

**MEMORANDUM**

TO: District of Columbia Zoning Commission

FROM:  Jennifer Steingasser, Deputy Director, Development Review and Historic Preservation

DATE: October 25, 2013

SUBJECT: Case No. 08-06A Title 11, Zoning Regulations – Comprehensive Text Revisions – Subtitles A, W, X, Y and Z

I. INTRODUCTION

The Comprehensive Plan is a general policy document that provides overall guidance for future planning and development of the city. The first Comprehensive Plan was adopted in 1984 and 1985. In 2006 a new Comprehensive Plan (Comp Plan) was approved, which was the first major revision of the 1985 plan. The Comp Plan was updated in 2011. The Comp Plan's Implementation chapter (IM-1.3) calls for the substantial revision and reorganization of the zoning regulations:

The Zoning Regulations need substantial revision and reorganization, ranging from new definitions to updated development and design standards, and even new zones.

This is the first in a series of hearing reports for case 08-06A. Draft proposed text was provided to the Commission and set down for public hearing on September 9, 2013. This report provides OP's recommendation on Subtitles A – Authority, W – Mapping X – General Processes, Y – Board of Zoning Adjustment, and Z – Zoning Commission, a summary of the proposed changes relative to the current code chapters (D.C. Municipal Regulations, Title 11) and a summary of Comprehensive Plan policies and actions relevant to the subject subtitles. Each subtitle is discussed in terms of Commission guidance provided to OP and changes to the current text. Additionally, the report notes any clarifying or additional language that may be required or is recommended for inclusion in the September 9, 2013 draft.

Zoning Commission Action to Date

The Commission held public hearings on the proposed concepts and then provided guidance to OP between 2008 and 2011. The table below summarizes the actions taken to date by the Zoning Commission relative to each subtitle or topic.

Subtitle	Case Number and Topic	Public Hearing	Guidance Public Meeting
A	Case 08-06-15 Administration, Enforcement And Procedures Guidance	February 17, 2011	March 14, 2011
X	Case 08-06-7 Institutional And Campus Plans Guidance	December 11, 2008	February 23, 2009
Y	Case 08-06-15 Administration, Enforcement And Procedures Guidance	February 17, 2011	March 14, 2011
Z	Case 08-06-15 Administration, Enforcement And Procedures Guidance	February 17, 2011	March 14, 2011



Advertised Version

All reports for Case 08-06A respond to the advertised text dated September 9, 2013 (“9/9/13 text”). The 9/9/13 text was posted and continues to be available for viewing on the Office of Planning website (www.dczoningupdate.org) and the Office of Zoning website (www.dcoz.dc.gov) through the IZIS link. An updated copy on a disc was provided to all ANC’s, and an updated paper copy was provided to every DC Public library to supplement earlier draft text.

Repetitions, Omissions, Additions and Clarifications

OP is aware that certain provisions are repeated throughout the subtitles and that there are phrases that may be inconsistently used (e.g. “by special exception” and “as a special exception”). Provisions may also have been unintentionally omitted due to reformatting of the proposed text.

Some changes have been recommended after additional consultation with the Zoning Administrator’s office since the publication of the 9/9/13 text and review of the guidance discussions. Furthermore, OP has continued to hear from the public and, where possible, has proposed clarification or new language based on input received. These items are addressed in the report as clarifications or errata with suggested additional text. The repetitions and inconsistencies will be reconciled after the public hearings in collaboration with the Office of Attorney General and any direction from the Commission.

SUBTITLE A

Subtitle A represents the compilation of current Chapters 1 and 32. The major changes are to zone names.

The revisions propose a reorganization of Title 11 DCMR including new zone groups and names as follows:

- Residential House (R) zones include those zones that permit a single household as a principal use; these zones are currently the R-1, R-2 and R-3 zones, and will include a new single family and a new rowhouse zone for the Georgetown area;
- Rowhouse Flat (RF) zones include those zones that permit more than one household as a principal use, currently the R-4 zone which permits two units per building, and will include two new rowhouse zones that would permit three and four units per building;
- Apartment (A) zones include those residential zones that permit more than four units per building, currently the R-5 zones;
- Mixed Use (M) zones include those zones that permit both residential and commercial uses by right, currently the C, SP, W and CR zones.
- Neighborhood Mixed Use (N) zones include those zones that permit both residential and commercial uses by right and are covered by existing neighborhood commercial overlays, currently the C -1, C-2 and C-3 zones.
- Production Distribution and Repair (PDR) zones include those zones that permit industrial and commercial uses, currently the CM and M zones.

A detailed list of proposed new zone names and their existing equivalent is provided as Attachment A.

ZC Guidance: Zoning Administrator Flexibility

Work with the Zoning Administrator to:

1. Consolidate flexibility standards, to the extent practicable, into one location in the regulations;
2. Establish consistency between flexibility across different types of orders; and
3. Determine any criteria by which requests for flexibility should be evaluated.

Proposed Text: General authority cited in Subtitle A § 304; Authority for Board of Zoning Adjustment orders cited in Subtitle Y § 703 and for PUDs in Subtitle X § 312.

Clarification/ERRATA:

Additional language is needed in A § 304.5 to clarify that modifications to any building permit authorized by an approved order of the Zoning Commission should be referred to the Commission for its concurrence, similar to the requirement for modifications to a Planned Unit Development. This would encompass design reviews, school plans and campus plans. The following proposed language should replace § 304.5:

304.5 Following approval of any minor modifications under A § 304.4, the Zoning Administrator shall report to the Commission, as applicable or as required by Subtitle X, any modification and his determination for its approval. For building permits that are authorized by an approved order of the Zoning Commission the Zoning Administrator shall report to the Commission any modification approved under A § 304.4. No modified building permit shall be issued for forty-five (45) days after a report is sent to the Commission. If prior to the expiration of this time period the Commission decides that the modification exceeded the scope of a minor modification the Zoning Administrator shall not approve the building permit, but shall instruct the applicant to seek a modification pursuant to the appropriate procedures of this title.

