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D.C. ZONING COMMISSION
NOTICE OF PROPOSED RULEMAKING

Zoning Commission Case No. 08-06 A and B
Zoning Regulation Review

September 25, 2015

The Committee of 100 submits the following comments and corrections to the Zoning Commission for your review and consideration.

Sincerely,

Nancy J. MacWood
Chair

Attachment

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ZONING COMMISSION
District of Columbia
CASE NO.08-06A
EXHIBIT NO.1053

SUBTITLE A – Authority and Applicability

- 101.4 (a) The 1958 Code refers to “larger yards;” the Notice of Proposed Rulemaking Case No. 08-06A Zoning Regulation Review (NPRM Text), refers to “larger setbacks,” which facilitates the change in place for measuring setbacks.
- 101.4 (c) The changes to text in section (a) may be in conflict with this section, “Require a greater percentage of the lot to be unoccupied.” The rear yard measurement would be taken from the rear of the lot inward, vs. current practice which is to measure from the rear of the building.
- 200 Code Organization needs to include a guide/cross walk which identifies “specific” residential zones, neighborhoods and/or geographic areas.
- 301.3 Subtitle K, add § 238.

SUBTITLE B

- 100.1 Missing or Incomplete Definition(s) or Illustration Needed
- a. Abut, (Adjacent and/or Confront) – definition missing.
 - b. Affordable Housing - the definition is insufficient; also, a basis for this definition is needed. The Zoning Commission should define the eligibility criteria using District-specific median family income levels, which it has the authority to do and which would focus affordable housing zoning regulations on addressing the actual DC population with affordable housing needs.
 - c. Amenity, Project – definition missing from Subtitle B.
 - d. Arts District, Arts and Entertainment District, Entertainment District, Commercial Art District – definitions missing.
 - e. Building, Separate – illustration needed.
 - f. Mezzanine – Review this definition relative to ZC Order No. 14-11, dated June 8, 2015: In an R-4 Zone District, “a mezzanine shall be considered a story in determining the maximum number of permitted stories within a principal structure but shall not be considered a story in determining the maximum number of permitted stories within an accessory building.” The definition should be consistent and considered a story in all zones which are limited to three stories.
 - g. Modifications of Consequence – a comprehensive definition is needed.
 - h. Setback, side – clarification needed where a lot abuts a street.
 - i. Sua Sponte – a discretionary internal review process ---.
 - j. Zoning Administrator – a fuller description of the position and more concise list of ZA authority is needed. Subtitle A, Section 304 lists some of the deviations and modifications permitted by the ZA’s ruling; but, the authority of the ZA is also mentioned in the following Subtitle sections and this list is by no means complete: B-201.4; B-307.7; C-203.4; C-203.5; C-204.5; C-205.3; C-205.4; C-604.9; C-604.10; H – 305.7(e); H-1101.1; I-800.3; U-600.1(e)(5); X-101.15; X-204.2; X-305.3 (d) Y-300.6(a); Z-702.8; Z702.10.
- 307.2 “May” should be “shall.”
- 307.3 “May” should be “shall.”
- 310.3 “...A mezzanine shall not be permitted above a third floor in those zones that have a three (3) story limit.” This section does not prohibit mezzanines between the first and second floor or the

second and third floor – it only addresses the space above a third floor. Recommend: A mezzanine shall count as a story in zones which have a three (3) story limit.

319.4 (b) Add reference to C – Chapter 14, Retaining Walls.

320.1 (b) Reword side setback regulation: Provide a setback that ensures a minimum yard for pedestrian access, privacy, and safe access for building maintenance

322.1 (b) Add reference to C – Chapter 14, Retaining Walls.

SUBTITLE C

- Index Chapter 17 Plaza, Introduction, General Procedures missing “C.”
Also missing “Subtitle C” from bottom of page 117.
- 201 Reinsert existing Sec. 2000.3 that in part states that “all uses and structures incompatible with permitted uses or structures shall be regulated strictly and permitted only under rigid controls.” The emphasis is necessary to direct the BZA and the zoning administrator to treat non-conforming uses and structures as anomalies that should ideally not be present in the zone. The absence of this provision from NPRM Text signals a change in policy that C100 does not think is warranted or intended.
- 202 Impervious surface regulations do not appear to apply when considered under regulations addressing Destruction of Nonconforming Structures. Impervious surface regulations are not referenced in any of the sections.
- 203.8 (c) Subtitle X, add Chapter 9.
- 204.1 Add or intensity at end of “A nonconforming use of land or structure shall not be extended in land area or gross floor area.” The intent of the regulation is not to expand a use which would have negative impacts on permitted uses in the zone. Increasing the square footage is only one means of expanding the non-conforming use – the existing square footage could be rearranged to result in a much more intense use which needs to be made clear.
- 204.6 Clarify that a non-conforming use that was discontinued should be allowed to resume operations within a three (3) year period provided there was no intervening conforming use.
- 204.8 Add that changes in the non-conforming use will be reviewed by the BZA. If the intent is to rigidly control non-conforming uses, which has long been zoning policy and is endorsed in area elements of Comprehensive Plan, then the zoning code should not permit matter of right changes from one non-conforming use to another, even if within the same use category. By definition, these uses are incompatible with the zone and communities should have an opportunity to control them through a public regulatory process. Current zoning does not provide an expectation that a non-conforming use can be changed to another non-conforming use as a matter or right. The ZRR provision is a significant liberalization of non-conforming uses and ZC should delete and require public participatory process.
- 204.9 Subtitle X, add Chapter 9.
- 204.9(e) Reinsert at least between “within” and “three hundred feet (300 ft.) of the site:” The intention is to require an applicant to show that change in non-conforming use will not adversely affect the character and future development of surrounding area. Applying that burden to an area less than a block long prohibits the BZA from really assessing the extent of a negative impact.

