

Committee of 100 on the Federal City

~~June~~
July
8, 2016

D.C. Zoning Commission
of the District of Columbia
441 4th Street NW Suite 200S
Washington, DC 20001

Re: ZC Case 08-06D and ZC Case 08-06E – Technical Corrections to ZC Order 08-06A

Dear Chairman Hood and Members of the Commission:

The attached comments are submitted for your consideration in the above-captioned cases by the Committee of 100 on the Federal City through its Zoning Subcommittee. Please let us know if you have questions.

Sincerely,



Laura Richards, Chair, Zoning Subcommittee
Lawrence Hargrove, Member
Alma Gates, Member
Marilyn Simon, Member
Caroline Petti, Member
Nancy MacWood, Chair, C100, ex-officio

MEMO TO: Zoning Commission of the District of Columbia

FROM: Committee of 100 on the Federal City

SUBJECT: ZC 08-06D and O8-06E: Comments on Notices of Proposed Rulemaking

DATE: July 8, 2016

Attached are our comments on the two NPRMs mentioned above, which propose what are characterized as "technical corrections" or "minor modifications" in ZC Order 08-06A.

Overview. Preliminarily, we wish to express our grave concern about the process by which it is proposed that the Commission make the more than fifty pages of alterations in the ZRR Final Order – namely, by proceeding without hearing as required by the Administrative Procedure Act and the Commission's Regulations and after allowing only a truncated period for public comment on some of the amendments, in order to meet the September 6 date for entry into effect of the 2016 Regulations.

This course seems to us to be unwise as a matter of policy, at this stage in the effort to bring the still controversial ZRR to a close in a manner that will command public respect for the integrity of the process. In our view it is also legally untenable in the case of a number of the amendments proposed. Our review indicates that the great majority of the proposed alterations do seem to be properly characterized as "technical corrections" or "minor modifications" on which the Commission may properly act by a summary procedure, via the consent calendar. But some appear on their face to be substantial substantive changes, and – contrary to what is declared in the NPRMs – many are not accompanied by a "full explanation" either of why they are needed on their merits or why they may properly be treated as mere technical corrections. We have only OP's statement that the change is "needed", or "should be" made, or amounts to a "clarification", or was "inadvertently omitted". Critically, for most of these substantive changes the public has been given no way of knowing whether the circumstances deemed to require a particular change pre-date the May, 2015 Notice of Proposed Rulemaking for the 2016 Regulations, creating a presumption that making the change now would require notice and hearing. This is particularly true of the multiple changes to zone boundaries.

Subtitle X, 301.2. We call to your particular attention proposed amendments to Subtitle X, § 301.2, regarding minimum area requirements for PUDs and the ability to have those requirements waived in some instances. Because this provision exemplifies the concerns discussed above, and because it presents other serious problems, we address it at the outset of our comments.

The Zoning Commission proposes:

Section 301, MINIMUM LAND AREA (PUD), § 301.2 is amended as follows:

301.2 The Zoning Commission may waive the minimum area requirement of Subtitle X § 301.1 for applications in Zone Groups 1, 2, 5, and 6, provided that the Zoning Commission shall find after the public hearing that the development is of exceptional merit and is in the best interests of the District of Columbia or the country and one (1) of the following:

The Committee of 100 questions the process by which §X-301.2 became a part of the ZRR Notice of Final Rulemaking text, concerns which we have raised with the Office of Planning. Specifically, we question the addition, in §X-301.2, of "Any Other Zone" to the list of zones in which the 100% waiver of PUD minimum lot size requirements is available. The table of Zone Groups referred is set forth at § 301.1 and is reproduced below.

TABLE X § 301.1: MINIMUM PUD LAND AREA

Zone Group	Applicable Zone	Minimum Area
1	Any R zone Any RF zone	2 acres
2	RA-1, -RA-2 RC-1 MU-11	1 acre
3	RF-2 RA-8, RA-9, RA-10 MU-15, MU-16 MU-22	1 acre
4	MU-17, MU-18, MU-19, MU-20, MU-21	0.5 acre
5	NC-7, NC-8, NC-9, NC-10, NC-11, NC-12, NC-13, NC-14, NC-15, NC-16, NC-17	10,000 sq. ft.
6	Any Other Zone	15,000 sq. ft.

