No. 16764, *Appeal of Darrell J. Grinstead* (Dec. 4, 2001), this Board's analysis plainly assumed that if the Appellant had come forward with evidence showing that a retaining wall located in required yard "was not constructed in accordance with Building Code requirements," that would have been an appropriate basis for granting the appeal.

[12] Even in situations where the Zoning Code does not expressly incorporate provisions of the Building Code, the BZA has often found it necessary and appropriate to interpret and apply the Building Code. *See, e.g.,* BZA Case No. 16601, *Application of NJA Development Partners* (Sept. 26, 2000) (granting application for special exception from setback requirement based in part on "Building Code compliance issues"); BZA Case No. 15494, *Application of Wisconsin Avenue Associates* (July 10, 1991) (granting application , based in part on finding that location of windows "does not violate the building code"); BZA Case No. 14577, *Application of Robert A. Weinstein* (Mar. 25, 1987) (granting variance based in part because it otherwise "would be impractical for the applicant to comply with bulding code access requirements); BZA Case No. 13992, *Application of Reid A. Dunn & Partners* (July 13, 1983) (granting special exception, based in part on finding that "proposed tennis court and pool will be constructed in accordance with the Building Code"); BZA Case No. 13874, *Application of D.C. Society for Crippled Children, Inc.*, (permitting applicant to erect replacement fence "which meets the requirements of the building code regarding the height of the fence")

2503 *and* not occupy more than half of any required yard. In other words, both the limitations on *height* of structures set forth in Sections 2503.2 (allowing only structures that are less than four feet above grade at every point) and Section 2503.3 (capping fences/walls within ten feet of property lines at 7 feet) and the limitations on *yard occupancy* set forth the in the definition of "yard" are *cumulative* and must be independently met.

No matter how one looks at the Walled Platform Structure, it fails to meet the 50% lot occupancy requirement:

- The most natural way to conceive of the Walled Platform Structure is as a multi-component structure that comprises a quarter-acre artificial elevated platform/terrace (which was the chief object of the project) together with the four walls that surround the imported fill material that supports and makes up the platform/terrace. From this perspective, the part of the required yards that the structure occupies includes (a) the entire area that has been covered by the elevated and sodded terrace plus the entire area that is directly below the stacked mesa blocks. The undisputed evidence now before this board demonstrates that nearly the entire required rear yard, and much more than half of the required side yard on the west side of the lot, is covered over by the terrace and/or the walls. *See, e.g.,* App. Exs. 23, 24.

- A second way to conceive of the Walled Platform Structure is as multiple separate structures — one consisting of just the platform/terrace, the other(s) consisting of just the exterior wall(s). From this perspective, the platform/terrace occupies, *by itself*, nearly all of the required rear yard and more than half of the required side yard on the west side of the lot.

- Even if the structure at issue were considered (as the Economides urge) to be nothing more than the elements that make up the exterior wall(s) — namely the stacked mesa blocks and the horizontal sheets of high-tension geogrid fabric that connect to the blocks and hold up the wall(s) — then the structure still violates the maximum occupancy provision. This is because the width of the the walls must be deemed to include not just the one-foot-thick mesa blocks, but also the geogrid sheets that are attached to, and hold up, the mesa blocks. (See App. Ex. 24.) Just as much as the mesa blocks themselves, those horizontally-extended sheets prevent portions of the required rear and side yards from being "open and unobstructed to the sky from the ground up." 11 DCMR § 2503.1. The geogrid sheets attached to the rear and western walls add between 13.5 feet and 27 feet to the thickness of each wall, so that the combination of the blocks and the sheets cover and occupy more than half of the required rear yard and more than half of the required side yard on the west side of the lot.

CONCLUSION

For all of the foregoing reasons, as well as for all of the reasons set forth in Appellant's prior submissions, all of the reasons set forth in the submissions and testimony of the ANC and Intervenor National Park Service, and all of the reasons set forth in the written submissions supporting this Appeal from individuals and organizations, Appellant respectfully requests that this Board reverse and vacate the DCRA decision to issue Building Permit No. B460927 and order the Economides to dismantle the Walled Platform Structure without wreaking any further damage on the surrounding parkland and property.

Respectfully submitted,

By: _____

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Counsel for Appellant

Dated: March 14, 2005

Government of the District of Columbia
EXECUTIVE OFFICE

Municipal Planning Office
District Building
Washington, D.C. 20004

September 1, 1976

M E M O R A N D U M

TO: D.C. Zoning Commission

FROM: Ben W. Gilbert, Director
Municipal Planning Office

RE: Zoning Commission Case No. 76-15

Application

The idea behind the text amendments proposed in this case was originally presented to the Zoning Commission by Mr. William S. Harps, Chairman of the Board of Zoning Adjustment. Mr. Harps proposed that the Zoning Commission clarify the Zoning Regulations as to what kinds of structures may occupy a yard required by the Zoning Regulations. Subsequently, following the directions of the Commission, the staff prepared and advertised specific text language (a copy of which is attached) which would define a yard as an exterior space unoccupied from the ground up, and would allow only certain prescribed structures to be located in a yard, as follows:

1. Accessory buildings in rear yards would be permitted as at present.

2. A structure, but not a building, may occupy a yard if it is less than four feet out of grade in its entirety.

3. A fence or retaining wall is permitted.

4. Stairs leading from the main story to the ground are permitted, provided that the highest tread is not more than 8 feet out of grade.

The effect of these proposed amendments is to change the current interpretation regarding occupancy of yards. The Zoning Administrator and the Board of Zoning Adjustment have determined that as long as a structure lies below the level of the main floor, and is thus not counted in the calculation of lot occupancy, it may occupy a yard.

Summary Recommendation

The Municipal Planning Office recommends that the Zoning Commission adopt the proposed text amendments with a clarifying modification regarding deck railings as a reasonable control on the occupancy permitted in yards required by the Zoning Regulations.

Background

The subject amendments were proposed to the Zoning Commission primarily as a result of a long and complicated case before the Board of Zoning Adjustment (Docket No. 11158) which dealt with the issue of a rear deck on a property in Georgetown. The level of the floor of the deck was below the level of the main floor joists of the building, and thus would not be computed as part of the building area (specifically exempted by the definition of building area). Based on a long-standing interpretation, the Zoning Administrator approved the issuance of a permit for the deck to cover 100 percent of the required rear yard. On an appeal taken by an abutting property owner, the BZA determined that because the subject railing around the deck (required by the Building Code) extended above the level of the main floor joists, the whole structure could not be located in a rear yard. Following a remand of the case to the Board from the D.C. Court of Appeals and further hearings, the Board reversed its earlier decision and denied the appeal. The Board concluded that the Zoning Administrator was correct in allowing the structure in the rear yard as long as the structure was below the main floor joists.

Detailed Description and Analysis

The present Zoning Regulations define a yard as "an unoccupied space other than a court, open to the sky on the same lot with a building or other structure" The interpretation placed on this definition by the Zoning Administrator and the Board of Zoning Adjustment implies that the space shall be unoccupied from the level of the main floor joists. Consequently, buildings and structures could occupy 100 percent of a lot, including all required yards, if the building and structures were below the level of the main floor. Since many dwellings in the District have basements, the ceiling of which may be from four to eight feet out of grade, the level of the main floor may also be well out of grade. In addition, if a lot slopes down from front to back, the main floor may be more than one story out of grade at the rear of the house.] ★

The present Zoning Regulations do specifically provide for accessory buildings to be located in rear yards (Section 7601). This section limits the height of accessory buildings in required rear yards to 15 feet, and specifies that no more than 30 percent of the required rear yard may be occupied.

In clarifying and amending the Zoning Regulations regarding what should be allowed to occupy a yard, there are essentially three options available, as follows:

1. Clarify the Regulations to continue the present interpretation. This would allow a structure to occupy a yard as long as it is below the level of the main floor, and could be accomplished by defining a yard as a space unoccupied from the level of the main floor up. This option would allow for complete occupancy of a lot, but would still provide the required light and ventilation for any buildings on the lot by limiting coverage to below the first floor. Building and housing code provisions would govern the requirements for light and ventilation to basement areas, and would effect the exact design and coverage for buildings on a particular lot. From the negative side, such a regulation would allow buildings or structures 10 feet or more out of grade to cover an entire yard, with adverse effects on light, air, privacy and aesthetics for properties surrounding the particular site.

2. Prohibit any structures from occupying a yard. This could be accomplished by defining a yard as an unoccupied space from the ground up. This would prevent any structures from locating in a yard, and would preserve these areas as open spaces. Such an across-the-board prohibition would not allow any structures, including fences, swimming pools, tennis courts, etc.

3. Allow certain limited occupancy of a yard. This could be accomplished by defining a yard as an unoccupied space from the ground up except for certain specified items. There are a number of approaches which could be utilized under this option, from giving all discretion to the BZA to allow occupancy, to permitting coverage up to a certain specified percentage or by specifying certain exemptions as a matter-of-right.

