Government of the District of Columbia
OFFICE OF ZONING

MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Sharon S. Schellin
Acting Secretary to the Zoning Commission

DATE: June 30, 2005

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on July 8, 2005:

1. Z.C. Notice of Filing (Case No. 05-19); and
2. Z.C. Notice of Final Rulemaking & Order No. 02-42A (Case No. 02-42).

I have also enclosed a copy of the Rulemaking on diskette.

2005 JUN 30 PM 1:32
Office Of Documents And Administrative Issuances

Attachments

[redacted]
[redacted] 02-42
[redacted] 65

ZONING COMMISSION
District of Columbia
CASE NO.02-42
EXHIBIT NO.65

RULEMAKING TRANSMITTAL FORM

DATE AND TIME RECEIVED
Office of Documents use only

TYPE OF RULEMAKING ACTION: [ ] EMERGENCY RULES [X] FINAL RULES [ ] PROPOSED RULES [ ] COMBINED

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: JERRILY KRESS

ADDRESS: 441 4th Street, N.W., Suite 210 South TELEPHONE: (202) 727-6311

TITLE AND DESCRIPTION OF RULES:

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) Chapters 1, 5, 6, 7, 8, 9, and 21

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 52 DCR 3649 DATE: APRIL 8, 2005

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.
DATE: JUNE 14, 2005 SIGNED: Alan Bergstein for PHONE: (202) 442-9777

✓	FINAL		CONDITIONAL	NAME: ROBERT J. SPAGNOLETTI TITLE: ATTORNEY GENERAL

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)
Zoning Commission For The District Of Columbia Title:

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules. Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL OF VOTE:

APPROVAL OF ATTEST: Jerrily Kress

TITLE: Director, Office of Zoning PHONE: (202) 727-6311

Office of Documents use only: THIS NOTICE PUBLISHED AT: VOL: DCR: DATE:

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 02-42A
Supersedes Z.C. Order 02-42
Z.C. Case No. 02-42
(Text Amendments – 11 DCMR)
(Waterfront Open Space Recreation Zone district)

The Zoning Commission for the District of Columbia, pursuant to its authority under §§ 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Code, 2001 Ed. §§ 6-641.03 and 6-641.07); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Home Rule Act, hereby gives notice of the adoption of the following amendments to Chapters 1 (Zoning Regulations), 9 (Waterfront Districts), 20 (Non-conforming Uses and Structures), 21 (Off-Street Parking Requirements), 24 (Planned Unit Development Procedures), 25 (Miscellaneous Zoning Requirements), 31 (Board of Zoning Adjustment Rules of Practice and Procedure), and 32 (Administration and Enforcement) of the Zoning Regulations (11 DCMR), to establish the text for a new W-0 (Waterfront Open Space Recreation) Zone District.

A notice of proposed rulemaking was published on September 19, 2003 at 50 DCR 7838. Comments were received from the National Capital Planning Commission, the Capital Yacht Club, and one individual. In addition, the Office of Planning submitted a supplemental report recommending that the Commission not include in the final rule the proposed substantive amendments to the provisions of the CR, W-1, W-2, and W-3 Zone Districts. At final action, the Commission accepted OP's recommendations. The final rule, therefore, does not include the amendments to Chapter 6 (CR District); Chapter 9, § 901.1 (W-1, W-2, and W-3 Permitted Uses), §§ 901.1(m), (v), and (w); and Chapter 21 (Off-Street Parking Requirements) §2101.1, Schedule of Required Parking Spaces and §2119, Bicycle Parking Spaces requirements for the W-1, W-2, and W-3 zones that were included in the Notice of Proposed Rulemaking.

The Commission took final action to adopt the amendments at a public meeting held on December 8, 2003.

The final rulemaking was published in the *D.C. Register ("DCR")* on April 2, 2004 (51 DCR 3440-3467). After the rule took effect, it was discovered that its numbering conflicted with that of Zoning Commission Order No. 02-28, published in the *DCR* on May 7, 2004. (51 DCR 4778-4784). Order No. 02-28 promulgated a new § 917 for the Zoning Regulations entitled "Police

Department General Facility." Order No. 02-42 also promulgated a new § 917, entitled "Uses Subject to Special Exception (W-0) – General Provisions."

In order to correct the numbering conflict, on June 14, 2004, the Zoning Commission approved the issuance of corrections to the 02-42 Notice of Final Rulemaking. No substantive corrections or changes were made. Only numbering changes were made.

Subsequent to the Zoning Commission's June 14, 2004 approval of the corrections to the 02-42 Final Rulemaking, but prior to their publication, conflicts between the 02-42 Final Rulemaking and Zoning Commission Order No. 02-15-B, a text amendment regarding public recreation and community centers, were also discovered. Order No. 02-15-B was published in the *DCR* on November 28, 2003, approximately 4 months before Order No. 02-42 was published. (50 DCR 10137-10149).

Order No. 02-42 added a new § 931.1 and repeated the language of the original § 931.1 in a new § 931.2, repeated the language of the original § 931.2 in a new § 931.3 and repeated the language of the original § 931.3 in a new § 931.4. The language used by Order No. 02-42, however, did not include wording that had been added by Order No. 02-15-B. This language, having already been approved by the Zoning Commission in Order No. 02-15-B, has now been added back into the newly-numbered subsections of § 931, *i.e.,* subsections 931.2, 931.3 and 931.4.

Order No. 02-15-B had also added a new § 937 to the Zoning Regulations. It is entitled "Gross Floor Area (W)." Order No. 02-42, however, also purported to add a "new" § 937 to the Zoning Regulations, entitled "Waterfront Setback (W-0)." In order to avoid duplicating section number 937, the § 937 from 02-42 Order has been re-numbered § 938, leaving one § 937 - "Gross Floor Area (W)," and one § 938 – "Waterfront Setback (W-0)."

All numbering changes/corrections are shown bolded and underlined.

Authority of the Zoning Commission

Because these rules will govern uses that may extend over or float on water, the Commission believes it appropriate to address the issue of its authority to promulgate such rules. Section 1 of the 1938 Zoning Enabling Act, 52 Stat. 797 (1938), D.C. Official Code § 6-641.01, from which the Zoning Commission derives its powers, gives the Commission plenary zoning authority to regulate "buildings," "structures," and "land" within the District of Columbia. The term "land" as used in a zoning context, is construed to include submerged lands. *See, e.g., Harbor Island Marina v. Bd. County Comm'rs. Of Calvert County, Md.,* 407 A.2d 738 (Md. 1979); 3 Rathkopf, The Law of Zoning and Planning, § 35:5 (2001). In *Harbor Island*, the court, construing a zoning ordinance with language similar to the 1938 Act, rejected a narrow interpretation of the word "land" as encompassing solely "dry, solid earth." The court held that "land" included submerged lands and that a narrower reading hampered the remedial purposes for which zoning statutes exist. There is no reason to read out submerged lands from the 1938 Act, and good reason to read them in, in order to effectuate the purposes of zoning -- the promotion of the general welfare and the protection of natural resources.