We understand from OP that in 2013 the position of the Zoning Commission was that a 100% waiver of the PUD minimum area requirements should be made available, under one of three stated conditions, in all zone districts other than districts that were then denominated N-7 through N-17 and eleven zones that were then included in Zone Groups 2 and 3. The critical fact remains, however, that this position, which would have changed existing regulations so as to extend the 100% waiver broadly across the city, was not incorporated into the 2015 Notice of Proposed Rulemaking. Consequently the NPRM provided no opportunity to property owners in what would have been the newly affected districts or to the public at large to comment upon that position. The various drafts of Subtitle X in the ZRR rulemaking record uniformly omit "any other zone" from the list of zones eligible for a waiver until January 2016 -- after the record was closed and the opportunity to comment had ended. Compare Exh. 7X (July 13, 2013, amdt. September 29, 2013) and Exh. 890X (Nov. 14, 2014) with Exh. 1102X (January 14, 2016). This lack of notice is not cured by the fact that it may have occurred as a result of error, or the fact that the Commission had taken this position at some earlier stage in the protracted

deliberations on ZRR.¹ Nor is the "any other zone" issue the only discrepancy in § 301.2. In addition, two unexplained changes to this section were made in January 2016 to the zones listed in Zone Group 2, also without notice, the opportunity for comment and deliberation.

For the reasons stated here, we do not consider the changes made to §X-301 in January 2016 to be legally in force as part of the 2016 Regulations scheduled to take effect in September 2016. Consequently if the Commission wishes to enact those changes, they must in our view be advertised for comment and set down for hearing.

¹ Set forth here are §§ X 301.1 and 301.2 as they appeared in draft during the ZRR process:

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:

301.1 The minimum area included within a proposed development application, including the area of public streets or alleys proposed to be closed, shall be as follows:

Minimum Area	Applicable Zone	Zone Group
Two (2) Acres	Any R zone (R-1, R-2, R-3) Any RF zone (R-4)	1
One (1) acre	A-1 (R-5-A) A-3 (R-5-B) M-11 (W-0)	2
One (1) acre	A-4, A-9, A-11 (R-5-B,D,E/DC) M-16, M-17 (SP/DC) M-23 (CR/DC)	3
One-half (½) acre	M-18 (C-2-A/DC) M-19 (C-2-B/DC) M-20 (C-2-C/DC) M-21 (C-3-B/DC) M-22 (C-3-C/DC)	4
Ten thousand square feet (10,000 sq. ft.)	N-7 (C-2-A/GA) N-8 (C-3-A/GA) N-9 (C-2-A/HS-H) N-10 (C-2-B/HS-H) N-11 (C-2-C/HS-H) N-12 (C-3-A/HS-H) N-13 (C-3-B/HS-H) N-14 (C-2-A/HS-A) N-15 (C-3-A/HS-A) N-16 (C-2-A/HS-R) N-17 (C-2-B/HS-R)	5
Fifteen thousand square feet (15,000 sq. ft.)	Any Other Zone	6

The Instant Proposed Amendment. The inclusion, in both the NPRM text and the Notice of Final Rulemaking text, of the N (now NC) zones (Zone Group 5) among those in which the 100% waiver would be available apparently resulted from drafting errors that occurred in 2013. The Zoning Commission proposes to correct that assertion of error as a technical modification. Without regard to whether this is a desirable or the originally intended outcome, this is not a technical amendment or minor modification. Just as allowing waivers in "any other zone" requires full notice and comment, amending § X-301.2 so as to exclude the NC zones from waivers would also require notice, comment and hearing.

Yet it appears to be the Commission's intention to proceed without a hearing on this and the more than fifty pages of other changes that OP has thus far proposed as technical corrections or minor modifications to the 2016 regulations. Moreover, on OP's recommendation² the Commission has now determined that the usual 30-day comment period will be reduced by half for the third set of proposed changes, in order to meet the September 6 date for entry into effect of the 2016 Regulations.

This course seems to us to be unwise as a matter of policy, at this stage in the effort to bring the still controversial ZRR to a close in a manner that will command public respect for the integrity of the process, and also to be legally untenable in the case of amendments situated like the proposed change regarding the NC zones and the PUD area waiver. Of course some of the changes proposed do seem to be properly characterized as "technical corrections" or "minor modifications" on which the Commission may properly act by a summary procedure, via the consent calendar. But many appear on their face to be substantial substantive changes, and – contrary to what is declared in the NPRM on the first set of proposed changes – many are not accompanied by a "full explanation" either of why they are needed or why they may properly be treated as mere technical corrections.

We do not quarrel with the conclusion that the Commission and OP have evidently reached that the 2016 regulations were not quite ready for prime time when adopted early this year and need some fixing, and we appreciate the very great efforts toward that end. But the method of fixing that is now proposed puts OP and the Commission in the public position of invoking an unwarrantedly expansive notion of "technical correction" in order to cut procedural corners on a very large number of amendments, leaving an indeterminate number of them under a potential legal cloud, just in order to meet a self-imposed deadline.