The proposed regulations take the third, middle ground approach by allowing certain structures to be located in required yards. These regulations apply to side and rear yards, since these are the yards required by the Zoning Regulations. A yard is defined as a space unoccupied from the ground up except as specifically provided. Those items which are allowed are broken into two classes, those allowed as a matter-of-right and those allowed with BZA approval.

Those items which may occupy a required side or rear yard as a matter-of-right are as follows:

1. Accessory buildings allowed in rear yards under the provisions of Section 7601.

2. A structure, but not a building, which is four feet or less out of grade in its entirety. This would prohibit a basement or cellar from

extending into a required yard, but would allow swimming pools, tennis courts, air conditioning compressors, and low decks where the entire deck, except for required safety railing, is less than four feet out of grade.

3. A fence or retaining wall up to the heights established by the Building Code may be located in a side or rear yard.

4. Stairs leading to the ground from the main floor. The steps may not exceed eight feet in height out of grade (the approximate height of one story for residential purposes) nor project more than four feet into the yard (the same distance as for a fire escape). MPO notes that these requirements are based on normal situations, which may require steps to be oriented parallel to the building rather than perpendicular to it. The Zoning Commission may wish to consider other alternatives to the distance out of grade or the allowable projection, to take into account unusual situations caused by changes in grade or to allow for greater architectural flexibility in the design of such stairs without requiring BZA approval of each such situation.

The Board of Zoning Adjustment may permit other structures, again not including buildings, to occupy yards. Such structures would be those more than four feet out of grade or those which are not otherwise permitted as a matter-of-right. The Board is required to find that such structures are located below the level of the main floor, except for any railings required of the Building Code, that the structure will not block light and ventilation, and that the structure does not lessen access to the required yard. The Board thus has the discretion to permit greater occupancy of yards if certain safeguards are met. As always, in exceptional or unique circumstances, where a practical difficulty or hardship is present, the Board may grant a variance from the provision as well as any other provisions of the Zoning Regulations. Attached figures 1 and 3 show situations where structures would be allowed as a matter-of-right. Attached figures 2 and 4 show situations where structures would be permitted only with BZA approval.

The proposal, as advertised for hearing, does not specifically indicate whether the height of a required safety railing is to be included for the purpose of measuring the height of a structure out of grade. The Building Code requires that all decks (referred to as open porches in the Code) 24 inches or more above the ground shall have a safety railing of at least 31 inches and not more than 42 inches on all open sides. The proposed regulation, as advertised, would require BZA review of a deck where the surface of the deck would be 4 feet or less out of grade and where only the railing extended above the four foot level. MPO believes that this would result in an unacceptable burden for the BZA and is not the intent of the proposed regulation. MPO, therefore, recommends that a new sentence be added to proposed paragraph 7602.21. The whole paragraph would then read as follows:

7602.21 A structure, not including a building, which is four feet or less out of grade in its entirety may occupy any yard required under the provisions of this regulation. Any railing required by the Building Code shall not be calculated in the measurement of such height.

Recommendation

The Municipal Planning Office recommends that the Zoning Commission adopt the proposed text amendments to the Zoning Regulations, as clarified with the modification concerning safety railings, to provide for certain limited occupancy of yards. The MPO believes that neither complete occupancy of yards nor outright prohibition of all occupancy is a desirable approach. The MPO believes that the middle ground approach, allowing limited occupancy as a matter-of-right and giving the BZA authority to review any other situation, represents a sensible balance in resolving this issue, and therefore recommends adoption of the proposed language.

Report Prepared by:
Zoning Division, MPO
SES:ss

OTE:

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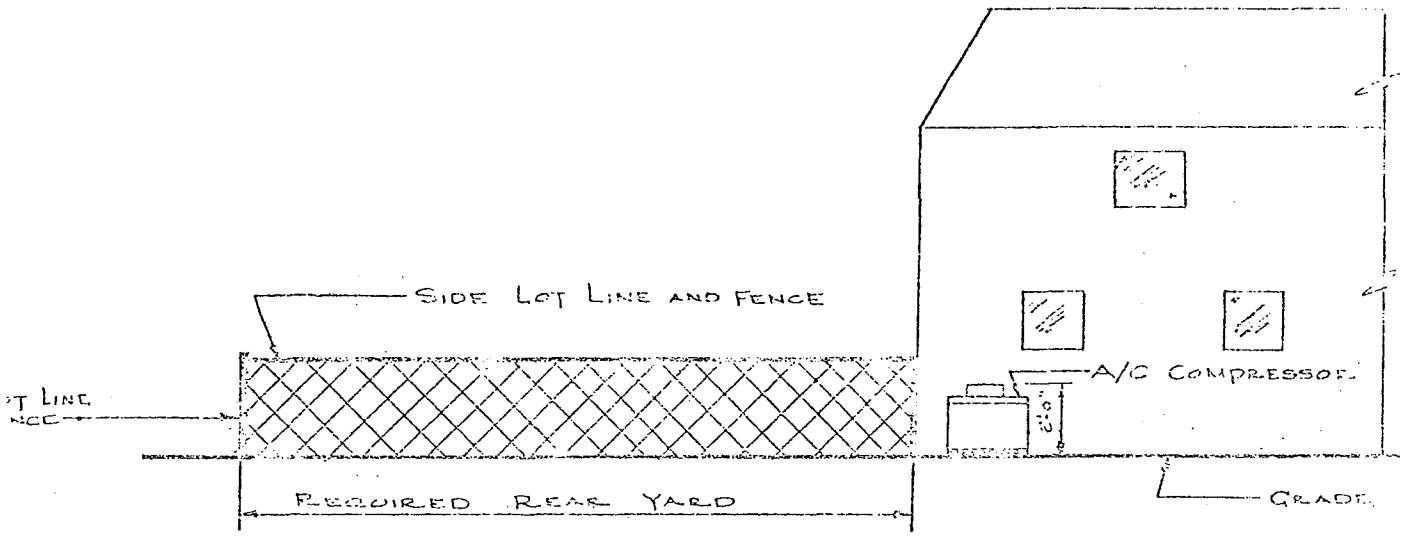

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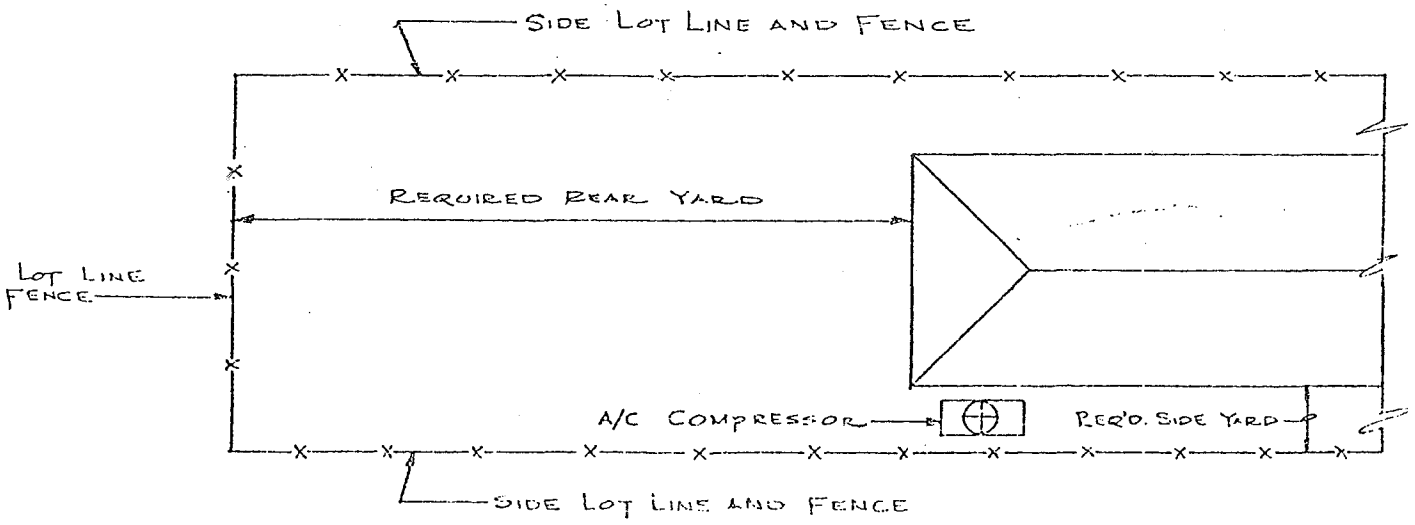

