

September 25, 2015

Chairman Anthony Hood and the Members of
the District of Columbia Zoning Commission
441 4th Street, NW, Suite 210
Washington, DC 20001

Re: Zoning Regulations Review – Zoning Commission Case No. 08-06A

Dear Chairman Hood and Members of the Commission:

We appreciate the opportunity to provide comments on the proposed regulations that have resulted from the Zoning Regulations Review (“ZRR”). The regulations reflect literally thousands of hours of work by this Commission, the Office of Planning, the Office of the Attorney General, the Task Force, numerous Advisory Neighborhood Commissions and individual residents, as well as other property owners, developers and related industry associations. The extensive outreach effort generated a thoughtful dialogue on many aspects of the regulations, and the proposed regulations clearly reflect a balancing of various interests. For that reason, we have not revisited fundamental policy decisions in our comments. Rather we have focused on the need for a smooth transition, which can be achieved through vesting language that will protect projects that have been designed under the current regulations and provide the District with adequate time to prepare for the implementation of the new Zoning Regulations. Also we offer technical corrections and seek to clarify areas of ambiguity. The proposed regulations are well drafted and reflect an outstanding amount of time and effort by a well coordinated city team. Our comments are numerous and detailed only because of the extent of this entire undertaking.

I. Vesting/Transition

Many projects have a long lead time from inception through design. In recent years, some fully designed matter-of-right projects have not proceeded to the full building permit stage because market conditions have not favored speculative buildings. Other projects have been designed based on the use of TDRs or CLDs that have been purchased in reliance on the current regulations. Accordingly, we suggest certain changes to the proposed vesting language. Our proposed language regarding foundation to grade permits mirrors the vesting language that was recently adopted in connection with the new R-4 regulations (Z.C. Order No. 14-11). Therefore, we propose the following:

- 102 VESTED RIGHTS UNDER THE PREVIOUS 1958 ZONING REGULATIONS, AS AMENDED.
- 102.1 A project identified within this section shall be considered to have vested development rights (vested project) subject to the provisions and requirements of the 1958 Zoning Regulations (**as amended**), any conditions of approval, and subject to the conditions of Subtitle A §§ 101.4 through 101.7.
- 102.2 An application for a building permit (**including a foundation to grade permit**) that has been officially accepted by the Department of Consumer and Regulatory Affairs as being complete prior to the effective date of this title, if the building permit plans are consistent with the 1958 Regulations (**as amended**), shall be considered a vested project.
- 102.3 An application for a building permit filed on or after the effective date of this title shall be considered a vested project if the building permit plans are consistent with **or rely on:**
- (a) an unexpired approval of a first-stage, second-stage, or consolidated planned unit development; variance; special exception; campus plan; design review in the CG or SEFC zones; or concept design by the Historic Preservation Review Board or Commission of Fine Arts; provided, the vote to approve occurred prior to the effective date of this title;
 - (b) an unexpired approval of a variance, special exception, or design review in the CG or SEFC zones granted on or after the effective date of this title, for which a public hearing was held prior to the effective date of this title;
 - (c) an unexpired approval of a first-stage, second-stage, or consolidated planned unit development that was granted after the effective date of this title, but which was set down for a public hearing prior to the effective date of this title;
 - (d) a large tract review completed prior to January 1, 2015; or
 - (e) **the use of TDRs or CLDs that have been transferred to the site prior to the effective date of this title.**

II. Six Month Dual Applicability

Given the magnitude of the ZRR effort and the extent of the proposed changes, property owners, architects, and other design professionals need time to fully understand the implications of the new regulations on actual projects. While the regulations have been in process for several years, a full understanding of the interrelationship among the sections has been challenging until

now. Similarly, the Office of the Zoning Administrator (“ZA”) needs time to hire and train additional staff in order to implement the regulations. The resources of the ZA’s office already have been strained to handle numerous recent changes to the regulations, such as GAR, retaining walls, the new R-4 restrictions, and Inclusionary Zoning.

We also understand that while training, transition time, and vesting are extremely important, many new projects will benefit from the proposed regulations. For this reason we suggest a six month phase-in period during which projects can vest under the existing regulations or opt into the new. Such a transitory provision would be similar to Section 123 of the DC Building Code Supplement of 2013 (“Building Code”). Under the Building Code, once the regulations became effective, one could immediately opt into the new regulations. The regulations also have a provision that allowed pending projects to proceed under the old regulations for one (1) year from the effective date of the new regulations.

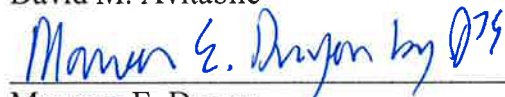
For ZRR, we propose a similar transition concept whereby the new regulations would become effective upon publication in the *DC Register* or on a predetermined date, which would need to be far enough in advance to allow publication in the *DC Register* prior to that date. A predetermined date would provide even more certainty to the public. The effective date of the new regulations also will be dependent on the issuance of the revised Zoning Map. After publication or the date certain, there would be an additional six month period before the new regulations would completely supplant the old. That phase-in period would provide time to modify plans to meet the new regulations, vest under the old regulations, or opt into the new. Through such a phase-in, property owners, ZA staff, and the Office of Planning will have an opportunity to fully assess the differences between the new and the old, and identify additional corrections that inevitably will be needed after such a complex and important undertaking; but it also will allow the new regulations to start to be used immediately.

Set forth herein are our specific comments that we offer on a section by section basis. We commend this effort to finalize ZRR and look forward to working cooperatively in the interest of a smooth transition.

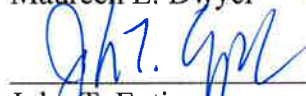
Respectfully submitted,



David M. Avitabile



Maureen E. Dwyer



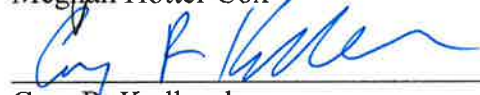
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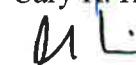
Phil T. Feola



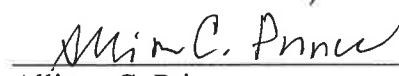
Meghan Hottel-Cox



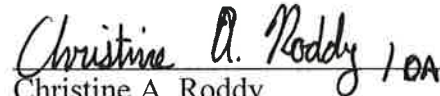
Cary R. Kadleccek



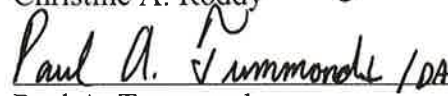
David A. Lewis



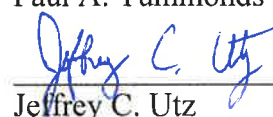
Allison C. Prince



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COMMENTS ON SUBTITLE A – APPLICABILITY

Chapter 1 – Enactment and Title – see comments in cover letter on vesting and implementation.