We therefore urge the Commission, at a minimum, to identify those proposed changes that cannot be clearly justified as "technical corrections" – some of which we have identified in the comments attached -- and set them down for hearing after an adequate comment period, even if they cannot all be acted on by September 6. It should be borne in mind that the flow of proposals for amendments to the 2016 regulations, whether as technical corrections or

² ZC 08-06E, OP Memorandum, June 8, 2016, p. 1.

otherwise, is not likely to halt just because the new regulations have entered into force, and any that are acted on after that date can be duly dealt with as the Regulations require.

We now address other proposed amendments.

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Z.C. Case No. 08-06D - Technical Corrections to Z.C. Order 08-06A

Summary:

Section	NPRM Page No.	Summary	Comment
B 100.2	2	Emergency Shelter definition expanded to include the following: <u>an emergency shelter may also provide ancillary services such as counseling, vocational training, or similar social and career assistance.</u>	This change exceeds the scope of a technical amendment. See comment A below.
B § 318.7 (New)	3	This new section concerning corner lots refers to the "front of the building" but the no definition exists for that term or for "Building, front"	See comments B and C below
C § 701.5	4	Minimum parking requirements for education, college or university, restores requirement in current regulations when there is no campus plan	Technical correction
C § 706.1	4	Maximum parking requirements (land area)	Technical correction
C § 709	4-5	Rules of Calculation (teachers and employees for parking requirements)	Technical correction
C § 715	5	Correcting typo, adding missing word	Technical correction
C § 806	5	Bicycle Parking, showers and changing facilities, adding that this is for non-residential uses	Technical correction
G § 609	12	Renumbering section numbers for Special Exception Criteria for Dupont Circle Mixed Use Overlay	Technical correction for paragraph numbering, but the NPRM fails to correct an incorrect list of relevant zones (see below)

Comment A re Subtitle B, §100.2 . The amendment expands significantly the uses associated with an emergency shelter. It includes the provision of services, such as vocational training, that may not apply only to those living in the shelter. In short, the expanded definition converts emergency shelters into comprehensive community service organizations with a residential

component. C100 does not challenge the desirability of "wrap around" services for homeless individuals. Nevertheless, a "technical" amendment to the zoning regulations is not the appropriate method to effect a substantive change in use. This amendment must be promulgated by full APA procedures.

Comment B re Subtitle B, Ch.1, Definitions. This comment does not refer to specific provisions of the NPRM and instead addresses the need to provide definitions for certain undefined terms, including:

- Abut
- Building, Front
- Eave, not an eave of a dormer
- Nonconforming Lot³
- Place of Worship

The need to define these (and other) terms, especially "abut," was raised repeatedly during the ZRR process. We ask the ZC to address this in the near future.

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Following are further Comments to 08-06-D, with text from OP Report and discussion of OP recommendations.

³ While the definition of "non-conforming lot" can be inferred from Subtitle C § 301.1 -- which is to be retitled "Substandard Lots" -- including "nonconforming lot" in the Subtitle B definitions will provide additional clarity. provides a sufficient definition?

301.1 A record lot existing prior to the effective date of this title that does not conform with the lot dimension and lot area requirements of the zone in which it is located may be considered a conforming lot for the purposes of building permits and uses provided any building or structure thereon shall meet the development standards of the relevant zone and provided the non-conformity shall not be increased.

C-701.5	VEHICLE PARKING The Parking Requirements table only listed parking requirements for college/university uses relative to a required campus plan but is silent for when a campus plan is not required. The omission was inadvertent and not consistent with the Commissions final action on parking. Subtitle C 701.5 is amended by clarifying the parking standard for college or university uses in Table C § 701.5 as follows: 701.5 Except as provided for in Subtitle C § 702, parking requirements for all use categories are as follows TABLE C § 701.5: PARKING REQUIREMENTS <table border="1"> <thead> <tr> <th>Use Category</th><th>Minimum number of vehicle parking spaces</th></tr> </thead> <tbody> <tr> <td>Education, college/university</td><td> As per approved campus plan <u>For each building: 2 for each 3 teachers; plus either 1 for each 10 classroom seats or 1 for each 12 stadium seats or 1 for each 10 auditorium seats, whichever is greater, except if a campus plan has been approved by the Zoning Commission or the Board of Zoning Adjustment for the college or university, in which case the parking shall be provided as set forth in the approved campus plan.</u> </td></tr> </tbody> </table>	Use Category	Minimum number of vehicle parking spaces	Education, college/university	As per approved campus plan <u>For each building: 2 for each 3 teachers; plus either 1 for each 10 classroom seats or 1 for each 12 stadium seats or 1 for each 10 auditorium seats, whichever is greater, except if a campus plan has been approved by the Zoning Commission or the Board of Zoning Adjustment for the college or university, in which case the parking shall be provided as set forth in the approved campus plan.</u>
Use Category	Minimum number of vehicle parking spaces				
Education, college/university	As per approved campus plan <u>For each building: 2 for each 3 teachers; plus either 1 for each 10 classroom seats or 1 for each 12 stadium seats or 1 for each 10 auditorium seats, whichever is greater, except if a campus plan has been approved by the Zoning Commission or the Board of Zoning Adjustment for the college or university, in which case the parking shall be provided as set forth in the approved campus plan.</u>				