ZC Guidance: Building Permits

Describe which building permits vest the zoning regulations for a property – specifically the following types of building permits under 12 DCMR § 105.1.4:

1. New construction, including constructing, adding to or moving a building or structure;
2. Erect or replace an awning, canopy, tent or other membrane structure, or similar structures as a principal structure;
3. Erect a radio, television or other telecommunications tower; and
4. Change of use or occupancy, increase in load or modification of floor layout of the building or structure.

Proposed Text: Subtitle A § 301.5

Comprehensive Plan Policies:

ZONING ISSUES	COMPREHENSIVE PLAN CITATION	COMPREHENSIVE PLAN TEXT
SUBTITLE A AUTHORITY		
Comprehensive Regulation Review	Policy IM-1.3	The Zoning Regulations need substantial revision and reorganization, ranging from new definitions to updated development and design standards, and even new zones.
Electronic Media	Policy IM-1.5.5	Enhance communication between residents, organizations, and the District by providing access to information through electronic media and other methods.

SUBTITLE W

This subtitle is proposed for the geographic descriptions of zones that have unique boundaries. The subtitle includes the descriptions of the zones currently identified as overlays and which are proposed to be new zones; it will also include the boundary description of neighborhood specific zones such as the proposed two new Georgetown zones, R-19 and R-20.

The purpose of the subtitle is to provide “ease of use” for the user of the code. Once mapped, there will be little reference to the geographically defined boundaries; the zones will be fully reflected in the Zoning Maps which will be electronically produced, updated and available through the Office of Zoning. The boundaries are also reflected within the orders that create the zones. Including the boundaries as text descriptions within each zone adds dozens of pages to the zone subtitles. Placing them in one central subtitle reduces the bulk of the regulatory chapters. There are no proposed changes to the any of the boundaries as they are currently defined in the existing overlays.

The 9/9/13 draft includes purposeful repetition of geographic boundary information, specifically Subtitle H, Neighborhood Commercial zones. Once the Commission takes action on the proposed regulations, duplicative language will be deleted and the descriptions will be centralized in Subtitle W.

ERRATA: W Chapter 119

The geographic boundaries cited in the 1992 order for the Wesley Heights Overlay District (WHOD) contained an error in street names. When the final WHOD order was adopted in 1992 (ZC Case Number 90-5, Order No. 718) a change to the description confused Nebraska Avenue and New Mexico Avenue. The WHOD is mapped over the R-1-A and R-1-B districts and is now proposed as R-14 and R-15. The boundary has always been reflected correctly on the zoning maps, but the error was carried forward into the proposed new regulations. The error, and opportunity to correct it, was brought to our attention by Mr. Heimert. The proposed text should be corrected to reflect the accurate boundary of the Nebraska Avenue:

The line then runs east along the northern property line of Lot 28 of Square 1521 to Foxhall Road, then runs north along the west boundary of the Foxhall Road right-of-way to ~~New Mexico~~ Nebraska Avenue. The line then runs northeast along the center line of ~~New Mexico~~ Nebraska Avenue to the point of origin at the intersection of New Mexico and Nebraska Avenues, N.W.

SUBTITLE Y and Z

Subtitle Y contains the Board of Zoning Adjustment Rules of Practice and Procedure currently in Chapter 31. The major modifications reflect electronic filing procedures, change to filing dates as set forth in the following table, clarification that an application must be complete at time of filing with a full statement how the application meets the variance or special exception standards, and guidance provided.

	Filing Deadlines Prior to BZA Hearing	
	Current Code Requirement	Proposed Code Requirements
Supplemental Information by the Applicant	14 days	21 days (Y 300.11)
Transportation Consultant report	20 days	45 days (Y 300.12)
Government Agency Reports	7 days	10 days (Y 405.2)

The increase in filing time is to allow the community and government agencies time to review and process additional information and to allow the Board time to review the recommendations of the ANC and government agencies prior to public hearings or action.

Subtitle Z contains the Zoning Commission Rules of Practice and Procedure currently in Chapter 30. The major modifications reflect current practices, electronic filing procedures, and guidance provided.

ZC Guidance: Selection of a Chairperson

Create a requirement that the chairperson of the Zoning Commission (ZC) and Board of Zoning Adjustment (BZA) be one of the three District resident mayoral appointees of each body.

Proposed Text: Subtitle Y §102.6 and Subtitle Z § 102.6:

The Chairperson of the Board/Commission shall be selected from one (1) of the three (3) Mayoral appointees to the Board/Commission.

ZC Guidance: Testimony for ZC and BZA Cases

Allow individuals wishing to testify to identify themselves as “in favor,” “in opposition,” or “undeclared.”

Proposed Text: Zoning Commission authority in Subtitle Z § 408.9 (i) (Public Hearing Procedures) and Subtitle Z § 506.4 (h) (Rulemaking); Not currently included in BZA procedures.

ERRATA: Proposed text should also be reflected in BZA rules; Proposed language should be added to Subtitle Y § 409 after (i) with subsequent renumbering:

Individuals and organization representatives who are undeclared with respect to the application.

ZC Guidance: ANC Input at Setdown

Allow affected ANC(s) to submit an ANC Setdown Form prior to a ZC Setdown Meeting in contested cases other than stand-alone map amendments, in which the ANC(s) can provide comments on particular items related to the proposed project (an administrative instrument totally separate from ANC report that must receive “great weight”).

Proposed Text: Zoning Commission rules in Subtitle Z §§ 400.8 – 400.12 (Setdown Procedures).

ZC Guidance: Maintenance of Posting

Require applicants in ZC cases to submit an Affidavit of Maintenance of Posting between two and six calendar days prior to the ZC Hearing.

Proposed Text: Zoning Commission rules in Subtitle Z § 402.10 (Public Notice Requirements).