- 301.3 Subtitle D, add Chapter 2.
- 304.4 Delete. The regulation would allow the creation of new lots for single family residences or flats that are only 40% the minimum required width for a lot in the zone. The absolute minimum could be as narrow as 14 feet! For example, 50 feet in an R-1-B zone as measured 30 feet back from the front of the lot (as NPRM Text is proposing) and a street frontage that is only 14 feet! These two provisions must be reconciled. The C100 recommends that lot width should be measured at the front of the lot in order to preserve block character and not 30 feet back; and, the regulation may be in conflict with A-101.6.
- 305.1 Subtitle X, add Chapter 9.
- 305.4(c) Substitute measurement of height from “finished grade” to “natural grade” as is required throughout the zoning code. Allowing the topography of a series of theoretical lots to be changed – usually to attain more height on at least one side of future structures - is problematic and could alter the character of a block or neighborhood. Building heights should rely on natural grade. If the grade is to be altered to achieve more height than would be possible using the natural grade, this should be part of the special exception proceeding.
- 305.6 Add reference to the Comprehensive Plan Area Element and Future Land Use Map.
- 400.1 Add (d) Encourage the planting of new trees.
- 401.4 Subtitle X, add Chapter 9.
- 500.2 The minimum pervious surface percentage requirements defeat the purpose of the regulations. Remove percentages listed in 500.2(a)-(d) from the regulations.
- 600 Green Area Ratio - In general, C100 recommends this chapter be expanded to include specific references in Title 11 to regulations which address responsibilities for management, implementation and enforcement by individual District agencies such as DOEE and DDOT. The GAR lacks an articulated scientific basis for its elaborate “point” system for trees and shrubs; and, lacks overall rational implementation basis.
- Areas of the Downtown (Subtitle I), which has been significantly expanded, permit lot line to lot line coverage which does not provide a recipe for success in terms of stormwater management, urban heat island effect and greenhouse gas (GHG) reduction. The conflict of 100% lot occupation and protecting and enhancing the environment should be assessed by the Zoning Commission before these regulations are final.
- 600.1 - 600.2 It is unclear how the GAR can apply equally to stormwater management, urban heat island effect and GHG reduction.
- 603.13 Add – Elements of GAR shall correlate with the US Green Building Council LEED system.

- 604 Submittal requirements for the confusing and complex point system provide little guidance to the Zoning Administrator.
- 605.1 Subtitle X, add Chapter 9.
Provide the measurement used to achieve the intent of the GAR equivalent.
- 701.8 (b) & (f) Add that permission to locate required parking spaces off-site whether as matter of right or by special exception should partly be premised on the unavailability, now and in the future, of the District's Restricted Residential Parking Program at the on-site and off-site locations, to protect adjacent and nearby properties from an increase in demand for scarce on street parking supply.
- 703.2(f) Delete. The regulation allows developers to base waiver of all or part of minimum parking requirements on the provision of a "significant proportion" of affordable housing units. The regulation declares that either low income residents don't own cars or worse, they should not own cars. Many low income residents rely on cars, rather than public transportation, to travel to shift work, to take children to day care or schools away from the neighborhood or jobs, and to reach other necessary services that are often not found in low income neighborhoods. This provision is onerous and should be removed.
- 707.3(a)(2) Delete. Trees have nothing to do with transportation demand management features.
- 708.4 Delete. This permission allows a commercial use that is not a home occupation on residential property. It has potential to turn a rear yard into a parking lot since these spaces would be in addition to required spaces for the principal dwelling; and, would add congestion to an alley that is used by residents and where commercial uses are not planned.
- 1000 Based in part on the setdown of text amendments to revise some features of IZ and the informative report from the Office of Planning about the limited success of the IZ program, the C100 urges the Zoning Commission to remove this section from the NPRM Text and to consider amendments to the entire program in a comprehensive manner. Notwithstanding that recommendation, C100 has the following comments about Case No. 08-06A and B version of Inclusionary Zoning.
- 1000.1(a) The definition of Affordable Housing – "do not exceed thirty percent (30%) of the targeted household income ranges - is not reflected in the listed program purposes. More emphasis is placed on "bonus density" and "incentivizing" than on the desired affordable housing outcome. [The IZ Program has produced limited amounts of rental housing (and practically no ownership housing) which are significantly not leased and that are available primarily to residents who can afford market rate housing. As designed, the program is not meeting the main purposes of the program and that deficiency should prompt changes to the program.]
- 1000.2 Reword first sentence: It is the intent of the Zoning Commission to promulgate such regulations as are necessary and to establish the minimum obligation of property owners applying for

building permits or certificates of occupancy under an IZ Program. [The regulation, as proposed, deprives the Zoning Commission of using its full authority to create zoning regulations to create affordable housing, including defining which subset of low income residents benefit. That delegation has not served the program well. The Zoning Commission should consider using its full authority to better design additional features of the program.]

- 1001.2(a) The regulation does not include all of the downtown zones. It is not supportable to continue to exempt downtown residential development from requirement to provide affordable housing. Zoning Commission should not condone exempting developers from IZ requirements in most of the downtown zones, an area that is providing most of the new residential construction.
- 1001.2 (b) Add “or rehabilitations of office buildings to residential uses that would result in (10) ten or more dwelling units.” Inclusionary zoning program must adapt to current housing development trends. Office building vacancies are rising and these buildings are being converted to residential use. In the future new housing stock will include these rehabs and IZ Program must include them in order to guarantee that a percentage of all new housing will be affordable housing.
- 1001.5 (5) Delete. All downtown zones should be required to comply with IZ requirements.
- 1001.5(d)(1) Exemption is not in the current IZ law and it makes sense to include it in NPRM Text but the last sentence of this provision that begins with “The term low-income household...” should be deleted. [The federally funded District affordable housing programs, exempted here, exchange subsidies for planning and building housing in compliance with federal requirements. Among those requirements is that the Housing and Urban Development (HUD) regional median family income figures be used to determine the eligible program beneficiaries. Those income figures are well above the median family income adjusted for family size in the District of Columbia.] The IZ program is not federally-funded and thus, does not have to use the HUD income figures. Instead of determining the income levels benefitting from the IZ program, the Zoning Commission passed its authority to determine how low and moderate income would be defined to the mayor and the mayor proposed, and Council approved, using the HUD figures. Experience with IZ has shown that using the HUD income levels is preventing IZ from reaching the DC residents who are intended to benefit from IZ. The C100 urges the Zoning Commission to delete the sentence which states “that low and moderate income households are defined the same in all federal or District funded programs.” This ties IZ to the HUD income figures and means that IZ would continue to serve the wrong population. The Zoning Commission should delete this sentence and correct a fundamental flaw in the IZ program by legislating that the District median income figures will define IZ eligibility.
- 1001.7 Delete. The regulation allows foreign missions to benefit from bonus densities and adjustments without providing affordable housing. This is not in current law and there is no reason to include it here.
- 1003.1 Reconsider. The proposed text amendment will increase the set-aside to a uniform 12%. The C100 agrees that the set-aside is too low to meet the critical demand for affordable housing and is

out of balance with the bonus densities provided. C100 does not necessarily agree that 12% is the right set-aside but this is an example of why the IZ section of NPRM Text should be pulled and reconsidered comprehensively.