Chapter 3 – Administration and Enforcement

301.3(f)	Add medical campus plan	“Buildings and structures approved as part of a campus, medical campus, or private school plan.”
304.2	The provisions of this section seem subjective and not verifiable whereas the other provisions of this section are quantifiable. Puts the Zoning Administrator in the position of being judge and jury and arguably having to gather and review evidence. Section 304.1 already has language requiring the ZA to determine “that the deviation will not impair the purposes of the regulations.” That should be sufficient for a minor administrative determination.	Delete Section 304.2

COMMENTS ON SUBTITLE B – DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES

Global Comments

- 1) The proposed definitions retain existing definitions but also include new definitions. They need to be carefully reviewed to eliminate old concepts that have been replaced by new concepts. As examples: “apartment building” appears to have replaced “apartment house”, “setbacks” (rear, side, etc) have replaced “yards”, and “courtyards” have replaced “courts”.
- 2) The proposed new scheme for lot lines and setbacks needs significant work. As applied, it creates multiple issues for key concepts such as rear setbacks and through lots. We strongly recommend reverting to the old definitions and concepts, which generally work well and have stood the test of time for over five decades. We agree that established interpretations of the rules of measurement for such concepts should be included.
- 3) The diagrams in the definitions and rules of measurement need to be revised to be consistent with the definitions. For example, Figure B § 304.4 refers to height of 6 feet, rather than 4 feet, to illustrate the perimeter wall method.
- 4) The definitions and rules of measurement need to be reviewed carefully to make sure that they are consistent but not duplicative. As an example, the rules of measurement for height and gross floor area repeat language in the definitions. As another example, the definition of “Building, Separate” is duplicative of Section 309.
- 5) Since the definitions and rules of measurement are intertwined, the proposed definitions should include cross references to the applicable rules of measurement.

Chapter 1 – Definitions

<u>Apartment Building</u> / <u>Apartment House</u>	Apartment building is defined as having 5 or more units, while apartment house is defined as having three or more units.	Delete Apartment House.
Apartment Buildings / Dormitories / Multiple Dwellings	The use regulations reference the concept of “multiple dwelling” as a permitted use (see Subtitle U, § 401.1(d)(1)) but do not define what a “multiple dwelling” is. Also, the proposed regulations eliminate the concept of dormitories altogether. Many modern student housing meets the technical definition of “apartment building”	Add: <u>Multiple Dwelling: A building containing five (5) or more dwelling units or rooming units, providing accommodations on a monthly or longer basis, including apartment buildings, dormitories, and other types of student housing or group</u>

	but some may lack kitchen or bathroom facilities within the room. Recommend defining “multiple dwelling” to include apartment buildings as well as other type of multiple dwelling uses, such as dormitories, even if the living units do not technically meet the definition of “dwelling unit.” This will allow dormitories to be permitted in all zones where apartment houses are permitted.	<u>housing.</u>
Courtyard (Court)	The proposed regulations eliminate the concept that some special architectural treatments should be allowed and not be considered to create a court.	Revise: Courtyard: An uncovered area, starting at or above grade, where two (2) walls of the same building with windows will face each other. <u>A court shall not include an indentation, recess, or decorative architectural treatment of the exterior wall of a building which opens onto a street, yard, alley, or court.</u>
Embassy	No definition	Needs definition
Floor Area, Gross	Incorrect cross reference	Should be cross reference to Sections 304 and 305.
Garage, Public	Appears to duplicate “Garage, Parking” and is unnecessary.	Delete.
Hotel	The definition of “commercial adjuncts” includes certain uses that are no longer common (e.g. cigar shops) and fails to include uses that have become common (e.g. clothing stores, toy stores, spas, and so on. It also fails to reflect the new “use categories.” Recommend revisions.	Revise as follows: Commercial adjuncts – <u>eating and drinking, retail, and general and financial service establishments</u> customarily incidental and subordinate to hotel use.

Inn	Definition omitted	Need to add back definition to cover category of transient use with less than 30 rooms
Lot, Flag	Is this term used?	Delete?
Lot, Interior	Language is inconsistent with other definitions and is unintentionally broad.	Revise to “A lot that abuts <u>only</u> one (1) street.”
Lot Line, Rear	Current definition means that buildings can have multiple rear yards because any lot line that is not a street lot line or does not intersect with a street becomes a rear lot line.	Revise back to old definition.
Lot, Through	Current definition fails to capture through lots that abut two streets, but only abut one street for part of the width of the lot.	Revise back to old definition.
Main Floor	Definition fails to reflect current interpretations and BZA decisions that buildings can have multiple main floors.	Revise to add: “ <u>A building may have more than one main floor.</u> ”
Parking Space, Structured	Definition captures below-grade parking as well as above-grade parking	Revise definition to reflect that structured parking is only parking located above grade.
Setbacks and Yards	Pick one concept or the other and revert back to the old way of defining and measuring side and rear yards.	Revise and delete as needed.