Structures built out over the water are also subject to the authority of the Zoning Commission. Land, in a legal sense, is a "bundle" of rights, which accrue to the owner or user of the land. Riparian owners have certain rights to access and use the waters adjacent to their land, including the right to "wharf out," i.e., to construct improvements onto and over the water. *See, e.g., People's Counsel for Baltimore County v. Maryland Marine Mfg., Co., Inc.,* 560 A.2d 32 (Md. 1989). Traditionally, improvements made and attached to riparian land are considered additions to the land and are, therefore, subject to the local zoning power. *See, e.g., Holiday Point Marina Partners v. Anne Arundel County,* 707 A.2d 829 (Md. 1998). Indeed, there is no reason to treat a riparian owner's ability to build improvements over the water differently from the other privileges of property ownership that are subject to zoning restrictions. *See, e.g., Shorehaven Golf Club, Inc. v. Water Resources Comm'n.,* 153 A.2d 444 (Conn. 1959). The zoning regulations already recognize this. Section 107.6 states that, in tidal water areas, "the zone district boundary shall be either the mean high water level or the established pierhead lines, whichever gives the greatest control." 11 DCMR § 107.6. Therefore, any structure or use within the pierhead lines or any structure or use attached to the land, would fall under the jurisdiction of the Zoning Commission.

Set Down Proceeding

The Commission initiated this rulemaking in response to a petition from the District of Columbia Office of Planning, which recommended that a new low-density, low-intensity zone permitting open space and waterfront-enhancing uses be created. The petition resulted from recent waterfront-related planning initiatives, principally the Anacostia Waterfront Initiative, a joint District/federal initiative to improve the character, use, and environment of the waterfront throughout the District. Major themes of the study include:

1. A Clean and Active River;
2. Eliminating Barriers and Gaining Access;
3. A Great Urban Riverfront Park System;
4. Cultural Destinations of Distinct Character; and
5. Building Strong Waterfront Neighborhoods.

The proposed W-0 Zone District would be a new Waterfront Zone District, useful in establishing appropriate uses along the Anacostia and Potomac Rivers, would add stability and predictability to long-term decision-making, and would help facilitate the major themes of the Anacostia Waterfront Initiative.

At its October 28, 2002 regular meeting, the Commission agreed to set down the proposed rulemaking down for a public hearing. A Notice of Public Hearing was published on December 6, 2002 at 49 DCR 11035, for a Public Hearing to be held on January 23, 2003. However, due to an error in the Notice, the public hearing was postponed. A revised and corrected Notice of Public Hearing was published on January 24, 2003 at 50 DCR 746, for a public hearing to be held on March 13, 2003.

Description of Text Amendment

The importance of the Anacostia and Potomac Rivers to the overall urban fabric of the District is being rediscovered and reemphasized. The Anacostia Waterfront Initiative envisions a clean and vibrant waterfront with parks, recreation uses and places for people to meet, relax, encounter nature, and experience the heritage of the waterfront, as well as the revitalization of surrounding neighborhoods, the creation of new waterfront neighborhoods, and improvements to water quality and the riparian environment. A number of planning initiatives for waterfront areas are underway, such as the Southwest Waterfront and Near Southeast Plans, the Capitol Gateway Overlay District, and the South Capitol Street Study. In addition, there are development proposals for key sections of the waterfront, such as the Southeast Federal Center site and Reservation 13. While the existing Waterfront Zones (W-1, W-2, and W-3) will remain appropriate designations for some areas and some forms of development, they permit many forms of development, including uses that neither require nor enhance the waterfront at densities and heights that would be greater than that envisioned for portions of the river's edge.

In response to these changing conditions along the rivers' edge, the Office of Planning recommended the creation of a new W-0 (Waterfront Open Space Recreation) Zone District intended to provide valuable zoning flexibility along the waterfront. The W-0 Zone would:

- provide a low-density alternative to existing waterfront zones;
- permit most open space and recreation uses as a matter-of-right, including parks, playgrounds, pedestrian and bicycle trails, community gardens, temporary markets for produce, arts and crafts, temporary boat construction, and nature interpretative centers;
- permit by special exception other retail, cultural, and recreational uses for which direct access to the river is necessary, or that serve to activate the water surface;
- provide by special exception for the review of the appropriateness of certain uses and developments to their sites and whether they are designed and sited to augment the natural environment and the waterfront experience;
- seek to minimize negative environmental, physical, and visual impacts of development along the rivers' edge; and
- include regulations pertaining to the size and siting of structures.

Relationship to the Comprehensive Plan

Most of the riverfront is currently designated "Parks, Recreation and Open Space" on the Comprehensive Plan Generalized Land Use Map, the dominant uses being "parks and recreation centers, cemeteries, and the National Capital Open Space System." If, in the future, some of these areas are proposed to be zoned or rezoned, the proposed W-0 Zone is in keeping with that designation.

Along many areas adjacent to the rivers, the Comprehensive Plan envisions the retention or restoration of the natural environment. In other areas, the Plan foresees development which

ensures the preservation and enhancement of public open space recreation for use by all District residents, and which compliments and enhances adjacent urban development and the quality of the rivers. The proposed new W-0 zone supports this vision as well as a number of Comprehensive Plan objectives and proposed actions for the District related to Land Use and Urban Design (§§ 700, 1406, 1732), Waterfront Development and Design (§§ 706, 1347), and Environmental Protection (§§ 1308, 1810).

Public Hearing

The Commission held a public hearing on this case on March 13, 2003. Commission members present were Chairman Carol J. Mitten, Vice Chairman Anthony J. Hood, and Commissioners James Hannaham, Peter May, and John Parsons.

In its testimony, the Office of Planning outlined the intent of the new W-0 zone district, to create a new, low-density alternative for lands along the waterfront.

In response to comments made by the Zoning Commission at the October 28, 2002 set down meeting, and comments made by affected ANC's, other District government departments, and members of the public, the Office of Planning proposed a number of modifications to the draft as presented to the Zoning Commission in concept form at the set-down meeting and advertised for public hearing. They included:

- minor amendments to add clarity to or clearly differentiate the W-0 zone district regulations from those of the remainder of the Waterfront zone districts;
- replacing the term "houseboat" with "floating home" and providing a revised definition;
- adding a statement of intent for the W-0 zone district;
- amending permitted uses and uses permitted by special exception;
- adding special exception review considerations and application requirements to assess emergency access and impacts on surrounding public lands, on the shoreline, and on the river;
- removing a number of previously proposed regulations pertaining to the management or servicing of a houseboat/marina/boathouse;
- increasing the recommended limit on the percentage of floating homes within a marina;
- adding special exception approval of accessory parking spaces for buildings, structures, and uses within the W-0 zone district;
- removing the previously recommended limit on the proportion of site that can be covered with any impervious surface;
- removing separate W-0 court requirements;
- simplifying the parking ratio for boathouses to one (1) space for every 2,000 sq.ft. of building area, providing for off-site parking for marinas, boathouses, and yacht clubs, and providing for a reduction or elimination of parking requirements for a boathouse by special exception;

- establishing bicycle parking space requirements for marinas and boathouses;
- amending loading berth and service/delivery loading space requirements for large retail, service, or cultural buildings used for public assembly; and
- clarifying that Planned Unit Development (PUD) standards for height and FAR limits are equal to those of the base W-0 District.

