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VIA HAND DELIVERY

Zoning Commission for the  
District of Columbia  
441 4th Street, N.W., Suite 210S  
Washington, D.C. 20001

Re: Zoning Regulations Rewrite  
ZC Case No. 08-06A (Title 11, Zoning Regulations - Comprehensive Text Revisions)

Dear Members of the Commission:

This letter is submitted by the law firm of Holland & Knight LLP to provide general comments to the Zoning Commission on the proposed new text of the District of Columbia Zoning Regulations.

Holland & Knight generally supports the newly proposed Zoning Regulations and understands the need to comprehensively update and reorganize concepts that were first introduced as a part of the 1958 Regulations. The proposed Regulations encourage high density residential and mixed uses in targeted areas of the District, and allow for greater height and flexibility in the design and development of new buildings, especially those in close proximity to Metrorail stations and in the expanded Downtown Zone. The proposed regulations are also reorganized in several significant respects and the crosswalk is of major assistance in comparing the existing to the proposed.

However, we do have some questions concerning the length and complexity of the new Zoning Regulations. It is important both for the Commission and for the public at large that there is internal consistency between the Regulations' general and specific provisions. There must also be vesting provisions and methods to address the transition period between the Regulations' adoption and their final implementation.

In reviewing the proposed Zoning Regulations, we have identified specific areas that we believe could use additional clarification and explanation (see Addendum). This list is not exhaustive, and we believe that continued review will lead to additional questions and clarification. We therefore suggest that the

Commission keep the record open for 30 days after the final November hearing date for supplementary review and comment by the public.

Holland & Knight appreciates the Commission's consideration of these comments and looks forward to presenting testimony at the public hearings in November.

Respectfully Submitted,

Norman M. Glasgow, Jr

## **ADDENDUM**

### **Subtitle A**

§ 204.3(d): This section should include "customary incidental and accessory uses," as are referenced and allowed in the current Regulations. Is the intent to identify the full permitted list of those uses in the new Regulations?

§ 210: This section should specify the process for correcting mapping errors and whether doing so will require a hearing.

### **Subtitle B**

§ 100.3 Fast Food Establishment: This definition should eliminate the reference to payment for the meal prior to consuming it. This change would parallel and coordinate with the definition of "Restaurant" in the proposed text, which makes no reference to payment for food after it has been served and consumed as a condition for recognition of a food establishment as a "Restaurant".

### **Subtitle C**

§ 304.5 Discontinuance of a non-conforming use: This section requires a showing of "affirmative steps to resume the use," to rebut the discontinuance argument. However, there is a substantial body of case law and interpretation under the current Regulations, which require a showing of "no intention to abandon." The new language signals a change in the intent of the Regulations, and in the treatment of non-conforming uses that has existed for the past 55 years. What is the purpose of this change?

Chapter 4: The Office of the Surveyor Subdivision Regulations, 10 DCMR, currently regulates the subdivision of lots. Duplication of these efforts could lead to inconsistent interpretations. This Chapter should be deleted in its entirety

§ 403.3 Alley lots: This section should be limited to alley lots for residential development. Subsection (a) is not necessary for all uses.

§ 405 Measurement rule for lot width: This section reflects an approach that is different from the three existing rules of lot width calculation. Why were they rejected in favor of this new method?

§ 407 Theoretical Lot Developments: This section does not allow Theoretical Lot Developments in the commercial zones (as is permitted in current Section 2517). We do not think this limitation if intended should be adopted.

§ 407.1 Theoretical lot developments in the residential zones: This section is not identical to current Section 2516. Is there a reason for the change?

§ 407.3: This section states that private streets are no longer permitted for theoretical lot developments, and instead must be "dedicated as a public street." What happens if the Council does not accept the dedication? Street dedication is a lengthy and complicated process and could significantly hinder the utilization of underdeveloped sites.

§ 505.2(e): This section states that roof structures must be set back from side (interior) lot lines, which is a change from the existing application of the Regulations. This section is also inconsistent with the new Subtitle D, Section 1502.4(c). Is there a reason for the change?

§ 505.4: This section limits the area within a roof structure enclosing walls to 40%. Is there a reason for this limitation? Enclosures are often open to the sky and do not generate any rooftop FAR or usable enclosed space. What if there are rooftop elements greater than 4 feet in height that are necessarily spread across the roof and need to be enclosed? Why force the applicant to the BZA for a special exception in that instance? This section is also not consistent with Subtitle G, Section 1201.5, which permits up to 0.40 FAR for a roof structure.

§ 601.1: This section changes the approach on regulating the number of residents in a dwelling from the current definition of a "family" to a "maximum number of occupants" in a dwelling (unlimited if related by blood, marriage or adoption; up to 15 for a religious group residence; 6 in all other instances). If the residents of the dwelling had out-of town guests, or had a party, resulting in more than 6 people inside the dwelling ("occupying" the dwelling) during that time, would that violate the zoning regulations?