Chapter 2 – Use Categories

200.2(q) Medical Care	This section is out of alphabetical order.	Relocate to proper location.
200.2(cc) Residential	For purposes of the Downtown Zone and other zones that incentivize residential development, student housing should count as a residential use.	Revise Exceptions to add the following: “ <u>Notwithstanding the foregoing, when otherwise permitted in the underlying</u> ”

		zone, student housing shall count as a residential use for purposes of any provision of this title that requires the provision of residential use, generates bonus density for provision of residential use, or otherwise incentivizes the creation and retention of residential use.”
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Chapter 3 – Rules of Measurement

304.1	Requires cross reference to definition of “Floor Area, Gross,” which elaborates on what is included and not included in GFA	Revises.
304.2	Clarify that student housing is not a non-residential use (that is, student housing is a residential use for purposes of GFA and other residential-use related bonuses)	Add: <u>(g) Housing provided for students, faculty, or staff of a private school or college/ university education use.</u>
304.4	The figure incorrectly references 6 feet instead of 4 feet.	Revise figure
304.5	The text and figure both incorrectly reference 6 feet.	Revise text and figure
307 and 308	Portions duplicate the definition of height.	Revise definition and rules of measurement to coordinate
308.1	As written, the rules do not explicitly set forth how to measure height in the RC-1, CG-1, and D-1 Zones	Revise 308.1 to also include the RC-1, CG-1, and D-1 zones.
310	Language is duplicative of definition of “story.”	Revise
312	Language is duplicative of (but not entirely consistent with) language in definition of Building Area	Revise and tighten
317.1	Language should be revised to clarify that it only applies to projections on private property.	Add: <u>“For zones with a front</u>

		<u>setback requirement, the distance of all projection allowances . . . “</u>
318-322	As discussed above, rear and side setbacks don’t work in practice for many lots.	Revise to use old definitions of yards and accompanying established rules of measurement.
319	The proposed regulations eliminate an existing established concept—that lots fronting on three or more streets do not require a rear yard. Recommend adding in this concept.	[319.3(e) or 319.7] <u>No rear yard is required for a building that fronts on three or more streets.</u>
323-324	Review to ensure that courtyard rules of measurement are not duplicative of definitions.	Review and revise as needed
325	“Plaza” is not defined.	Add a definition for plaza.
326.1	The current regulations do not require that a plaza be open and uncovered to the sky.	Revise to eliminate this requirement.

COMMENTS ON SUBTITLE C – GENERAL RULES

Global Comment

The zoning provisions that apply to the former Southwest Urban Renewal Area (Section 2521 of the current Zoning Regulations) have been inadvertently omitted from the proposed Zoning Regulations. They must be included in the proposed regulations – perhaps as a new chapter in Subtitle C.

Chapter 2 -- Nonconformities

Section	Issue	Recommendation
204.9(a)	Does not address nonconforming uses in K Zones	Need to update to add in zones created pursuant to Subtitle K – perhaps between the MU and D zones.

Chapter 3: Subdivision Rules

Section	Issue	Recommendation
301.1	Preexisting record lots grandfathered as to lot dimension and size standards	Revise so language is parallel with 301.2: “. . . do not have to comply with the <u>frontage, lot width, or lot area requirements</u> . . .”
301.2	Preexisting tax lots without an underlying record lot grandfathered for conversion to record lot as to frontage, lot width, or lot area. This is helpful, but what about a single tax lot that has multiple underlying record lots?	Revise to clarify that multiple underlying record lots don’t count as an underlying record lot: “. . . and do not have any underlying record lot <u>that is coterminous with the tax lot</u> . . .”
302.2(b)	No separate lot required for campus / private school buildings – need to amend for Medical	Revise 302.2(b) as follows: “. . . in conformance with an

	Campus Plans. Also recommend including PUDs as an exception.	approved campus plan, <u>medical campus plan</u>, or private school plan." Add 302.2(c): Buildings and structures erected in conformance with an approved planned unit development.
303.2	In zones with a minimum lot width requirement, street frontage must be 75% of lot width requirement. However Sections 304.4 and 304.5 impose separate requirements under 304.4 and 304.5 for single household, flat, and apartment buildings that may be less than 75% of the lot width.	Clarify that the more specific provisions trump the general provision: "Except as provided in Sections 304.4 and 304.5, . . . "
305.3	This provision <u>requires</u> a street dedication within theoretical subdivisions. The responsibility for determining whether public streets should be dedicated rests exclusively with the D.C. Council.	Recommend revising to require that street networks meet minimum DDOT standards, but not require actual dedication: "Private driveways and streets shall be permitted, but any right-of way containing public utilities . . . shall be consistent with the applicable standards of the District Department of Transportation."
305.7	Missing words	"The proposed development . . . shall not <u>be</u> likely <u>to</u> have an adverse effect . . . "

Chapter 4 – Tree Protection

401.1	Lacks language indicating it only applies in a handful of zones.	"<u>The tree protection standards only apply in designated zones.</u> The tree protection standards required by specific zones shall apply when . . . "
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Chapter 7 – Vehicle Parking

701.4	Only space devoted to vehicle and bike parking is excluded from parking requirements	Should be parallel to 709.1, 803.3 and 902.4, should simply state “gross floor area does not include floor area devoted to off-street parking or loading facilities, including aisles, ramps, and maneuvering spaces.” Given the language in 709.1, this provision is probably unnecessary.
701.6	Only get one exemption for initial floor area—how does it work for residential and retail/office mixed-use buildings?	Need to clarify whether mixed use residential and retail buildings get both the exemption for the first 4 residential units and the first 3000 SF of retail use.
701.10, 701.14	Conflicting provisions – one requires parking for so long as use exists, the other requires parking for so long as the structure exists	Parking is tied to use, not structure. Delete 701.14.
702.3(a)	No parking required in R and RF zones if a lot lacks access to a 10 ft+ wide alley	Poorly worded. Arguably exempts all uses (even those on large lots) from parking requirements altogether. Revise to clarify which uses don’t have a parking minimum if they lack alley access (e.g. single family houses).
702.3(d)	Exemption for CG Overlay – language is unclear	Needs to be revised to parallel Subtitle K, 514.2(a): “On any property located within the CG Zones and has frontage on South Capitol Street or is located east of South Capitol Street.”
707.2(b)	Revise to add reference to the SEFC zone	“Within the D, SEFC, and CG zones . . .”