- 1005.1 An indirect way of saying IZ is not producing the type of units needed for low income DC residents. This provision should require the type of units we need to meet the affordable housing crisis rather than leave that determination up to developers who are creating market rate units for DC residents of much higher incomes. The Zoning Commission should require a schedule of unit types that is not based on the market but is based on affordable needs, which may mean two bedroom or three bedroom units even if they are not included as part of the market rate unit offerings. IZ is based on square footage and there is no reason that the set aside square footage cannot be configured into larger units.
- 1006.1 Delete. The basis for the establishment of an economic need to comply with IZ off-site is weak.
- 1006.2(a)(b) & (c) In practice, condo fees are undermining the goals of IZ. While they are built into the approved purchase price of units or an acceptable rent there are no controls over how these fees will escalate. The Zoning Commission should determine a reasonable cap on condo fees or an allowable annual percentage increase that will apply to the IZ units. It is predictable that Class A residential buildings that feature spas, party rooms, pools, concierges, and other amenities will continue to upgrade to meet tenant's desires but this competitive practice should not affect the affordability of IZ units. And a developer's desire to serve a high income community should not absolve the developer from addressing the city's affordable housing crisis in that building. Similarly, social and health services in a retirement housing development should not be the reason that affordable units cannot be provided in that building. Exempting a development that has already benefitted from bonus densities from continuing to provide on-site affordable housing because the owner wants to convert the building to another use should only be allowed if the conditions listed in 1006.3 include no bonus density for units moved off-site.
- 1006.4 As drafted, the regulation has the potential to move the units to less expensive land and to aggregate low income housing in one part of the city. This provision needs further controls.
- 1007.2 Add which type of variance waives the IZ requirements. The Zoning Commission should consider both an area and use variance.
- 1100.2 Include a map which shows the area included in the one hundred 100-year flood plain.
- 1102.3 Allows matter of right 500 foot buildings on waterfront lots. This is incompatible with the building densities planned throughout the District, and would remove waterfront views potentially for blocks. While a selling point for residential developers, it would deprive the city literal and visual access to one of our major assets and unique features. Such mass should not be permitted.
- 1501.5 Typo – "dooms" should be "domes."

SUBTITLE D

- Index: Recommend adding a zone name conversion table for residential zones which have been assigned zone numbers in the NPRM Text.
- NOTE: Add reference to Subtitle W for each residential zone included in Subtitle D. The specific zone boundaries, squares and lots for exiting Overlay residential zone districts in Subtitle D is missing. The term “Overlay” has been removed from NPRM Text, a protection neighborhoods fought hard to establish. The need to keep all aspects of the overlay districts contained in one section of the regulations has been noted in testimony before the Zoning Commission and the DC Council. Subtitle W lists these residential zones, however, they appear out of context without a cross reference to Subtitle W in Subtitle D.
- 101.3 Subtitle X, add Chapter 9.
- 201.2 Subtitle U, add Chapter 2.
- 308.1 Subtitle X, add Chapter 9.
- 410.1 Subtitle X, add Chapter 9.
- 900 The C100 feels the Wesley Heights Overlay would be strengthened substantially by the addition of the tree and slope protections. Recommend the regulations of Subtitle C § 401 be added through reference to Subtitle D § 900.1(d). (Alma, we have not called out any overlays specifically throughout ZRR. We have only talked about them in general. I don’t think we should include this.)
- 909.1 Subtitle X, add Chapter 9.
- 1402.1 replace “finished grade” with “natural grade.” External ADUs should have different height measurement methodology than that used to measure height for principal structure. Using finished grade is invitation to alter neighborhood character and build an accessory structure that could arguably exceed the height of the main structure.
- 1404.2 The section should be clear as to whether the garage is an accessory or a principal structure on the lot.
- 1407 The regulation does not address: how the front of an accessory building is determined; and, whether balconies and protruding windows would be permitted and where they would be located.
- 1407.1 Subtitle X, add Chapter 9.
- 1602.1 Subtitle X, add Chapter 9.

1604.1 Subtitle X, add Chapter 9.

SUBTITLE E

102.1 Subtitle U, add chapter number.

1000.1 Subtitle X, add Chapter 9.

SUBTITLE F

- 102.1 Subtitle U, add Chapter 4.
- 103.1 Subtitle C, add Chapter 7.
- 900.1 (a) Typo in line one – The accessory building is subordinate to and located on the same lot as “a”...
this title.
- 1006 Percentage of pervious surface should reflect percentage applied to residential zone, “but not less
than ten percent (10%).
- 1100.1 Subtitle X, add Chapter 9.
- 1102.2 Subtitle X, add Chapter 9.
- 1102.4 Subtitle X, add Chapter 9.

SUBTITLE G

- 102.1 Subtitle U, add Chapter 5.
- 103.1 Subtitle C, add Chapter 7 and Chapter 8.
- 505.5 Subtitle X, add Chapter 9.
- 509.1 Subtitle X, add Chapter 9.

SUBTITLE H

- 102.1 Subtitle C, add Chapter 7 and Chapter 8.
- 302.2 Subtitle X, add Chapter 9.
- 810.1 Subtitle X, add Chapter 9.
- 910.1 Subtitle X, add Chapter 9.
- 1103.1 A reference to Table H § 1100.8 NC-Use Groups should be included.
- 1105.1 Subtitle X, add Chapter 9.
- 1107.1 Subtitle X, add Chapter 9.
- 1109.1 Subtitle X, add Chapter 9.

SUBTITLE I

The elimination of parking requirements downtown is a serious omission based more on wishful thinking than on empirical data. This omission leaves the future viability of downtown in the hands of individual developers and creates an essentially uncorrectable situation—not financially feasible or physically likely, if even possible, to build parking under an existing high rise building. Parking minimums should be re-established in the new code.

Allowing matter of right building to the maximum envelope—density and FAR—eliminates the ability to achieve public benefits such as affordable housing, open space, and needed uses in exchange for increased density. This creates the financial incentive to simply build the largest box. There should be greater limitations on FAR with modifications allowed as incentives for better public outcomes.

Subtitle I only applies Inclusionary Zoning in 3 of the 11 downtown zones (D-2, D-4, and D-8) but not in any of the D-#-R zones where housing is the primary objective and a mix of housing would be desirable. This is a missed opportunity that conflicts with the Comprehensive Plan’s directive for inclusive neighborhoods and balanced new housing that will help to create a desirable city for residents of all income levels and at all stages of life. . All D zones should be required to comply with IZ requirements. See more detailed comments on IZ under Subtitle C. [Note: There is a conflict with language in Subtitle C subsection 1001.5(a)(5) that exempts D-8 from IZ and Subtitle I section 576.3 which says the D-8 zone is subject to IZ.]

