

Testimony of Cary Kadlecek

Good evening, members of the Commission. My name is Cary Kadlecek of the law firm of Goulston & Storrs. I am here on behalf of the District of Columbia Building Industry Association. In general, DCBIA supports the proposed new subtitles G and H for mixed use zones. However, we would like to offer a few changes to these proposed zones.

First, regarding the rear setback requirements in subtitle G, we propose that, for corner lots, a conforming courtyard may be provided in lieu of a rear yard. Just as this is presently permitted in the C-3-B and C-3-C zones, this provision should be carried over to the proposed new higher-density mixed use zones, such as M-8 and M-9. Providing a courtyard in lieu of a rear yard is a common practice that allows many corner lots to be more easily developed, and many developers and architects rely on this practice in certain locations as a means to provide adequate light and air without providing a complete rear yard. Allowing this practice to continue would simply maintain consistency with the current zoning standards.

Second, regarding the special exception standards in Section 811.1 of subtitle G, we propose that more specificity be added or that certain standards be eliminated. For example, subsection (b) requires that the design of the project enhance the urban features of its immediate vicinity. This is an overly general standard that forces the BZA to evaluate design without and standards by which to do so. The result is that

applicants will have no benchmark by which to prove this standard, and the BZA will have no ability to adequately evaluate it. This standard should be eliminated to avoid an open-ended design debate. Any concerns about the design appropriateness may be imposed by the Board as requirements under subsection (d). However, this subsection should be refined to limit the BZA's ability to impose such requirements only as they pertain to the relief being sought. For example, front façade material requirements may not be appropriate for relief from the rear setback requirement. We make this recommendation generally for all subtitles, such as section 1200 in subtitle H, where similar special exception criteria apply.

Third, under the Chapter 12 roof structure standards in subtitle G, the requirement for enclosing roof structures with walls of equal height should be eliminated. This recommendation can be adopted for all of the proposed new zones. We recognize that this is a carryover from the present zoning regulations, but it is very common to request relief from this requirement. The basis for the relief is usually to create a roof structure that is less visible and has less impact, so it contravenes the intent of needing relief for a roof structure. At the very least, we recommend that this standard be modified so that walls of varying heights are permitted when minimizing the height of a roof structure but for an elevator overrun or some other mechanical reason that causes part of the roof structure to be taller.

Fourth, we propose that you remove § 1201.4 in subtitle G, which creates a more onerous setback requirement in for roof structures confronting open courts. This requirement does not exist now and should not exist under the new regulations. This proposed requirement will create a considerably more burdensome roof structure setback requirement that severely restricts building core design flexibility when the roof structure most likely will not have any impact on public space. Finding a suitable location for a roof structure and designing an efficient core may become extremely difficult, which would trigger the need for relief that would not have any impact anyway. For example, a roof structure may confront one wall of an open court, but that wall may not face an alley or a street. In this case, it should not be necessary that this roof structure is set back at a 1:1 ratio when it most likely will not have any visual impact on anything but the property itself, but the result would be that it would be necessary to seek BZA relief. Accordingly, we request that you eliminate this change to the roof structure regulations.

Moving on to subtitle H, we recommend two changes. First, under section 808, we propose that more specificity be added to when these design requirements are applicable, i.e., whether these design standards apply to existing buildings, to new buildings, or to additions. We propose a simple bright line that all of these design requirements apply only to new buildings or new additions. This bright line standard will simplify these regulations for property owners, and, more importantly, it will

help the Zoning Administrator avoid a case by case assessment of whether a certain criterion could apply to a particular existing building.

Second, we recommend a change to the special exception standard language in section 1200.1. Under this section, a special exception is provided for relief from the development standards in subtitle H. However, subsection (c) - or what is intended to be subsection (c) since there is a typo and (a) is repeated twice – requires that exceptional circumstances exist for the relief to be granted. This standard effectively turns the special exception into a variance and all but eliminates the point of a special exception. With a special exception in general, there is a presumption that the provided nonconforming standard is appropriate, provided that certain conditions relating to impacts are met. However, this “exceptional circumstances” criterion eliminates the presumption by forcing the applicant to demonstrate something unusual about the property or neighborhood. This is much different than the conditions on impacts, as opposed property characteristics, that are the basis for special exceptions.

In addition, this “exceptional circumstances” criterion is inconsistent with the Zoning Enabling Act, which separately sets forth special exceptions and variances as falling within the jurisdiction of the BZA. The Zoning Enabling Act specifically establishes the criteria for a variance, which include standards for the property. By imposing the variance “unusual property characteristic” criterion on a special

exception, the proposed regulation morphs the special exception into a hybrid class that is not contemplated by the Zoning Enabling Act.

The intent of a special exception for development standards is to minimize any adverse impacts from nonconformities. However, the proposed regulation goes well beyond that by forcing an examination of the property characteristics, so we recommend that subsection (c) should be eliminated to maintain the focus of the special exception on impacts.

DCBIA has already submitted a letter to pertaining to these recommendations to the record.

Thank you for your time, and this concludes my testimony.