711.4	Permits automated parking garages, but is unclear whether a mechanical elevator is permitted	Clarify to state that a parking elevator is also allowed. “An automated parking garage, including an elevator providing access to parking spaces, . . . “
711.7	Requires that vehicular entrances be set back from alley – is this just at the ground floor? Otherwise it will create funny notches in the backs of buildings.	Clarify: “ When access to parking spaces within a building is provided from an alley, the entrance to the parking garage shall be set back at least twelve feet (12 ft.) from the center line of the adjacent alley, for a minimum height of ____ feet (____ ft.). “
711.8(b)	Paving for driveway unnecessary because already covered in 713.1	Delete.
711.9(a)	Rules for groups of 3+ rowhouses – prohibits direct access from street to parking in individual rowhouses. Unclear that intent is to create alley systems. Needs clarification.	“ <u>Access to vehicle parking to individual rowhouses shall be from a public or private alley.</u> Access to vehicle parking . . .
711.10	Language regarding maneuvering is unnecessary – see 712.9(b)	Delete second sentence.
714.2(b)	Should be revised to allow for gaps that open onto an alley	Revise to include reference to alley: “ . . . that open directly onto a street, sidewalk, or alley.”

Chapter 9 – Loading Requirements

901.2	Edit to language	“The loading requirements must <u>shall</u> be met . . .”
901.6	As written, suggests that you have to provide an additional loading berth for an addition even if the structure is otherwise “maxed out.”	“The additional minimum loading berths and service/delivery spaces required shall be calculated

		based upon the entire gross floor area added <u>of the combined structure</u> .”
903.1	Loading must now be located either in the building or in a rear yard or side yard. It is not allowed in other areas, except in PDR zones. Current regulations allow loading in “other areas” such as courts in the commercial and industrial zones.	Add new provision to parallel existing regulations and allow loading to be located: “Elsewhere, in the NC, MU and D Zones and in the Zones created pursuant to Subtitle K.”
903.1(c), 903.2	The reference to the MU zones seems unduly restrictive for zones like the CR and C-3-C Zone. Reference likely intended to be to the NC Zones.	Replace MU with NC zone in both sections.
903.2	Incorrect crossreference	Change to 903.1?
909	This section provides a very limited special exception review from the number, access, and screening requirements. Recommend consolidating into one provision encompassing all factors.	Revise as follows: “The Board may grant, as a special exception, a full or partial reduction of the number of loading berths or service/delivery spaces . . . as well as modifications or waivers to the access, location, screening, or other requirements of this chapter . . . if, in addition to meeting the general requirements of Subtitle X, the applicant demonstrates that: (a) The only means by which a motor vehicle could access the lot is from a public street . . . (b) The loading berths . . . required for an addition to a historic structure . . . (c) The lot has unusual topography, grades, shape, size, or

		dimensions, (d) Alternate access arrangements would improve site design . . . (e) Existing protective and screening walls . . . (f) Provision of protective screening walls would result . . .
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Chapter 10 – Inclusionary Zoning

General Comment: multiple changes hard to track with changes also being undertaken in 04-33G. Keep IZ as is in current regulations for purposes of ZRR and make all changes in 04-33G.

1001.2	The exemption for additions less than 50% is missing. (But 1001.4 references the concept.)	
1001.7	Allows for “opting in” to IZ, but it has an incorrect cross reference	
1002.5	Clarifies that other bonus density may stack on top of the IZ bonus, subject to the total FAR maximum in that zone. Current regulations explicitly allow stacking in certain zones, but in other zones stacking has been interpreted to be permitted because the zone predated IZ.	Must revise FAR maximums in other zones to ensure that both IZ and other bonuses continue to stack as permitted under current regulations.

Chapter 11 – Waterfront

1102.4	Prohibits a variety of uses within a 100-year floodplain, including lodging, education, daytime care, hospital, and animal sales, care and boarding	Delete – Floodplain regulations are adequate to control use. Also, regulation is unclear whether it applies even if a property has been graded out of the floodplain.
1102.5(b)	Revise to clarify that parking may be located off-site within 600 feet as a matter of right, per 701.8(b)	Revise

Chapter 12 – CLD Provisions

Chapter 14 – Retaining Walls

1400.1	Applies to R-1 through R-3 and RF Zones. Clarify that it does not apply in other zones.	Clarify and revise
1401.2	General limit of 6 feet in height, but 4 feet in other contexts. Large sites (e.g. campuses) often have much larger retaining walls due to topography. Will require special exception relief.	Exempt campuses / private schools?

Chapter 15 – Roof Structures

1504, 1504.1	Error	Relief to <u>from</u> Roof Structure Requirements Relief to <u>from</u> the requirements of this chapter . . .
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Chapter 17 – Plazas

1700.1	Lacks language indicating it only applies in a handful of zones.	“ <u>The plaza standards only apply in designated zones.</u> Plaza space required by specific zones”
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COMMENTS ON SUBTITLE D – RESIDENTIAL ZONES

Section 1601.1 seems to limit former Section 223 which allowed for special exception approval for additions to single family homes. The new section provides:

The Board of Zoning Adjustment may grant special exception relief from the following development standards of this subtitle, subject to the provisions of this section and the general special exception criteria at Subtitle X:

Lot occupancy;

Setbacks; and

Pervious surface.

Under 223, the prior regulations allowed relief from minimum lot, lot occupancy, rear and side yard (which are covered by setbacks above), courts and section 2001.3. Unless modified, this section will now again require variance relief, rather than special exception review, from the minimum lot width and area, courts, and nonconforming structure provisions. Consider revisions to capture the above areas or, perhaps more broadly, “the development standards of this subtitle as well as the general rules of Subtitle C.”