Technical correction.

C-706	VEHICLE PARKING Subtitle C § 706.1 has confusing language and clarification is needed. Subtitle C § 706.1 is amended to clarify the language for maximum parking as follows: 706 MAXIMUM PARKING REQUIREMENTS 706.1 The maximum <u>land area</u> for all newly constructed parking areas, and <u>for</u> parking areas that increase the number of parking spaces or the land area by twenty-five percent (25%) or more, shall be no above-grade parking area built or expanded to exceed one hundred thousand square feet (100,000 sq. ft.) in land area
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Technical correction.

New § 709.4	VEHICLE PARKING A section is needed to clarify how teachers and employees are computed for the purpose of calculating parking requirements. The language reflects the exact language used in the 1958 regulations. Subtitle C 709 is amended by adding a new 709.4 to clarify how employees and teachers are computed as follows: 709.4 The number of teachers or employees shall be computed on the basis of the
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	<u>greatest number of persons to be employed at any one period during the day or night, including persons having both full-time and part-time employment.</u>
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A technical correction, the language added matches the current Rules of Interpretation in the parking chapter: Section 2118.3: "The number of teachers or employees shall be computed on the basis of the greatest number of persons to be employed at any one period during the day or night, including persons having both full-time and part-time employment."

C-715	VEHICLE PARKING The section title should include the word "Lots". Subtitle C § 715 is amended to include the word "Lots" in the section title as follows: 715 LANDSCAPING REQUIREMENTS FOR SURFACE PARKING <u>LOTS</u>
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Technical correction

C-806	BICYCLE PARKING The section title should include "Non-Residential Uses". Subtitle C § 806 is amended to include the word "Lot" in the section title as follows: 806 REQUIREMENTS FOR SHOWERS AND CHANGING FACILITIES - <u>NON-RESIDENTIAL USES</u>
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In spite of the slightly puzzling description, amending to include the word "lot," this is an appropriate technical correction, the showers and changing facilities are related only to non-residential uses.

Subtitle D, Residential House (R) Zones

New 207 is a compilation of the General Development Standards with regard to height and contains no new substantive content. We suggest the following additions to the proposed amendments:

- § 207.2 Add at the beginning of the section: Except as permitted in Subtitle C § 1501.3, a, A spire, tower, dome, pinnacle, minaret serving as an architectural embellishment
- § 207.4 Add at the beginning of the section: Subject to § 303.3, a, A building or other structure may be erected...district in which it is located.
- § 207.6 Add at the beginning of the section: Subject to § 303.3, an, A institutional building or structure may be erected

The proposed additions cross-reference other applicable provisions and do not impose any new restrictions. The addition to § 207.2 cross-references an existing limitation on the amount of roof space an architectural embellishment may occupy in an R zone. The addition to § 207.4 and § 207.6 cross-reference provisions govern the height of a penthouse in an R zone.

Subtitle G	
	Special Exception The Special Exception provision is mislabeled as §608.3 and should be § 609. Subtitle G § 608 is amended by renumbering §§ 608.3 and 608.4 to a new section §609 and 609.1 as follows: 608.3 609 SPECIAL EXCEPTION 608.4 609.1 The special exception criteria of Subtitle G, Chapter 12 shall apply to all MU-13 through MU-22 zones

Technical Correction, but also needs to be included in the contents and hyperlink page for the Subtitle. Also, this section Dupont Circle Mixed Use Zones is for zones MU-15 through MU-22, not MU-13 through MU-22. MU-13 and MU-14 are Waterfront Zones, and the special exception criteria are described in Section 509.

