

NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 19-14
(Text Amendment - Subtitles C, D, E, F, and X of Title 11 DCMR)
(Nonconforming Structures)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2018 Repl.), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of its intent to amend the following provisions of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the Zoning Regulations]) to which all references are made unless otherwise specified:

- Subtitle C (General Rules) § 202.2
- Subtitle D (Residential House (R) Zones) §§ 306.4, 706.4, 1006.3, 1206.4, 5007, 5108, 5200, 5201, & 5204
- Subtitle E (Residential Flat (RF) Zones) §§ 205.5, 5007, 5108, 5200, 5201, & 5204
- Subtitle F (Residential Apartment (RA) Zones) §§ 5005, 5107, 5200, 5201, & 5204
- Subtitle X (General Procedures) § 1001.3

The text amendment proposes to clarify the zoning treatment of enlargements and additions to nonconforming structures. In particular, in Subtitle C § 202.2, the proposed text amendment would clarify that nonconforming structures are permitted to expand as a matter of right so long as the enlargement or addition conforms to the development standards. Where non-compliant, zoning relief would be needed from applicable development standards of each subtitle and not from Subtitle C § 202.2 specifically. Although focused on non-conforming structures, the text amendment also proposes changes to the relief required for principal residential developments on substandard record lots and changes to clarify and reorganize the special exception provisions in Subtitles D – F as follows:

- Subtitle D, Chapter 52, to remove the current reference to relief from Subtitle C § 202.2; to clarify which development standards are eligible for special exception relief and under what criteria; and to consolidate all special exception authority in this chapter by deleting current §§ 5007, 5108, and 5204;
- Subtitle E, Chapter 52, to remove the current reference to relief from Subtitle C § 202.2; to clarify which development standards are eligible for special exception relief and under what criteria; and to consolidate all special exception authority in this chapter by deleting current §§ 5007, 5108, and 5204;
- Subtitle F, Chapter 52, to clarify which development standards are eligible for special exception relief; and to consolidate all special exception authority in this chapter by deleting current §§ 5005, 5107, and 5204; and
- Subtitle X, Chapter 10, to remove the reference to Subtitle C § 202.2 as relief from that section is no longer required.

Office of Planning (OP)

The Office of Planning (OP) filed a July 18, 2019 report that served as the pre-hearing report required by Subtitle Z § 501 and as a petition proposing text amendments to the Zoning Regulations.

The Commission voted at its July 29, 2019, public meeting to set down the proposed text amendment for a public hearing and authorized flexibility for OP to work with the Office of the Attorney General (OAG) to refine the proposed text and add any conforming language as necessary.

OP filed an October 30, 2019 hearing report, as required by Subtitle Z § 400.6, that recommended approval of the proposed text amendment as advertised in the Public Hearing Notice.

At its November 7, 2019 hearing, the Commission heard testimony from OP in support of the proposed text amendment and from Advisory Neighborhood Commission (ANC) 6C, which was supportive of the text amendment but highlighted specific provisions for further revision (as discussed below).

In response to concerns raised by ANCs 6B and 6C and the Commission that the proposed amendment did not address existing ambiguities in the Zoning Regulations, especially the provisions related to building height special exceptions (Subtitle E § 5203) and rooftop or upper floor additions (Subtitle E § 206.1), OP submitted a November 25, 2019 supplemental report (OP Second Report). The OP Second Report indicated that most of the existing problematic text provisions are included in two text amendments currently before the Commission – Z.C. Case No. 19-13 (Alley Lots) or Z.C. Case No. 19-21 (Roof Top or Upper Floor Elements) – and are less suited to resolution in this case, Z.C. Case No. 19-14.

ANC Reports

ANC 5D filed a November 12, 2019 written report expressing support for the proposed text amendment's expanded protection of solar panels.

ANC 6B filed an October 29, 2019 written report in support of the proposed text amendment but also recommended changes including:

- Retaining Subtitle E § 5204, a special exception related to alley lots, rather than consolidating alley lot and non-alley lot standards into a revised Subtitle E § 5201 as proposed;
- Further refinements to the proposed text in Subtitle E § 5201; and
- Improvements to the Office of Zoning user handbook (although not related to the specific text amendment and outside the Commission's purview).