COMMENTS ON SUBTITLE G – MIXED USE ZONES

In section 302 for MU-1/MU-2, we believe that the density chart is incorrect. **SP-2 allowed 6 max FAR. Revise as follows below.**

TABLE G § 302.1: MAXIMUM PERMITTED FLOOR AREA RATIO

Zone	Maximum Permitted FAR	
	Total Permitted	Maximum Non-Residential Use
MU-1	4.0	2.5
	4.8 (IZ)	
MU-2	6.0	3.5
	7.2 (IZ)	

COMMENTS ON SUBTITLE H – NC ZONES

Section	Issue	Recommendation
702.1	Decreases permitted non-residential FAR to 2.5 from existing allowance.	Amend section to read: “The maximum density in the NC-6 zone shall be 3.0 FAR. with a maximum non-residential density of 2.5 FAR. ”

COMMENTS ON SUBTITLE I - DOWNTOWN

Chapter 1- Introduction

101.2	Figure I Section 101.2 illustrates the general boundaries of the D zones. This map includes Square 374, Lot 44 in the “D-5-R” Zone District. This property is the site of the hotel development parcel of the Old Convention Center redevelopment project. As such, it was removed from Housing Priority Area B by Z.C. Order No. 08-23. The site should not have a residential requirement.	Remove Square 374, Lot 44 from the D-5-R Zone and place it in the D-5 Zone.
102.3	As written, this section suggests that the zone only applies when triggered. However, since it is a zone, and not an overlay, it needs to apply all the time. Therefore, a distinction needs to be drawn between the provisions of this zone that automatically apply (e.g. development standards, ability to use density credits) and the provisions of this zone that are triggered (e.g. residential, use, and design requirements). We also recommend that property owners should have the opportunity to opt into requirements even if they are not triggered.	Revise to state: the <u>requirements</u> (residential, use and design) are only triggered by certain levels of construction, or if opted in by the property owner; and the <u>development standards, permissions, and incentives</u> (such as the ability to use Density Credits to expand) are an automatic right that is not subject to the trigger.

Chapter 2 – General Development Standards

200	General comment: need to add a provision that clarifies for purposes of the Downtown Zone, “student housing” qualifies as a residential use.	Add new provision.
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205.1(b)	The rear yard section is overly complex and serves no clear purpose.	Return to current requirement: D-1 and D-2 Zones: 15 feet. All other zones: 2.5 inches per foot of vertical distance from finished grade at the middle of the rear of the structure the highest point of the roof or parapet wall but not less than 12 feet.
205.3	Clarify to address applicability of rear setback requirements to additions to historic resources.	Clarification proposed: The rear setback regulations shall not apply to any landmarks or contributing buildings within historic districts <u>including any addition thereto</u> .
205.4	Rear yard waiver: the special exception standards have always been unclear and difficult to interpret. The building code governs the required distance between openings and should address concerns about distance between windows.	Delete 205.4(a)-(c).
205	Lacks a provision eliminating the rear yard requirement for lots fronting on three or more streets.	Add new provision: "A rear yard is not required for lot with three street frontages." OR ensure that general rule in Subtitle B applies here as in other zones.
208	GAR requirement is erroneously listed as 0.3.	Return to 0.2 requirement.
210	Alley Lots 30' height limit with setbacks from any residential. OK if accessed thru 24 foot alley or 15 foot alley within 300 feet of a street. However, ZA or Building Code official can determine that access to dwelling is insufficient and send to BZA for Special Exception.	The ZA/Building Code official section seems fraught with potential issues given the lack of certainty for owners. Recommend revising or deleting.

211	Clarify that PUDs do not need to buy credits for density above the matter-of-right limits. Establish and define “matter-of-right” means maximum permitted with any credits to the maximum extent feasible (i.e. 211.1(c)), and confirm that 20% bonus in Subtitle U, § 303.3 is on top of this number.	Revise.
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Chapter 3 – General Zone-Based Use Requirements and Conditions

302	General comment – set up a new provision in Subtitle U that lists the matter of right uses for the Downtown Zones. Revise to add additional matter of right uses as listed in Section 302.2.	Revise.
303.1(a), 303.1(i)	Why should animal care and boarding use require special exception Downtown? Also, delete veterinary care item – duplicative	Revise and delete.
303.1(b), 303.1(h)	Make eating and drinking and retail uses matter of right in all Downtown Zones, up to a 0.5 FAR or 1.0 FAR limit. Should not need permission to seek such uses Downtown.	Revise.
304.1	Lodging and office uses should be permitted as a matter of right in all Downtown zones. The residential use requirements will effectively preclude entirely commercial use in certain zones.	Revise.

Chapter 4 – General Zone-Based Design Requirements and Permissions

401.1	Current language permits vehicular access if an entrance is “required” by DDOT. DDOT technically doesn’t require access to be located in certain locations. They do, however, “approve” the location. A Special Exception should not be required if DDOT has approved the access.	Revision suggested. Vehicular access to a garage in a street facade is permitted only if: (a) no access through a 15 foot wide alley; or (b) entrance <u>approved</u> (rather than required) by DDOT; or (c) building is subject to a less restrictive requirement (certain Mt. Vernon Triangle Streets)
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Chapter 5 – Regulations Specific to Particular Downtown Zones

517.2	Cannot exceed 90 feet on portion of a site occupied by a historic landmark or contributing building. Section is also inconsistent with Section 200.2.	Eliminate this section to allow the height decision to be left to the HPRB. In the alternative, relief from this section should be a special exception and not a variance. Also, clarifying language is needed so the section is consistent with Section 200.2 and the restriction clearly applies only to the footprint of the historic structure.
522	Language as written arguably requires special exception review for a balcony, terrace or roof deck at any height. Should be revised to clarify that such review is required only for a balcony, terrace, or roof structure located above the 90-foot height.	Revise as follows: “A new building or building addition that is taller than ninety feet (90 ft) or that has a balcony, terrace, or roof deck <u>located above ninety feet (90 ft.)...</u> ”

525.1	Error: Cross reference to 503.3(b) doesn't make sense.	Revise to correct cross reference.
525.2	Clarify wording: - What is a "designated other street segment"? Should probably be revised to say a "building with frontage on one of the following designated street segments". - Should be more specific about what review process is contemplated – presumably, it is Zoning Commission review pursuant to Subtitle I, Chapter 7.	Revise as recommended.
525.4	Delete as unnecessary.	Delete.
532.1, 540.1, 548.1, 556.1, 563.1, 577.1	Revise to allow Height Act maximum. As worded this limits height of buildings on 100-foot wide, such as 6 th Street, NW, streets to 110 feet.	Revise as follows (inserting the correct zone name in the bracketed section for each zone): "The maximum permitted building height in the [D-4-R, D-5, D-5-R, D-6, D-6-R, and D-8 zones] shall be that permitted by the Height Act, subject to the upper story setbacks in certain areas set forth in Section 201.3."
555.1	There should be no limit on density for residential or when credits are used.	Revise the mirror language in 569.1.
555.2	Delete (language should be incorporated into new 555.1).	Delete.
555.4	Non-residential density is limited to 6.5 FAR. This is an error. The area affected by this subsection is the old C-4 Zone. The limit should be 8.5 FAR for sites that front on a street less than 110 feet wide and 10.0 FAR for sites that front on a street of at least 110 feet in width.	Revise as recommended, paralleling the existing density limitations for the C-4 Zone.
576.2	Error: incorrect cross reference.	Revise to correct cross reference.