Z.C. Case No. 08-06E - Technical Corrections to Z.C. Order 08-06A

Summary:

Section	NPRM Page No.	Summary	Comment
B § 100.2	2	Amends definition of alley lot, albeit with a discrepancy between the NPRM and the accompanying OP report	Technical correction,
C §§ 201.1 and 201.3	3	Inserts <u>zone</u> before "district" in two places	Technical correction
C § 301		Changes the title of § 301 to <u>Substandard Lots</u> ; in making this change, the NPRM misstates the current title as "Subdivision Provisions;" it is "General Provisions,"	Technical correction
C § 701.5 and 709	5	Rules of calculation for areas included in calculating parking requirements	Technical correction, but correction is incomplete, omitting some categories where cellar space is currently included but not currently

			calculated by floor area. (see below)
C § 802.1 and table	6	Bicycle Parking, change house to single dwelling unit and apartment to multiple dwelling unit	Technical correction
C § 1504.1(c)	6	This section contains a typographical error: Reference is made to §§ <u>1506</u> – 1500.10 and 1502 ... 1506 should be <u>1500.6</u> .	Technical correction
D § 700.1(d)	9-10	Spelling correction; removes hyphen in "Vice President"	Technical correction
E § 302.2 and § 402.2	13	Number of Dwelling Units The amendments correct a cross reference and a spelling error	Technical corrections
F § 506.5	18	Side Yard. Amendment purports to add a hyphen to "non-conforming"; however, the hyphen appears in the online ZRR text.	Technical correction
G § 201 (New)	19	Allocation of floor area use ratios for mixed use zones	Technical correction but rewording is suggested for clarity. (see below)
G § 702.1	19	Capitol Interest and Capitol Hill Commercial Mixed Use Zones, FAR	Technical correction, but seems to be incomplete (see below)
G § 802.1 and 709	19	Naval Observatory FAR (removing reference to IZ)	Technical correction
G § 804.1	20	Corrects lot occupancy in MU-27 (Naval Observatory District) from 100% to 60%	Technical correction; seems to be right in light of rear yard setback requirement
G § 803.1	19-20	Naval Observatory Height	Technical correction, restores measurement rules from current regulations
I § 210.1	23	Alley lots setback provisions	Technical, but contains errors (see below)
I § 205.1	22	Rear yards	Technical; typo in referring to cross-referenced sections; the NPR contains

			another typo, at one point referring to § I 304 instead of § B 205
I § 207.1	23	Court requirements	Technical; typo
K § 717	38-39	Parking, Bicycle, Loading requirements in RC zone, cross-referencing to Subtitle C	Technical correction
K § 717	39	Parking, Bicycle, Loading requirements in ARTS zone, cross-referencing to Subtitle C	Technical correction
X § 303.7	45	Adding the Maximum PUD Height for the Fort Totten Overlay to the table	Technical correction, except that the NPRM describes the table of minimum number of bicycle parking spaces instead of PUD Height.
X § 1300.1	46	In new § 1300.1 (Minimal Land Area (PUD)), "will" should be replaced with "shall" to be consistent with §1300.2 and §1301.1A.	Technical amendment

08-06-E: Text from OP Report and discussion of OP Recommendation:

Section A 102.4 Alteration of vesting requirements. 806-E at pp. 1-2

SECTION	CORRECTIONS
Subtitle A – Authority and Applicability	
A § 102.4	VESTED RIGHTS UNDER THE PREVIOUS 1958 ZONING REGULATIONS, AS AMENDED – The vesting language should be clarified. Subtitle A § 102.4 is amended as follows: 102.4 Any proposed amendment or modification to a vested project identified within this section <u>that cannot be granted by the Zoning Administrator as a deviation permitted by Subtitle A § 304 or as a minor modification permitted by Subtitle X § 311.6 shall conform with the 2016 Regulations and if no building permit has been issued for the vested project, the entire project must conform with the 2016 Regulations be reviewed in the context of the general purpose and intent of the 2016 Regulations and shall not be inconsistent with the general purpose and intent of the initial approval.</u>

This section purports to clarify the ZRR's vesting requirements but instead alters them. As adopted, Section 102.4 states:

Any proposed amendment or modification to a vested project ... shall be reviewed in the context of the general purpose and intent of the 2016 Regulations and *shall not be inconsistent with the general purpose and intent of the initial approval.* (emphasis added). The proposed amendment

modification to a vested project "must conform to the 2016 Regulation," and if no building permit has been issued, "the entire project must conform with the 2016 Regulations." The amendment applies to PUDs and standalone projects.

This provision rewrites the terms of approved projects. It goes far beyond clarifying the vesting provision: it substantively changes it and thereby affects an unknown number of pending projects. Its substantive impact means that it cannot be adopted as a minor clarification. As The vesting provisions of the 1958 Code required vested projects to proceed under the terms of their initial approval, whether or not the new rules were more or less restrictive, ie:

The Zoning Regulations of the District of Columbia adopted August 30, 1920, as amended, shall continue in full force and effect as follows:

- (a) With respect to any construction or occupancy authorized under §§ 3202.4, 3202.5, 3202.6, 3203.7, 3203.8, 3203.9, or 3203.11

An appropriate clarification could be: "Any proposed amendment or modification to a vested project shall not be inconsistent with the general purpose and intent of the initial approval.