ANC 6C filed a November 6, 2019 written report (ANC 6C's First Report) and provided testimony at the November 7, 2020 public hearing, supporting the proposed text amendments, but also recommending changes including:

- Relief for new principal residential buildings on standard lots (found in proposed text in Subtitle E § 5201);
- Syntax concerns with the proposed text of Subtitle E § 5201.6 and Subtitle F § 5201.6; and
- repetition and circularity between existing Subtitle E § 206.1 and the zoning relief found in Subtitle E § 5203, for which ANC 6C recommended several modifications to improve the clarity of these sections.

In response to OP’s Second Report, ANC 6C filed a supplemental report (ANC 6C’s Second Report), in which the ANC agreed with OP that most of the issues raised in ANC 6C’s First Report could be addressed in pending Z.C. Case No. 19-21 rather than in this case, Z.C. Case No. 19-14.

“Great Weight” to the Recommendations of OP

The Commission must give “great weight” to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Y § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

The Commission finds OP’s recommendation that the Commission take proposed action to adopt the proposed text amendment persuasive and concurs in that judgment.

“Great Weight” to the Written Report of the ANCs

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016). The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

At its November 7, 2020 hearing, the Commission requested that OP provide a detailed response to the issues raised in the reports by ANCs 6B and 6C and to specifically identify which pending Commission cases would address these concerns. Upon review of OP’s and ANC’s Second Reports, the Commission agreed with OP and ANC 6C that the concerns raised by the ANCs would be better addressed by other pending Commission cases rather than this case, Z.C. Case No. 19-14.

At the close of its January 13, 2020 public hearing, the Commission voted to take **PROPOSED ACTION** and to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (January 13, 2020): 5-0-0 (Anthony J. Hood, Peter A. Shapiro, Robert E. Miller, Peter G. May, Michael G. Turnbull to **APPROVE**)

The complete record in the case, including the OP and ANC reports and transcript of the public hearings, can be viewed online at the Office of Zoning website, through the Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by e-mail at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice of proposed rulemaking in the *D.C. Register*.

PROPOSED TEXT AMENDMENT

The proposed amendments to the text of the Zoning Regulations are as follows (text to be deleted is marked in ~~bold and strikethrough~~ and new text is shown in **bold and underlined**):

I. Proposed amendments to Subtitle C, GENERAL RULES

Subsection 202.2 of § 202, NONCONFORMING STRUCTURES, of Chapter 2, NONCONFORMITIES, of Subtitle C, GENERAL RULES, is proposed to be amended to read as follows:

- 202.2 Enlargements or additions may be made to the structure; provided that the addition or enlargement itself shall:
- (a) Conform to ~~the~~ use and development standards ~~requirements; and~~
 - (b) Neither increase nor extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined; ~~and~~
 - (c) Any enlargement or addition not meeting paragraphs (a) and (b) must obtain relief from the applicable development standards.

II. Proposed amendments to Subtitle D, RESIDENTIAL HOUSE ZONES

Subsection 306.4 of § 306, REAR YARD, of Chapter 3, RESIDENTIAL HOUSE ZONES – R-1-A, R-1-B, R-2, AND R-3, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be revised as follows:

306.4 A rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 ~~and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.~~

Subsection 706.4 of § 706, REAR YARD, of Chapter 7, NAVAL OBSERVATORY RESIDENTIAL HOUSE ZONES – R-12 AND R-13, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be revised as follows:

706.4 A rear wall of ~~an attached a~~ row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 ~~and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.~~

Subsection 1006.3 of § 1006, REAR YARD, of Chapter 10, FOGGY BOTTOM RESIDENTIAL HOUSE ZONES – R-17, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be revised as follows:

1006.3 A rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 ~~and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.~~

Subsection 1206.4 of § 1206, REAR YARD, of Chapter 12, GEORGETOWN RESIDENTIAL HOUSE ZONES – R-19 AND R-20, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be revised as follows:

1206.4 A rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 ~~and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.~~

Section 5007, SPECIAL EXCEPTION, of Chapter 50, ACCESSORY BUILDING REGULATIONS FOR R ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be deleted as follows:

5007 SPECIAL EXCEPTION [RESERVED]

~~5007.1 — Exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle D § 5201.~~

Section 5108, SPECIAL EXCEPTION, of Chapter 51, ALLEY LOT REGULATIONS FOR R ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be deleted as follows:

~~5108 — SPECIAL EXCEPTION~~

~~5108.1 — Exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle D § 5204.~~

The title of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be amended to read as follows:

CHAPTER 52 RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR R ZONES

Section 5200, GENERAL PROVISIONS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR R ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be amended as follows:

5200.1 The ~~following~~ provisions of this chapter provide for special exception relief ~~to~~ from the specified development standards and regulations, subject to the provisions of each section and the general special exception criteria at Subtitle X, Chapter 9.

5200.2 Requested relief that does not comply with specific conditions or limitations of a special exception authorized by this chapter shall be processed as a variance pursuant to Subtitle X, Chapter 10.

The title of § 5201, ADDITION TO A BUILDING OR ACCESSORY STRUCTURE, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR R ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be amended to read as follows:

5201

ADDITION TO A BUILDING OR ACCESSORY STRUCTURE SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS

Section 5201, SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR R ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be amended by revising the existing subsections and by adding new §§ 5201.3 and 5201.7 and renumbering, to read as follows:

5201.1 **The For an addition to a principal residential building with one (1) principal dwelling unit on a non-alley lot or for a new principal residential building on a substandard non-alley record lot as described by Subtitle C § 301.1, the Board of Zoning Adjustment may ~~approve as a special exception in the R zones~~ grant relief from the following development standards of this subtitle as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:**

(a) Lot occupancy **subject to the following table:**

TABLE D § 5201.1(a): MAXIMUM PERMITTED LOT OCCUPANCY BY SPECIAL EXCEPTION

<u>Zone</u>	<u>Maximum Lot Occupancy (%)</u>
<u>R-3, R-13, and R-17</u> <u>R-20 - Row dwellings</u>	<u>70</u>
<u>R-20 - Detached and semi-detached dwellings</u> <u>All other R zones</u>	<u>50</u>

(b) Yards, **including alley centerline setback; and**

~~(c) Courts;~~

~~(d) Minimum Lot dimensions;~~

~~(e) (c) Pervious surface; and.~~

~~(f) The limitations on enlargements or additions to nonconforming structures as set forth in Subtitle C § 202.2.~~

5201.2 **Special exception relief under this section is applicable only to the following For a new or enlarged accessory structure to a residential building with only one (1) principal dwelling unit on a non-alley lot, the Board of Zoning**

Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- (a) ~~An addition to a building with only one (1) principal dwelling unit; or Lot occupancy subject to the following table:~~

TABLE D § 5201.2(a): MAXIMUM PERMITTED LOT OCCUPANCY BY SPECIAL EXCEPTION

<u>Zone</u>	<u>Maximum Lot Occupancy (%)</u>
<u>R-3, R-13, and R-17</u> <u>R-20 - Row dwellings</u>	<u>70</u>
<u>R-20 - Detached and semi-detached dwellings</u> <u>All other R zones</u>	<u>50</u>

- (b) ~~A new or enlarged accessory structure that is accessory to such a building~~ **Maximum building area of an accessory building;**
- (c) ~~Yards, including alley centerline setback; and~~
- (d) ~~Courts; and~~
- (d) ~~Pervious surface.~~

5201.3 For a new or enlarged principal building on an Alley Record Lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- (a) ~~Yards, including alley centerline setback; and~~
- (b) ~~Pervious surface.~~

5201.3 5201.4 An ~~applicant~~ **application** for special exception **relief** under this section shall demonstrate that the proposed addition, **new principal building**, or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, ~~in particular~~ **specifically**:

- (a) The light and air available ...¹
- (b) The privacy of use and enjoyment ...

¹ The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

- (c) The **proposed** addition or accessory structure, together with the original building, **or the new principal building**, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the **subject street or alley** frontage; **and**
- (d) In demonstrating compliance with paragraphs ... from public ways; **and**.
- ~~(e) **The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot as specified in the following table:**~~

TABLE D § 5201.4: MAXIMUM PERMITTED LOT OCCUPANCY

<u>Zone</u>	<u>Maximum Lot Occupancy</u>
R-3 R-13 R-17	<u>70%</u>
R-20 – attached dwellings only	<u>70%</u>
R-20 – detached and semi-detached dwellings All Other R zones	<u>50%</u>

~~5201.4~~ 5201.5 The Board of Zoning Adjustment may require ...