No other District government department or agency testified before the Commission. The report from the Office of Planning included comments from the Department of Consumer and Regulatory Affairs, Department of Public Works, District of Columbia Department of Transportation, Fire and Emergency Medical Services Department, Metropolitan Police Department, and the Water and Sewer Agency, indicating support for, or no concerns regarding, the proposal text. The Office of Planning report also included comments from the Chief of the Bureau of Environmental Quality, Department of Health, noting comments and suggestions that had either been incorporated into the proposed W-0 text by the Office of Planning, or which were considered outside the scope of the zoning regulations.

The National Park Service (NPS), which manages about twenty (20) miles of parkland along the Anacostia and Potomac Rivers, testified in support of the W-0 initiative. The NPS noted concern related to the potential impact on parkland of vehicular parking that would be required for boathouses, and stated that the proposed waterfront setback of twenty (20) feet should be increased.

Advisory Neighborhood Commission (ANC) 6-D, which includes waterfront land in the Southwest and Near Southeast areas of the District, noted qualified support for the concept of a W-0 zone in its submission to and testimony before the Zoning Commission, but recommended rejection of the proposal as drafted, due to concerns related to:

- the possible application of the W-0 zone to existing private lands and businesses, (this concern resulting from an error in the original and subsequent notifications which mistakenly indicated that the zone would be applied to specific lands as part of this application);
- special exception provisions that the ANC felt would increase the authority of Office of Planning at the expense of ANC's;
- the establishment of a limit on the percentage of floating homes within a marina; and
- a restriction on transient moorage spaces within a yacht club.

No other ANC provided written comments or testimony regarding this proposal.

The applicants for Zoning Commission Case Nos. 02-30 and 02-31, the Georgetown University Boathouse on the Potomac River, testified in support of the proposal and noted the conflict between the need for boathouses to be as close to the river as possible and the proposed waterfront setback, particularly given the shallowness of many waterfront sites, and suggested additional flexibility be given in the review of applications.

The D.C. Chapter of the Sierra Club testified in support of the proposal but recommended that that the W-0 Zone should not be applied to currently undeveloped areas. They suggested that the new zone district should include regulations that specifically require new development to use best practices to prevent runoff and pollution.

The National Resources Defense Council testified in support, and recommended the establishment of clearer, environmentally-sound standards for all development within the W-0 zone district, such as a larger waterfront setback requirement, and the establishment of more detailed review guidelines related to environmental impacts of development proposals.

Numerous residents, boat slip owners, and business owners along the waterfront, including the Commodore and several members of the Capital Yacht Club, provided written comments and testified in opposition to specific aspects of the proposed zone district. Concerns were similar to those of ANC 6-D, including the potential application of the new zone designation to existing lands and businesses; the language of a proposed "grand-fathering" clause; the restriction on the number of floating homes within a marina; and restrictions on the use and location of a yacht club.

Proposed Rulemaking

Following the public hearing, the Commission took proposed action pursuant to 11 DCMR § 3027.2 at a special meeting on April 28, 2003. The Office of Planning and Corporation Counsel recommended a number of modifications to the proposed text, in response to concerns and issues raised by the Zoning Commission and members of the public at the Public Hearing, including minor wording modifications for clarification, reordering of sections, and to:

- incorporate a number of additional special exception review requirements;
- add PUD-type flexibility permitting Commission review of minor FAR, height, lot coverage, setback, and parking requirements;
- further increase the permitted percentage of floating homes within a marina from 35% to 50%;
- eliminate previously proposed size limits on yacht clubs, and slightly amend wording to provide for infrequent public functions and to permit temporary moorage of boats;
- amend parking requirements; and
- increase the required waterfront setback to seventy-five (75) feet, but permit a setback of between twenty (20) feet and seventy-five (75) feet by special exception.

The Zoning Commission further revised the proposed W-0 text by clarifying wording, eliminating redundant or unnecessary clauses, reordering clauses, and by:

- clarifying permitted and special exception uses with the W-0 zone district;
- applying waterfront setback requirements to parking areas as well as structures; and

- increasing the required waterfront setback to 100 feet, but permitting a setback of between twenty (20) feet and 100 feet by special exception.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on September 19, 2003, at 50 DCR 7838, for a 30-day notice and comment period.

In response to the notice, a written comment was received on October 15, 2003, from Lindsley Williams, 3307 Highland Place NW. Mr. Williams requested clarification regarding the Zoning Commission's jurisdiction to apply zoning over water past the high tide mark. He suggested changes to the text to permit floating commercial establishments in the W-0 zone district; to permit outright caretaker's residences of 750 square feet or less in the W-0 zone district; to clarify that a caretaker's residence is for the use of the caretaker of the premises itself; to propose minor unrelated clarifications to the C-M zone district; and to amend a numerical reference related to floating homes.

Written comments were also received from the Capital Yacht Club, dated October 20, 2003, expressing dissatisfaction with the proposed text because of the exclusion of floating homes from yacht clubs whereas floating homes may be allowed in a marina by special exception. Numerous specific changes to the proposed text were recommended in the letter.

The Office of Planning submitted a supplemental report dated November 17, 2003, recommending that all substantive proposed changes to the CR, W-1, W-2 and W-3 zones be eliminated from the final order, as they were not advertised. Other non-substantive wording clarifications were also recommended.

The proposed rulemaking was referred to the National Capital Planning Commission (NCPC) in accordance with the provisions of § 492 of the District of Columbia Home Rule Act. NCPC reviewed this proposal at its meeting of November 6, 2003, and by report dated November 13, 2003, found that the text amendment would not negatively affect the federal interest, but recommended that the Zoning Commission amend § 917.4 (now § 917.5) to clarify that it does not apply to federally-owned property.

Final Rulemaking

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on December 8, 2003. In response to the above-mentioned supplemental report from the Office of Planning, the Commission agreed to eliminate amendments affecting the CR zone district and to make only technical amendments to the provisions of the W-1 through W-3 zone districts. The Commission also agreed with Mr. Williams' comment and voted to clarify § 921.1 to state that a caretaker's residence shall be "for a person employed on the premises." In addition, the following minor revisions were made:

(1) the words "yacht club" were stricken from § 921.4 and

(2) "caretaker's residence" was added to the table of special exception uses in § 3104.1.

The Commission also reviewed in detail other submission received in response to the Notice of Proposed Rulemaking, and made the following revisions to the W-0 final text:

(1) the word "recreational" was removed from the definition for "yacht club" in § 199.1;

(2) the words "located by" were replaced with "surrounded by" in §§ 917.4 (a) and (b);

(3) reordering § 919.2;

(4) the words "an approved" were replaced with the words "a permitted" and the words "or waived" were removed from § 919.3;

(5) "floating home" was added as an accessory use within a yacht club in § 920, with the addition of provisions related to maximum density, home occupation with a floating home, and parking;

(6) the words "or yacht club" were added in § 922.1, Additional Uses Subject to Special Exception, § (s) to permit a floating home within a yacht club, and in conformity with changes noted in (4) above, the words "an approved" were replaced with the words "a permitted";

(7) the words "to the highest point of the building or structure, not including sailboat masts" were added in § 930.1;

(8) the words "or yacht club" were added in the table in § 2101.1, Schedule of Requirements for Parking Spaces, to require one parking space for each floating home within a yacht club; and

(9) the words "yacht club" were added in § 3202.3.