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FIGURE 2

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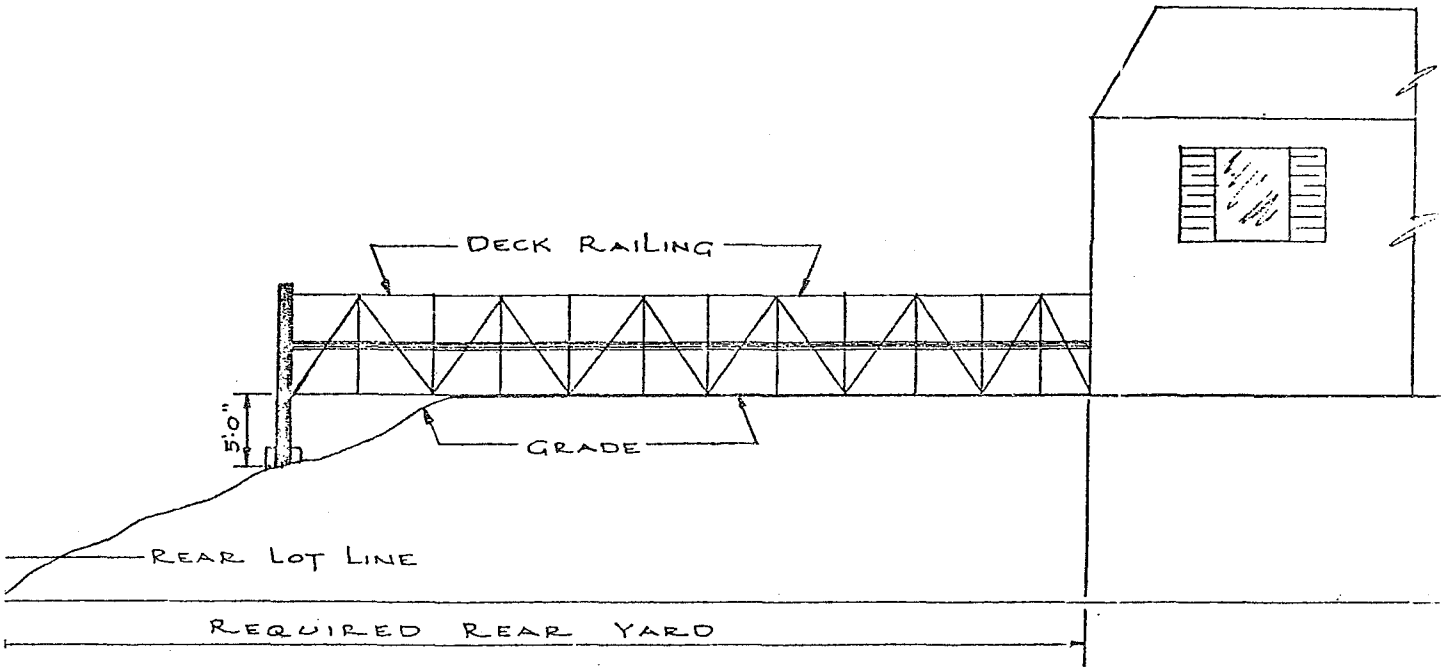

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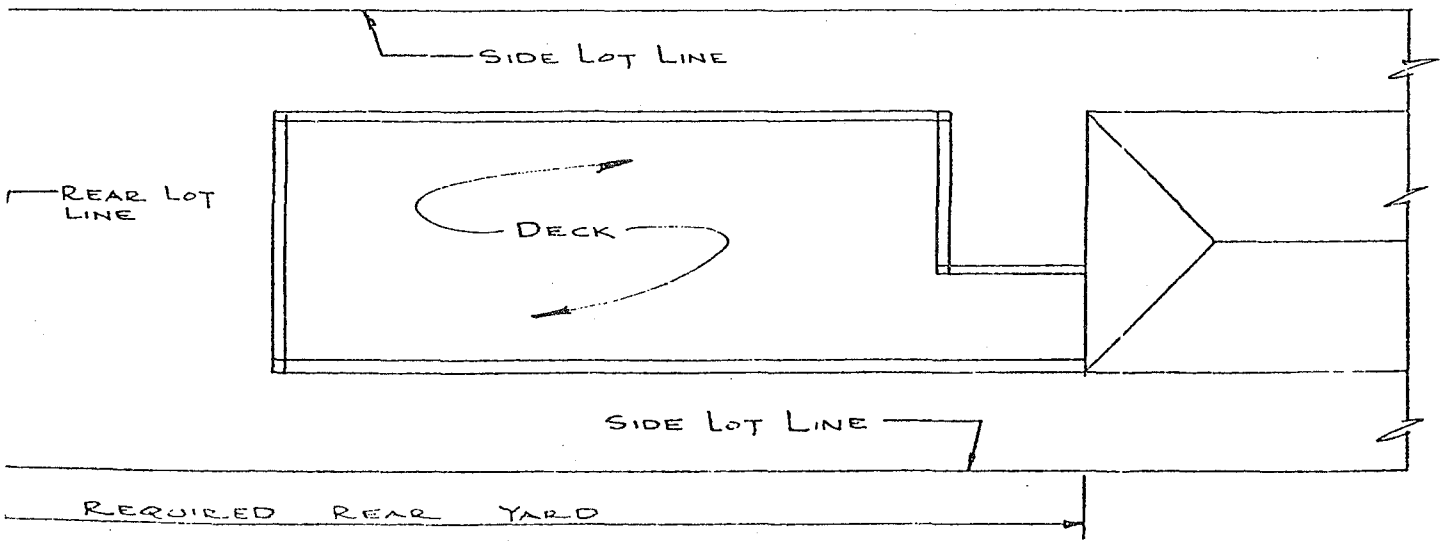

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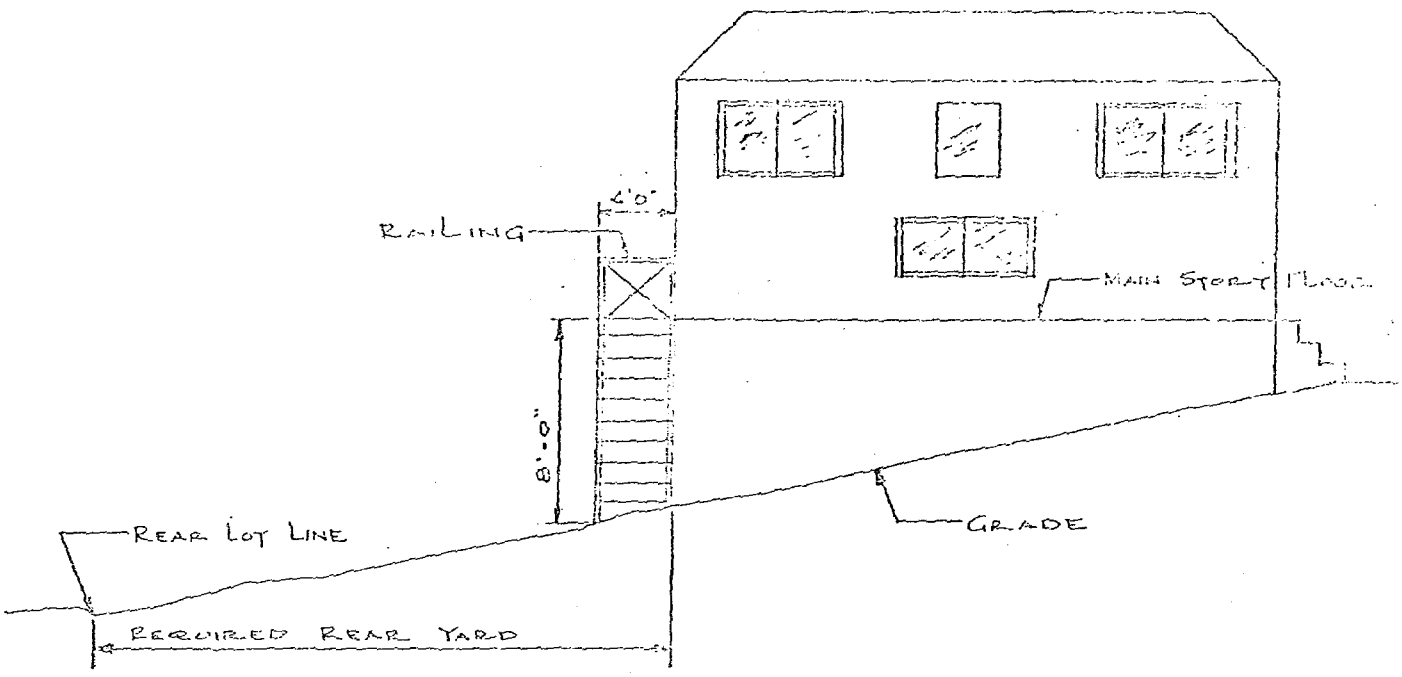