~~5201.5~~ 5201.6 This section ~~may~~ **shall** not be used to permit the introduction or expansion of a nonconforming use, **lot occupancy beyond what is authorized in this section, height, or number of stories** as a special exception.

~~5201.6~~ ~~This section shall not be used to permit the introduction or expansion of nonconforming height, or number of stories as a special exception.~~

5201.7 **Where an application requests relief from the alley centerline setback requirements under this section, the Office of Zoning shall refer the application to the following agencies for their review and recommendations, to be filed in the case record within the forty (40) day period established by Subtitle A § 211:**

- (a) **District Department of Transportation (DDOT);**
- (a) **Department of Public Works (DPW);**
- (b) **Metropolitan Police Department (MPD);**
- (c) **Fire and Emergency Medical Services Department (FEMS);**
- (d) **DC Water (WASA); and**

(e) If a historic district or historic landmark is involved, the Historic Preservation Office (HPO).

Section 5204, SPECIAL EXCEPTION CRITERIA ALLEY LOTS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be deleted as follows:

5204 ~~SPECIAL EXCEPTION CRITERIA ALLEY LOTS [RESERVED]~~

5204.1 ~~The Board of Zoning Adjustment may approve as a special exception a reduction in the minimum yard requirements of an alley lot in an R zone pursuant to Subtitle X, Chapter 9~~

III. Proposed amendments to Subtitle E, RESIDENTIAL FLAT ZONES

Subsection 205.5 of § 205, REAR YARD, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be revised as follows:

205.5 A rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 ~~and as evaluated against the criteria of Subtitle E §§ 5201.3 through 5201.6.~~

Section 5007, SPECIAL EXCEPTION, of Chapter 50, ACCESSORY BUILDING REGULATIONS FOR RF ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be deleted as follows:

5007 ~~SPECIAL EXCEPTION~~

5007.1 ~~Exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle E §§ 5201.~~

Section 5108, SPECIAL EXCEPTION, of Chapter 51, ALLEY LOT REGULATIONS, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be deleted as follows:

5108 ~~SPECIAL EXCEPTION~~

5108.1 ~~Exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under~~

~~Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle E § 5204.~~

The title of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be amended to read as follows:

**CHAPTER 52 RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR
RF ZONES**

Section 5200, GENERAL PROVISIONS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RF ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be amended to read as follows:

- 5200.1 The ~~following~~ provisions of this chapter provide for special exception relief ~~to~~ from the specified development standards and regulations, subject to the provisions of each section and the general special exception criteria at Subtitle X, Chapter 9.
- 5200.2 Requested relief that does not comply with specific conditions or limitations of a special exception authorized by this chapter shall be processed as a variance pursuant to Subtitle X, Chapter 10.

The title of § 5201, ADDITION TO A BUILDING OR ACCESSORY STRUCTURE, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RF ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be amended to read as follows:

5201 ~~ADDITION TO A BUILDING OR ACCESSORY STRUCTURE~~ SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS

Section 5201, SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RF ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be amended by revising the existing subsections and by adding new §§ 5201.3 and 5201.7 and renumbering, to read as follows:

- 5201.1 ~~The~~ For an addition to a principal residential building on a non-alley lot or for a new principal residential building on a substandard non-alley record lot as described by Subtitle C § 301.1, the Board of Zoning Adjustment may ~~approve~~ grant relief from the following development standards ~~of this subtitle~~ as a special exception, subject to the

provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- (a) Lot occupancy up to a maximum of seventy percent (70%) for all new and existing structures on the lot;
- (b) Yards, including alley centerline setback;
- (c) Courts; and
- ~~(d) — Minimum Lot dimension;~~
- ~~(e) (d) Pervious surface; and.~~
- ~~(f) — The limitations on enlargements or additions to nonconforming structures as set forth in Subtitle C § 202.2.~~