- 100.2 The purposes are generally good but the incentives mentioned in 100.2 (a) and (h) are undermined by allowing development of the full zoning envelope as matter of right. (typo in (j)—delete “a” before “well-designed”)
- 100.2(c) Delete “generally”. The standard is “consistent”, not “generally consistent” with the Comprehensive Plan.
- 100.2(g) Add - including the development and preservation of affordable housing. It is imperative that the strongest housing market and a target of the Zoning Commission’s affordable housing incentives be the downtown area which could be a major source of affordable housing.
- 101.1(a) Delete “regardless of the geographic location of a property within the zone”. Not clear what it means or adds.
- 101.1(c) & (d) These sections are in conflict from planning perspective. The former is very prescriptive and the latter permits developers to avoid the detailed ground floor regulations and implement them somewhere that is not planned to receive them. It is questionable how the goal of a retail or arts hub can be realized if developers can substitute their plan for where these uses will be, which presumably has more to do with maximizing profit than with good downtown planning. The C100 urges the Zoning Commission to require implementation of the sub-area regulations, if it finds those sub-area regulations are beneficial to the city.
- 200.4(a) The section links bonus density to production of housing beyond a low minimum requirement for housing. There is no requirement that any of that housing be affordable. The C100 strongly

urges the Zoning Commission, as it has since the first ZRR hearing, to accept the opportunity presented by your decision to expand downtown and to increase matter of right density to address the District's affordable housing crisis by requiring that 30% of new residential square footage provide a range of affordable housing, including unit size options. To continue to incentivize market rate housing only in an area that needs no incentives is not in the best interests of the city's residents nor will it further the goal of building a diverse and inclusive city. [Note that OP's proposal, endorsed by the Zoning Commission, to limit housing requirements, results in developers, who want to build housing anyway, ensuring greater profit because their market driven decision will reap credits. Understanding that ZC is giving developers a blank check, it is not unreasonable to exchange the financial and square footage benefits extended to developers for some public benefit, such as affordable housing. To not do this raises many questions.]

- 200.4(d) Does not make sense as a subsection of 200.4. Doesn't follow the lead in.
- 200.5 The regulation allows non-residential FAR to be increased through a PUD, but Inclusionary Zoning would presumably not apply since most of the downtown zones explicitly state that IZ does not apply. The Zoning Commission should add to this section that all of the residential density that is required would be subject to IZ and would not be waived through the PUD process.
- 201.3(c) No upper-story height setbacks are specified in 612.
- 201.3(d) Subtitle I § 613 specifies height but no height setbacks.
- 210.1(c) If alleys should be a minimum of 15 feet wide, then the minimum setback from the centerline should be 7.5 feet not 7 feet (which would result in a 14 foot wide alley).
- 210.5 The regulation permits an "authorized building official", who may be a third party inspector from another jurisdiction, to determine that matter of right development of alley lot should not be permitted because of inadequate access and that BZA should review as a special exception matter. The Zoning Commission should list which agencies or departments (MPD, DCFD, DC Water, etc.) can make this determination because the regulation should not rely on a vague description.
- 212 Parking requirements should be restored for downtown to maintain its viability as an employment, retail and residential area.
- 302.2 (c) Motorcycle sales and repair are listed as a by right use in this section and only by special exception in § 303.1(f). This conflict needs to be resolved.
- 305.3(c) The regulation exempts twenty-five (25) year old non-residential buildings from minimum residential requirements when the building is renovated. Much has been written that the trend downtown is to convert underutilized office buildings to residential use. This provision would prevent capitalizing on the trend and guaranteeing that some of that housing is affordable. This is an ill-conceived provision and it should be deleted.

- 305.3(d) The regulation similarly exempts vacant buildings that apparently at one time had some residential use, but less than the minimum required by ZRR, to get rehabbed or even expanded without meeting the minimum residential requirements or providing IZ. Covenantee the building to continue a small residential use for twenty (20) years is no bargain and certainly not worth this exemption. This provision should be more targeted to encourage preservation of existing buildings while not eliminating opportunity for more housing when developer seeks to expand non-residential development.
- 305.5 The regulation allows a child development center to substitute for residential use under certain circumstances. This is a very important use to promote, but, as has been widely publicized, the cost of day care prevents many workers from using this necessary resource. The Zoning Commission should add an affordability condition to this provision.
- 305.6 Add - provided there is no increase in either non-residential or residential uses. The intent of this regulation is unclear. There is no stipulation that the entire building must be residential or that an expansion of non-residential use would end the exemption. The regulation should be clarified to avoid an open-ended exemption to expand the building without complying with the new residential requirements or IZ, should the Zoning Commission decide to require affordable housing downtown.
- 305.7(a) The regulation exemplifies what is wrong with the approach taken to downtown development and affordable housing. It would exempt three (3) of four (4) downtown zones with a minimum residential requirement from part of that requirement either by paying into the Housing Production Trust Fund or by providing a minimum amount of housing for undefined low income households. Instead of requiring IZ per every other commercial and mixed use zone in the District, downtown developers would not only continue to be exempt but would be rewarded for voluntarily providing some affordable housing. THIS SHOULD BE A REQUIREMENT. Why should downtown developers merit some sweetheart deal in order to coerce them to provide some limited amount of affordable housing? Also, payments to the HPTF should not be allowed to satisfy this requirement as there is no guarantee housing will result. The fund is used for many purposes. Also, it will not result in housing as fast as that constructed by the developer at his cost.
- 305.7(d) Delete previously in non-residential use, or vacant for a minimum of three (3) years. The rehabilitation of non-residential to residential and the rehabilitation of vacant buildings are underway now. There is no reason to incentivize something that developers will do because it is profitable. The link to using some of the rehabbed space for affordable housing again should be a requirement. Developers will be getting bonus densities not allowed under current zoning and there should be a benefit to the city for what otherwise looks like a giveaway.
- 305.7(e)(2) The regulation refers in vague terms to the waiver resulting in the filling of gaps in the HPTF. This needs explication. The DHCD has many programs that are funded by the federal government, and HPTF is used to provide the District match for those programs. If any waivers

are permitted in exchange for payments to the HPTF, and we urge that this not be allowed, it should be clear how the funds will be used and there should be timetables for using the funds. The Zoning Commission has little or no control over accounting for HPTF funds even those generated from zoning regulations; it would be a more accountable use of zoning authority to require developers to produce affordable housing either as a requirement or in exchange for zoning waivers.

306.1, 306.2, 306.3, and 306.4 basically duplicate §§212.1, 212.2, 212.3, and 212.4. Eliminate section 212 entirely. Add parking minimums back to downtown. See 212 comment.

508 Change D-2 zone a D-2-R zone. All the other zones where the primary objective is housing are designated R.

516.1(c) In the density section of all the zones eligible to use credits, a comma needs to be added to clarify the wording, e.g., “(c) If conditions (a) and (b) are not satisfied, through the use of credits pursuant to Subtitle I, Chapters 8 and 9.” It is an if/then statement and not intending to say if the conditions are not satisfied through the use of credits, but rather that credits can be used instead of the conditions in (a) and (b). It is done correctly in § 555.2. Need comma in §§ 524.2(c), 531.1(c), 539.1(c), 547.1, 553.1, 569.1(c), and 576.1.