ZC Guidance: Ethics Requirements

Add language regarding existing ethical requirements of Commissioners and Board Members stated in other codes.

Proposed Text: Zoning Commission rules in Subtitle Z § 105 (Rules of Ethics) and to Board of Zoning Adjustment rules in Subtitle Y § 105 (Rules of Ethics).

ZC Guidance: Right to Stay a Final Decision

Clarify the ability of the ZC and BZA to stay a final decision pending appeal.

Proposed Text: Zoning Commission rules in Subtitle Z § 701 (Stay of Final Decision and Order) and in Board of Zoning Adjustment rules in Subtitle Y § 701 (Stay of Final Decision and Order).

ZC Guidance: Expiration of Setdowns

Institute a two-year sunset clause for setdowns.

Proposed Text: For Design Review and PUDs in Subtitle Z §§ 707.2 and 707.4; and for PUDs in Subtitle X § 314.1.

ERRATA: Proposed text Z § 707.4 needs to be amended to include any case requiring a setdown; possible language:

707.4 ***An application for a map amendment, text amendment or PUD for which a public hearing has not been held before the Commission within two (2) years from the date of when the Commission set the case down for public hearing shall be deemed dismissed without prejudice.***

ZC Guidance: ZC Authority

Clarify that the ZC can determine, at its sole discretion, to hear any case that the BZA can hear. The intent is to make explicit that ZC can choose to decide a variance that is part of another application before the Commission.

Proposed Text: Text is proposed in Subtitle X §§ 303.10 (PUD) and 602.3 (Design Review).

ERRATA: Proposed text should also be added to Subtitle Z as a new § 100.7 to make the provision universal to Zoning Commission processes; proposed language:

100.7 The Zoning Commission may at its discretion, hear and decide any application that would otherwise be processed by special exception or variance. Such applications shall be advertised, heard, and decided together with a related text or map amendment, Planned Unit Development, or design review, and no additional Board of Zoning Adjustment hearing shall be required for such requests.

Comprehensive Plan Policies:

ZONING ISSUES	COMPREHENSIVE PLAN CITATION	COMPREHENSIVE PLAN TEXT
SUBTITLE Y BOARD OF ZONING ADJUSTMENT		
SUBTITLE Z ZONING COMMISSION		
Involvement of Advisory Neighborhood Commissions	Policy IM-1.5.1	Include the Advisory Neighborhood Commissions and area residents in the review of development to assist the District in responding to resident concerns. Consistent with the statutory requirements of the DC Code, feedback from the ANCs should be given “great weight” as land use recommendations and decisions are made.
Transparency in Decision-Making	Policy IM-1.5.4	Strongly encourage transparent decision-making in all land use and development matters, making information available and accessible to residents and maintaining open lines of communication with the public as plans are developed.

SUBTITLE X

Subtitle X contains the general procedures for the review of Campus Plans, Private Schools Plans, Chanceries, and Planned Unit Development applications. Because these procedures are applicable either throughout several zones groups or city-wide their place in one subtitle allows for easy reference.

Subtitle X represents the compilation of current Chapter 10 Mixed Use Diplomatic Overlay District and Chancery Uses, Chapter 24 Planned Unit Development Procedures; and Chapter 2 Residential Districts, § 206 Public and Private Schools and Staff Residences, and § 210 Colleges and Universities.

Campus and School Plans

The changes proposed to the Campus Plan or Private School Plan review procedures are proposed to clarify elements of impacts including guidance for adjunct commercial uses, details for counting students, as well as excluding DC Public School students from enrollment caps.

ZC Provisional Guidance: **Consistent Regulation of Institutional Uses (except public uses and chanceries) in Residential Zones**

Although the Commission was open to this concept, there was concern that the approach might be too broad. After additional review of the number of universities and the range of uses within the initial Institutional Use Group at the time of the guidance, it was determined that the initial recommendation was too broad to adequately protect against adverse impacts in the residential zones and to establish clear review criteria. The draft regulations instead fine-tune Institutional uses by breaking education into three groups and treating them individually.

A review of institutional uses showed an abundance of academic facilities in the District. Ninety-seven (97) universities have some form of academic program offering within the District.

Colleges/Univ in DC with academic courses	Research / Internships	Full Academic Program	Limited Academic / Graduate Programs	Military Or Federal
97 total	6	10	78	3

Proposed Text:

The Use Groups in Subtitle B Chapter 2 have been fine-tuned since the original guidance creating three educational use groups and two institutional use groups.

- 1) Educational uses are separated from Institutional uses and three educational use groups are proposed:
 - a. College/University, which is proposed to continue to be subject to campus plan regulations;
 - b. Private Education, which is proposed to continue to be subject to Private School plans; and
 - c. Public Education, which includes DC Public Schools and DC Public Charter Schools which continue to be matter-of-right uses in all zones.
- 2) Institutional uses are separated into two groups:
 - a. General, which includes private clubs, non-profit uses and social service providers; and
 - b. Religious-based, which includes places of worship and related schools and residences.

The separation of Institutional uses allows for a more organized approach to impacts and conditions and allows for the maintenance of the Sixteenth Street Heights overlay conditions in Subtitle D.

- 3) Campus Plan requirements and conditions are proposed to be carried forward in generally the same form, but the proposed text includes more specific criteria as part of the special exception review. Detailed requirements for student counts, programs and site development are included

in Subtitle X, Chapter 1 and Chapter 2 for Private School Plans in residential zones (R, RF and A).

The regulations are zone-based, similar to existing standards. There is no matter of right threshold proposed for Campus Plans or Private School Plans except for Subtitle X §101.18 which proposes to permit only a small addition to individual buildings for code compliance relative to ingress and egress.

