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October 28, 2013

Zoning Commission
for the District of Columbia
441 4th Street, N.W.
2nd Floor South
Washington, D.C. 20001

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

Dear Members of the Commission:

This letter is submitted by the District of Columbia Building Industry Association ("DCBIA") to provide comments to the Zoning Commission on relevant sections of the proposed new text of the Zoning Regulations in ZC Case No. 08-06A.

Subtitle A – Authority and Applicability

The effective date of the proposed Zoning Regulations is unknown, which provides a great deal of anxiety for DCBIA members as they contemplate new development projects. Accordingly, the proposed Regulations need to establish timelines for transition to the new regulations that will clearly establish when property owners will be subject to the new regulations and allow design, development, and zoning review that is currently underway to continue to proceed under the existing regulations.

Subtitle A, Section 100.4 of the proposed Regulations uses the same transitory language that was used over 50 years ago when the 1958 Regulations were adopted. The concept is acceptable but the actual language fails to capture other land use processes that have since been established. The 1958 language also lacks clarity that is typical in modern regulatory language. With that in mind, DCBIA recommends the following additional changes, which are consistent with similar phase-in language recently adopted by the Commission for the Green Area Ratio requirements and for new versions of the D.C. Construction Codes.

- Amend Subtitle A, Section 100.4 as follows:

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District of Columbia

CASE NO. 08-06A
www.dcbia.org
EXHIBIT NO. 102



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- Section 100.4(2) states that the current Regulations remain in effect “with respect to any right accrued, any duty imposed, any offense committed, any penalty incurred, or any proceeding commenced under or by virtue of the regulations repealed.” We recommend adding the following clarifying language.

“Examples include:

- An unexpired approval of (1) a first-stage, second-stage, or consolidated planned unit development, (2) variance or special exception, including a campus plan or approval for a private school, and (3) design review under the CG or SEFC Overlay, including the approved plans and conditions of approval related to all such approvals listed above.
- An application for a planned unit development, variance, special exception, or design review, provided that such application was filed prior to _____ [Date to be added based on date of final approval of the proposed Zoning Regulations]”
- Add a new Section 100.4(4) that states the current Regulations remain in effect for the following additional types of projects that are in development but have not yet received a building permit.

“Section 100.4 (4) With respect to certain other developments or designs that have commenced but not yet received a building permit by the date set forth in Section 100.3 as enumerated below:

- Concept design approved by the Historic Preservation Review Board or the U.S. Commission of Fine Arts, provided that the application was filed prior to _____ [Date to be added based on date of final approval of the proposed Zoning Regulations]
- Large Tract Review approval, provided that the application was filed prior to _____ [Date to be added based on date of final approval of the proposed Zoning Regulations]

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- Building permit, provided that the application was filed with plans sufficiently complete for processing and accepted by the Department of Consumer and Regulatory Affairs as complete prior to _____ [Date to be added based on date of final approval of the proposed Zoning Regulations]
- Buildings and other structures under contract for design on or before _____, provided that the applicant shall file the permit application for such design within one year after _____ [Dates to be added based on date of final approval of the proposed Zoning Regulations]

Subtitle X – General Procedures (Campus Plan)

DCBIA recognizes the changes that the Office of Planning has made to the draft Zoning Regulations regarding the Campus Plan process in response to the Zoning Commission's recent experience with numerous Campus Plans. DCBIA notes the following issues with the proposed Zoning Regulations and potential means to address those issues.

- The draft Zoning Regulations require institutional campuses to create cumbersome "theoretical" lots as a part of special exception approval. This provision overrules unwritten but recognized interpretation that multiple buildings are permitted on a campus lot. DCBIA proposes the following modifications to the draft Zoning Regulations:
 - Amend Subtitle A, Section 301.3 to add exception from record lot requirement for institutional campuses (colleges/universities and private schools);
 - Amend Subtitle C, Section 402 to permit multiple buildings for institutional campuses in residential zones as well as in nonresidential zones; and
 - Amend Subtitle C, Section 407.10 to remove requirement for institutional uses to secure theoretical lot approval.
- If the draft theoretical lot regulations do apply, then institutions cannot have private streets serving multiple landowners. Also, private rights-of-way containing public utilities must comply with DDOT standards for a public street. DCBIA proposes the following modifications to the draft Zoning Regulations:

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- Amend Subtitle C, Section 407.3 to clarify that limitations on private streets to do not apply to institutional campuses.