525.1 There is no § 503.3(b) and the reference doesn't make sense. Also, § 525.4 seems to address the issue. Delete § 525.1?

525.2(a) Section 608.9 refers to measuring points not height and setbacks on Pennsylvania Avenue. The height and setback requirements seem to be missing completely from § 608.

525.2(c) Delete reference to § 616.8 which relates to design not height.

525.2(d) Delete reference to § 617.7 since that section doesn't exist.

525.4 This section is very difficult to understand and would benefit from a diagram.

526.1 There is no subsection 618.8 and that section refers to North Capitol Street. It should probably be a § 616 reference which is the South Capitol Street section.

531 The following comments are partly premised on the Zoning Commission's decision to increase matter of right mass from 6.5 FAR in most of this new zone (far more in parts of the zone) to unlimited and to increase matter of right height by as much as forty (40) feet. This is an unprecedented permission to change the density of the District and it appears that residents will not have any means – probably for as long as the Height Act protects the skyline and vistas – to address critical land use needs, like affordable housing, in the future because the Zoning Commission is leaving no flexibility to use unauthorized height and mass to achieve public policy goals. The C100 urges the Zoning Commission to consider if this is the intended result, and, if it is, to use this final opportunity to leverage maximum bonus density for the long standing and

highly critical need for affordable housing. As it stands, the Zoning Commission is poised to worsen the crisis to a degree not even realized during the recent housing boom.

- 531.1 The regulation links residential development to a developer's access to maximum height and density in this zone. There is no IZ requirement. This is a missed opportunity for the Zoning Commission to facilitate affordable housing in the Judiciary Square, New York Avenue corridor, and the area north of the Convention Center. There is no conceivable public policy reason to not include affordable housing requirement.
- 531.2(c) The regulation details the general provision earlier cited in the subtitle comment that a developer can avoid complying with total minimum housing requirement by constructing some lesser amount of affordable housing (undefined as to what level of affordable) or by paying into HPTF. Why should developers get an increase in density, which this new zone provides over existing zoning, without providing IZ housing as developers must in other parts of the city? Its certain that downtown developers would meet the 10 unit threshold, but for some reason the Office of Planning and the Zoning Commission are shying away from a goldmine of affordable housing potential – to the point of trying to coax developers to provide a little affordable housing in exchange for a waiver. This is a huge lost opportunity and the Zoning Commission should delete this incentive and write a requirement for IZ. The same provision can be found in D-5-R and D-6-R zones.
- 531.2 (c) Typo - delete "s" from requirements)
- 531.4 The regulation exempts D-4-R from IZ. Delete and require inclusion of IZ. Same provision in D-5-R, D-6-R, D-3, D-5, D-6, and D-7 zones.
- 532 See comment under § 531 Density. The matter of right height permission is extreme and unwarranted without conditions, like significant affordable housing. Similar provisions are found in nearly every new downtown zone. Providing market rate housing or using credits bought to avoid housing requirements are not reasons to avoid the opportunity to leverage the bonus densities when more and more of DC residents are being priced out of the city or rendered homeless largely due to the unconditioned expansion of expensive housing, some of which is replacing the city's inventory of affordable housing.
- 532.3(a) There are no heights specified for Massachusetts Avenue in § 610. See comment on § 601.7.
- 536.2 Delete "...and the design requirements of Subtitle I § 602, which refers to design, not use. It is a duplication of § 537.1.
- 537.2 Delete the references to § 612.6 which does not have anything to do with design.
- 539.1(c) Delete enable at the end. Not consistent with other identical references and doesn't add anything.
- 547.2 See comment in § 531.1 – the same comment applies.

- 540.2(a) No heights are specified for Massachusetts Avenue in § 610. See comment on § 610.7.
- 547.2(a) Remove reference to § 200.4 which does not reduce or eliminate such a requirement.
- 547.2(b) Delete subsection. Section 305.2 does not relieve a residential requirement.
- 547.3 The regulation exempts D-5-R from IZ. Delete and require.
- 553.1 Delete the last phrase starting with “unless” because § 552.2 does not relate to design.
- 556.2(b) This subsection links to §305.6 which talks about already existing housing, but makes no mention of this housing being affordable. There is an assumption perhaps that is being stated as a conclusion, which is inappropriate in the zoning code. Affordability should be clearly required if that is intent of the exemption. (typo—delete s from “requirements”)
- 569.1(a) Insert “If” at the beginning to make grammatically consistent with other subsections.
- 570.1, 570.1, 570.3 These three sections use the term “confronting” but the rest of Subtitle I uses the term “fronting on.” These three sections are the only ones that use the term “confronting.” If there is a zoning rational for the difference it should be explained, otherwise, it should be changed to “fronting on” to be consistent throughout the Subtitle, e.g., § 608.9 uses the terminology “fronting on Pennsylvania Avenue.”
- 575 The objectives for the D-8 zone (§ 575.1) are very good but the allowable heights along the south side of Independence Avenue are excessive (see §§ 577.3 and 618) and will undermine the transition from the National Mall. The setbacks will simply look like part of the streetwall from the vantage point of the Mall and the buildings will dwarf the Smithsonian buildings. There should be a ninety (90) foot maximum height on the south side of Independence Avenue like the ninety (90) feet associated with historic buildings.
- 575.2 Typo - need a space after “transportation-.”
- 581.3(a)(3) Typo - third line from the bottom should say “building or buildings” extra “s” to be deleted
- 581.4 The regulation applies to lots south of the Mall, a very sensitive and historic area; and, would prohibit the Zoning Commission from addressing height as part of its deliberations for a required special exception review of any development project in this zone. It is inappropriate to remove this authority from the Zoning Commission, especially when the height is likely to be a significant consideration in this sensitive area. Delete this regulation.
- 600.3(c) Very laudable objectives but it isn’t clear that open spaces are being fostered.
- 605.6(a) Subsection doesn't make sense. Maybe something got dropped.