Subtitle B, § 100.2 Definition of Alley Lot

The proposed amendment in the NPRM (immediately below) differs in form, although not in substance, from the proposed amendment in the OP memorandum, which is part of the rulemaking record. We presume the NPRM is the intended amendment.

Definition for "Lot, Alley" is amended as follows:

Lot, Alley: Is either aA lot that is recorded on the records of the Surveyor, District of Columbia, that faces or abuts an alley that does not face or abut a street at any point (alley record lot) or a lot that is recorded on the records of the D.C., and that is recorded on the records of the Office of the Surveyor or the Office of Tax and Revenue, on or before November 1, 1957, that faces or abuts an alley that does not face or abut a street at any point (alley tax lot).

B § 100.2	Lot, Alley – The definition should be revised to reflect the ability to create new alley record lots under ZR 16. Subtitle B § 100.2 definition for Lot, Alley is amended as follows: Lot, Alley: A lot that faces or abuts an alley that does not face or abut a street at any point, and that is recorded on the records of the Office of the Surveyor or the Office of Tax and Revenue on or before November 1, 1957.
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Subtitle B § 311 (Lot Occupancy) and § 312 (Rules of Measurement for Lot Occupancy). The proposed amendments redefine lot occupancy such that "structures" no longer count in determining lot occupancy. Only "buildings" do. The removal of the term "structure" from the lot occupancy regulations exceeds the scope of a technical amendment. A structure or

structures can occupy a significant portion of a lot, as demonstrated by the breadth of the term's definition, see § 100.2. Changing the definition by eliminating "structures" has the potential to undermine the purpose of the lot occupancy standards, see § 311.1. Because of their substantive impact, these proposed amendments cannot be promulgated as a technical amendment rulemaking. NPRM at page 3.

This comment applies to §§311.1, §312.1 and §312.2, in all of which "structures" impermissibly would be deleted. In our view, a subsequent, non-technical rulemaking should consider incorporating "structures" into §312.3, defining "building area."

NOTE: The term "structure" is used repeatedly in the proposed new section 207 of Subtitle D, addressing heights in residential zones. The amendments apply to the heights of structures as well as buildings, thereby recognizing the impact of structures in the vertical plane of a property. Similarly, "structures" that are not "buildings" impact the horizontal plane and overall built volume of a property, and on that account should be considered in determining lot occupancy.

C §§ 701.5 and 709	Clarification of the method for calculating parking requirements for non-residential uses, to be consistent with current regulations. Subtitle D Chapter 7 is amended by adding a new clarification clause to Section 701.5 to read as follows: 701.5 Except as provided for in Subtitle C § 702, parking requirements for all use categories are as follows <u>(all references to “sq. ft.” refers to square feet of gross floor area as calculated in Subtitle C § 709):</u> Subtitle D Chapter 7 is amended by clarifying Section 709.1 and adding new subsections (c) - (e) as follows: 709.1 <u>Gross floor area shall be as defined in Subtitle B, except that</u> for purposes of calculating off-street parking requirements: (a) <u>In all zones</u>, gross floor area shall not include floor area devoted to off-street parking or loading facilities, including aisles, ramps, and maneuvering space or space devoted exclusively to bicycle storage or support (lockers and showers) facilities; and (b) <u>In all zones</u>, gross floor area shall include penthouse habitable space except that recreation space for residents or tenants of the building or other ancillary space associated with a rooftop deck shall not be included. (c) <u>In the R, RF, RA, and MU-11 through MU-14 zones, gross floor area shall include cellar floor area devoted to uses within the Government, Local use.</u> (d) <u>In the MU-3, MU-4, MU-7, MU-17, MU-24, MU-25, MU-26, MU-27, NC-1, NC-2, NC-3, NC-4, NC-6, NC-7, NC-8, NC-9, NC-12, NC-14, NC-15, NC-16, RC-2, ARTS-1, ARTS-3, PDR-1, PDR-4, PDR-5, PDR-6, AND PDR-7 zones, gross floor area shall include cellar floor area devoted to uses within following use groups:</u> <u>(1) Animal sales, care and boarding</u> <u>(2) Arts, design and creation</u> <u>(3) Chancery</u> <u>(4) Eating and drinking establishments</u> <u>(5) Firearm sales</u> <u>(6) Medical Care</u> <u>(7) Office</u> <u>(8) Retail</u> <u>(9) Service, general and financial</u> (e) <u>In the PDR-2 and PDR-3 zones, gross floor area shall include the cellar floor area devoted to uses within the Office and Chancery use groups.</u>
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This correction does not fully capture the uses for which the current regulations would be including cellar areas. It needs further evaluation to determine other use groups that should be included in 709.1(d).