5201.2

~~Special exception relief under this section is applicable only to the following~~
For a new or enlarged accessory structure to a residential building with one (1) principal dwelling unit on a non-alley lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- ~~(a) An addition to a residential building~~ Lot occupancy under Subtitle E § 5003 up to a maximum of seventy percent (70%) for all new and existing structures on the lot;
- ~~(b) A new or enlarged accessory structure that is accessory to such a building; or~~ Yards, including alley centerline setback;
- ~~(c) A reduction in the minimum setback requirements of an alley lot.~~ Courts; and
- ~~(d) Pervious surface.~~

5201.3

For a new or enlarged building on an Alley Record Lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- (a) Yards, including alley centerline setback; and
- (b) Pervious surface.

~~5201.3~~ **5201.4** An **applicant application** for special exception **relief** under this section shall demonstrate that the proposed addition, **new building**, or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, ~~in particular~~ **specifically**:

- (a) The light and air available ...
- (b) The privacy of use and enjoyment ...
- (c) The **proposed** addition or accessory structure, together with the original building, **or the proposed new building**, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the **subject** street **and alley** frontage; **and**
- (d) In demonstrating compliance with paragraphs ... from public ways; **and**.
- ~~(e) — The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%).~~

~~5201.4~~ **5201.5** The Board of Zoning Adjustment may require ...

~~5201.5~~ **5201.6** This section ~~may~~ **shall** not be used to permit the introduction or expansion of a nonconforming use, **lot occupancy beyond what is authorized in this section, height, or number of stories**, as a special exception.

~~5201.6~~ — ~~This section shall not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.~~

5201.7 Where an application requests relief from the alley centerline setback requirements under this section, the Office of Zoning shall refer the application to the following agencies for their review and recommendations, to be filed in the case record within the forty (40) day period established by Subtitle A § 211:

- (a) District Department of Transportation (DDOT);
- (a) Department of Public Works (DPW);
- (b) Metropolitan Police Department (MPD);
- (c) Fire and Emergency Medical Services Department (FEMS);
- (d) DC Water (WASA); and

(e) If a historic district or historic landmark is involved, the Historic Preservation Office (HPO).

Section 5204, SPECIAL EXCEPTION CRITERIA ALLEY LOTS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RF ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be deleted:

5204 ~~SPECIAL EXCEPTION CRITERIA ALLEY LOTS [RESERVED]~~

5204.1 ~~The Board of Zoning Adjustment may approve as a special exception a reduction in the minimum yard requirements of an alley lot in an RF zone may be approved as a special exception pursuant to Subtitle X, Chapter 9~~

IV. Proposed amendments to Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES

The title of Chapter 50, ACCESSORY BUILDING REGULATIONS (RA) ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be amended to read as follows:

Chapter 50, ACCESSORY BUILDING REGULATIONS ~~(RA)~~ FOR RA ZONES

Section 5005, SPECIAL EXCEPTION, of Chapter 50, ACCESSORY BUILDING REGULATIONS FOR RA ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be deleted as follows:

5005 ~~SPECIAL EXCEPTION~~

5005.1 ~~Exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X and subject to the provisions and limitations of Subtitle F§ 5201.~~

Section 5107, SPECIAL EXCEPTION, of Chapter 51, ALLEY LOT REGULATIONS FOR RA ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be deleted as follows:

5107 ~~SPECIAL EXCEPTION~~

5107.1 ~~Exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle F§ 5201.~~

Section 5200, ADDITION TO A BUILDING OR ACCESSORY STRUCTURE, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be amended to read as follows:

5200.1 The provisions of this chapter provide for special exception relief to the specified development standards and regulations ~~in the RA zones~~ as a special exception, subject to the provisions of ~~this chapter~~ each section and the general special exception criteria at Subtitle X, Chapter 9.

5200.2 Requested relief that does not comply with specific conditions or limitations of a special exception authorized by this chapter shall be processed as a variance pursuant to Subtitle X, Chapter 10.