No other substantive changes were made. As explained earlier, however, certain technical changes were made to bring this Order and text amendment into conformity with the Zoning Commission Orders Nos. 02-28 and 02-15-B. These technical, *i.e.,* numbering, changes were made to ensure consistency within the Zoning Regulations.

The Office of the Corporation Counsel has determined that this rulemaking meets its standards of legal sufficiency and that no re-advertisement or re-publication of the proposed rule is required by virtue of the changes made.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose 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 **APPROVES** the following amendments to Chapters 1 (Zoning Regulations), 9 (Waterfront Districts), 20 (Non-

conforming Uses and Structures), 21 (Off-Street Parking Requirements), 24 (Planned Unit Development Procedures), 25 (Miscellaneous Zoning Requirements), 31 (Board of Zoning Adjustment Rules of Practice and Procedure), and 32 (Administration and Enforcement) of the Zoning Regulations, Title 11 DCMR.

Added wording to existing provisions is underlined, and deleted wording is shown in ~~strike-through~~ lettering:

A. **Chapter 1, THE ZONING REGULATIONS,** is amended as follows:

1. Section 105.1 (g) is amended to read as follows:

105.1 For the purpose of this title, the District of Columbia shall be divided into the following zone districts:

(g) **WATERFRONT DISTRICTS,** as follows:

(1) **W** mixed uses, subdivided as follows:
(A) **W-0** waterfront open space and recreation, low density;
(B) **W-1** moderate density;
(C) **W-2** medium density; and
(D) **W-3** high density;

2. Section 199.1 is amended as follows:

(a) By amending the definition of "Percentage of lot occupancy" to read as follows:

Percentage of lot occupancy - a figure that expresses that portion of a lot lying within lot lines and building lines that is occupied or that may be occupied under the provisions of this title as building area; except as provided in the Waterfront Districts wherein lot occupancy shall be calculated in accordance with § 932, and Mixed Use Districts wherein the percentage of lot occupancy may be calculated on a horizontal plane located at the lowest level where residential uses begin.

(b) By inserting the following new definitions in alphabetical order:

Boathouse - a building or structure designed and used to store and provide water access for non-motorized watercraft, including racing shells, kayaks, canoes, sailboats, rowboats, and similar boats.

Floating home - a sailboat, motorboat, or other floating structure that is designed and built to be used, or is modified to be used, as a waterborne residential dwelling, is dependent for utilities upon a utility linkage to a source originating on shore, and in which the tenant or owner sleeps overnight an average of fifteen (15) days per month.

Marina - the use of land, buildings, structures, and the surface of water for the provision of docking and storage facilities for boats.

Yacht Club - land, buildings, structures, and the surface of water for use by an incorporated club, for the purpose of boating, sailing, or yachting and in which the affairs of the organization are actually conducted and carried on by the members thereof.

B. **Chapter 9, WATERFRONT DISTRICTS,** is amended to read as follows:

1. Section **900, GENERAL PROVISIONS: WATERFRONT DISTRICTS** is amended to read as follows:

900 GENERAL PROVISIONS: WATERFRONT DISTRICTS

900.1 The Waterfront (W) Districts are applied to waterfront areas that have one (1) or more of the following characteristics:

(a) Geographically, historically, or locationally unique;

(b) Adjacent to well-established residential areas;

(c) Undergoing transition from light and heavy industrial uses to office and commercial uses; or

(d) Where the public health, safety, general welfare, and amenity would be promoted and protected by the encouragement of mixed uses.

900.2 The Waterfront District shall be subdivided into W-0, W-1, W-2, and W-3 Districts.

900.3 The W-0 District permits open space, park, and low-density and low-height waterfront-oriented retail and arts uses, the W-1 District permits a moderate height and density, the W-2 District allows a medium height and density, and the W-3 District allows the greatest height and density of the Waterfront Districts.

900.4 The purpose of the Waterfront Districts is to encourage a diversity of compatible land uses at various densities, including combinations of residential, offices, retail, recreational, arts and cultural, and other miscellaneous uses.

900.5 The W-1, W-2, and W-3 Districts are also intended to be relatively self-contained by supplying a variety of housing, service, employment, and recreational opportunities in one (1) location. This characteristic allows one (1) area to serve many different needs of a single population and to thereby reduce the amount of vehicular traffic generated by the uses in the districts.

900.6 The W-0 District is intended to provide waterfront recreation areas with related waterfront-oriented or waterfront-enhancing uses, to serve local and regional open space recreation needs.

900.7 Except as provided in chapter 21 of this title, in the Waterfront Districts, no building or premises shall be used and no building shall be erected or altered that is arranged, intended, or designed to be used except as specified in §§ 901, 902, and 906 through **925**.

2. Section **901, USES AS A MATTER OF RIGHT (W)**, is amended as follows:

(a) Subsection 901.1 is amended to read as follows:

(a) 901.1 The following uses shall be permitted in the W-1, W-2, and W-3 Districts as a matter of right.

(b) Subsections 901.2 through 901.4 are amended by striking the phrase "a Waterfront District" and replacing it with the phrase "the W-1, W-2, and W-3 Districts" wherever it appears.

(c) By adding a new § 901.5 to read as follows:

901.5 Within the W-0 District, the following uses shall be permitted as a matter of right:

(a) Publicly-accessible park or open space, playground, or athletic field, including pedestrian and bicycle trails, necessary support facilities, and fitness circuits;

(b) Boat construction on an occasional basis by a local community organization;

(c) Community garden operated by a local community organization or District government agency;

(d) Public nature education or interpretive center; and

(e) Seasonal or occasional market for produce, arts, and crafts, with non-permanent structures.

3. Section **902, PROHIBITED USES (W)**, § 902.1 (l) is amended to read as follows:

(l) Parking lot, other than as permitted by special exception in the W-0 District in § **926**;

4. Section **905, PLANNING OFFICE REVIEW (W)**, is amended to read as follows:

905 PLANNING OFFICE REVIEW (W)

905.1 Wherever §§ 906 through **926** require referral of an application to the D.C. Office of Planning for coordination, review, and report, the report shall reflect consideration of the following:

(a) Whether the proposed use furthers the objectives of the Waterfront Districts;

(b) The relationship of the proposed use to other planning considerations for the area and the District of Columbia as a whole, including the plans, programs, and policies of other departments and agencies of the District government;

(c) The proposed site plan, including the relationship of different uses on the site;

(d) The effect of the proposed site plan on neighboring properties and the waterfront shoreline (if applicable); and

(e) Other issues deemed appropriate for report.

905.2 Whenever the Office of Planning refers an application to the D.C. Department of Transportation under §§ 906 through **926**, the report shall reflect consideration of the following transportation and environmental matters:

(a) Traffic to be generated;

(b) Location and design of vehicular access and parking facilities;

(c) Number of parking and loading facilities;

(d) Treatment of public space;

(e) Availability of sewer and water capacity;

(f) Air quality;

(g) Noise from commercial, industrial, and traffic sources; and

(h) Other issues deemed appropriate for report.

5. Sections 906 through 912, 914, and 916 are amended as follows:

(a) The titles of the section are amended so that the zone district designation "**(W)**" is replaced with "**(W-1, W-2, and W-3)**".