ERRATA: The minor modification provision of X § 101.18 which proposes a by-right modification size of 1,500 square feet needs reconciliation with the minor modification authority of the Zoning Administrator in A § 304. To avoid the confusion that the two sections can be applied cumulatively, it is recommended that X § 101.18 be deleted and A § 304.5 be expanded to require a referral back to the Commission for concurrence on the modification.

Subtitle X - delete

~~101.18 Small additions that are determined necessary by the Zoning Administrator for compliance with life, safety or building codes may be permitted without an amendment to an approved campus plan provided the addition does not result in an increase in gross floor area of more than 1,500 square feet and the addition shall only be used for purposes of ingress, egress or handicap access~~

Subtitle A – expand (See discussion on page 3 of this report.)

~~304.5 Following approval of any minor modifications under A § 304.4, the Zoning Administrator shall report to the Commission, as applicable or as required by Subtitle X, any modification and his determination for its approval. For building permits that are authorized by an approved order of the Zoning Commission the Zoning Administrator shall report to the Commission any modification approved under A § 304.4. No modified building permit shall be issued for forty-five (45) days after a report is sent to the Commission. If prior to the expiration of this time period the Commission decides that the modification exceeded the scope of a minor modification the Zoning Administrator shall not approve the building permit, but shall instruct the applicant to seek a modification pursuant to the appropriate procedures of this title.~~

ZC Guidance: **Special Exception** – Individual Project Special Exception (instead of 10 Year Campus Plan)

This proposal has not been introduced in the draft text. For uses that occupy an individual building the process is the same; for uses that occupy multiple buildings or sites there would be increased difficulty in assessing the cumulative impact of special exceptions without a campus plan context.

ZC Guidance: **Removal of Second Stage Review for Projects in Compliance with Valid Campus Master Plan**

This proposal has not been introduced in the draft text. The Commission expressed concern about a ten year time frame being a long time frame with no additional review. During community outreach OP also heard concerns from several communities that it creates an enormous burden on a community or ANC to review multiple buildings simultaneously with a full campus plan. The further processing step is vital to a review of buildings within a campus plan. The current process can accommodate coordinated filings which achieve the same purpose as this recommendation and allow the Zoning Commission to determine the appropriateness of multiple filings and scheduling on a case-by-case basis.

ZC Guidance: Exempt Institutional and Educational Uses Reviewed Through the Special Exception or Campus Plan Process from the § 2516 Process**Proposed Text:**

The 9/9/13 draft text is currently vague and is not consistent with the guidance. It could be confusing to both applicants and communities in trying to understand the process. In the District of Columbia it has been a long-standing practice to permit multiple buildings on a single lot within the boundaries of a school or university where the buildings are approved in accordance with an approved campus master plan or private school plan. The campus/school plan process has not required colleges, universities or private schools to apply for theoretical lots, and the Zoning Administrator has confirmed this practice through written interpretations. These interpretations should be clarified in the proposed regulations. Clarification will also be cross-referenced in Subtitle C § 407.10 and reflected in the report for that hearing.

Clarification/ERRATA: It is recommended that the following text be included in Subtitle A § 301.3:

301.3 *Except as provided in the building lot control regulations for Residence Districts in C Chapter 4 and § 5 of An Act to amend an Act of Congress approved March 2, 1893, ... a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record; except a building permit may be issued for:*

- (f) **Buildings within the boundaries of a campus plan or school plan where the buildings are in accordance with an approved campus master plan or approved school plan.**

Additional ERRATA – Height Measuring Points:

Changes to how height is determined and measured have been incorporated into the existing Title 11 and have been brought forward into the 9/9/13 proposed text. However, due to the particular development process for a campus/public school plan and the historic interpretation and guidance to exempt campus plans from Section 2516, additional clarification is needed on how to measure height of buildings within an approved campus plan that do not front on a public street.

It is recommended that the following text be included in Subtitle X § 106

106 MEASURING HEIGHT

106.1 The building height measuring point (BHMP) for a building within an approved campus or private school plan when not fronting on a public street shall be established at the existing grade at the mid-point of the front building façade of the building.

106.2 The Zoning Commission may approve, or amend, the building height if it is determined that the BHMP results in a building that is inappropriately tall compared to other buildings with the same zone district development standard restrictions.

ZC Guidance: Ancillary Campus Uses

Allow ancillary non-residential uses for institutional uses as a part of an approved campus master plan special exception, but not as part of an individual special exception. Examples include campus-serving retail, service, and industrial use; Need for new definition of “ancillary”.

Proposed Text: Subtitle X §§ 101.3 – 101.4 establishes a maximum of 10% for any commercial use within a campus plan in a residential zone and requires that the applicant demonstrate a needed relationship between the uses and a general compliance with the Comprehensive Plan.

Additional language may be needed to help in the review of “necessary relationship between the use and the university functions” required by proposed Subtitle X § 101.3 (a). The intent of X § 101 is to recognize and accommodate the academic, food and retail needs of a student body within a campus while protecting the adjoining residential neighbors. More and more, students are being encouraged to live on campus and it is therefore logical to provide for their needs and enjoyment within the campus. The text also should clarify that the uses may be available to the broader public as is often the case in the more urban downtown campuses.

Clarification: Additional clarifying language could be added that reads:

101.3 *Any commercial use customarily incidental to a university use in an R, RF or A zone, or as an adjunct use to a university building, shall be subject to the following conditions:*

(a) *There shall be a demonstrated and necessary **or desirable** relationship between the use and the university functions **or student life**; ...*

(e) ***Such uses may be available for use by the broader community and the Zoning Commission may consider the location and context of the use and the campus as whole when considering such uses.***

ZC Guidance: Look at University Use of Local Commercial Zones

After several campus plans hearings, and in response to Councilmember Cheh’s letters requesting that university owned commercial lands require a campus plan, the Commission asked OP to look at this issue as part of the revisions to the zoning regulations.