- 606.7 This section talks about height regulations for buildings fronting on Pennsylvania Avenue and refers to § 608.9(b) and (c). However, there are no such subsections or any height and setback references in § 608. Section 608.9 defines how to measure height.
- 607.1 Typo at the end of the first line, the hyphen needs to be deleted after “and.”
- 607.9 Add or contributing buildings within a historic district after “historic landmarks. This will make this section consistent with the other sections creating protections for historic properties in Subtitle I. Contributing buildings are an important part of the character of the city and their protection is required to maintain the integrity and character of a historic district.
- 607.12 There are no height regulations for buildings fronting on Pennsylvania Ave. in § 608. These seem to have gotten dropped. Section 608.9 talks about how to measure height, § 608.10 refers to requirements from PADC Plan, there is no § 608.11.
- 607.14 The reference to § 603 should be changed to § 602; § 603 is for “other” street segments, § 602 is design for primary and secondary street segments, the subject of this section.
- 608.5 The reference to § 602 should be changed to § 601; § 601 is use, § 602 is design and this section is about use.
- 609.5(c) and 609.6(c) Add contributing buildings within a historic district after “historic landmarks.” This will make this section consistent with the other sections creating protections for historic properties in Subtitle I. Contributing buildings are an important part of the character of the city and their protection is required to maintain the integrity and character of a historic district.
- 609.8 Section 610.6 is about use not height. Probably meant to refer to §610.7 that also should be made clearer, see below.
- 610.5 Reference to § 609.3 should be changed to § 609.5 which addresses use.
- 610.7 This is a very obscure way of describing height and setback. This critical provision governing heights along Massachusetts Avenue should be described in a way that is consistent with the rest of Subtitle I.
- 611.9 This section seems garbled. Something clearly got dropped in the first line “between Street and L Street.” It talks about the following streets and has a colon but no subsections. Also should be an “s” on garage. Section needs to be reviewed and rewritten to make sense.
- 611.10(a) This subsection is missing something—“on any side of the adjacent” doesn't make sense.
- 611.13 Not sure what the reference should be but § 610.4 is the listing of street segments; maybe meant to refer to § 610.8.

- 618 Table in this section should be changed to § 618.3 from § 617.3.
- 618.5(a) and (b) The allowable heights along the south side of Independence Avenue are too high and will undermine the transition from the National Mall. The setbacks will simply look like part of the streetwall from the vantage point of the Mall and the buildings will dwarf the Smithsonian buildings. There should be a ninety (90) foot maximum height on the south side of Independence Avenue like the ninety (90) feet associated with historic buildings.
- 701.1 Add at the end “and the Independence Avenue Sub-Area.” Section 618.6 says that the Independence Avenue Sub-Area is subject to the provisions of Chapter 7.
- 701.2(b)(3) Something is missing in this subsection after “views and vistas around...” It doesn’t make sense.
- 701.3 Section refers to §§ 702.4 and 702.5 but there is no § 702 in Subtitle I.
- 800 The ability of developers to generate credits to ensure the range of uses essential to a successful downtown, is an easily manipulated “gimmick” which guarantees certain outcomes for developers, but little predictability in the way of quantifiable outcomes for subject areas. The range of uses included in Chapter Eight, determined essential to the establishment of a successful downtown, need to be included by percentage in the Future Land Use Map of the Comprehensive Plan to ensure that an overabundance of credits generated in one use area do not result in the creation of an objectionable condition in another area.
- 801.1(a) The regulation would authorize new credits in D-3 through D-8 zones for most residential development. Credits are treated as commodities which can be bought and sold as a means to avoid compliance with conditions that are the quid pro quo for gaining maximum density on a lot. The ZRR regulations pertaining to credits reward developers for constructing market rate housing, which is partly creating our affordable housing crisis. The C100 strongly urges the Zoning Commission to require the production of affordable housing (with specific guidelines about unit sizes and income eligibility) as a condition for the generation of new credits.
- 801.1(c) Change “building that received its first certificate of occupancy prior to 1936” to “building that received its first certificate of occupancy at least 50 years ago.” The purpose of this requirement is to give special consideration to buildings that are potentially eligible for the National Register of Historic Places. This provision was added in 1986, when 1936 would have marked the 50 year anniversary of the building. This wording should be corrected to keep current with eligibility of the current building inventory.
- 801.1(f) Authorizes new credits for a licensed child development center in two sub-areas where the zones require minimum residential, but no IZ, and in a third zone where matter of right heights would range from one hundred thirty (130) to one hundred sixty (160) feet, but no IZ is required. The C100 asks the Zoning Commission to reconsider extending this additional profit incentive to developers with the condition that IZ apply and that affordable child care be offered. As a

community, we want to provide resources for the growing low income population to find housing in job centers and services, such as child care, that are affordable.

- 802.1 Authorizes new credits for any amount of residential development above the minimum, if that is required. It also rewards with credits the conversion of a non-residential use to a residential use in an existing building. As discussed above, developers are doing the latter without any incentives, and encouraging even more market rate housing that is predominately efficiencies and one bedroom units is not addressing our citywide housing needs, as expressed in the Comprehensive Plan. Affordable units and a variety of unit sizes are needed to meet the demands of a diverse community. The Zoning Commission should add conditions to the unregulated and very lucrative credit system that link to the fulfillment of citywide housing needs.
- 802.2(a) & (b) Authorize two (2) credits per square foot of IZ housing for projects subject to IZ. There are only three (3) of eleven (11) new downtown zones that do not exempt projects from IZ. This provision seems to acknowledge that it is the view of the Zoning Commission that no downtown zones should be required to participate in IZ and thus, when a few zones do have the requirement credits are necessary to offset the loss of profit associated with market rate units. This issue would disappear if all downtown zones were required to participate in IZ. It should not be zoning policy that downtown, which is greatly expanding, is an area devoid of a representative mix of DC residents and income groups. IZ ensures diversity and should be required and no additional credits should be provided above the credits for residential housing generally. The incentive of bonus density is enough.
- 807.2 Change “non-historic building that received its first certificate of occupancy prior to 1936” to “non-historic building that received its first certificate of occupancy at least 50 years ago.” Same rationale as for § 801.1(c).

SUBTITLE J

Add The Standards of External Effects to Subtitle J.

101.3 Subtitle X, add Chapter 9.

102.1 Subtitle U. add Chapter 8.

207.6 Subtitle J, Section 209.5 (a) does not exist.

210.1 Subtitle X, add Chapter 9.

400.1 Subtitle X, add Chapter 9.

SUBTITLE K

813.1 Is this meant to be Subtitle X, Chapter 9 or is Subtitle Y correct?

813.3 Subtitle X, add Chapter 9.

SUBTITLE U

- 506.3 (a) and (b) National Park Service (NPS) lands are meant for the enjoyment of all. Permitting a private boathouse to encroach on public parkland may not be in keeping with the mission of the NPS or the interest of the public. The proposed increase in lot occupancy, height or FAR, as well as a reduction in the minimum setback of five (5%) percent has the potential to alter the enjoyment of public land for private use. Even in the case of a publicly owned facility, public parkland would be impacted by these regulations. Recommend these provisions be removed from the ZRR text as they seem written to serve a specific interest or interest group.
- 506.5(b)(1) Add docks and rowing tanks to list of improvements to be included on the site plan.
- 506.5 Add a new section (e). A current Environmental Impact Statement, and where National Park Service lands have the potential to be impacted by the provisions of § 506.3, a National Environmental Protection Act (NEPA) undertaking.
- 506.7 Add – A report submitted by the Office of Planning under this section shall specifically address the environmental impact of the proposed use, as that impact is identified by the Department of Energy and Environment; provided that any such report shall be in addition to the requirements of § 506.5 and is not intended to be, and shall not be construed to replace the requirements of § 506.3.
- 600.1 Subtitle X, add Chapter 9.