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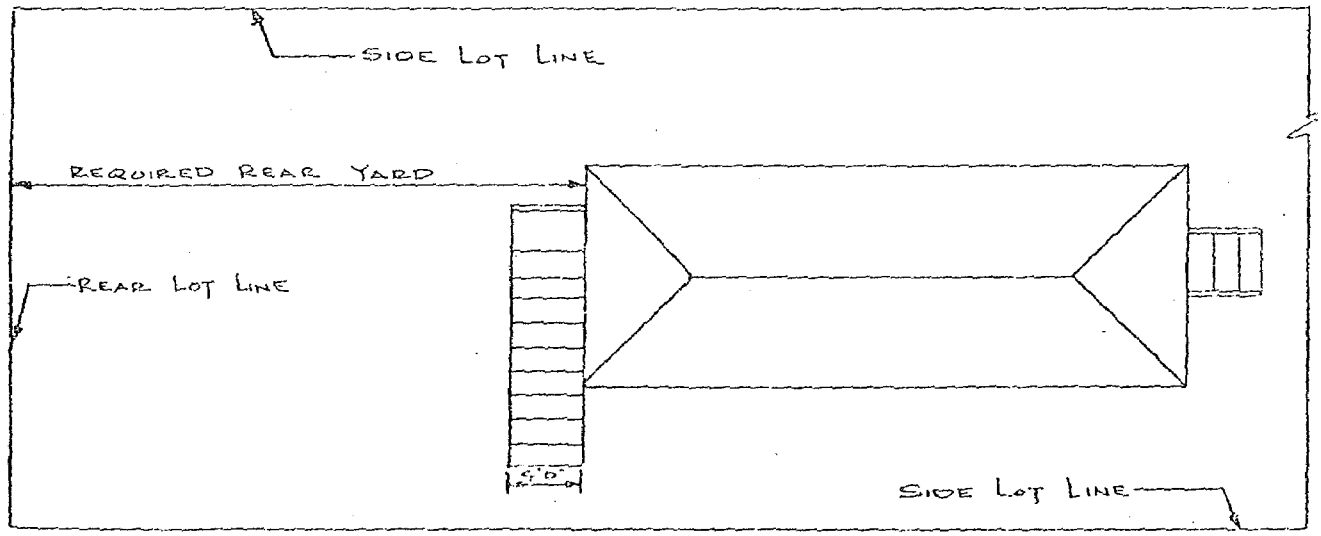

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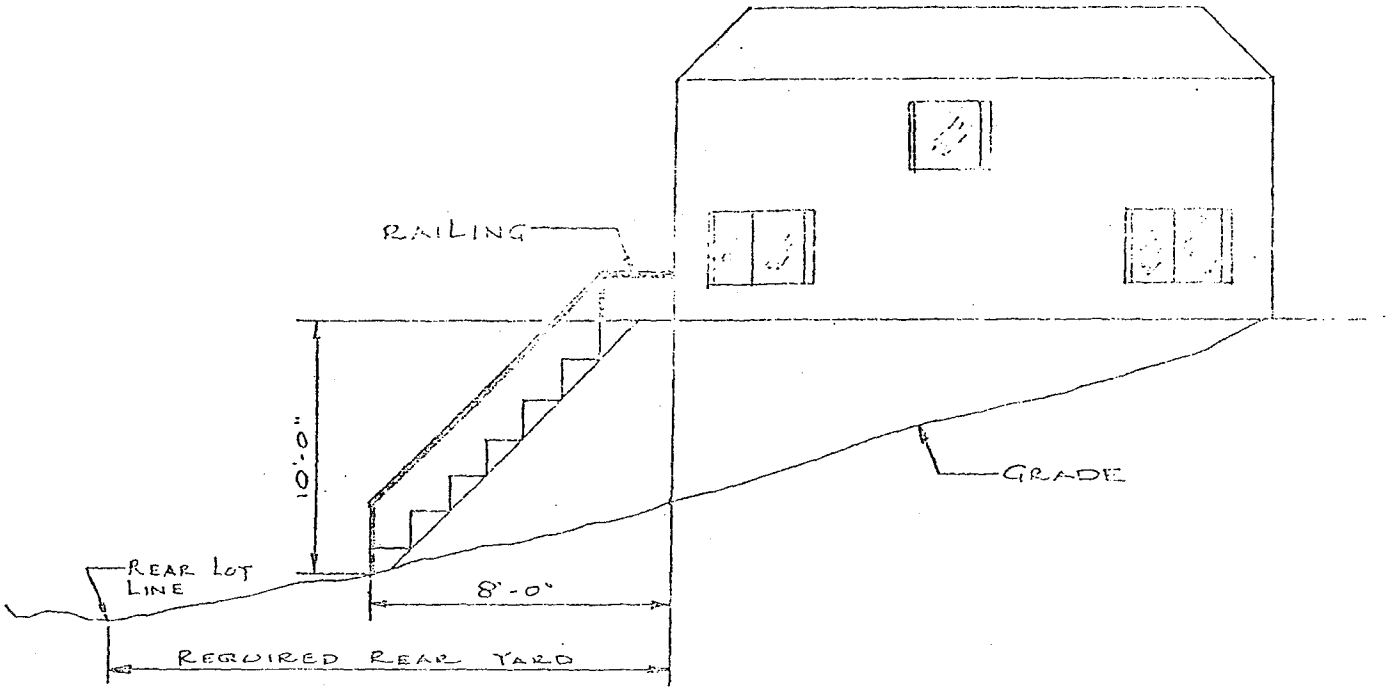

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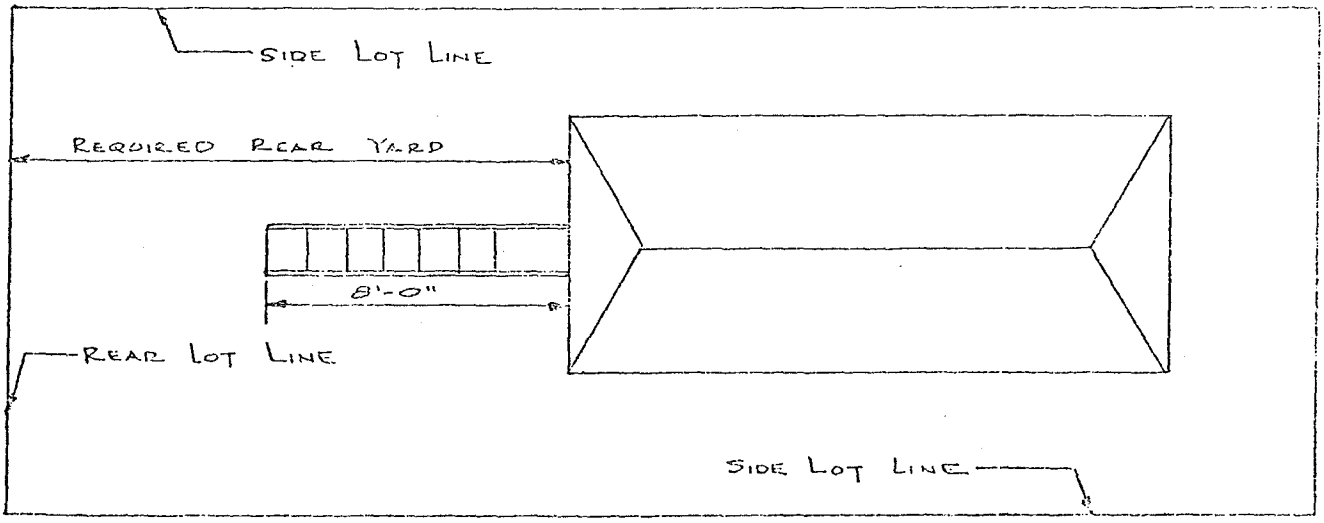

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DCMR 11

ZONING

(PROVISIONAL EDITION)

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Title 11 DCMR

ZONING

(Provisional Edition)

This provisional edition of Title 11 DCMR consists of the former D.C. Zoning Regulations (DCRR) with all amendments through August, 1982, and relevant rules for the Zoning Regulations promulgated by the D.C. Zoning Commission. Although this publication contains the most current rules and regulations, it is designated a "provisional edition" because it has not been renumbered and restructured in accordance with the D.C. Office of Documents uniform format and style requirements, and does not contain the research aid required by D.C. Law 2-153, the "District of Columbi Documents Act."

amusement machines and the percentage of the establishment or facility to be devoted to the use of such mechanical amusement machines. Such a scaled drawing is intended to provide the Zoning Administrator with the data necessary to make the appropriate review as required in Paragraph 7601.62.

7601.62 Where mechanical amusement machines are permitted as accessory uses, such machines shall not exceed the following:

7601.621 In an establishment or facility of less than 2,000 square feet more than five percent of the floor area of such establishment or a maximum of three such machines;

7601.622 In an establishment or facility of 2,001 to 4,000 square feet more than five percent of the floor area of such establishment or facility or a maximum of five such machines;

7601.623 In an establishment or facility of more than 4,000 square feet, more than five percent of the floor area of such establishment or a maximum of ten such machines.

7601.63 Such machines shall not be used to display specified sexual activities or specified anatomical areas, except that in the C-3-C, C-4 and C-5 (PAD) Districts, display of specified sexual activities or specified anatomical areas in mechanical amusement machines may be permitted if approved by the Board of Zoning Adjustment in accordance with Paragraph 5103.47 and 5104.45.