The list of included uses in the cellar doesn't include "entertainment, assembly, and performing arts," and doesn't include the education uses. Also doesn't include institutional, government, sexually oriented business establishments. Seems to be based on the zones and uses where the table in Section 2101 lists gross floor area and cellar area, but doesn't take into account the uses for which parking currently isn't based on floor area, but on some other criteria, such as seats, but for which the ZRR, that was changed to floor area.

Assembly halls, etc., currently done by seats, probably should be added to the category where cellar floor area counts list. Current regulations include cellar floor area in all other uses and zones not listed in table 2101.1, and the list of uses and zones that include cellar floor area should be checked and include any of those uses/zones.

C § 802.1	Clarification of residential use-types for determining bicycle parking requirements to be consistent with vehicle parking requirements.		
	Subtitle C § 802.1 is amended as follows:		
	Use	Long-Term Spaces	Short-Term Spaces
	Residential house, single dwelling unit	None	None

Section	Correction		
	Residential, flat		
	Residential apartment, multiple dwelling unit	1 space for each 3 dwelling units	1 space for each 20 dwelling units

Technical Correction.

Note: There is a definition for dwelling, multiple and for dwelling unit, but none that we could find for single dwelling unit. House is not a defined term either.

New § G 201

Existing provision applicable to all C zones in current regulations to be carried forward —allows the conversion of a pre-existing non-residential building to residential, even if it would exceed permitted FAR.

Subtitle G § 201 is amended by relabeling the section and adding a new § 201.1 as follows:

201 ~~[RESERVED]~~ DENSITY – FLOOR AREA RATIO (FAR)

201.1 For a building or structure in existence with a valid Certificate of Occupancy prior to November 17, 1978, or for which an application for a building permit was filed prior to November 17, 1978, a conversion of non-residential GFA to residential GFA, even if in excess of otherwise permitted FAR, shall be permitted.

This section is intended to bring forward Section 771.3 from the old code (reproduced below). The phrase in the amendment, "even if in excess of otherwise permitted FAR," needs to be read in the context of the table at Section 771.2, in order to be properly understood. For clarity, we suggest deleting the "in excess" phrase.

Subtitle G – Mixed-Use (MU) Zones																										
G § 702.1	Correction to Table Reference and to reflect that the maximum non-residential FAR in the MU-26 zone should be 2.5. Subtitle G § 702.1 is amended as follows: TABLE G § 603.1<u>702.1</u>: MAXIMUM PERMITTED FLOOR AREA RATIO <table> <tr> <th rowspan="2">Zone</th><th colspan="2">Maximum FAR</th></tr> <tr> <th>Total Permitted</th><th>Maximum Non-Residential Use</th></tr> <tr> <td rowspan="2">MU-23</td><td>1.8</td><td rowspan="2">N/A</td></tr> <tr> <td>2.16 (IZ)</td></tr> <tr> <td rowspan="2">MU-24</td><td>1.8</td><td rowspan="2">1.5</td></tr> <tr> <td>2.16 (IZ)</td></tr> <tr> <td rowspan="2">MU-25</td><td>2.5</td><td rowspan="2">3.0</td></tr> <tr> <td>3.0 (IZ)</td></tr> <tr> <td rowspan="2">MU-26</td><td>1.8</td><td rowspan="2">1.5 <u>2.5</u></td></tr> <tr> <td>2.16 (IZ)</td></tr> <tr> <td></td><td></td><td></td></tr> </table>		Zone	Maximum FAR		Total Permitted	Maximum Non-Residential Use	MU-23	1.8	N/A	2.16 (IZ)	MU-24	1.8	1.5	2.16 (IZ)	MU-25	2.5	3.0	3.0 (IZ)	MU-26	1.8	1.5 <u>2.5</u>	2.16 (IZ)			
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	2.16 (IZ)																									

Note: Clearly, there is an error in this correction, since with the correction, the non-residential FAR is higher than the maximum total FAR. MU-26 is C-2-A in the Capitol Interest Overlay and the Capitol Hill Commercial Overlay.