Chapter 6 – Location-Based Regulations for Downtown Sub-Areas and Designated Street Segments

600	General comment – it is hard to follow the design requirements with all of the blank space/page breaks. It may make sense to break each new section on a separate page so that the maps are aligned with each heading.	Revise.
601.2	Need to clarify that both “general services” and “financial services” count towards the ground floor use requirement.	Revise.
601.2(c)	Wrong crossreference – should be to 601.2(a).	Revise.
612, 612.2	Error: “Principal,” not “Principle.”	Revise.

Chapter 8 –Generation and Certification of Credits

806	TDR and CLD conversion issue. Unlike TDRs, CLDs are not memorialized by a covenant before they are transferred. This section needs to allow for the conversion of existing CLDs that have not transferred.	Revise to permit conversion of existing CLDs that have not yet been transferred and recorded.
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Chapter 9 – Use of Credits

900	Re-transfer of legacy TDRs/CLDs. Need to address “legacy” TDRs or CLDs that are vested in a site but no longer needed and are being resold. They should maintain legacy status and be able to be used in any trading area.	Revise.
900.2, 900.4	Legacy CLDs should be able to be utilized in any trade area to protect their value, as legacy TDRs are.	Revise Section 900.2 to delete Section 801.1(e) and revise Section 900.4 to add Section 801.1(e).

COMMENTS ON SUBTITLE K – SPECIAL PURPOSE ZONES

Global Comment – Lists of uses in Subtitle K should be converted to use groups in Subtitle U. To the extent necessary, definitions of use groups and use permissions should be revised to conform to the individual uses identified in these special purpose zones.

Chapter 2 – SEFC Zones

200	The SEFC Overlay essentially operates as a first-stage PUD. It was developed in 2003 to implement GSA’s plan to develop the property as a series of parcels with a certain mix, height, and density of uses. These parcels and densities assumed the constraints of the then-applicable zoning regulations (that is, public streets would not count toward FAR or lot occupancy, but private streets would count). Additional public-private agreements between the master developer and GSA as well as the District of Columbia are also based on these assumptions. The proposed regulation in Subtitle B, Section 301.2 will carve out private as well as public streets, thus reducing the maximum permitted density originally approved in Z.C. Case No. 03-06, as amended in Z.C. Case No. 07-11. Recommend inserting a provision here that recognizes the history of planning and approvals here and therefore allow private streets to count toward FAR and other zoning regulations.	Insert new 200.11: <u>“Notwithstanding the restrictions in Subtitle B, Section 303.2 and other provisions of the regulations, private rights-of-way within the SEFC Zones that serve as principal circulation for the site may be included in lot area for the purposes of calculating FAR and other development standards of this title.”</u>
200.10(c)	Refers to specific uses rather than new use groups	“Parking for boathouses, marinas, yacht clubs, or other recreational uses <u>Marine and Parks and Recreation uses</u> shall be located . . . “
202.1	Missing the Yards West Text Amendment approved in Z.C. Case No. 14-05	Update throughout Chapter 2.
201.1	Double negative; allows hotel use to count as a residential use	Revise as follows “Non-Residential floor area shall be the total GFA of the building not dedicated to uses in one of the following categories:

		(a) Residential (b) Emergency Shelter; or (c) Lodging <u>All other uses shall be deemed non-residential uses.</u>
214.1	Language contradicts original SEFC Overlay and restricts all nonresidential uses to 0.5 FAR per parcel.	Revise as follows: “The maximum permitted density for building in the SEFC-2 zone shall be 6.0 FAR with a maximum density of 0.5 FAR for non-residential uses <u>preferred uses as set forth in Section 236.1.</u>
215.4	Language is unnecessary because it simply restates the Height Act	Delete
222.1	Same comment as 214.1	Revise as follows: “The maximum permitted density for building in the SEFC-3 zone shall be 3.5 FAR with a maximum density of 0.5 FAR for non-residential uses <u>preferred uses as set forth in Section 236.1.</u>
223.4	Language is unnecessary because it simply restates the Height Act	Delete
236.1	Current overlay includes optical goods store, optical lab, optician and optometrist, physician or dentists offices as preferred uses	Add “Medical Care” to the list of preferred uses
236.2	Missing language	“Preferred uses shall be located on the ground floor and <u>shall be street-oriented.</u> ”
237.4	Global Comment – the lists of uses should reflect the Use Groups, not individual uses.	
237.4(a)	Error – Automobile Rental Agency has been inadvertently included here. Use fits within “Motor Vehicle-Related” Use group	Delete phrase

237.4(b)	“Dental Lab” should probably fall under “Medical Care” use category	Delete section; Update definition of Medical Care in Subtitle B to include Dental Lab
237.4(d)	Hotel use not a defined use category	Replace “Hotel” with “Lodging”
237.4(e)	International Organization is not a defined use category	Delete
237.4(f) and (g)	Library and Museum are not defined use categories	Delete. Museum is already included through “entertainment, assembly, and performing arts”. Libraries are part of general institutional uses, but such uses should not require a special exception.
237.4(i)	Wall is missing its separate bullet item.	Separate out the wall as a separate item
237.4(m), 237.4(n)	Automobile sales and gas stations are not a separate use categories – they are both within the “motor-vehicle related” category	Delete both and replace with “Motor-Vehicle Related”
237.4(o)	Should probably begin with “Parking” since that is the use category, then indicate that such use is limited to temporary lots	Revise as follows: “ <u>Parking:</u> <u>limited to</u> temporary parking lot or garage . . . “
238	Global comment: should references to RA-5 Zone should be changed to just the “RA” Zone?	
238.2(c)	Prohibits sanitarium use – is this otherwise permitted in this zone?	
238.3	Clarification	Notwithstanding <u>In addition to</u> uses set forth in Subtitle K § 238.1 . . .
238.3(b)	Current SEFC Overlay permits “arts, cultural, and hotel uses.” Change from uses to use group inadvertently deleted “cultural” uses. Add in “entertainment” use category to cover cultural uses.	Revise as follows: “Uses within the arts, design, and creation, <u>entertainment,</u> <u>assembly, and performing arts,</u> and lodging use groups . . . “