7601.64 The provisions of Chapters 3, 4, 5 and 6 and Section 8104 of Chapter 8 shall not prohibit, nor be construed to prohibit, the continued use or operation of mechanical amusement machines as accessory uses in such numbers and locations as have been licensed on or after October 31, 1977 by the Government of the District of Columbia, even though such machines as accessory uses do not otherwise conform to these regulations, provided that the numbers of such machines do not exceed by more than fifty percent of the maximum number of machines otherwise permitted by the requirements of Paragraph 7601.62.

SECTION 7602 - PROJECTIONS INTO REQUIRED OPEN SPACES

7602.1 Except for the following specified projections and encroachments, every part of a required yard or court or other required open space shall be open and unobstructed to the sky.

7602.11 Cornices and eaves may project over any required yard or court for a distance not to exceed two feet.

7602.12 Sills, leaders, belt courses, and similar ornamental or structural features may project over any required yard or court a distance not to exceed six inches.

7602.13 The ordinary projection of skylights above the bottom of a yard or court shall be permitted if placed so as not to obstruct light and ventilation.

7602.14 Awnings serving a window, porch, or door may project into a required yard or an open court for a distance not to exceed 40 inches;

7602.15 An open or lattice enclosed fire balcony or fire escape may project into a required yard or an open court for a distance not to exceed four feet;

7602.16 A chimney, smokestack, or flue may project into any required rear yard, provided the horizontal section of the projection does not exceed five square feet; or

7602.17 A chimney, smokestack, or flue may project into any required side yard for a distance not to exceed two feet.

7602.18 A room air conditioner (self-contained) may project into any required yard or court a distance not to exceed two feet.

7602.2 Except for the following specified structures, every part of a yard required under the provisions of these regulations shall be open and unobstructed to the sky from the ground up.

7602.21 A structure, not including a building, no part of which is more than four feet above the grade at any point may occupy any yard required under provision of the regulations. Any railing required by the Building Code shall not be calculated in the measurement of such height.

7602.22 A fence or retaining wall constructed in accordance with the Building Code may occupy any yard required under the provision of these regulations.

7602.23 Stairs leading to the ground from a door located on the story in which the principal entrance of a building is located may occupy any yard required under provisions of these regulations. Such stairs should include any railing required by the Building Code.

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District of Columbia

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* COUNCIL SETS HEARINGS ON VIABILITY OF A MUNICIPAL BANK IN THE DISTRICT OF COLUMBIA
* REVISED HEARING SCHEDULE FOR COUNCIL HEARINGS ON FY 1981 BUDGET AMENDMENT
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ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICES OF FINAL RULEMAKING

ZONING COMMISSION CASE NO. 79-9

The Zoning Commission of the District of Columbia, pursuant to the authority set forth in the Zoning Act (D. C. Code, Sec. 5-413 et seq.), hereby gives notice of the adoption of revisions to the Zoning Regulations to create a new C-3-B District and to redesignate the existing C-3-B District to C-3-C. Notice of proposed rulemaking was published in the D. C. Register on February 1, 1980 at 27 DCR 490 and April 25, 1980 at 27 DCR 1675. The final revised rules were adopted by the Zoning Commission at its public meeting held on May 8, 1980. These rules will be effective upon publication in the D. C. Register and one newspaper of general circulation. The rules finally adopted are as follows:

1. Change all existing references to "C-3-B" in the Zoning Regulations to "C-3-C".

2. Redesignate on the Zoning Map all property currently zoned "C-3-B" to "C-3-C".

3. Modify existing Sub-section 5103.1 to read as follows:

   5103.1 The C-3 District is designed to accommodate important subcenters supplementary to the Central Business District. All such districts will provide substantial amounts of employment, housing and mixed uses. The District is divided into C-3-A, C-3-B and C-3-C Districts.

   5103.11 The C-3-A District permits medium density development, with a density incentive for residential development within a general pattern of mixed use development. C-3-A Districts should be compact in area and located on arterial streets, in uptown centers and at rapid transit stops.

   5103.12 The C-3-B District permits medium density development, including office-retail, housing and mixed uses. It is intended for uptown locations, where the largest component of development will be office-retail and other non-residential uses. C-3-B Districts should be compact in area and located in or near the Central Employment Area, on arterial streets, in uptown centers and at rapid transit stops.

5103.13 The C-3-C District permits medium-high density development, including office, retail, housing and mixed use development. C-3-C Districts should be compact in area.

4. Modify part of the table in Sub-section 5201.1, regarding height, to read as follows:

	Height in Feet	Height in Stories
C-3-A	65	No limit
C-3-B	70	6
C-3-C	90	No limit

5. Modify part of the table in Sub-section 5301.1, regarding floor area ratio, to read as follows:

	Apartment House or other Residential Use	Hotel or other Permitted Use	Maximum Permitted
C-3-A	4.0	2.5	4.0
C-3-B	5.0	4.0	5.0
C-3-C	6.5	6.5	6.5

6. Modify part of the table in Sub-section 5302.1 regarding percentage of lot occupancy, to read as follows:

C-2-A	75%
C-3-B, C-3-C	100%

7. Modify part of the table in Paragraph 5302.21, regarding residential recreation space, to read as follows:

C-3-A	15%
C-3-B	10%
C-3-C	10%

8. Modify parts of Section 5303, regarding rear yards, as follows:

a. In the table in Sub-section 5303.1, add "C-3-C" between "C-3-B" and "C-4".

b. In paragraph 5303.11, add "C-3-C" between "C-3-B" and "C-4".

c. In Sub-section 5303.3, add "C-3-C" after "C-3-B".

9. Modify paragraph 5304.13, regarding side yards, to add "C-3-C" after "C-3-B" in Sub-paragraph 5304.132.

10. Modify parts of Section 5103, regarding uses, as follows:

a. In sub-paragraph 5103.331, regarding motorcycle sales and repair, sub-paragraph 5103.332, regarding massage establishments, and paragraph 5103.35, regarding mechanical parking garages, change "C-3-B" to "C-3-C".

b. In paragraph 5103.41, regarding mechanical parking garages, and paragraph 5103.42, regarding motorcycle sales and repairs, and "and C-3-B" after C-3-A".

c. In paragraph 5103.47, regarding sexually-oriented business establishment, change "C-3-B" to "C-3-C".

11. In Sub-section 5401.1 regarding existing uses and structures, and sub-section 7103.1, regarding non-conforming provisions, add "C-3-C" between "C-3-B" and "C-4".

12. In the table sub-section 7202.1, for parking requirements, and sub-section 7303.1, for loading requirements, add "C-3-C" after "C-3-B" in all places.

13. Modify part of the table in paragraph 7501.41, regarding height in Planned Unit Developments, to read as follows:

	Maximum Height
C-3-A, C-3-B	90 feet
C-3-C	130 feet

14. Modify part of the table in paragraph 7501.43, regarding floor area ratio in Planned Unit Developments, to read as follows:

	Residential	Commercial including hotels and motels	Total
C-3-A	4.5	3.0	4.5
C-3-B	5.5	4.5	5.5
C-3-C	7.0	7.0	7.0

15. In paragraph 7601.63, regarding mechanical amusement machines, change "C-3-B" to "C-3-C".

16. In paragraph 7613.23, regarding boundary lines crossing a lot, add "C-3-C between "C-3-B" and "C-4".

17. In paragraph 2101.14, regarding types of districts, add "C-3-B medium bulk" after "C-3-A" and change "C-3-B" to "C-3-C".

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
CASE NO. 84-10
(Antennas - Text Amendment)

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in the Zoning Act (D.C. Code, Section 5-413, et seq.), having held a public hearing as required, hereby gives notice of adoption of amendments to the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The amendments relate to the location of antennas. Notice of proposed rulemaking was published in the D.C. Register on January 8, 1988. (35 DCR 179). These amendments were adopted by the Zoning Commission as a final action at public meetings held on September 15, 1988, and February 13, 1989. The specific amendments to the Zoning Regulations are as follows:

1. Add a new definition for antennas in Section 199 and new definitions for specific types of antennas, to read as follows:

   Antenna - a device used to transmit or receive communications signals. This term encompasses transmitting and receiving elements, and any tower and immediately related support and stabilizing elements, and rotating or other directional mechanism.

   Antenna, commercial broadcast - antenna used for television and commercial radio broadcasting by a profit or non-profit entity. The transmitting antenna may be affixed to a tower or to the top of a building. In amplitude modulation (AM) radio service, the tower also acts as the antenna.

   Antenna, microwave terrestrial - dish, horn, or other type antenna used for point-to-point microwave communication of sound, visual images or data from one terrestial point to another.

   Antenna, satellite earth station - antenna used to transmit or receive sound, visual images or data from one or more space stations or from one or more stations of the same kind by means of satellites or other objects in space.