OP has proposed that university use of commercial properties in the C-1 or C-2-A (M-3, M-4, M-18, M-25 through M-29, M-33 and N) zones be permitted only by special exception. A university or college can include uses that are similar to light industrial, production, distribution or repair uses which would not be permitted within these local commercial zones as independent uses. Such uses could include mail sorting, fleet vehicle repair, and central building maintenance and storage. Under the current regulations these uses would not be permitted as independent business uses but could be located in the C-1 and C-2A zones as a matter-of-right under the umbrella of a University use. Other uses may be more compatible such as office use.

Because campus plans are reviewed and approved by the Commission and the criteria for this particular special exception permits consideration of campus plan conditions, the proposal is for the Commission to be the approval authority for this special exception.

Proposed Text: Subtitle X § 102 addresses a special exception for university use of commercial property and establishes Commission authority to require the use be considered as part of a campus plan if warranted.

Clarification/ERRATA: A new provision is proposed to allow for a comprehensive review of the plan with any relief. It reduces the burden on a community and ANC to hear separate cases, take separate actions and attend separate hearing procedures; and clarifies that the Commission can hear all actions together.

101.19 As part of the campus plan process, the Commission may hear and decide requests for any relief that would otherwise be processed by special exception or variance. Such requests shall be advertised, heard, and decided together with the campus plan or further

processing application and no additional Board of Zoning Adjustment hearing shall be required for such requests.

Diplomatic Overlay

The 9/9/13 draft text proposes a removal of the Diplomatic Overlay. Instead of an overlay, the new draft regulations propose the establishment of a process to permit the use in all residential zones subject to fifty percent (50%) of the square being in institutional use and subject to the Foreign Mission Board of Zoning Adjustment review.

The practice for applying the Diplomatic Overlay has been based on a 1/3- 2/3 methodology which stemmed from a 1984 study prepared by the National Capital Planning Commission and largely accepted by the Zoning Commission. Although never codified as a rule, the 1/3-2/3 methodology considered a square appropriate for chancery use if only 1/3 of the square was in institutional uses. This practice gave a disproportionate weight to non-residential uses in residential zones.

In 2004, the Sheridan-Kalorama Neighborhood Council (SKNC) filed a petition with the Zoning Commission to remove portions of the Diplomatic Overlay (ZC Case No. 04-21). The SKNC agreed to hold the case and work with OP in the larger context of updating the zoning regulations. After reviewing the impacts of the 1/3-2/3 rule and working extensively with the SKNC and the Office of Attorney General, it was determined that a 50% standard was more appropriate for maintaining residential character and provided guidance to the FMBZA on how to review a new chancery application. The proposed changes, if adopted, will address the issues of Case 04-21.

Planned Unit Development Procedures

Many of the proposed changes to the PUD regulations have been adopted by the Commission as part of ZC Case 12-11. Other proposed modifications include the establishment of limits on and standards for extension of approved PUDs, delineation of types of modifications, proposals for determining party status prior to the hearings, updates to Housing Linkage, clarification that a PUD without a related map amendment does not constitute a change to the zoning map and requires only one vote for a second stage application, and clarification that a PUD-related map amendment constitute flexibility.

ZC Guidance: PUD Process

Divide the existing PUD process into three separate processes:

Type 1 “Design Review” - No density increase – flexibility tied to design review; Available city-wide, with some areas potentially mandatory.

Type 2 “Design Review with Bonus Density” – Limited bonus density increase.

Type 3 “Project Specific Rezoning” – Major density increase.

This proposal has been modified as proposed in the 9/9/13 draft text. The Design Review process is identified for those zones that are currently subject to review – the Capital Gateway and Southeast Federal Center zones. What was referred to as Type 2 and Type 3 remain planned unit developments and those without a related map amendment are proposed to have only one vote by the Commission because they are not considered a change to the zoning map. Those PUDs with a related map amendment retain the two vote requirement and referral to the National Capital Planning Commission.

ZC Guidance: Standard Bonus Density

Base the density increase available within each zone on a standard percentage across zones.
Maximum density increase should be:

- 20% above the greater of the current maximum matter-of-right (including IZ) for residential FAR; and
- 34% above the maximum current matter-of-right for non-residential FAR.

Proposed Text: Subtitle X § 303.3

The non-residential FAR change is proposed at a standard increase of 34% above the matter-of-right standards.

FAR Bonus:

The draft regulations propose a standardizing the increase in density achievable through a PUD with no map amendment at twenty percent (20%) instead of the variable densities in the current code. The table below shows the range of PUD densities within the current code. With the implementation of IZ, many zones have lower PUD FAR than matter-of-right zoning. The maximum increase of 42.9 % is for the C-2-B zone, and because of this and the Comprehensive Plan land use designations, it is anticipated that under the current FAR regime, the most PUDs will be with an associated C-2-B zone. A PUD with a related map amendment has an associated increased cost and reduces the predictability of development under zoning.

EXISTING FAR in PUDs					PROPOSED FAR (20%) PUD MAX
Zone	Total FAR BASE w/IZ	Total Existing FAR PUD MAX	Total FAR Delta	Total FAR Delta %	
R-5-A	1.08	1	-0.08	-7.4%	1.30
R-5-B	2.16	3	0.84	38.9%	2.6
R-5-C	3.6	4	0.4	11.1%	4.32
R-5-D	4.2	4.5	0.3	7.1%	5.04
R-5-E	5	6	1	20.0%	6
C-1	1.2	1	-0.2	-16.7%	1.44
C-2-A	3	3	0	0.0%	3.6
C-2-B	4.2	6	1.8	42.9%	5.04
C-2-C	7.2	6	-1.2	-16.7%	8.64
C-3-A	4.8	4.5	-0.3	-6.3%	5.76
C-3-B	6	5.5	-0.5	-8.3%	7.2
C-3-C	7.8	8	0.2	2.6%	9.36
C-4	10.2	11	0.8	7.8%	12
C-5	12	12	0	0.0%	12
CR	7.2	8	0.8	11.1%	8.64
SP-1	4	4.5	0.5	12.5%	4.8
SP-2	6	6.5	0.5	8.3%	7.2
Overall Averages			0.9	18.3%	

Non-residential FAR bonus:

Most zones which allow a mix of uses provide a limit on the amount of non-residential FAR that may be achieved. The existing regulations also typically limit how much additional non-residential FAR could be achieved through a PUD without a map amendment. The amount of additional non-residential density varies from 0 to 1 FAR. The 9/9/13 draft text proposes a standard non-residential FAR increase through the PUD at 34%. The zones that currently permit a lower non-residential FAR are zones identified for business and

employment centers at medium and high densities therefore permitting a non-residential FAR similar to the lower density commercial zones is not inappropriate.