(b) The phrase "shall be permitted as a special exception in a Waterfront district" is deleted wherever it appears and the phrase "shall be permitted as a special exception in the W-1, W-2, and W-3 Districts" is inserted in its place.

6. Sections 913 and 915 are amended as follows:

(a) The titles of the section are amended so that the zone district designation **"(W)"** is replaced with "**(W-1, W-2, and W-3)**".

(b) The phrase "shall be permitted as special exceptions in a Waterfront district" is deleted whenever it appears and the phrase "shall be permitted as special exceptions in the W-1, W-2, and W-3 Districts" is inserted in its place.

§ 917 POLICE DEPARTMENT GENERAL FACILITY

§ 918 & 919 WILL BE RESERVED

7. New §§ **920** through **929** are added to read as follows:

920 USES SUBJECT TO SPECIAL EXCEPTION (W-0) – GENERAL PROVISIONS

920.1 The uses described in §§ **921** through **925** are permitted if approved as special exceptions in the W-0 District.

920.2 Except as provided in § **920.3**, applications for special exceptions within the W-0 District shall be heard by the Board of Zoning Adjustment.

920.3 As part of its consideration of a petition or application to zone a property or properties to the W-0 District, the Zoning Commission may also review special exceptions (whether authorized in this chapter or elsewhere in this Title) and variance requests for the subject properties simultaneously with the zoning map amendment application. The Commission's rules of procedure shall apply to such reviews.

920.4 At the time of filing an application with the Commission, the applicant shall pay the filing fee specified in § 3180.1(b)(16) plus such fees as apply to any additional zoning relief requested. The provisions of § 3181 relating to the administration of fees shall apply, except that the applicant may appeal any decision of the Director regarding the fee schedule to the Commission, which shall decide the appeal at a meeting or hearing as a preliminary matter to hearing the application.

920.5 With respect to any special exception use under consideration, the Commission may authorize the following if the applicant is able to demonstrate that application of normally applied zoning regulations would result in an infeasible project and would hinder furtherance of the objectives of the Waterfront District:

(a) An increase of not more than five percent (5%) in the maximum lot occupancy, height, or floor area ratio as otherwise prescribed in this Title. The Commission shall have the option to approve a greater increase if the subject property is surrounded by National Park Service lands; or

(b) A reduction of not more than five percent (5%) of the minimum yard or court requirements as otherwise prescribed in this Title. The Commission shall have the option to approve a greater decrease if the subject property is surrounded by National Park Service lands.

921 BOATHOUSE (W-0)

921.1 If appropriate in furthering the objectives of the Waterfront District, a boathouse shall be permitted as a special exception in the W-0 District.

921.2 **In addition to demonstrating that the boathouse meets the criteria for special exceptions set forth in §§ 927 and 3104 of this Title, the applicant shall further demonstrate that the boathouse and associated structures:**(a) Will be designed to enhance the visual and recreational opportunities offered along the waterfront;

(b) Will not result in the filling of normally submerged areas, and will minimize excavation to that reasonably required for a facility that is principally above-grade; and

(c) Will be located so as not likely to become objectionable to surrounding and nearby property because of noise, traffic, or parking.

921.3 One or more motorized safety launches for coaches are allowed for supervision of rowing practice and water safety.

921.4 A boathouse may include rest rooms, showers, locker rooms, kitchen, exercise area, boat storage and maintenance, coach's office, one caretaker's residence pursuant to § **924**, rowing tank, dock, and related functions.

921.5 Off-street parking spaces shall be provided in the amount and manner specified in Chapter 21 – Off-Street Parking Requirements, except as may be permitted in accordance with the provisions of § **926**.

922 MARINA (W-0)

922.1 If appropriate in furthering the objectives of the Waterfront District, a marina shall be permitted as a special exception in the W-0 District, provided that the applicant demonstrates the proposed use meets the special exception criteria set forth in §§ **927** and 3104 of this Title.

922.2 A marina may also include as accessory uses the following:

(a) an office for the operation of the marina;

(b) boat launching;

(c) the sale of marine fuels;

(d) minor repairs and maintenance to boats and marine engines;

(e) the rental of boats; and

(f) retail sales of supplies and services for small pleasure and commercial vessels.

922.3 Floating homes shall be permitted within a permitted marina provided that the maximum density of floating home berths shall not exceed fifty percent (50%) of the total number of berths in the marina. This percentage may be increased by special exception, subject to the provisions of § 927.

922.4 A home occupation within a floating home, including a Bed and Breakfast, is permitted, subject to the provisions of §203.

922.5 Off-street parking spaces for a marina and each floating home permitted shall be provided in the amount and manner specified in Chapter 21 – Off Street Parking Requirements, except as may be permitted in accordance with the provisions of § 926.

923 **YACHT CLUB (W-0)**

923.1 If appropriate in furthering the objectives of the Waterfront District, a yacht club shall be permitted as a special exception in the W-0 District.

923.2 In addition to demonstrating that the yacht club meets the criteria for special exceptions set forth in §§ 927 and 3104 of this Title, the applicant shall further demonstrate that the yacht club and associated facilities:

(a) Will be primarily for the use of the members of the yacht club, except that the yacht club may provide transient berths;

(b) Will be located so as not likely to become objectionable to surrounding and nearby property because of noise, traffic, or parking; and

(c) Will not result in the filling of normally submerged areas and will minimize excavation to that reasonably required for a facility that is principally above-grade.

923.3 Floating homes shall be permitted within a permitted yacht club provided that the maximum density of floating home berths shall not exceed fifty percent (50%) of the total number of berths in the yacht club. This percentage may be increased by special exception, subject to the provisions of § 927.

923.4 A home occupation within a floating home, including a Bed and Breakfast, is permitted, subject to the provisions of § 203.

923.5 Off-street parking spaces for a yacht club and each floating home shall be provided in the amount and manner specified in Chapter 21 – Off-Street Parking Requirements, except as may be permitted in accordance with the provisions of § **926**.

924 CARETAKER'S RESIDENCE (W-0)

924.1 A caretaker's residence, for a person employed on the premises, as an accessory use within a boathouse, marina, or yacht club in the W-0 District shall be permitted as a special exception.

924.2 In addition to demonstrating that the caretaker's residence meets the criteria for **special exceptions set forth in §§ 927 and 3104 of this Title, the applicant** shall further demonstrate that the residence is clearly secondary in design, location, and size to the principal use of the building.

924.3 The caretaker's residence shall be located within the principal building and exclusively for the use of the facility's caretaker and immediate family.

924.4 If the caretaker's residence is larger than 1,200 square feet, it shall occupy no more than 20% of the total area of the principal building.