   Antenna, super high frequency - an antenna which serves a super high frequency channel and requires a line of sight to the transmitting antenna, and which generally

consists of a metal grid or a sheet of bent metal, and is mounted on the pole of a UHF or VHF antenna or on a roof structure.

Antenna, whip - antenna generally consisting of a single pole or mast, also called a broomstick antenna, sometimes including irregularly shaped prongs or attachments at its extremity, including an antenna used for citizens band or two-way radio communications.

Antenna, yagi - a very high frequency (VHF) or ultrahigh frequency (UHF) directional antenna array in which a basic whip or dipole antenna is supplemented by one or more parallel reflector and director elements.

2. Add new Section 2519 to provide a clear purpose for the regulation of antennas. That purpose is supportive of the FCC declaratory rulings that do not disallow reasonable differences in regulations dealing with essentially different antennas.

2519 REGULATION OF ANTENNAS

2519.1 The purposes for the regulation of antennas as a particular type of structure are as follows:

(a) The Zoning Commission has determined that certain antennas, because of their size, shape, design, construction or location, may affect the health, welfare or safety of the population and may detract from the streetscape, landscape, skyline, scenic beauty or aesthetic interests of Washington, D.C., and its role as the Nation's Capital;

(b) The Zoning Regulations therefore regulate the size, height, construction, design, and location of antennas and antenna structures which have the greatest potential for adverse impact on the health, safety and welfare of the population, and on neighborhood quality, and those which have the greatest potential for adverse impact on the scenic beauty of the Nation's Capital; and

(c) The principal types of antennas regulated are those that, because of their shape and relatively large mass, potentially have the greatest visual impact and include, by example, large

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satellite earth station antennas and certain microwave terrestrial antennas.

2519.2 If the Zoning Administrator determines that an antenna does not meet the definition of any specific class of an antenna as set forth in section 199 of this title, the Zoning Administrator shall determine the class of antenna to which it is closest, and treat the antenna accordingly.

3. Permit antennas having the least potential adverse impact on the aesthetic qualities of Washington, D.C., the Nation's Capital, as a matter-of-right in the R-1 and less restrictive districts by adding new sub-sections 201.2 and 201.3, to read as follows:

201.2 The following classes of antennas shall be permitted as a matter of right in an R-1 district, subject to the requirements for each class of antenna:

(a) No more than two (2) residential type UHF/VHF television and frequency modulation (FM) radio receiving Yagi antenna not to exceed 8 feet horizontally;

(b) No more than two (2) whip antennas not exceeding two and one-half (2½) inches in diameter, with a mounted dimension no longer than twelve (12) feet in any direction, and located on a principal building;

(c) No more than one (1) residential type super high frequency antenna, not to exceed three (3) feet in any dimension, excluding the support element;

(d) One (1) or more antennas entirely enclosed on all sides within a building or by the penthouse walls or extensions of the penthouse walls. Those walls may include an opaque membrane covering a port in front of an antenna;

(e) One (1) or more antennas located entirely behind and no taller than the parapet walls; provided, that the parapet wall may include an opaque membrane covering a port in front of an antenna;

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(f) One (1) satellite earth station or one microwave terrestrial antenna with a diameter of no more than four (4) feet, not taller than eight (8) feet, located on the roof of a principal building, and set back from the edge of the roof a distance at least equal to its height above the roof. The principal building must have a height of no less than fifty (50) feet;

(g) A whip antenna mounted on a vehicle; and

(h) Antenna, other than a whip antenna, mounted on a vehicle located in a given square for not longer than one hundred and twenty (120) hours.

201.3 An antenna which is listed in sub-section 201.2, but which does not comply with the requirements that apply to its class of antennas, shall be permitted as a matter of right in an R-1 district, by administrative review, subject to the requirements of sub-section 201.7.

4. Other than antennas permitted as of right under sub-sections 201.2 and 201.3, permit ground-mounted antennas with a mounted height no greater than 12 feet to be erected as of right, but with conditions, in the R-1 and less restrictive districts. Review by the Office of Planning and approval by the Zoning Administrator is provided. Add new sub-section 201.4, to read as follows:

201.4 Subject to the procedure of sub-section 201.7, one ground-mounted antenna, not to exceed a mounted height of 12 feet at its highest point above the ground, shall be permitted as a matter of right in an R-1 district, provided that:

(a) The antenna is located in either the rear yard or the side yard of the principal building on the lot;

(b) The antenna is not visible from any public park which is within the Central Employment Area or from any street which the lot abuts;

(c) Each part of the antenna is removed from all lot lines by a minimum distance of ten (10) feet;

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(d) To the maximum practical extent, the antenna shall be black mesh construction or of materials and colors that blend with the surroundings;

(e) The installation shall include screening treatments necessary to ensure compliance with paragraph (b) of this sub-section, and, to the maximum practical extent, to reduce the adverse impact of the antenna as viewed from adjacent property; and

(f) The antenna installation shall be as small as is practical for its intended use.

5. Other than antennas permitted as of right under sub-section 201.2, permit roof-mounted antennas with a mounted height no greater than 12 feet above the roof to be erected as of right, but with conditions, in the R-1 and less restrictive districts. Review by the Office of Planning and approval by the Zoning Administrator is provided. Add new sub-section 201.5, to read as follows:

201.5 Subject to the procedure of sub-section 201.7, one roof-mounted antenna, not to exceed a mounted height of 12 feet at its highest point above the roof, shall be permitted as a matter of right in an R-1 district, provided that:

(a) Each part of the antenna is removed from each edge of the roof a minimum distance equal at least to its height above the roof;

(b) To the maximum practical extent, the antenna shall be of black mesh construction, or of materials and colors that blend with the surroundings;

(c) Each installation must be so located and screened as to minimize the view of the antenna from the ground; and

(d) If the antenna is located on the roof of a building which has a height of fifty (50) feet or less, the antenna shall not be visible from the ground.

6. Permit antenna additions to an existing broadcast tower with certain conditions. Review by the Office of

Planning and approval by the Zoning Administrator is provided.

201.6 Subject to the procedure of sub-section 201.7, an addition of an antenna to an existing broadcast tower shall be permitted as a matter of right in an R-1 district, provided that:

(a) The size of the tower is not increased; and

(b) The appearance of the tower is not changed in a manner which causes an adverse impact on the surrounding area.

7. Provide for antennas in sub-sections 201.3 through 201.6 to be reviewed and approved by the Zoning Administrator, with the report and recommendation by the Office of Planning, by adding new sub-section 201.7, to read as follows:

201.7 The following procedure shall apply to an application which is filed for the approval of an antenna under sub-section 201.3 through 201.6 of this section:

(a) Before taking final action on the application, the Zoning Administrator shall submit the application to the Director of the Office of Planning for review and report; and

(b) The Director shall report to the Zoning Administrator either within thirty (30) days of the date of submission of the application to the Director, or within such longer or shorter period as the applicant, the Zoning Administrator, and the Director may agree to establish for the report of the Director.

8. Provide for special exceptions to the regulations for commercial broadcast antennas, by deleting the existing Section 211 and substituting the following:

211 ANTENNA, COMMERCIAL BROADCAST (R-1)

211.1 Use as an antenna for commercial television and frequency modulation broadcasting to any height and in conjunction with the erection, alteration, or use of buildings for transmission or reception equipment on the same lot or elsewhere, shall be permitted in

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an R-1 District if approved by the Board of Zoning Adjustment in accordance with the conditions specified in §3108 of of this title, and subject to the provisions of this section.

211.2 The proposed location, height, and other characteristics of the antenna shall not adversely affect the use of neighboring property.

211.3 The antenna shall be mounted in a location which minimizes to the greatest practical degree its visibility from neighboring property and from adjacent public space, or is appropriately screened by landscaping or other techniques so as to soften or minimize the visibility of the antenna.

211.4 Each part of a ground-mounted commercial broadcast antenna, including support system and guy wires, shall be removed a minimum of ten (10) feet from each lot line, or a distance of at least one-sixth of the mounted height of the antenna, whichever is greater.

211.5 The proposed height of the tower shall not exceed that which is reasonably necessary to render satisfactory service to all parts of its service area.

211.6 No transmission equipment shall be located in a residential district, unless location in the district is necessary for technically satisfactory and reasonably economical transmission.

211.7 If review by the Historic Preservation Review Board or Commission of Fine Arts is required, concept review and approval should occur before review by the Board of Zoning Adjustment.

211.8 No height of an antenna tower in excess of that permitted by the Act of June 1, 1910 (36 Stat. 452), as amended, shall be permitted, unless the height is approved by the Mayor.

211.9 Before taking final action on an application for use as an antenna tower, the Board shall have submitted the application to the D.C. Office of Planning for review and report.

211.10 The applicant shall have the burden of

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demonstrating the need for the proposed height, and that full compliance with the matter of right standards would be unduly restrictive, prohibitively costly, or unreasonable.