SUBTITLE W

The chapters of this Subtitle need to be cross referenced to their respective zones in other Subtitles. The R Zones have been given numbers as identifiers and lack the geographic descriptors of the 1958 Code.

SUBTITLE X

- 101.7 The premise of this section needs clarification if it is to support the intent of the subsection.
- 101.13 Add ANC into application referrals from Office of Zoning.
- 102.2 Subtitle Y add Chapter 300.
- 103.9 Add referral of PUD application to the ANC
- 105.2 Add ANC into application referrals from Office of Zoning.
- 201 Define “area” narrowly as this is an extraordinary authorization which allows a foreign government to avoid zone restrictions by essentially creating a geographic boundary that is more beneficial to establishing an undesirable use and potentially undermines the intent of zone regulations.
- 203.4 Add ANC into application referrals from Office of Zoning.
- 300.1(c) Add affordable housing options to list of criteria underlying purpose of PUDs. PUDs can and should facilitate this primary public policy for land use.
- 300.4 Add and the Zoning Commission will not consider an approved PUD-related map amendment in evaluating new PUD-related map amendment application to final sentence because the no precedent rule is not preventing the Commission or applicants from relying on past approvals. The standard of review should not include past PUDs and this declaration needs to be clearly stated, as it is in existing code.
- 301.2 The authority of the Zoning Commission with regard to waiver of area minimum requirements for Zone Groups 1,2 and 5 is not specified. Given the permissive wording of (c) - “The development will result in compatible infill development” – this authority provides no development predictability for the surrounding residential areas when a PUD is proposed.
- 301.2(a) Reword - The development follows the redevelopment principles in an approved Small Area Plan. It is meaningless to say a redevelopment project is “identified in SAP” because the PUD may not resemble the SAP as supported by community and approved by Council. Criteria for waiving minimum area requirement should be factual and meaningful.
- 301.2(b) Delete the regulation because it concludes that development is “compatible” infill development before the case has been heard and evaluated; and, replace with “the development will set aside at least 50% of the gross floor area for low and moderate income housing;” OR, “at least 30% of gfa will result in multi-bedroom units for low and moderate income families.” Currently, none of the criteria provide good land use reasons to waive the minimum area requirement for PUD and none leverage the exception for any public benefit.

- 303.2 Delete be calculated as twenty percent (20%).
- 305 Add the Zoning Commission will weigh the quality of the individual and aggregate public benefit proffers since not all categories will produce proffers of equal benefit to the city or community.
- 305.3(d) Delete because monetary contributions to DC government or non-profit entities should not be allowed; applicant should directly produce public benefits and incur all associated costs.
- 305.5(b) Add and maintenance of those amenities.
- 305.5(e) Add and maintenance of those amenities.
- 305.5(g) Replace with Proffer of affordable housing will not be considered a public benefit if the total square footage of affordable units is not at least 40% of total square footage for all units. It is not enough for developer to “exceed” MOR requirement; there should be predictability in level of affordable housing which will rise to a public benefit for PUD approval.
- 305.5(h) Add before semi-colon that lead to actual job placements because there is no benefit if employment and training opportunities don’t lead to actual jobs.
- 305.5(i) Add - There must be a current demonstrated need for the particular social service and facility, including its listing in Comprehensive Plan as a needed use in the PUD area.
- 305.5 (l) Typo – change “is no design standards” to “are no design standards.”
- 306 The Housing Link should be removed from NPRM Text and rethought. It is premised on using demand for office as leverage for production of low and moderate income housing when current trend is the conversion of vacant office space into retail and residential. New office space is typically generated for tenants who are abandoning a less desirable office space. There should be no exclusions for non-office uses since these are the uses, along with residential, that are replacing office uses. In fact, office buildings are being torn down to create non-office and residential space. The housing link must be updated to take advantage of the current and likely future trend away from new office construction and the unproductive reliance on new office to provide low and moderate income housing.
- 308.1 Add ANC into application referrals from Office of Zoning.
- 600 Design review is not presented as a serious regulatory process, but more as a means to avoid more comprehensive review standards associated with current regulatory processes to achieve the same result.
- 601.3(b) Add - No minimum area required for a development in any other zone provided the area required shall not be less than that listed in Table X § 301.1: Minimum PUD Land Area.

- 601.4(b) Replace no minimum area for design review application with a maximum area of less than 10,000 square feet because the no minimum will encourage developers to seek bonus height that currently can only be achieved through PUD in exchange for public benefits or a variance with its very strict evaluation criteria through design review and avoid the stricter PUD zoning process. The Zoning Commission should delete height bonus as part of design review approval and limit design review to waivers of other development standards.
- 604.1 This regulation is unclear – does “standards set forth in Subtitle K” refer to the “development standards” set for each Special Purpose Zone; and, how do those standards exceed the minimum standards for design review?
- 604.7 Augment the design review criteria to include views and vistas, congestion, parking, light and air because §§ 604.5 and 604.6 with its long list of criteria won’t prevent design review from becoming an easy way to get zoning waivers by simply incorporating into design what developments are already required to include or including elements that lead to a more marketable development and thus, would be part of the development anyway. There should be standard zoning considerations included since this process permits waivers of significant standard zoning requirements.
- 701.4 Add historic viewsheds and vistas to the list of goals that the Zoning Commission wants protected when reviewing airspace development.
- 800.1 Delete MOR permission for ninety (90) foot water tower on St. Elizabeth’s East Campus.
- 800.5 Delete that only motion of approval is allowed; and replace with requirement for special exception process.
- 901.2 Add a special exception review standard which states exception will not be inconsistent with the Comprehensive Plan.