- The draft Zoning Regulations do not permit minor modifications to existing buildings or structures that have de minimus impact. DCBIA proposes the following modifications to the draft Zoning Regulations:
 - Amend Subtitle A, Section 304 to give the ZA the authority to approve additions to institutional buildings that do not exceed 2% of gross floor area or lot occupancy of the building regardless of when built, subject to finding that the change is consistent with the approved special exception; and
 - Subtitle X, Section 101.18 permits small additions needed for code compliance permitted without campus plan amendment but limited to 1,500 s.f. Recommend modification to tie size of addition to size of building (i.e. 2%).
- Building Height Measurement requires measurement from midpoint of façade along street lot line /nearest to a public street. DCBIA proposes the following modifications to the draft Zoning Regulations:
 - Clarify discrepancy in language between definitions in Subtitle A and regulations in Subtitle C; and
 - Amend the proposed Zoning Regulations to permit measurement from midpoint of whatever building façade that permits the greater height for buildings that are set back 1:1 for each foot of height from all lot lines – not limited to façade that faces a “public street”.
- The draft Zoning Regulations require interior private roads that serve as access to buildings or circulation be excluded from FAR calculations. This effectively strips all institutional campuses of existing FAR (whether internal roadways or closed alleys that are now driveways to parking and loading functions). DCBIA proposes the following modifications to the draft Zoning Regulations:
 - Remove this limitation or increase the maximum permitted FAR on campus.
- The definition of University use combined with definition of Accessory Uses may unnecessarily limit the permitted number of accessory uses on a college or university campus. The definition of Education, College/University”

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includes only the following accessory uses: accessory athletic and recreation areas, dormitories, cafeterias, ancillary commercial uses, multiple academic and administrative buildings, and sports facilities.” DCBIA proposes the following modifications to the draft Zoning Regulations

- Clarify that other accessory uses are also permitted (i.e., that the uses listed in the definition are not exhaustive and the only permitted accessory uses);
 - Clarify that the accessory uses are not limited to college or university populations (e.g. use of fitness centers and pool/tennis clubs by community members); and
 - Amend Subtitle C, Section 203 to permit accessory uses that are not permitted in the underlying zone, subject to Zoning Administrator determination that the use is accessory and consistent with the underlying principal use.
- The draft Zoning Regulations require special exception approval for college/university use in low density commercial zones (C-1 and C-2-A zone districts). DCBIA believes that this proposed regulation improperly treats a college or university use differently than a non-college/university use. For example, a theater (i.e. Studio Theater, Gala Theater, Arena Stage) is a permitted matter-of-right use in a C-2-A Zone District, while a university theater (such as AU’s Greenberg Theatre) will require special exception approval. Similarly, an architect or lawyer’s office is a permitted use in the C-1 and C-2-A zones, while having a university architect or general counsel’s office in those same zones will require special exception approval. DCBIA believes that this provision should be deleted from the draft Zoning Regulations.

Subtitle C – General Procedures (Parking, Bike Parking, Loading)

DCBIA is generally in support of Subtitle C of the newly proposed Zoning Regulations as set forth in Zoning Commission Case No. 08-06C with respect to Parking and Loading. DCBIA generally supports the proposed parking and loading requirements and the revisions that have been made to these standards. DCBIA specifically supports the following concepts within Subtitle C: Parking:

- Allowing shared parking between different uses.
- Allowing parking to be located off-site.
- Elimination of minimum parking requirements within the downtown zones.

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- Updated compact parking standards.
- Metro and Streetcar proximity requirements.

DCBIA suggests that further consideration be given to the following concepts within Subtitle C: Parking:

- Reconsider the elimination of parking minimums near Transit Zones. This concept should be included in the Regulations at least on a trial basis for a minimum of five years and at which time the impacts can be re-evaluated and refined.
- Studying further the Transportation Demand Management features proposed when excess parking spaces are provided. Specifically, consider increasing the threshold for triggering the additional TDM requirements to two times the base minimum parking requirement and clarifying what an “excess parking space” is (§1907.3).
- Studying further the impacts on development of landscaping requirements (§1915), particularly with respect to the length of parking rows.
- Consideration of gravel and other porous composites, such as recycled tire products, as allowable all-weather surfaces (§1913.1).
- Studying the relative minimum requirements for short- and long-term bicycle parking spaces (§2002.1), especially where bike sharing facilities are located within reasonable proximity to the building.
- Reconsider the queuing provisions, particularly the prohibition of a queuing aisle within 20 feet of a street lot line (§1916.3).

DCBIA specifically supports the following concepts within Subtitle C: Loading:

- Removal of the 55 foot truck bay requirements.
- Allowing shared loading facilities between different uses.
- Allowing loading to be shared by adjoining buildings.

DCBIA suggests that further consideration be given to the following concepts within Subtitle C: Loading:

- Allow for trash rooms to be located nearby but not immediately adjacent to the loading area (§2107). In many instances the lay-out of the building does not allow for immediate adjacency.
- Clarifying the measurement of gross floor area provisions (§2102) include the provisions in the current Zoning Regulations for gasoline service stations (§2205.2).