9. Permit an antenna other than a commercial broadcast antenna to be located in an R-1 district by special exception, by adding the following new section 212:

212 ANTENNA, OTHER THAN COMMERCIAL BROADCAST ANTENNA (R-1)

212.1 An antenna, other than a commercial broadcast antenna, which is not permitted or approved pursuant to section 201 of this title may be permitted as a special exception by the Board of Zoning Adjustment, provided that the following requirements are met:

(a) The proposed use, location, and conditions related thereto shall be consistent with the purposes set forth in section 2519 of this title;

(b) If review by the Historic Preservation Review Board or Commission of Fine Arts is required, concept review and approval should occur before review by the Board of Zoning Adjustment;

(c) The Board may impose conditions relating to operation, location, screening, or other requirements as it shall deem necessary to protect adjacent and nearby property, consistent with the general purpose and intent of this section;

(d) The Board may require the removal of any nonconforming antenna as a condition to the approval of an antenna;

(e) The location and other characteristics of the antenna shall be reasonably necessary for the intended use of the antenna;

(f) The present character and future development of the neighborhood shall not be adversely affected; and

(g) Before taking final action on an application for use and location of an antenna, the Board shall have referred

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the application to the Office of Planning for review and report.

10. Renumber existing sections 212 through 220, and all references thereto in Title 11, as sections 213 through 221, respectively.

11. Delete existing Section 511 that permits antenna towers as of right in SP and less restrictive zone districts.

12. Permit ground-mounted antennas with a mounted height no greater than 20 feet to be erected as of right, but with conditions, in the C-1 and less restrictive districts. Review by the Office of Planning and approval by the Zoning Administrator is provided. Add new sub-section 701.7, to read as follows:

701.7 Subject to the procedure of sub-section 701.9, one ground-mounted antenna, not to exceed a mounted height of 20 feet at its highest point above the ground, shall be permitted as a matter of right in a C-1 district, provided that:

(a) The antenna is located in either the rear yard or the side yard of the principal building or the lot;

(b) The antenna is not visible from any street which the lot abuts, or from any public park which is within the Central Employment Area;

(c) Each part of the antenna is removed from all lot lines by a minimum distance of ten (10) feet;

(d) To the maximum practical extent, the antenna shall be of black mesh construction, or of materials and colors that blend with the surroundings; and

(e) The installation shall include screening treatments as necessary to ensure compliance with paragraph (b) of this sub-section, and, to the maximum practical extent, to reduce the adverse impact of the visibility of the antenna from adjacent property.

13. Permit roof-mounted antennas with a mounted height no greater than 12 feet above a roof up to 90 feet above the ground to be erected as of right but with conditions in the C-1 and less restrictive districts.

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Also permit roof-mounted antennas with a mounted height no greater than 18 feet, 6 inches above a roof exceeding 90 feet above the ground. Review by the Office of Planning and approval by the Zoning Administrator is provided. Add new sub-section 701.8, to read as follows:

701.8 Subject to the procedure of sub-section 701.9, one roof-mounted antenna shall be permitted as a matter of right in a C-1 district, provided that:

(a) Each part of the antenna is removed from all edges of the roof a minimum distance equal at least to its height above the roof;

(b) To the maximum practical extent, the antenna shall be of black mesh construction, or of materials and colors that blend with the surroundings;

(c) The installation shall be so located and screened as to minimize the view of the antenna from the ground;

(d) If the antenna is located on the roof of a building which has a height of 65 feet or less, the antenna shall not be visible from the ground;

(e) If the height of the roof is 90 feet or less, the mounted height of the antenna at its highest point shall not exceed 12 feet above the roof; and

(f) If the height of the roof exceeds 90 feet, the mounted height of the antenna at its highest point shall not exceed 18 feet, 6 inches above the roof.

14. Provide for antennas in sub-sections 701.7 and 701.8 to be reviewed and approved by the Zoning Administrator, with the report and recommendation by the Office of Planning, by adding new sub-section 701.9, to read as follows:

701.9 The following procedure shall apply to an application for approval of an antenna under sub-section 701.7 or 701.8 of this section:

(a) Before taking final action on an application, the Zoning Administrator shall submit the application to the

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Director of the Office of Planning for review and report; and

(b) The Director shall report to the Zoning Administrator either within thirty (30) days of the date of submission of the application to the Director, or within such longer or shorter period as the applicant, the Zoning Administrator, and the Director may agree to establish for the report of the Director.

15. Permit ground-mounted antennas with a mounted height no greater than 20 feet to be erected as of right, but with conditions, in the C-3 and less restrictive Districts. Review by the Office of Planning and approval by the Zoning Administrator is provided. Add new sub-section 741.6, to read as follows:

741.6 Subject to the procedure of sub-section 741.7, one ground-mounted antenna, not to exceed a mounted height of 20 feet at its highest point above the ground, shall be permitted as a matter of right in a C-3 district, provided that:

(a) The antenna is located in either the rear yard or the side yard of the principal building on the lot;

(b) The antenna is not visible from any street which the lot abuts, or from any public park which is within the Central Employment Area;

(c) Each part of the antenna is removed from all lot lines by a minimum distance of 10 feet;

(d) To the maximum practical extent, the antenna shall be of black mesh construction, or of materials and colors that blend with the surroundings; and

(e) The installation shall include screening treatments necessary to insure compliance with paragraph (b) of this sub-section.

16. Provide for antennas in sub-section 741.6 to be reviewed and approved by the Zoning Administrator, with report and recommendation by the Office of Planning, by adding new sub-section 741.7, to read as follows:

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741.7 The following procedure shall apply for an application for the approval of an antenna under sub-section 741.6 of this section:

(a) Before taking final action on the application, the Zoning Administrator shall submit the application to the Director of the Office of Planning for review and report; and

(b) The Director shall report to the Zoning Administrator either within thirty (30) days of the date of submission of the application to the Director, or within such longer or shorter period as the applicant, the Zoning Administrator, and the Director may agree to establish for the report of the Director.

17. Provide for antennas as a matter-of-right in the CR district under the same standards and procedure as apply in residential and commercial districts, by adding paragraph 601.1(s), to read as follows:

601.1(s) Antenna, subject to the standards and procedure which apply to particular class of antenna pursuant to sub-sections 201.2 through 201.7.

18. Provide for antennas as special exceptions in the CR districts under the same standards and procedure as apply in the residential and commercial districts, by adding a new section 617, to read as follows:

617 ANTENNAS

617.1 An antenna shall be permitted as a special exception in the CR district, if approved by the Board of Zoning Adjustment subject to the standards and procedures which apply to the particular class of antenna under section 211 or section 212.

19. Renumber existing section 617 and all references thereto in Title 11 as 618.

20. Provide for antennas as a matter-of-right in the W district under the same standards and procedure as apply in residential and commercial districts, by adding paragraph 901.1(u), to read as follows:

901.1(u) Antenna, subject to the standards and

procedure which apply to the particular class of antenna pursuant to sub-sections 201.2 through 201.7.

21. Provide for antennas as special exceptions in the W district under the same standards and procedure as apply in the residential and commercial districts, by adding a new section 914 to read as follows:

914 ANTENNAS

914.1 If the Board considers that it is appropriate in furthering the objections of the Waterfront Districts, an antenna shall be permitted as a special exception in the CR district, if approved by the Board of Zoning Adjustment subject to the standards and procedures which apply to the particular class of antenna under section 211 or section 212.

22. Renumber existing section 914 and all references thereto in Title 11 as 915.

23. Provide that the replacement of an existing antenna shall be subject to the regulations which apply to the location of a new antenna, by amending sub-section 2001.2, and adding new sub-section 2001.11, to read as follows:

2001.2 Except as is provided in sub-sections 2001.11 and 2001.12 of this title, ordinary repairs, alterations, and modernizations to the structure, including structural alterations, shall be permitted.

2001.11 A nonconforming antenna shall not be altered, modernized, or otherwise replaced, except in conformity with all provisions of this title.

24. Provide for an immediate, temporary replacement of a nonconforming antenna which stops functioning and can not be replaced as a matter-of-right, by adopting a new sub-section 2001.12, to read as follows:

2001.12 If a nonconforming antenna stops functioning, a temporary replacement antenna may be installed, subject to the following conditions:

(a) A permanent replacement antenna cannot be installed as a matter-of-right;

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(b) The temporary installation shall be removed no later than one year after the nonconforming antenna stops functioning;

(c) Within three months after the nonconforming antenna stops functioning, the owner or occupant of the land or structure on which the antenna is installed shall apply for a special exception to install a longer term replacement; and

(d) If the owner or occupant elects to install an immediate replacement antenna, the cost of the temporary replacement shall not be considered by the Board of Zoning Adjustment as a basis for approval of a special exception to install a longer term replacement.

25. Enable antennas to exceed the normal four-foot height limit for accessory structures located in any required yard by adding new sub-section 2503.5, to read as follows:

2503.5 An antenna which complies with all other requirements of this title may occupy any side or rear yard which is required by any provision of this title.