G § 802 FAR (Naval Obs)	Correction to delete the inadvertent reference to IZ bonus density: NO overlay was excluded from IZ. Subtitle G § 802.1 is amended as follows: 802.1 The maximum permitted FAR in the MU-27 zone shall be 2.5 FAR (3.0 with IZ) with a maximum density of 1.5 FAR for non-residential use.
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Technical Correction

G § 803	1. Add the specific method for height measurement from the current regulation; 2. Add the recently adopted penthouse use limitation from the current regulation. Subtitle G § 803 is amended as follows: 803 HEIGHT 803.1 The maximum permitted building height, not including the penthouse, in the MU-27 zone shall be forty feet (40 ft.), <u>measured as follows:</u>
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Section	Correction
	<u>(a) The height of a building shall be the vertical distance measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet; and</u> <u>(b) The curb elevation opposite the middle of the front of the building shall be determined as the average elevation of the lot from its front line to its rear lot line.</u> 803.2 The maximum permitted height of a penthouse, except as prohibited on the roof of a detached dwelling, semi-detached dwelling, rowhouse, or flat in Subtitle C § 1500.4, shall be twelve feet (12 ft.) except fifteen feet (15 ft.) shall be permitted for penthouse mechanical space, and the maximum number of stories within the penthouse shall be one (1). <u>803.3 The penthouse shall contain no form of habitable space, other than ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop deck, terrace, or recreation space.</u>

Subtitle H, Section 1101.3(b)(1), Changing of the formula for eating and drinking establishments and fast food in certain neighborhood commercial overlay districts

§ 1101.3(b)(1), NPRM at page 22, sets forth a change in the formula for calculating the linear street frontage that can be used for eating and drinking establishments and fast food establishments for various neighborhood commercial overlays. Instead of being based on *frontage facing designated roadways*, it would be measured as linear street frontage *in the designated use area*, so, for example would include frontage on side streets, interior courts, etc. Given the granularity with which these overlay districts are designed and mapped, this is not facially a technical correction or minor modification.

Technical correction to reflect current regulations and penthouse rules.

K § 717	Add a new § 717 to address parking, bike parking, and loading requirements in the RC zones. New Subtitle K § 717 is added as follows:
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Section	Correction
	717 PARKING, LOADING, AND VEHICLE ACCESS (RC) 717.1 Parking requirements for the RC zones are as specified in Subtitle C Chapter 7. 717.2 Bicycle parking requirements for the RC zones are as specified in Subtitle C Chapter 8. 717.3 Loading requirements for the RC zones are as specified in Subtitle C Chapter 9.

Technical correction.

K § 814	Add a new § 814 to address parking, bike parking, and loading requirements in the ARTS zones. New Subtitle K § 814 is added as follows:
	814 PARKING, LOADING, AND VEHICLE ACCESS (RC) 814.1 Parking requirements for the RC zones are as specified in Subtitle C Chapter 7. 814.2 Bicycle parking requirements for the RC zones are as specified in Subtitle C Chapter 8. 814.3 Loading requirements for the RC zones are as specified in Subtitle C Chapter 9.

Note: The error (RC rather than ARTS) was in the OP report, but corrected in the Public Notice)

X § 303.7	Missing Criteria - Heights missing from Table 303.7. <table border="1" data-bbox="565 378 1243 527"> <thead> <tr> <th>Zone</th><th>Maximum PUD Height (feet)</th></tr> </thead> <tbody> <tr> <td>MU-28 (C-3-A/FT)</td><td>90</td></tr> <tr> <td>MU-29 (CR/FT)</td><td>110</td></tr> <tr> <td>PDR-7 (M/FT)</td><td>90</td></tr> </tbody> </table>	Zone	Maximum PUD Height (feet)	MU-28 (C-3-A/FT)	90	MU-29 (CR/FT)	110	PDR-7 (M/FT)	90
Zone	Maximum PUD Height (feet)								
MU-28 (C-3-A/FT)	90								
MU-29 (CR/FT)	110								
PDR-7 (M/FT)	90								

Technical Correction

Section 210.1

I § 210.1(d)	ALLEY LOTS Section 210.1(d) split a word into two words. Subtitle I § 210.1(d) is amended as follows: 210.1 The following development standards shall apply to buildings on alley lots in D zones: --- (d) A building or structure on an alley lot shall be setback at least seven and one-half feet (7.5 ft.) from the centerline of all alleys the alley lot abuts.
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Although this purely technical amendment purports to correct a spelling error in § 210.1(d), the language in question is found at § 210.1(b), and the purported error is not erroneous. When used as a verb, as if the case here, "set back" is two words, not one. No correction needed. Nevertheless, there is an error in § 210.(c), where "set back" also is used as a verb, and is hyphenated. No hyphen needed.