Chapter 3 – USN

310	Delete as unnecessary – bike parking covered under Subtitle C, Chapter 8?	Delete?
318.1	Unnecessary – ANC is automatically a party	Delete

Chapter 4 – Hill East

400.7	Map is unreadable and lacks delineation of the four zones	Revise
403	Add a provision clarifying that the HE zone is a “mixed-use zone” for purposes of the Height Act (similar to 215.2 and 223.2)	Revise
403.4, 403.5, 403.6	Delete as unnecessary	Delete
408.1, 408.2, 408.3	Delete as unnecessary	Delete

Chapter 5 – Capitol Gateway

502.3, 503.3, 504.3(f)	Same comment as 201.1: Double negative. Also, 503.3 lacks a reference to maximum permitted non-residential density.	Revise second sentence as follows “Non-Residential floor area shall be the total GFA of the building not dedicated to uses in one of the following categories: (a) Residential (b) Emergency Shelter; (c) Lodging; or (d) Education Uses that are operated or chartered by the District Government <u>All other uses shall be deemed</u>
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		<u>non-residential uses.</u>
504.4	Existing regulations allow Height Act height to accommodate bonus density; proposed language only allows Height Act height with CLDs. Revise to conform with current regulations.	<u>The maximum permitted height in the CG-4 zone shall be as follows:</u> (a) <u>The maximum permitted height in the CG-4 zone shall be ninety feet (90 ft.).</u> (b) <u>Notwithstanding the foregoing, the maximum permitted height shall be that permitted under the Height Act for any site receiving combined lot density within the CG-4 Zone or for any site utilizing bonus density pursuant to Section 504.3 of this subtitle or Subtitle C, Chapter 10:</u> ...
505.3(c)	The bonus density should be permitted beyond the IZ bonus; it should be a 5.8 FAR, not a 5	(c)The Zoning Commission may grant bonus density for residential development in a building or a combined lot development, using a guideline of 1.0 FAR in excess of the normally-allowed maximum of 4.0 <u>4.8</u> FAR, provided that...
508.5, 509.1	Add a map showing designated streets	
509	Need consistency in references to “preferred”, “designated”, and “required” uses	
509.2, 516.2(a)	Missing typical ground floor uses such as animal sales and medical care	Revise to add Animal Sales and Medical Care
511	CLDs are no longer allowed in all of CG but limited to CG-4. Regulations should be revised	<u>Two (2) or more lots within the CG Zones may be combined</u>

	to align with current regulations, which allow CLDs to transfer use requirements across entire CG Overlay.	<u>for the purpose of allocating residential and nonresidential uses regardless of the normal limitation on floor area by uses on each lot; provided, that the aggregate residential and nonresidential floor area shall not exceed the matter-of-right maximum height or density of the underlying zone district(s), except when bonus density is being constructed, subject to the following:</u> (a) <u>Within the CG-4 District, the residential and nonresidential floor area on each individual parcel shall not exceed a maximum floor area ratio of 8.0 on parcels for which a height of 110 feet is permitted or 8.5 on parcels for which a height of 130 feet is permitted by the Height Act, including any bonus density;</u> (b) <u>Within the CG-4 District, the amount of commercial density transferred from one parcel to another may not exceed the lesser of a density of 3.0 FAR or the amount of residential density being transferred;</u> (c) <u>Maximum permitted height shall be that permitted for any site receiving combined lot density within the CG-4 District, but only to the extent necessary to accommodate any additional density received from another parcel;</u> (d) <u>The combined lot</u>
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		<u>provisions may only be used to transfer use, not density, to or from any property within the CG-1, CG-2, CG-3, or CG-5 Districts; and</u> <u>(e) The Zoning Commission may, at its discretion, grant an additional transfer of density of 1.0 FAR maximum to or within Squares 700, 701, and 702.</u>
513.3(b)	Revise to line up with new use group categories	“...with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail or service uses <u>Residential; Lodging; Arts, Design, and Creation; Entertainment, Assembly and Performing Arts; Retail; Service, General; and Service, Financial.</u>”
513.8	Delete as unnecessary	Delete
514.2	Delete all three provisions as unnecessary.	Delete

Chapter 7 – Reed-Cooke

715.1	List of individual uses does not line up with the new “use group” based approach to uses.	Revise
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Chapter 8 – ARTS

801.4	Delete as unnecessary	Delete
802.1(b)	Subtitle C, Section 1002.5 now makes it clear that the FAR maximum in the individual zone controls for purposes of whether IZ and zone-based bonuses “stack.” Revise to allow use of IZ and ARTS bonuses (CLDs, retail, residential). Historically, the ARTS Overlay has been interpreted to allow a 0.5 FAR ARTS bonus	Revise as follows: “No building that uses bonus density shall achieve a maximum density in excess of the following:

	above and beyond the maximum FAR permitted in the underlying zone with IZ. Also revise to codify the current interpretation that CLDs may be used to increase the maximum permitted density by 0.5 FAR.	(1) 3.5 FAR in the ARTS-1 Zone, (2) 4.7 FAR in the ARTS-2 Zone, (3) 5.3 FAR in the ARTS-3 Zone, (4) 7.7 FAR in the ARTS-4 Zone. Notwithstanding the foregoing, a property utilizing CLDs pursuant to Section 812 of this subtitle shall be permitted a 0.5 FAR increase above the maximum permitted density set forth above.
802.2	Incorrect reference to old code number in table	Revise
811 and Subtitle U, Chapter 7	This section is very confusing. There is a separate set of “Arts” uses in Subtitle U, Chapter 7. Looking at the list, basically everything fits into “Arts, Design, and Creation,” “Entertainment, Assembly, and Performing Arts,” “Eating and Drinking Establishments,” and then some arts-related education, office, and retail uses. As a starting point, recommend paring down the list of uses Subtitle U, Chapter 7 to: • Arts, Design, and Creation • Eating and Drinking Establishments • Entertainment, Assembly, and Performing Arts • Education (arts-related) • Office (arts-related) • Retail (arts-related) • Service, General (arts-related) With a list that simple, consider pulling in directly to Subtitle K, Chapter 8	Revise Subtitle U, Chapter 7 or perhaps delete and integrate into this section.
811.2	All of the uses listed in Subtitle U, Chapter 7 appear to be already permitted as a matter of right	Revise to eliminate reference to arts uses in Subtitle U,