EXISTING Non-Residential FAR in PUDs					PROPOSED	Zone Description
Zone	Non-Res FAR M-o-R	Non-Res FAR PUD MAX	Delta	Delta %	Non-Res FAR PUD MAX (34% M-o-R)	
C-1	1.0	1.0	0		1.34	Low Density Commercial
C-2-A	1.5	2.0	.5	.33	2.01	Community Bus Center-Low-Moderate Density
C-2-B	1.5	2.0	.5	.33	2.01	Community Bus Center-Medium Density
C-2-C	2.0	2.5	.5	.25	2.68	Community Bus Center-High Density
C-3-A	2.5	3.0	.5	.20	3.35	Major Bus and Employment Medium Density
C-3-B	4.0	4.5	.5	.125	5.36	Major Bus and Employment Medium Density
CR	3.0	4.0	1.0	.33	4.02	Major Bus and Employment Medium Density
SP-1	2.5	3.5	1.0	.4	3.35	Limited Office/Residential Medium Density
SP-2	3.5	4.5	1.0	.29	4.69	Limited Office/Residential Med-High Density
Overall Averages				.25		

ZC Guidance: Minimum PUD Lot Size

Retain a relatively large lot size minimum for PUDs in low and moderate density residential zones and relate minimum size for all other zones to the amount of flexibility being requested, with Zoning Commission able to waive these minimums.

Zone	Type 1	Types 2 and 3
Low/Moderate Residential	2 acres	N/A
Other Zones, including R-5-B	None	15,000 square feet

Proposed Text: Subtitle X § 301; Minimum areas also reflect and retain those required by current overlays.

ZC Guidance: Criteria for Lot Size Waiver

- 1) Permit waiver of minimum lot size for additional categories of projects including:
 - Redevelopment consistent with approved Small Area Plan;
 - Government projects
 - Compatible infill development
- 2) Remove existing limit of maximum waiver of 50% of minimum lot size.

Proposed Text: Subtitle X § 301.2

ERRATA: The advertised text does not reflect the Commission guidance to remove the 50% limitation on waivers; OP recommends that the draft text be modified to reflect the Commission's guidance; possible text:

301.2 The Commission may waive ~~up to fifty percent (50%) of~~ the minimum area requirement of this section for applications in zone groups 1, 2 and 5, or up to five percent (5%) for applications in zone groups 3 and 4, provided that the Commission shall find one of the following: ...

- c) The development ~~consists of at least eighty percent (80%) residential use~~ **will result in compatible infill development.**

ZC Guidance: Public Benefits

Codify a list of specific and measureable public benefits. Benefits would be clearly defined.

Proposed Text: The benefit clarification has been adopted through Zoning Commission Case 12-11 and reflected in the draft new regulations, Subtitle X § 305.

ZC Guidance: Value of Benefits

Create a point system to establish relationship between density and public benefits, with clarification that a point system or list of potential public benefits will be considered the minimum required; Support for language clarifying that:

- Meeting these standards are necessary but not sufficient for a PUD application and that additional public benefits may be required; and
- Zoning Commission retains flexibility to waive or substitute listed benefits on a case by case basis.

This proposal has not been introduced in the draft text. The Commission expressed concern about the reliability of such a system and the need to keep the flexibility for negotiating benefits by communities. OP agreed and has not proposed a point system.

ZC Guidance: Community Input

Formalize the pre-application process; establish public meeting between applicant and ANC prior to PUD application filing. The proposed community input process would include the following steps:

1. Pre-application meeting for PUDs;
2. Applicant notifies ANC and OP of potential project;
3. ANC schedules public meeting for the applicant to present the project;
4. Application may be filed 45 days after initial ANC notification; and
5. Applicant must provide documentation of community notification/participation and highlight changes, if any, resulting from community input.

Proposed Text: Subtitle X § 307.6 establishes the 45 day Notice of Intent to file;

ERRATA: Additional language is needed to clarify the process; possible text:

307.9 The applicant is encouraged to attend a meeting of the ANC after filing the NOI and prior to submitting the application with the Office of Zoning. The application narrative should note any amendments resulting from community input and consultation with the ANC.

ZC Guidance: Propose process for Zoning Commission consideration of party status applications in advance of meeting.

Proposed Text: Party Status in Subtitle X § 317.

ZC Guidance: Extension and Expiration of PUDs

Adopt time periods for PUD orders, criteria for extension requests, and limits on number of request.

ZC Guidance: PUD Condition Enforcement

Define audit process for enforcement of PUD conditions after approval as follows:

1. Zoning Administrator reviews provision of PUD conditions during permit process;
2. Temporary Certificate of Occupancy issued if all benefits have not been provided; and
3. Applicant must return to Zoning Commission to amend approved PUD if approved conditions cannot be met by expiration of Temporary Certificate of Occupancy.

Proposed Text: Subtitle X § 311

ZC Guidance: Post-Hearing Filing Requirements

Add filing requirements to improve clarity of Commission-approved benefits and conditions:

Proposed Text: Subtitle X § 308.