The title of § 5201, ADDITION TO A BUILDING OR ACCESSORY STRUCTURE, of Chapter 52, ACCESSORY BUILDING REGULATIONS FOR RA ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be amended to read as follows:

5201 ADDITION TO A BUILDING OR ACCESSORY STRUCTURE SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS

Section 5201, ADDITION TO A BUILDING OR ACCESSORY STRUCTURE, of Chapter 52, SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be amended by revising the existing subsections and by adding new §§ 5201.3 and 5201.7 and renumbering, to read as follows:

5201.1 ~~The~~ For an addition to a principal residential building on a non-alley lot or for a new principal residential building on a substandard non-alley record lot as described by Subtitle C § 301.1, the Board of Zoning Adjustment may grant ~~special-exception~~ relief from the following development standards of this subtitle as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9.

(a) Lot occupancy up to a maximum of seventy percent (70%) for all new and existing structures on the lot;

(b) Yards, including alley centerline setback; ~~and~~

Courts; ~~and~~

~~(e) (d)~~ Green ~~area-ratio~~ Area Ratio.

5201.2 ~~Special-exception relief under this section is applicable only to the following~~

For a new or enlarged accessory structure to a residential building with one (1) principal dwelling unit on a non-alley lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- (a) ~~An addition to an existing residential building; or~~ **Lot occupancy up to a maximum of seventy percent (70%) for all new and existing structures on the lot;**
- (b) ~~A new or enlarged accessory structure that is accessory to such a building.~~ **Yards, including alley centerline setback;**
- (c) **Courts; and**
- (d) **Green Area Ratio.**

5201.3 **For a new or enlarged building on an Alley Record lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:**

- (a) **Yards, including alley centerline setback; and**
- (b) **Green Area Ratio.**

~~5201.3~~ **5201.4** An application for special exception **relief** under this section shall demonstrate that the **proposed** addition, **new building**, or accessory structure, shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular **specifically**:

- (a) The light and air available ...
- (b) The privacy of use and enjoyment ...
- (c) The **proposed** addition or accessory structure, together with the original building, **or the new building**, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the **subject** street **and alley** frontage; **and**
- (d) In demonstrating compliance with paragraphs... from public ways; **and**.
- (e) ~~The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%).~~

~~5201.4~~ 5201.5 The Board of Zoning Adjustment may require ...

~~5201.5~~ 5201.6 This section shall not be used to permit the introduction or expansion of a nonconforming use, lot occupancy beyond what is authorized in this section, height, or number of stories, as a special exception.

~~5201.6~~ — ~~This section shall not be used to permit the introduction or expansion of noneonforming height or number of stories as a special exception.~~

5201.7 Where an application requests relief from the alley centerline setback requirements under this section, the Office of Zoning shall refer the application to the following agencies for their review and recommendations, to be filed in the case record within the forty (40) day period established by Subtitle A § 211:

(a) District Department of Transportation (DDOT);

(a) Department of Public Works (DPW);

(b) Metropolitan Police Department (MPD);

(c) Fire and Emergency Medical Services Department (FEMS);

(d) DC Water (WASA); and

(e) If a historic district or historic landmark is involved, the Historic Preservation Office (HPO).

Section 5204, SPECIAL EXCEPTION CRITERIA ALLEY LOTS, of Chapter 52, SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be deleted to read as follows:

~~5204~~ — ~~SPECIAL EXCEPTION CRITERIA ALLEY LOTS~~

~~5204.1~~ — ~~The Board of Zoning Adjustment may approve as a special exception a reduction in the minimum yard requirements of an alley lot in an RA zone may be approved as a special exception pursuant to Subtitle X, Chapter 9~~

V. Proposed amendments to Subtitle X, GENERAL PROCEDURES

Subsection 1001.3 of § 1001, VARIANCE TYPES, of Chapter 10, VARIANCES, of Subtitle X, GENERAL PROCEDURES, is proposed to be amended as follows:

1001.3 Examples of area variances are requests to deviate from:

(a) Requirements that ...

...

(d) Limitations on the alteration or conversion of certain structures on alley lots as stated in Subtitle D § 1610; Subtitle E § 1104; Subtitle F § 903; and Subtitle G § 1503; **and**

~~(e) — The prohibition against certain enlargements and additions to nonconforming structures as stated at Subtitle C § 202; and~~

~~(f)~~ **(e)** Preconditions to the establishment of ... a more intense use.