26. Revise the table of special exceptions under Sub-section 3108.1, by adding the following thereto:

Type of Special Exception:

Exceptions to location, density, and height regulations for antennas.

District:

Any district

Section in Which Conditions are Specified:
sub-sections 211, 212

27. Modify existing sub-section 400.3 to include "antenna", as follows:

400.3 A spire, tower, dome, pinnacle, or minaret serving as an architectural embellishment, or an antenna may be erected to a height in excess of that which this section otherwise

authorizes in the district in which it is located.

28. Delete existing sub-section 400.5 and renumber existing sub-sections 400.6 through 400.13 and all references thereto in Title 11, as 400.5 through 400.12, respectively.

29. Revise existing sub-sections 530.3, 630.5, 770.3, 840.2, and 930.3 to read as follows:

> Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouse over elevator shaft, ventilator shaft, antennas, chimneys, smokestacks or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes.

30. Delete existing sub-sections 530.4 and 770.4, and renumber subsequent sub-sections consistently.

DEC 8 - 2000

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
ORDER NO. 931
Z.C. CASE NO. 00-04
(Text Amendment – 11 DCMR)
(Editorial Amendments to the Zoning Regulations)
November 27, 2000

The Zoning Commission for the District of Columbia, pursuant to its authority under Sections 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code §§ 5-413 and 5-424), and 11 DCMR § 3030 (Consent Calendar), hereby gives notice of the adoption of editorial amendments to all chapters of the Zoning Regulations, Title 11 DCMR. The Commission took final action to adopt the amendments on November 27, 2000.

The Commission initiated this case to make minor, editorial amendments to the Zoning Regulations to correct errors and to improve the readability of the regulations. The amendments (1) provide the full popular name, history, and citation to the official codification for all cross-referenced statutes and regulations; (2) update and correct internal Zoning Regulation cross-references; (3) correct source notes known to be erroneous; (4) correct titles and section headings to accurately reflect the text and correct subsection numbering errors; (5) correct names and abbreviated references to zone districts to conform to the names and abbreviations used on the Zoning Map; (6) update public agency names; (7) change references to the "effective date" of a regulation to the actual date the regulation became effective; (8) correct and update the special exceptions table in 11 DCMR § 3104.1 to accurately reflect the text of the Zoning Regulations; (9) eliminate redundant provisions; (10) correct grammatical and typographical errors; and (11) make other editorial changes to conform to the D.C. Office of Documents Rulemaking Handbook and Publications Style Manual. The changes are editorial in nature and do not affect the substance of the Zoning Regulations.

This final rulemaking is effective upon publication in the *D.C. Register,* to be published concurrently in Title 11, DCMR.

The Commission took proposed action pursuant to 11 DCMR § 3027.2 at its regular monthly meeting on October 16, 2000, to approve the proposed amendments. A Notice of Proposed Rulemaking was published in the *D.C. Register* on October 20, 2000, at 47 DCR 8335, for a 30-day notice and comment period. Because this rulemaking was undertaken

pursuant to the Commission's Consent Calendar procedures in 11 DCMR § 3030, no hearing was held. The Office of Corporation Counsel has determined that this rulemaking meets its standards of legal sufficiency.

The Commission did not receive any comments from the public regarding this rulemaking. The Commission therefore took final action to adopt the proposed rulemaking with the following exceptions as the final rulemaking:

First, the Office of Documents and Administrative Issuances suggested additional editorial corrections to 11 DCMR §§ 2507.4 and 2522.1, which the Commission has adopted in this rulemaking, as follows:

Section 2507.4	**Delete** the phrase **building of**

Zoning Commission Case No. 98-19
46 DCR 7853 (1999)

Section 2522.1	Insert the phrase **as is** before the phrase **cumulative totals**

Second, the Office of Zoning recommended including footnotes in the new appendix to Chapter 25, identifying the references to B Street, N.E., as Constitution Avenue, and B Street, S.E., as Independence Avenue, which footnotes have been included.

Finally, the Commission has deleted the proposed amendments to Sections 210.8, 302.1, 322.1, 332.1, 352.1, 500.6, 507.1, 507.2, 507.4, 615.1, 615.4, 615.5, 615.6, 900.6, 901.3, 912.1, 912.5(b), and 915.1 in this notice of final rulemaking because the Commission is amending these sections in Z.C. Order No. 932 in Z.C. Case No.99-09, relating to colleges and universities. In addition, the following changes were made to the proposed special exceptions table in Section 3104.1 to conform to the amendments adopted in Z.C. Order No. 932: the entries "Dormitory, fraternity, or sorority house on campus"; "Hospital – on college or university campus; and School – college, university, or other academic institution of higher learning" are deleted and the entry "School – private school, trade school, or college or university" in a W District is changed to "School – private school or trade school."

Based on the above, the Commission finds that the proposed amendments are minor modifications to previously approved rulemakings, in the best interests of the District of Columbia, consistent with the purpose and intent of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders **APPROVAL** of the amendments to the Zoning Regulations, Title 11 DCMR, as set forth

in the Commission's Notice of Proposed Rulemaking, as modified in this Notice of Final Rulemaking.

Vote of the Zoning Commission taken at its public meeting on October 16, 2000, to adopt the proposed rulemaking: 5 - 0 (Anthony J. Hood, Carol J. Mitten, Kwasi Holman, and Herbert M. Franklin, to approve; John G. Parsons, to approve by absentee vote).

This order was adopted by the Zoning Commission at its public meeting on November 27, 2000, by a vote of 5-0. (Herbert M. Franklin, Kwasi Holman, Anthony J. Hood, Carol J. Mitten, and John G. Parsons, to **ADOPT** Z.C. Order No. 931).

In accordance with 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register,* to be published concurrently with Title 11, DCMR.

OCT 2 0 2000

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 00-04
(Text Amendment – 11 DCMR)
(Editorial Amendments to the Zoning Regulations)

The Zoning Commission for the District of Columbia, pursuant to its authority under Sections 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code §§ 5-413 and 5-424), and 11 DCMR § 3030 (Consent Calendar), hereby gives notice of its intent to amend all chapters of the Zoning Regulations, Title 11 DCMR, to correct errors and improve the readability of the regulations

The proposed amendments (1) provide the full popular name, history, and citation to the official codification for all cross-referenced statutes and regulations; (2) update and correct the internal Zoning Regulation cross-references; (3) correct source notes known to be erroneous; (4) correct titles and section headings to accurately reflect the text and correct subsection numbering errors; (5) correct names and abbreviated references to zone districts to conform to the names and abbreviations used on the Zoning Map; (6) update public agency names; (7) change references to the "effective date" of a regulation to the actual date the regulation became effective; (8) correct and update the special exceptions table in 11 DCMR § 3104.1 to accurately reflect the text of the Zoning Regulations; (9) eliminate redundant provisions; (10) correct grammatical and typographical errors; and (11) make other editorial changes to conform to the D.C. Office of Documents Rulemaking Handbook and Publications Style Manual. The proposed changes are editorial in nature and do not affect the substance of the Zoning Regulations.

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following rulemaking action is proposed:

EDITORIAL AMENDMENTS TO CHAPTER 1
The Zoning Regulations

Table of Contents, Section 105	Replace the word **Zoning** with the word **Zone**
Table of Contents, Section 107	Replace the word **Zoning** with the word **Zone**

Section 2501.5	Capitalize the word **districts**, insert the phrase **as a special exception** between the words **permitted** and **if**, and replace the cross-reference to **§§744 and 754** with **§§744, 744, and 3104**
Section 2501.6	Delete the **comma** after the phrase **of this title** and delete the phrase **of chapter 32**
Source Note (pg 25-3) following Section 2501.6	Change **Regulations** to **the Zoning Regulations**
Section 2502.1	Delete the **comma** following the word **section** and delete the phrase **set forth**
Section 2502.5	Replace the **semicolon** at the end of the sentence with a **period**
Section 2502.9	Insert the phrase **self-contained** between the words **A** and **room** and delete the parenthetical phrase **(self-contained)**
Source Note (pg 25-4) following Section 2502.9	Change **Regulations** to **the Zoning Regulations**
Section 2503.1	Replace the phrase **structures specified, and the exceptions set forth,** with the phrase **structures and exceptions specified** and delete the phrase **the provisions of**
Section 2503.2	Insert a **comma** following the word **Code** and insert the phrase **Title 12 DCMR,** before the word **shall**
Section 2503.5	Replace the word **which** with **that** in two places and delete the phrase **any provision of**
Source Note (pg 25-4) following Section 2503.5	Change **Regulations** to **the Zoning Regulations**
Section 2504.1	Capitalize the word **district** after the abbreviation **M**
Source Note (pg 25-5) following Section 2504.1	Change **Regulations** to **the Zoning Regulations**
Section 2505.1	Delete the **comma** following the word **purposes** and delete the **comma** following the word **quarry**