PUD Height

For the purposes of understanding the changes to PUD heights, the draft regulations include a detailed table that shows a comparison of heights achievable through current matter-of-right (with and without Inclusionary Zoning (IZ)) standards, through a PUD under current regulations, and proposed changes (Subtitle X § 303.4). The comparative data will be deleted should the Commission take action on the changes.

For the purpose of this discussion, the zones will be discussed in terms of the current code names. The table below shows a change to height proposed for only four zones. Two zones, the W-2 and W-3 districts, are proposed for changes so the PUD height is equal to the height achievable as a matter-of-right under IZ. The increase in height in these zones is also consistent with the guidance given to allow buildings in the W zones to be taller through the PUD process to increase views and access to the water:

ZC Guidance:: Allow additional height, but not density, in W-1, W-2, and W-3 through a PUD process.

The only zone proposed for an increase in height is the C-2-C district which is a high-density mixed use commercial zone. The current PUD regulations assign no bonus density or height for a PUD in the C-2-C district; as a result there is no history of a C-2-C PUD. With the implementation of IZ, the density increases as a matter of right by 20% which is associated with an increase in lot occupancy to 90%. The draft regulations propose to permit a PUD achievable height of 110 feet which is consistent with the CR zone. The CR and C-2-C zones have the same permitted FAR and both zones are anticipated to be mapped in proximity of the Central Employment Area (typically the down town):

A CR District may be located on the periphery of the Central Employment Area (11 DCMR §600.5)

The C-2-C Districts shall be compact and located in or near the Central Employment Area (11 DCMR § 720.11)

Both zones permit buildings which may be entirely residential, or a mixture of commercial and residential uses.

The fourth change is to the current R-4 (Rowhouse zone). In this zone, the proposal is to lower the PUD height to 50 feet to reflect a smoother transition in this low-moderate residential zone.

A	B	C	D	E	F
Current Zone	Proposed Zone Name	Current MoR Height (feet)	Current MoR Height w/IZ (feet)	Current PUD Height (feet)	Proposed PUD Height (feet)
R-4	R-16 RF-1	40	40	60	50
C-2-C	M-6	90	90	90	110
W-2	M-13	60	80	60	80
W-3	M-15	90	100	90	100

Other changes to the proposed PUD regulations include centralizing all references from other zones and overlays.

ERRATA: RF Zones

The advertised text for Subtitle X did not reflect the new Subtitle E for RF Rowhouse zones.

Proposed Text:

The R-4 zones listed in column B should accurately be RF zones as reflected below:

A	B	C	D	E	F
Current Zone	Proposed Zone Name	Current MoR Height (feet)	Current MoR Height w/IZ (feet)	Current PUD Height (feet)	Proposed PUD Height (feet)
R-4	R-16, R-17, R-18 RF-1	40		60	50
R-4/DC R-4/CAP	<u>RF-2</u> <u>RF-3</u>	The matter-of-right height and floor area ratio limits shall serve as the maximum permitted height and floor area ratio for a planned unit development.			

Additionally, as the new RF-4 or RF-5 zones may be mapped, the PUD standards would be established.

Subtitle X also proposes guidance on establishing new zones. The conditions establish that new zones need to reflect a well-defined geographic area that has similar development characteristics and land use. There is a stated connection with the Comprehensive Plan and identifies the type of information and evidence expected to be submitted.

Comprehensive Plan Policies and Actions:

ZONING ISSUES	COMPREHENSIVE PLAN CITATION	COMPREHENSIVE PLAN TEXT
SUBTITLE X GENERAL PROCESSES		
Using Zoning to Achieve Design Goals	Action UD-2.2.B	Explore zoning and other regulatory techniques to promote excellence in the design of new buildings and public spaces. Zoning should include incentives or requirements for facade features, window placement, courtyards, buffering, and other exterior architectural elements that improve the compatibility of structures, including roof structures, with their surroundings while promoting high architectural quality
Involvement of Advisory Neighborhood Commissions	Policy IM-1.5.1	Include the Advisory Neighborhood Commissions and area residents in the review of development to assist the District in responding to resident concerns. Consistent with the statutory requirements of the DC Code, feedback from the ANCs should be given “great weight” as land use recommendations and decisions are made.
PUD Regulations	Action IM-1.1.A	Evaluate the District’s Planned Unit Development (PUD) regulations and procedures, including a “best practices” assessment of PUD practices in other large cities.
Review of Zoning Requirements	Action UD-4.1.C	Review the processes and requirements for PUDs, site plans in the R-5-A zoning districts, and large tract reviews in order to strengthen design amenities and promote higher design quality.
	Action T-1.1.B	Require transportation demand management measures and transportation support facilities such as crosswalks, bus shelters, and bicycle facilities in large development projects and major trip generators, including projects that go through the PUD process.
Design of public space in PUDs	Policy PROS-4.3.2: Plazas in Commercial Districts	Use the PUD process to promote such spaces for public benefit and to encourage tree planting, public art, sculpture, seating areas, and other amenities within such spaces.
	Policy 1-7	Incorporate a park and open space classification system into residential development requirements through the planned unit development process.
Historic Structures	Policy HP-2.2.2	Give full consideration to preservation concerns in applications for planned unit developments.
Zoning Review of Institutional Uses	Action LU-3.2.A	Study residential zoning requirements for institutional uses other than colleges and universities. Determine whether additional BZA or ZC review should be required in the event of a change in use.
Institutional Housing	Action LU-3.2.B	Require a special exception for dormitories, rooming houses, boarding houses, fraternities, sororities, and similar uses.

ZONING ISSUES	COMPREHENSIVE PLAN CITATION	COMPREHENSIVE PLAN TEXT
Institutional Uses	Policy LU-3.2.3	Ensure that large non-profits, service organizations, private schools, seminaries, colleges and universities, and other institutional uses that occupy large sites within residential areas are planned, designed, and managed in a way that minimizes objectionable impacts on adjacent communities. The zoning regulations should ensure that the expansion of these uses is not permitted if the quality of life in adjacent residential areas is significantly adversely affected.
Modifications to diplomatic overlay	Action LU-3.3.A	Develop a new methodology to determine appropriate additional chancery development areas; and revise the mapped diplomatic areas, reflecting additional areas where foreign missions may relocate. Avoid concentrations of chanceries in low density neighborhoods, as consistent with the Foreign Missions Act.