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Subtitles G & H – Mixed Use and Neighborhood Mixed Use Zones

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DCBIA is generally supportive of Subtitles G & H as proposed in Zoning Commission Case No. 08-06A. However, DCBIA suggests that further consideration be given to the following concepts in Subtitle G:

- Provide an exemption from rear setbacks for through lots with frontage on three streets.
- Allow for more flexibility under the rear setback requirements to be commensurate with the current Zoning Regulations.
 - Allow for no rear setback for the lower 20 feet or 25 feet of a building when it abuts an alley to the rear. (§ 305)
 - Allow a court in lieu of a rear setback in the higher density zones.
- Maximum FAR (especially non-residential) should be consistent with what is permitted now in the CAP and CHC overlays (§ 601)
- Provide more specific criteria for special exceptions from development standards. (§ 811)
- Alter the Chapter 12 roof structure standards:
 - Remove the requirement for enclosing walls of equal height since it is a common relief request and does not make better penthouses. (§ 1201.3(f))
 - Remove the more onerous setback requirement for setbacks from open courts, which is not always required under the current Zoning Regulations. (§ 1201.4)
- Provide more specific criteria for the special exception for “miscellaneous uses” in some zones. (§ 1421.2(k))

DCBIA also suggests that further consideration be given to the following concepts in Subtitle H:

- Clarify when design requirements, such as § 808, apply. New buildings, additions, or existing buildings should be individually considered.
- Refine the rear setback requirement to allow for an average distance calculation for an irregular rear setback. The proposed language is too standard to account for irregularities. (§ 1004)
- Allow entertainment and performing arts uses to be designated uses in § 1101.4. This is a contradiction with § 1101.2.
- Remove the variance-like higher standard of an “exceptional circumstance” affecting the property for a special exception. Also, other non-relevant

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criteria, such as traffic and parking and noise, should be eliminated from the special exception criteria for development standards. (§ 1200.1)

Subtitle I – Downtown Zones

DCBIA is generally in support of Subtitle I of the newly proposed Zoning Regulations as set forth in Zoning Commission Case No. 08-06A. DCBIA generally supports the expansion of the proposed Downtown zone and the benefits that it affords to properties within this area. DCBIA specifically supports the following concepts within Subtitle I: Downtown Zones:

- Maintaining or expanding existing height and density rights for all properties within the expanded downtown area.
- Allowing the maximum height for properties within the D-4-B-2 through D-6-B-2 zones to be that permitted by the 1910 Height Act.
- Providing no limit on the maximum FAR within the D-4-B-2 through D-5-B-2 zones and within the D-6-B-2 zones if all FAR is residential, if all FAR exceeding the non-residential maximum is residential or if using Density Credits.
- Eliminating parking minimums for projects in the expanded downtown area.
- Maintaining and/or expanding the ability to generate, use and transfer Density Credits.

DCBIA suggests that further consideration be given to the following concepts within Subtitle I: Downtown Zones:

- Providing no limit on FAR within the D-6-B-1 zones if all FAR is residential, if all FAR exceeding the non-residential maximum is residential or if using Density Credits.
- Relaxing the dimensional and access standards for parking that is provided for projects within the Downtown zone.
- Eliminating the limitation on height on the portion of a site occupied by a historic landmark or contributing building within a historic district in at least the D-4 and D-5 zones (§ 306.1).
- Incorporating the composite FAR provisions for project involving both historic and non-historic properties (§ 308.3).
- Eliminating the requirement for access through an improved and accessible alley, if one exists, to provide greater flexibility of design and access (§ 500.3).
- Clarifying the amount of required uses based on building frontage versus entirety of the building for those lots fronting on designated preferred streets

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to better accommodated multi-phase or larger projects that have multiple frontages (§ 602).

- Protection and continued maintenance of the relative weighting/valuation of Transferable Development Rights ("TDR") and/or Combined Lot Development ("CLD") rights that have been established by construction pre-dating the effective date of the Density Credits provisions of the ZRR (§ 807.1).
- Clarifying the concept of "Density Credit" and relationship to permanently-vested non-residential density (§§ 800, 900.2, 900.19).
- Streamlining standard Credit certification process (§§ 900.13 - 900.18) as well as process of TDR/CLD conversion to Credits (§ 807).

Subtitle J – Production, Distribution and Repair Zones

The proposed Zoning Regulations provide a lower FAR for "other" uses (referred to in new Section 201 as "restricted" uses) than for "industrial uses" (referred to in new Section 201 as "permitted" uses). The uses considered "industrial"/"permitted" and therefore allowed to achieve the higher FAR in each category are Basic Utilities (such as electrical or telephone sub-station, electronic equipment facility, optical transmission node, sewer or water treatment plant, utility pumping station); Large Scale Government (services owned, managed or provided by a governmental entity providing regional or wider services, such as airports, jails or police/fire training facilities); Production, Distribution and Repair (such as manufacturing, concrete/asphalt manufacturing, material salvage, hauling or terminal yard, warehouse, outdoor storage, shipping or wholesale); and Waste-Related Services (such as composting, incinerator, solid waste handling, or non-intensive recycling).

Section 301 lists use categories that are "permitted by right" in the P zones, but not all of them are allowed to use the full FAR for "permitted" uses. Uses such as art design and creation; education; and health care (aka medical care) should be allowed to use the full FAR that is allowed for "permitted" uses. Other uses permitted subject to conditions or permitted by special exception should also be able to achieve the full FAR, such as entertainment, assembly and performing arts; and services (general). In addition, other uses which are not specifically defined in Subtitle B, Chapter 2 (such as green technology, tech incubator space, and other cutting edge type uses) should also be able to utilize the full FAR in the P zones.

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Conclusion

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

Sincerely,

Paul Tummonds

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