	in the MU-Use Group E Standards	Chapter 7
811.3	All of the uses listed in Subtitle U, Chapter 7 appear to be already permitted as a matter of right in the MU-Use Group F Standards	Revise to eliminate reference to arts uses in Subtitle U, Chapter 7
811.4	All of the uses listed in Subtitle U, Chapter 7 appear to be already permitted as a matter of right in the MU-Use Group G Standards	Revise to eliminate reference to arts uses in Subtitle U, Chapter 7
811.6	As written, this only permits <u>arts-related uses</u> to count toward the ground floor requirement. Revise to include retail/service as well as arts-related uses.	“Arts use groups listed in Subtitle U § 700.1 The following use groups shall occupy no less than fifty percent . . . a) Arts, Design, and Creation b) Eating and Drinking Establishments c) Entertainment, Assembly, and Performing Arts d) Education (arts-related) e) Office (arts-related) f) Retail g) Service, General h) Service, Financial
811.7	Replace “hotel” with “lodging use”	Revise
811.9	Unnecessary and duplicative language.	Revise as follows: “Eating and Drinking Establishments Eating establishments, drinking establishments, or eating and drinking establishments (“eating and drinking establishments”)-shall be subject to . . .”
811.10	Unnecessary given that Parking in Subtitle C now allows shared use as a matter of right. That should trump this old regulation	Delete.

COMMENTS ON SUBTITLE U – USES

Section	Issue	Recommendation
All	Use definitions difficult to locate	Move all use definitions from Subtitle B to Subtitle U
203.1(d)	Seeming mistake that colleges/universities to be approved by BZA.	Delete since campus plans and further processing must be approved by Zoning Commission pursuant to Z § 302.
301	Rooming house no longer permitted or defined use	Add section to permit rooming house
410	Unclear whether accessory dining rooms/restaurants are permitted in apartment houses	Add section allowing accessory dining rooms/restaurants in apartment houses
500.2	The table is missing the NC, D and almost all of the K zones. Should be updated to add them.	Revise and update to add additional zones. Also add a note that “Specific additional use permissions and restrictions may be found in the individual zone.”
506.3	Reference to special exception review by the Zoning Commission is out of place here – origin was a specific provision limited to special exceptions attached to W-0 rezonings only.	Add precatory language to beginning explaining: “For the review of any special exception use application related to a request to amend the Zoning Map to the MU-11 Zone, . . . “
508.1(e)	Seeming conflict in use permissions. Special exception approval required for entertainment, assembly, and performing arts uses for MU zones use group C, but private/public theater for purpose of entertainment, assembly and performing arts is permitted in § 507.1(b)(7).	Permit all entertainment, assembly, performing arts, private/public theater uses; no special exception required
508.1(g)	“Miscellaneous uses” is too broad and unclear. Again, the section has been wrenched out of its	Delete section or clarify

	context as part of the use permissions in waterfront zones.	
Chapter 7	Looking at the list, basically everything fits into “Arts, Design, and Creation,” “Entertainment, Assembly, and Performing Arts,” “Eating and Drinking Establishments,” and then some arts-related education, office, and retail uses. As a starting point, recommend paring down the list of uses Subtitle U, Chapter 7 to: • Arts, Design, and Creation • Eating and Drinking Establishments • Entertainment, Assembly, and Performing Arts • Education (arts-related) • Office (arts-related) • Retail (arts-related) • Service, General (arts-related) With a list that simple, consider pulling in directly to Subtitle K, Chapter 8	Revise Subtitle U, Chapter 7 or perhaps delete and integrate into this section.
700.2	Residential and non-arts commercial uses (office, general retail, etc.) are not identified as being permitted.	Add subsections allowing residential, office, and general retail uses

COMMENTS ON SUBTITLE W – SPECIFIC ZONE BOUNDARIES

112.1(c)	Proposed regulations exclude Square 1050 and Reservations 15P, Q, R and 213 from H Street Overlay, whereas those areas are included in the existing regulations	(c) H Street Northeast Arts Sub-district (NC-14 and NC-15) encompasses properties fronting on H Street, NE in Squares 1003, 1004, 1026, 1027, 1049N, 1049 from 12 th to 15 th Streets, NE, <u>and Reservations 15P, 15Q, 15R and 213 and Square 1050</u>
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COMMENTS ON SUBTITLE X - General Procedures

103.5	Should include continuing care retirement community	A medical campus may include hospitals, clinics, primary care, medical office buildings, nursing and convalescence care facilities and <u>continuing care retirement communities</u> , related and shared parking and loading facilities, and ancillary retail and services that are customarily incidental to the uses.
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COMMENTS ON SUBTITLE Y – BZA RULES

Section	Issue	Recommendation
206	Does not define a time deadline for filing in IZIS	Add a new section: “ <u>All filings submitted in IZIS on or before 11:59 pm shall be recorded as being received on the same day.</u> ”
302.2	Not clear on when it can be confirmed that an appellant had notice of the appealed administrative decision. Need a definitive time by which it can be confirmed that an appellant did or should have and notice of administrative decision. Second sentence creates greater uncertainty about when a person has knowledge.	Delete second sentence of the section: “ A person shall not be imputed with having knowledge of the grant of a building permit or certificate of occupancy by the mere issuance of the permit or certificate or its placement in a public file or website, unless there is evidence that the person routinely viewed the file or website on or about the time that the permit or certificate was issued. ”
702.1	Unclear if conditions in BZA order for a phased project supersede this time limit, if the BZA’s intent is to allow more time.	Add the following phrase at the end of the last sentence: “... <u>unless the BZA Order says otherwise.</u> ”