§ 701.4: This section governing building area omits the current exclusion for portions of the building that do not extend above the main floor of the main building. Is there a reason for this change?

§ 701.6: This section states that when adding a vertical addition to an existing building, each added story must comply with the prescribed lot occupancy limitations. Why must a vertical addition to a non-conforming building conform to the lot occupancy limitation when the existing building does not? Putting an addition on top of an existing nonconforming building that exceeds the lot occupancy limit, to the full limit of the building's footprint, will not increase the lot occupancy of the building.

§ 901.2: This section should more specifically clarify private rights-of-way that serve as principal circulation versus those that access loading, service, and parking functions.

§ 903.1(a): This provision changes the perimeter wall method metric from 4 feet to 6 feet; however, the definition of basement and cellar have not changed. In addition, the last portion of this section states ". . . between the finished grade and the ground floor of the story above."

What about when there is more than one level of a building that is partially below grade? Are they all "ground" floors in that instance? There are numerous examples of apartment buildings along major corridors, with stream valleys behind, that have this condition. The word "ground" should be deleted.

§ 1004: This section should be revised to clarify that it addresses projections within required setbacks, not projections outside of the property lines. Section 1004.1 should be deleted.

§ 1201.4: This section should be renumbered to more clearly reflect that it applies to through lots in all zones.

§ 1400: This Chapter should be revised to clarify that it applies only to those zones in which plazas are identified in the accompanying development standards chart. It is our understanding that at this point, plazas are only required in the existing CR zones (M-10 and M-23).

§ 1500: This Chapter should be revised to clarify that it applies only to those zones in which transitions are identified in the accompanying development standards chart.

§ 1901.8(b)(2): This section refers to D 1603.16 and E 1102.11, but these sections do not exist.

### **Subtitle E**

§ 1003.1: This section's reference to "R" zone should be to "RF" zone.

### **Subtitle G**

§ 201.1: This section lists the "M-1-A and M-2-A" zones, but those are not referenced elsewhere.

§ 508.2: This section references the CR zone. To which zone(s) is it intended to apply?

### **Subtitle I**

§ 210.1: The development table should be modified to provide for unlimited FAR for residential use and/or credits in the D-6-B-1 zones, similar to the D-5-B-1 and D-7-B-1 zones.

§ 306.1: This section should be revised to remove the limitations on height for projects with contributing buildings in the D-5-B-1 and D-5-B-2 zones to be consistent with the current regulations.

§ 308.3: This section should be revised to include a composite FAR as is currently provided for in Section 1707.4 of the Zoning Regulations: "... provided, that in a multi-lot development or combined lot development within a single square, the permitted 6.0 FAR may be averaged with the permitted FARs of other lots that are part of the development, including any lots not subject to the 6.0 FAR maximum, so as to achieve a composite FAR for the entire development."

§ 603.4: This section should be deleted in its entirety.

§ 615.3: This section should be revised to limit the use requirements based on a calculation more accurately reflecting the goal of locating preferred uses on Primary Designated Street Segment.

§ 807.6: This section should be deleted in its entirety. Buildings that were constructed during the appropriate time period that would have generated credits (previously TDRs or CLDs) should not lose their rights.

## **Subtitle J**

§ 301 Use Categories Permitted by Right: This section lists categories that are "permitted by right" in the P zones, but not all of them are allowed to use the full FAR for "permitted" uses. Uses that are permitted by right and not subject to conditions are less intrusive and should therefore also be able to achieve the full FAR for permitted uses in each category (e.g. art design and creation; education; health care). Other uses permitted subject to conditions or permitted by special exception should also be able to use the full FAR (e.g. entertainment, assembly and performing arts; services general).

## **Additional Questions and Concerns:**

Vesting: The proposed Regulations do not include any provisions relating to vesting. We recommend that the Commission propose vesting provisions similar to those adopted for the GAR regulations in current 11 DCMR, Chapter 34, Section 3401.4, to preserve rights for projects that have already moved forward with predevelopment activities. Vested rights could be provided to the following types of projects: PUDs and BZA cases that have been filed prior to the effective date, projects that have received concept approval from the Historic Preservation Review Board or the Commission of Fine Arts, Large Tract Review completed prior to prior to the effective date, and projects that have been officially accepted by DCRA as being complete prior to the effective date. In addition, the Commission should consider rights for phased projects such that the new regulations apply only to the phase under development and not impact the existing phases that have been constructed or previously approved.

Timing: What is the anticipated effective date of the new Regulations? What is the anticipated phase-in period?