924.5 One on-site parking space, in addition to other parking requirements, shall be provided.

925 ADDITIONAL SPECIAL EXCEPTION USES (W-0)

925.1 In addition to the uses set forth in §§ **920** through **924** of this Chapter, the following uses shall also be permitted as special exceptions in the W-0 District if appropriate in furthering the objectives of the Waterfront District; Provided that the applicant shall demonstrate that the proposed use meets the special exception criteria set forth in §§ **927** and 3104 of this Title:

(a) Amusement enterprise;

(b) Antique store;

(c) Art gallery;

(d) Art supply store;

(e) Artist studio;

(f) Auction house;

(g) Bakery;

(h) Bicycle sale, repair, or rental;

(i) Boat accessory sales;

(j) Boat repair, rental, or sales;

(k) Boat launching facility, dock, wharf, or pier;

(l) Book store;

(m) Cabaret;

(n) Camera / photo supplies;

(o) Child care facility;

(p) Cosmetic / toiletries sales;

(q) Cruise line operation, including necessary associated dock and land facilities;

(r) Fish monger;

(s) Floating home, only within a permitted marina or yacht club and subject to the provisions of § **922.3**;

(t) Flower stand / florist;

(u) Food / grocery store;

(v) Gift shop;

(w) Hobby shop;

(x) Jewelry store;

(y) Leather goods store;

(z) Legitimate theater;

(aa) Library, private or public;

(bb) Mass transit facility;

(cc) Museum;

(dd) Music store, including the sale of musical instruments;

(ee) Newsstand;

(ff) Off-premises sale of beer and wine, with sale directly to consumers;

(gg) Pet shop;

(hh) Photo studio;

(ii) Picture framing studio / shop;

(jj) Place of worship;

(kk) Private club other than a yacht club;

(ll) Recreation building or use;

(mm) Public parking - uncovered surface parking lot or underground structure only;

(nn) Restaurant;

(oo) Retail establishments;

(pp) Sporting goods store;

(qq) Stationery store;

(rr) Swimming pool operated by a local community organization or District government agency;

(ss) Temporary use of premises by fairs, circuses, or carnivals, upon compliance with the provisions of 19 DCMR Chapter 13, "Amusements and Recreation;"

(tt) Ticket office;

(uu) Water taxi information / ticket booth and passenger shelter; and

(vv) Other maritime-related retail and service commercial uses.

926 PARKING SPACES (W-0)

926.1 Notwithstanding § 2116.1 of this Title, parking spaces for boathouses, marinas, yacht clubs, or other recreational uses to be located elsewhere than on the same lot or part of the lot on which the principal use is located, may be permitted as a special exception, if the applicant proves that compliance with this parking requirement would be unsafe or economically impractical and:

(e) The parking spaces will be located to furnish reasonable and convenient parking for patrons of the principal building;

(f) Any support facility in relation to the parking spaces is designed so as not likely to become objectionable to adjoining or nearby property, park space, or the waterfront because of noise, traffic, or other objectionable conditions;

(c) The parking spaces will be adequately screened from adjacent park space and from the waterfront, and shall be designed to prevent storm water run-off directly into the river; and

(d) All other requirements of Chapter 21 will be met.

926.2 The applicant shall prove that compliance would be unsafe or economically impractical by showing that one or more of the following applies:

(a) The lack of street frontage or the separation of the use from any publicly-accessible street by public park space;

(b) Unusual topography, grades, shape, size, or dimensions of the lot;

(c) The lack of appropriate ingress or egress through existing or proposed streets;

(d) Strip zoning or shallow zoning depth;

(e) Restricted size of lot caused by adverse adjoining ownership or substantial improvements adjoining or on the lot; or

(f) Traffic hazards caused by unusual street grades or other conditions.

926.3 All or a portion of required parking spaces for a boathouse may be reduced or eliminated by special exception if the applicant proves that:

(a) The provision of parking would result in significant adverse impacts on adjacent park land;

(b) The type or location of the associated principal use results in diminished need for parking from what would otherwise be required by zoning regulations; or

(c) Reasonable and conveniently-located alternatives to the required parking exist and are available to the boathouse users with minimal impact on adjacent land or development.

927 SPECIAL EXCEPTION REVIEW CRITERIA (W-0)

927.1 In addition to proving that the proposed use meets all specific special exception criteria applicable to it as well as the general criteria set forth in § 3104, the applicant shall also demonstrate that:

(a) The buildings, structures, and uses will enhance the visual and public recreational opportunities offered along the waterfront;

(b) Buildings, structures, and uses on land will be located and designed to minimize adverse impacts on the river and riverbank areas;

(c) If the proposed use is a boathouse, marina, or yacht club, the buildings will be located entirely on shore directly in front of berths, separated only by the setback area described in § 938, unless doing so would result in an infeasible project and would hinder furtherance of the objectives of the W-0 District;

(d) Buildings, structures, and uses on, under, or over water will be located and designed to minimize adverse impacts on the river and riverbank areas;

(e) All structures and buildings will be located so as not likely to become objectionable to surrounding and nearby property because of noise, traffic, or parking, and so as not to limit public access along or to the waterfront, other than directly in front of the principal building or structure of a boathouse, marina, or yacht club;

(f) Impervious surfaces will be minimized, and buildings, structures, and other uses will be designed and sited to minimize potential for surface storm water run-off directly into the river;

(g) Screening, coping, setbacks, fences, the location of entrances and exits, or any other consideration for accessory or non-accessory parking spaces will be designed to screen and protect adjacent parkland and the waterfront; and

(h) Emergency access will be provided to any buildings, structures, or other space devoted to active public use.

928 SPECIAL EXCEPTION APPLICATION REQUIREMENTS (W-0)

928.1 An applicant for a special exception shall provide a survey plan showing:

(a) Existing vertical contours at two-foot intervals;

(b) The 100-year floodplain and all existing streams, wetlands, and bodies of water, as well as general drainage patterns with arrows indicating the directions of major drainage flow;

(c) Existing vegetation, including a listing of most abundant species; and

(d) All existing disturbed areas, including the locations of utilities, paved areas, streets, culverts, storm water management systems, and bridges.

928.2 The applicant shall provide a proposed site plan showing:

(a) The proposed location, height, bulk, and design of all improvements, including buildings, structures, pedestrian and vehicular access, parking, piers and wharves, berths, utilities, paved areas, culverts, storm water management, and bridges;

(b) Suitable open space treatment of a waterfront setback area, as required in § **938**, for uses such as walkway, bikeway, passive or active recreation; and including provisions assuring private maintenance of the space, convenient and public access to the space, and suitable connections to adjacent public space along the waterfront;

(c) Proposed grading, including a calculation of the amount of cutting from and filling to natural grade;

(d) Proposed landscaping, including riverbank treatment/restoration; and

(e) The location and design of fencing, gates, screening, exterior lighting, and signage.

928.3 An applicant for a special exception shall provide a parking plan showing:

(a) The location and design of parking spaces, access driveways, and other impervious surface landscaping;

(b) The location and design of emergency vehicle access to all buildings, structures, and active public spaces; and

(c) For boathouse, marina, and yacht club facilities, a parking management plan for special events (such as regattas).

928.4 An applicant for a special exception shall provide a description of activities proposed to be conducted at the site.

929 REFERAL OF SPECIAL EXCEPTION APPLICATIONS (W-0)

929.1 Before commencement of a Public Hearing on an application for any special exception in the W-0 Zoning District, the Commission or Board shall refer the application to the D.C. Office of Planning for coordination, review, and report. The application shall include reports and recommendations from the Departments of Health and Transportation and all other appropriate agencies.