SUBTITLE Y

- 102.2 Delete authorization for staff of Zoning Commission to serve on Board of Zoning Adjustment. The Zoning Commission has no staff, unless the Office of Zoning personnel are considered the staff, but there should be no delegation of this important function to staff. The DC members of the Zoning Commission are appointed by the mayor and confirmed by the Council after a public hearing and there is no similar process for staff to be vetted for their qualifications to represent DC residents on this important regulatory body.
- 102.7 Reword the second sentence to reflect current regulation (3129.6) requiring that members must have participated in, and voted on the decision, or read the record in order to vote on modification or extension of a decision order. Modifications and time extensions are material decisions. The public expects members to be fully aware of the record that resulted in original decision in order to make informed decisions that change the original decision.
- 103.5 Replace four (4) day notice of public meeting agenda with current requirement (3105.7) of seven (7) day notice. Four days is not reasonable public notice.
- 203 Add burden of proof shall rest with the applicant, which is currently required (3119.2), and has been deleted in the NPRM Text.
- 302.17 Replace fourteen (14) days with seven (7) days, which is current requirement (3115.1). It is an unreasonable burden to require ANC's that meet on a set monthly schedule to produce appeal responses fourteen (14) days rather than the current seven (7) days in advance of the hearing.
- 405.2 Add ANC into application referrals from Office of Zoning.
- 703.2 Delete modifications of consequences from authorized list of consent calendar zoning order changes. Sec.703.5 defines the modifications of consequence category broadly to include changes in conditions and design that could be among the most highly contentious issues considered during an application hearing. The parties should have an opportunity to be heard and not be subject to an unreasonable ten (10) day period to file opposition response, which would be process if these significant changes could be approved on consent calendar.
- 703.10 The time constraint in this regulation is especially onerous for an ANC.
- 704 Add definition for Modifications of Consequence. See notation of missing definition under Subtitle B § 100.1(f).
- 704.6 Ten (10) days between notice and filing response is not adequate or reasonable for an ANC. It may be presumed that ANC has reviewed the original application and authorized a commissioner to represent it on the application, however, ANC's cannot be expected to have anticipated what modifications of consequence an applicant may request after the decision. The modification may be associated with some aspect of the application that was fine originally but is not fine as

modified. The ANC would have to vote at a public meeting to have the authority to offer a response. The timing of the response if limited to ten (10) days may deprive the ANC of opportunity to represent the neighborhood on the matter.

SUBTITLE Z

- 102.7 Strike second sentence that would treat decisions on petitions differently than the treatment of applications by allowing commissioners to vote with no knowledge of the case record that should form the foundation of the merits of extending or modifying an order.
- 103.2 Clarification is needed. The meetings of the Commission shall be open to the public: provided that, for the reasons..., the Commission may hold a closed meeting to receive advice from the OAG on legal matters, but only after the Commission meets in public session and votes in favor of entering into or scheduling a closed meeting.
- 103.4(e) Subtitle Z § 1504 does not exist.
- 105.5 Add, or any other proceeding.
- 203 Add burden of proof shall rest with the applicant, which is currently required (3119.2), and has been deleted in the NPRM Text.
- 206.10 Change the 3:00 p.m. to 5:00 p.m., which is the normal time associated with “close of business.”
- 206.11 Change the hours in this regulation to reflect those proposed in § 206.10.
- 300.11(g)(3) Add - The gross floor area and floor area ratio for each building and structure...for all structures on the entire site, including a breakdown for each use;
- 300.12(f) Add retaining walls to detailed landscaping and grading plan elements to be included.
- 301.10(h) Add retaining walls to the list of landscaping elements to be retained.
- 302.10(e) Add – The number of student interns and student teachers to the list of those to be included in the employee count.¹
- 303.8(h) Add retaining walls to detailed landscaping and grading plan elements to be included.
- 400.3 Add ANC into referral by Office of Zoning of a contested case provided the timing of the referral shall be different than that outlined in § 400.7. It is particularly important for ANCs to be notified early because this chapter authorizes design review and campus plan applications to skip setdown, a process that would involve the ANC at an early stage. Design review and campus plan applications not only skip this step, but they are scheduled for hearing immediately, giving ANCs limited time to review and react to an application that may be of significant interest to the community.

¹ The Lab School of Washington has a five day-a-week Tutor Trainee and Student Teacher teaching requirement that extends across an entire school year for completion and academic credit. This may add a significant number of “staff” to the campus on a daily basis. These are unpaid positions and therefore do not meet the definition of “employee.”

- 401.7 Add the affected ANC to those to whom the applicant shall provide a copy of the supplemental report.
- 405.1 Add - As to those applications for which set down is not required ...a copy of the application shall be referred to the Office of Planning, affected ANC and other...review and comment.
- 405.7 Seems to separate the level of meaningfulness of great weight afforded to the Office of Planning comments on zoning cases and the great weight afforded to ANCs in § 406.2. The former is vague about when Commission must honor the great weight of OP comments, but the latter provision clearly states that the ANC's comments will only be given great weight after deliberations and the issuing of a proposed decision. It is only at a pro forma second vote, or final action, that the Commission would honor the ANC great weight requirement that is articulated in the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000. The amendments state that "the issues and concerns raised in recommendations of ANC shall be given great weight during deliberations by the government entity." Thus, there should be no qualification on which deliberations of the Commission require great weight – in fact, all deliberations should include great weight consideration of ANC recommendations. Section 406.2 must be changed to make this requirement clear and unambiguous.
- 504.6 & 505.1 The same inconsistent treatment of great weight afforded to the Office of Planning and the Advisory Neighborhood Commissions is presented in these sections. It effectively permits the Commission to ignore the ANC recommendations until all meaningful deliberations are finished and only the final decision is scheduled. This downgrading of ANC great weight versus Office of Planning great weight is not the intent of the authorizing law and the Commission should correct this treatment of ANCs before the ZRR is finalized.
- 703.1 Delete authorization that petitions for modifications of consequence can be decided without public hearing on consent calendar. By definition, these petitions are material to the facts that led to the Commission's decision on the original application in a contested case. Parties should have an opportunity on the public record to oppose changing conditions in the final order and/or altering exhibits upon which all parties and the Commission relied. In addition, the example listed in § 703.4 that "a change in position on an issue discussed by the Commission that affected its decision" should be deleted. This appears to be a reconsideration of the decision and it should not be allowed using modification rules.
- 703.6 Add change to public benefits or amenities or required covenants to list of examples of modifications of significance.
- 705.5 Add no extensions will be approved for PUDs that would have been subject to IZ requirements if original PUD application was filed within one (1) year prior to the publication of proposed new IZ regulations. Extensions could be considered if petition includes voluntary compliance with existing IZ requirements. No additional bonus density will be considered.

1601.7 Typo – An applicants for a modification---.

1602.2 Add only low and moderate income projects receiving federal funding will be defined using HUD definitions. Low and moderate income developments receiving DC funding or complying with DC affordable housing requirements will be defined using DC Council definitions based on DC median family income levels. There is no federal law that requires DC to use HUD income definitions when administering DC affordable housing programs. It is only programs receiving federal funding that must use the HUD definitions. It is incumbent on the Zoning Commission to orient zoning affordable housing provisions to actual DC resident incomes and not undercut the production of affordable housing by using Fairfax and Montgomery County income levels that effectively hamstring the effectiveness of our programs. The presumption during ZRR hearings that the Zoning Commission has no control over determining the definition of low and moderate income because DC is tied to HUD definitions of area incomes is not correct. The Zoning Commission's affordable housing regulations can regulate eligibility using DC median family income levels, if it chooses to do so.