Attachment A: Zone Name Conversion Table

Current Zone Name	Proposed Zone Name
Subtitle D - Residential House	
R-1-A and R-1-A/D	R-1
R-1-B and R-1-B/D	R-2
R-2 and R-2/D	R-3
R-3 and R-3/D	R-4
R-1-A/CBUT	R-5
R-1-A/TSP	R-6
R-1-B/TSP	R-7
R-1-A/FH-TSP	R-8
R-1-B/FH-TSP	R-9
R-2/FH-TSP	R-10
R-1-A/NO/TSP and R-1-A/NO/TSP/D	R-11
R-1-B/NO and R-1-B/NO/D	R-12
R-3/NO	R-13
R-1-A/WH	R-14
R-1-B/WH	R-15
R-3/FB	R-16
R-1-B/SSH1	R-17
R-1-B/SSH2	R-18
Modified R-1-B (Gtwn)	R-19
Modified R-3 (Gtwn)	R-20
Subtitle E – Residential Flat	
R-4 and R-4/D	RF-1
R-4/DC	RF-2
R-4/CAP	RF-3
NEW ZONE	RF-4
NEW ZONE	RF-5
Subtitle F - Apartments	
R-5-A	A -1
R-5-B	A-2
R-5-C	A-3
R-5-D	A-4
R-5-E	A-5
R-5-A/NO	A-6
R-5-B/CAP	A-7
R-5-B/RC	A-8
R-5-B/DC	A-9
R-5-D/DC	A-10
R-5-E/DC	A-11
Subtitle G - Mixed Use	
SP-1	M-1

Current Zone Name	Proposed Zone Name
SP-2	M-2
C-1	M-3
C-2-A	M-4
C-2-B	M-5
C-2-C	M-6
C-3-A	M-7
C-3-B	M-8
C-3-C	M-9
CR	M-10
W-0	M-11
W-1	M-12
W-2	M-13
W-3	M-14
SP-1/DC	M-16
SP-2/DC	M-17
C-2-A/DC	M-18
C-2-B/DC	M-19
C-2-C/DC	M-20
C-3-B/DC	M-21
C-3-C/DC	M-22
CR/DC	M-23
SP-2/CAP	M-24
C-2-A/CAP	M-25
C-2-A/CHC	M-26
C-2-A/CAP/CHC	M-27
C-2-A/NO	M-28
C-2-A/ARTS	M-29
C-2-B/ARTS	M-30
C-3-A/ARTS	M-31
CR/ARTS	M-32
C-2-A/RC	M-33
C-2-B/RC	M-34
C-3-A/FT	M-35
CR/FT	M-36
Subtitle H – Neighborhood Commercial	
C-1/MW	N-1
C-2-A/TK	N-2
C-2-A/CP	N-3
C-2-A/WP	N-4
C-2-B/WP	N-5
C-3-A/ES	N-6

Current Zone Name	Proposed Zone Name
C-2-A/GA	N-7
C-3-A/GA	N-8
C-2-A/HS-H	N-9
C-2-B/HS-H	N-10
C-2-C/HS-H	N-11
C-3-A/HS-H	N-12
C-3-B/HS-H	N-13
C-2-A/HS-A	N-14
C-3-A/HS-A	N-15
C-2-A/HS-R	N-16
C-2-B/HS-R	N-17
Subtitle I - Downtown	
R-5-E in expanded downtown, DD/R-5-E; DD/Chinatown/R-5-E	D-1-A-2
SP-2 in expanded downtown	D-2-B-1
HR/C-3-C/TDR; C-3-C/Downtown East TDR	D-3-B-1
C-3-C/non-TDR in expanded downtown HR/C-3-C/non-TDR	D-4-B-1
DD/C-2-C/HPA (housing priority area); DD/C-2-C/MVT/HPA	D-4-B-2
CG/C-3-C/TDR; C-3-C/TDR other than Downtown East TDR; DD/C-3-C/non-HPA; DD/C-3-C	D-5-B-1
DD/C-3-C/HPA; DD/C-3-C/MVT/HPA	D-5-B-2
C-4/non HPA in expanded downtown; DD/C-4/non-HPA	D-6-B-1
DD/C-4/HPA	D-6-B-2
C-5	D-7-B-1
C-3-C/ non TDR, generally bounded by 4th and 12th Streets, SW & Independence Ave. and Maryland Ave. SW	D-8-B-1
Subtitle J – Production Distribution, Repair (PDR) (Industrial)	
CM-1, CM-1/LO	P-1
CM-2	P-2
CM-3	P-3
M	P-4
CM-1/CAP	P-5
CM-1/FT	P-6
M/FT	P-7
Subtitle K - Special Plan Zones	
SEFC	SEFC-1 through SEFC-4
USN	USN
HE	HE-1 through HE-4
CG/R-5-E	CG-1
CG/C-2-C	CG-2
CG/C-3-C	CG-3
CG/CR	CG-4

Current Zone Name	Proposed Zone Name
CG/W-2	CG-5
CG/W-1	CG-6
CG/W-3	CG-7
StE	STE-1 through STE-19

Legend - Existing	Legend – Proposed
R = Residential	R = Residential House
SP = Special Purpose	RF = Residential Flat
C = Commercial (mixed use)	A = Residential Apartment
CR = Commercial Restricted	M = Mixed Use
W = Waterfront (mixed use)	N = Neighborhood Mixed Use
CM = Commercial Manufacturing	D = Downtown
M = Manufacturing (heavy)	P = Production, Distribution, Repair (industrial)