929.2 The report submitted by the Office of Planning shall specifically address the environmental impact of the proposed use, as that impact is identified by the Department of Health; provided that any such report is not intended to be, and shall not be construed to constitute, the functional equivalent of an Environmental Impact Assessment or Statement.

8. Sections 930 through 934 are amended to read as follows:

930 HEIGHT OF BUILDINGS OR STRUCTURES (W)

930.1 Except as provided in this section, the height of buildings and structures shall not exceed the maximum height in the following table:

ZONE DISTRICT	MAXIMUM HEIGHT (Feet)
W-0	40 feet
W-1	**45 feet**
W-2	60 feet
W-3	90 feet

Notwithstanding the above, the maximum height of a building or structure located on, in, or over the water within the W-0 District, including a floating home, shall be twenty-five (25) feet, measured from the mean high water level along the shore directly in front of the building or structure to the highest point of the building or structure, not including sailboat masts.

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

930.3 If housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:

(a) It shall meet the requirements of § 411;

(b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and

(c) It shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in), height of the housing.

930.4 Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located.

931 FLOOR AREA RATIO (W)

931.1 In the W-0 District, the floor area ratio of all buildings and structures shall not exceed five-tenths (0.5), provided that:

(a) The floor area ratio on a lot used exclusively for recreational use, marina, yacht club, or boathouse buildings and structures shall not exceed 0.75; and

(b) For the purposes of this sub-section, floor area ratio shall be the gross floor area of all buildings and structures located on land and any associated permanent structure located on, in, or over water, other than a floating home, divided by the total area of the lot.

931.2 In the W-1 District, the floor area ratio of all buildings and structures on a lot shall not exceed two and five-tenths (2.5), not more than one (1.0) of which may be used for other than residential purposes. The floor area ratio of public recreation and community centers shall not exceed 1.8.

931.3 In the W-2 District, the floor area ratio of all buildings and structures on a lot shall not exceed four (4.0), not more than two (2.0) of which may be used for other than residential purposes. The floor area ratio of public recreation and community centers shall not exceed 1.8.

931.4 In the W-3 District, the floor area ratio of all buildings and structures on a lot shall not exceed six (6.0), not more than five (5.0) of which may be used for other than residential purposes. The floor area ratio public recreation and community centers shall not exceed 1.8.

931.5 For the purposes of this section, "residential purposes" shall include dwellings, flats, multiple dwellings, rooming and boarding houses, community-based residential facilities, inns, and guestroom areas and service areas within hotels.

932 PERCENTAGE OF LOT OCCUPANCY (W)

932.1 No building or portion of a building devoted to residential use, including accessory buildings, shall occupy the lot upon which it is located in excess of the percentage of lot occupancy in the following table:

ZONE DISTRICT	MAXIMUM PERCENTAGE OF LOT OCCUPANCY
W-1	80%
W-2, W-3	75%

932.2 Within the W-0 District, no building or portion of a building, including accessory buildings, shall occupy greater than twenty-five percent (25%) of the lot upon which it is located, provided that:

(a) The lot occupancy on a lot used exclusively for a recreational use, marina, yacht club, or boathouse buildings and structures shall not exceed fifty percent (50%) and

(b) For the purposes of this sub-section, the lot occupancy shall be the total area occupied by all buildings and structures located on land and by any associated permanent structure located on, in, or over water, other than a floating home, divided by the total area of the lot.

930.2 For the purposes of this section, the percentage of lot occupancy in the W-1, W-2, and W-3 Districts may be calculated on a horizontal plane located at the lowest level where residential uses begin.

930.3 For the purposes of this section, the phrase "residential use" shall mean dwellings, flats, multiple dwellings, rooming houses, boarding houses, hospitals, and community-based residential facilities.

933 REAR YARDS (W)

933.1 A rear yard shall be provided for each residential building or structure, other than a floating home.

933.2 When a residential use begins at or below grade, the minimum depth of rear yard shall be three inches per foot (3 in./ft.) of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof, but not less than twelve feet (12 ft.).

933.3 When a residential use begins above grade, the minimum depth of rear yard shall be three inches per foot (3 in./ft.) of vertical distance from the horizontal plane upon which the residential use begins to the highest point of the main roof, but not less than twelve feet (12 ft.). The rear yard shall be provided at and above the residential plane.

933.4 For the purposes of this section, "residential building or structure" shall include those used as or intended to be used as dwellings, flats, multiple dwellings, rooming and boarding houses, hospitals, hotels, inns, and community-based residential facilities.

934 SIDE YARDS (W)

934.1 Within the W-0 District, for any building or structure located in whole or in part on land, the minimum width of each side yard shall be twelve (12) feet.

934.2 No side yard shall be required in the W-1, W-2, and W-3 Districts. If a side yard is provided, its minimum width shall be at least eight (8) feet.

9. A new § **938** is added to read as follows:

938 WATERFRONT SETBACK (W-0)

938.1 A setback inland from the bulkhead or the mean high water level, whichever provides the larger setback, of not less than one hundred feet (100 ft.) to any building or structure, shall be provided.

938.2 Notwithstanding § **938.1**, a waterfront setback need not be provided for a water taxi ticketing / information booth, or for structures directly associated with a public-accessible wharf, dock, or pier.

938.3 A special exception may be granted in accordance with the criteria of §§ **927** and 3104, for any proposed waterfront setback of greater than twenty (20) feet and less than one hundred (100) feet.

938.4 Parking spaces, passenger drop-off areas, access to parking spaces, and access to loading areas shall not be located within the required waterfront setback area.

C. **Chapter 20, NONCONFORMING USES AND STRUCTURES, § 2003.6, CHANGING USES WITHIN STRUCTURES,** is amended to read as follows:

2003.6 For the purpose of this section, the districts established by this title are listed in the following order of decreased use restriction:

(a) W-0, R-1-A, R-1-B, R-2, R-3, R-5-A, R-4, R-5-B, R-5-C, R-5-D, and R-5-E; . . .

D. **Chapter 21, OFF-STREET PARKING REQUIREMENTS,** is amended as follows:

1. The table included in § 2101.1, **SCHEDULE OF REQUIREMENTS FOR PARKING SPACES,** is amended by inserting the following after "Boat club or marina":

USES	NUMBER OF PARKING SPACES REQUIRED
Marina: W-0	1 for each 4 berths or slips plus 1 for each floating home space within a marina or yacht club
Boathouse: W-0	1 space for every 2,000 square feet of gross building area
Yacht Club: W-0	The greater of 1 for each 4 berths or slips or 1 for each 800 square feet of clubhouse building area.

2. Section 2116.1 is amended to read as follows:

2116.1 Except as provided in §§ 214, 510, 708, 730, 743.2(d), 753.1(c), 761.2, 803.1, **926,** 2116.5, and 2117.9(c), all parking spaces shall be located on the same lot with the buildings or structures they are intended to serve.

3. Section **2119, BICYCLE PARKING SPACES,** is amended by adding new §§ 2119.10 and 2119.11, to read as follows:

2119.10 For a marina or yacht club within the W-0 District, one suitably designed and sited bicycle rack parking space shall be provided for each ten (10) berths or mooring spaces, in a location that is secure and convenient to the principal structure.

2119.11 For a boathouse within the W-0 District, one suitably designed and sited bicycle rack parking space shall be provided for each 2,000 gross square feet of gross building area, in a location that is secure and convenient to the principal structure.

E. **Chapter 22, OFF-STREET LOADING FACILITY REQUIREMENTS, § 2201, SCHEDULE OF REQUIREMENTS FOR PARKING SPACES,** is amended by inserting the following into the table included in § 2201.1:

Uses And Districts	Minimum Number And Size Of Loading Berths Required	Minimum Number And Size Of Loading Platforms Required	Minimum Number And Size Of Service / Delivery Loading Spaces Required
Retail, service, or public assembly use in the W-0 District:			
With greater than 20,000 sq.ft. of gross floor area	1 @ 30 feet deep	1 @ 100 ft.^{2}	1 @ 20 feet deep

F. **Chapter 24, PLANNED UNIT DEVELOPMENT PROCEDURES**, is amended as follows:

1. Section 2401.1 is amended to read as follows:

2401.1 The minimum area included within the proposed development, including the area of public streets or alleys proposed to be closed, shall be as follows:

(a) A total of two (2) acres for a development to be located in any R-1, R-2, R-3, R-4, or R-5-A District;

(b) A total of one (1) acre for a development to be located in any W-0 or R-5-B District; or

(c) A total of fifteen thousand square feet (15,000 ft.^{2}) for development to be located in any other zone district.

2. Section **2405, DEVELOPMENT STANDARDS**, is amended as follows:

(a) Section 2405.1 is amended by modifying the first line of its table to read as follows:

ZONE DISTRICT	MAXIMUM HEIGHT (feet)
R-1-A, R-1-B, R-2, R-3, C-1, W-0	40

(b) Section 2405.2 is amended by adding the following at the end of its table:

FLOOR AREA RATIO (FAR)			
ZONE DISTRICT	RESIDENCE	COMMERCIAL, INCLUDING HOTELS AND MOTELS	TOTAL
W-0		0.5	0.5

G. **Chapter 25, MISCELLANEOUS ZONING REQUIREMENTS**, § 2514.3, is amended to read as follows:

2514.3 For the purpose of interpreting this section, the zone districts established in this title are listed in the following groups of decreasing use restrictions:

(a) W-0, R-1-A, R-1-B, R-2, and R-3 Districts;

(b) R-4, R-5-A, R-5-B, R-5-C, R-5-D, R-5-E, and SP Districts;

(c) C-1, C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, and C-5 (PAD) Districts;

(d) W-1, W-2, W-3, and CR Districts; and

(e) C-M-1, C-M-2, C-M-3, and M Districts.

H. **Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, § 3104, SPECIAL EXCEPTIONS**, is amended as follows:

1. Section 3104.1 is amended by making the following modifications to and insertions in its table:

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Antenna for commercial TV or FM	Any R, SP, or CR District, W-1, W-2, or W-3 Districts	§§ 211, 514, 617, and 914
Antenna, other than commercial	Any R, SP, or CR District, W-1, W-2, or W-3 Districts	§§ 212, 515, 617, and 914
Boathouse	W-0 District	§ **921**
Bowling alley	CR, C-1, W-1, W-2, and W-3 Districts	§§ 609, 709, and 908
Building service trades, including plumber, electrician, exterminator, and air-conditioning mechanic	CR, W-1, W-2, and W-3 Districts	§§ 612 and 912
Caretaker's Residence	W-0	§ **924**
Community-based residential facility	Any R, SP, CR, C-1, or C-2 District, W-1, W-2, or W-3 Districts	§§ 218 - 221, 303 - 306, 335, 357 - 360, 513, 616, 711, 732, and 913
Electric substation	Any R, SP, or CR District, W-1, W-2, or W-3 Districts	§§ 207, 509, 608, and 907
Floating home	W-0 District	§§ **922.3** and **923.3**

Hospital or clinic	CR, W-1, W-2, or W-3 Districts	§§ 606 and 906
Light manufacturing, processing, fabricating, or milling	CR, W-1, W-2, or W-3 Districts	§§ 610 and 909
Marina	W-0 District	§ **922**
Miscellaneous uses	CR or W Districts	§§ 618, 915, and 922
Natural gas regulator stations	Any R, SP, or CR District, W-1, W-2, or W-3 Districts	§§ 207, 509, 608, and 907
Parking spaces – location of accessory spaces	Any District	§§214, 510, 708, 730, 743.2(d), 751.1(c), 761.2, 803.1, 824, **926.1**, and 2116.5 – 2116.9
Parking spaces – reduction or elimination for boathouses	W-0 District	§ **926.3**
Public utility pumping stations	Any R, SP, CR, or C District, W-1, W-2, or W-3 Districts	§§ 207, 509, 608, 707, 728, 743.2(b), 753.1, 761.2, and 907
Retail, service, arts and cultural uses as specified	W-0 District	§ **925**
School - private school or trade school	W-1, W-2, or W-3 Districts	§ 912
Telephone exchange.	R-4, R-5, SP, CR, and W-1, W-2, and W-3 Districts	§§ 332.1(b), 509, 608, and 907
Warehouse use	CR, W-1, W-2, and W-3 Districts	§§ 611 and 910
Wholesaler use	CR, W-1, W-2, and W-3 Districts	§§ 611 and 910
Yacht club	W-0 District	§ **923**

2. Section 3104.4 is amended by modifying the first line of its table to read as follows:

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
College, university, or other academic institution of higher learning	Any R, SP, or CR District, or W-1, W-2, or W-3 Districts	§§ 210, 507, 615, and 916

I. **Chapter 32, ADMINISTRATION AND ENFORCEMENT**, § 3202.3 is amended to read as follows:

3202.3 Except as provided in the building lot control regulations for Residence Districts in § 2516 and § 5 of An Act to amend an Act of Congress approved March 2, 1893, entitled "An Act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," and for other purposes, approved June 28, 1898 (30 Stat. 519, 520, as amended; D.C. Code, 2001 Ed. § 9-101.05 (formerly codified at D.C. Code § 7-114 (1995 Repl.))), a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record; except buildings and structures related to a fixed right-of-way mass transit system approved by the Council of the District of Columbia. Notwithstanding the foregoing, a building permit may be issued for a boathouse, yacht club, or marina to be constructed on a lot that is not a lot of record, provided that such lot fronts on a public body of water, is otherwise surrounded by public park land, and is zoned W-0. Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure.

Vote of the Zoning Commission taken at its public meeting on April 28, 2003, to **APPROVE** the proposed rulemaking: **5-0-0** (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and James H. Hannaham in favor, and Peter G. May also in favor by absentee ballot to approve).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on December 8, 2003, by a vote of **4-0-1** (Carol J. Mitten, Peter G. May, Anthony J. Hood, and John G. Parsons to adopt; James H. Hannaham not present and not voting).

In order to correct the numbering conflict, on June 14, 2004, the Zoning Commission **APPROVED** the issuance of corrections to the 02-42 Notice of Final Rulemaking by a vote of **4-0-1** (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and Kevin L. Hildebrand to approve; Gregory N. Jeffries not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on _____.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 02-42A
Z.C. Case No. 02-42
(Text Amendment – 11 DCMR)
(W-0 Waterfront Open Space Recreation Zone)

The full text of this Zoning Commission order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.