



Government of the District of Columbia  
**Advisory Neighborhood  
Commission 6C**

November 6, 2019

Anthony J. Hood  
Chair  
Zoning Commission  
of the District of Columbia  
441 4th Street, NW  
Suite 210-S  
Washington, DC 20001

Re: ZC 19-14 (Nonconforming structures)

Dear Chairman Hood:

We write to state our views<sup>1</sup> on the rulemaking proposal put forward by the Office of Planning. As set forth below, we generally support the proposed text with a few small but significant revisions. However, we urge the Commission to make text revisions to counterpart provisions of the zoning regulations conspicuously—and in our view inexplicably—omitted from the proposed rulemaking.

**The rulemaking as proposed**

ANC 6C offers the following suggested changes to the proposed rulemaking:

- **Section E-5201:** It is unclear to us why proposed section 5201.1 contemplates various forms of relief for “an addition to a principal residential building on a non-alley lot or for a new principal residential building on a substandard record lot,” but seemingly no such relief for a new principal residential building on a **standard** record lot.
- **Lot-occupancy relief:** We are puzzled by the text proposed for section E-5201.6 (for RF zones) and its equivalent at F-5201.6 (RA zones). To begin with, these edits would result in ungrammatical sentences ending with “a nonconforming use, lot occupancy, [sic]” More importantly, given that both section 5201 provisions *expressly* contemplate lot-occupancy special-exception relief up to 70% in 5201.1(a), it is unclear why 5201.6 should forbid such relief.

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<sup>1</sup> On October 10, 2019, at a duly noticed and regularly scheduled monthly meeting, with a quorum of six out of six commissioners and the public present, this matter came before ANC 6C. The commissioners voted 6-0 to adopt the position set out in this letter. As part of that vote, ANC 6C authorized Commissioner Mark Eckenwiler (6C04) to present testimony on its behalf.

### **Matters omitted from the proposed rulemaking**

Although the rulemaking makes substantial changes to section E-5201, it explicably fails to address its very similar counterpart, section E-5203. The omission is especially troubling because a) a member of ANC 6C raised significant (and detailed) concerns with OP nearly two years ago about E-5203 and another related section; b) ANC 6C's zoning committee had extensive public deliberations on these issues in January 2018, further refining our collective thinking on the subject; c) the result of those discussions was promptly passed along to OP in writing; and d) OP advised that it was working with DCRA to develop suitable text amendments to address those concerns, which OP conceded were legitimate.

To summarize, section E-5203 functions in parallel to E-5201, providing a framework for special-exception relief in two scenarios: where an applicant seeks to exceed the 35' height limit in the RF zones, and where an applicant requests relief from the prohibitions in section E-206 against removing or altering a "roof top architectural element," blocking an adjacent chimney or solar array, etc. (Because the relevant restrictions apply only in RF zones, there are no counterpart provisions in other subtitles of Title 11.)

Both sections suffer from numerous omissions, errors, or other defects. These include the following:

- The Zoning Commission made extensive—and welcome—changes to E-206 in case ZC 14-11B (effective April 28, 2017). Those changes included, *inter alia*, expanding the enumerated list of covered "roof top architectural elements" and establishing more detailed criteria for identifying protected solar arrays and assessing "significant interference." Unfortunately, the parallel language in E-5203.1(d) was never amended, resulting in textual conflicts between the two sections.
- Section E-206 offers no guidance on the question of whether damaged/decayed rooftop elements may be replaced in kind without violating the bar against removal/alteration.
- Section E-206.2 authorizes the granting of special exception relief, but provides no specific criteria, citing only the general provisions of Subtitle X, Chapter 9.
- Section E-5203.3 allows for special exception relief from E-206, but is cumbersome and barely comprehensible; cross-refers to a non-existent subsection; and establishes no specific criteria for granting such relief.
- Section E-5203 suffers from several loopholes allowing new buildings (but not additions) exceeding 35' in height to interfere with adjacent chimneys and/or solar systems, or to have substantial adverse impacts on the air, light, and privacy of adjacent properties.
- Section E-5203.2 allows, for no apparent reason and on no showing of need or justification, a waiver of any two of the criteria in E-5203 (with the exception of E-

5203.1(e) governing, *inter alia*, impacts on air, light, and privacy). Among other things, this would allow additions above 35' in height to impair or even entirely block adjacent chimneys and solar systems.

ANC 6C believes that these defects have existed for too long without curative action by OP, and that they have in some cases led to undesirable consequences. For example, we understand that the DCRA Zoning Administrator has taken the position that the language in E-5203 does not prohibit a new building above 35' in height from significantly interfering with a qualifying solar system on an adjacent property.

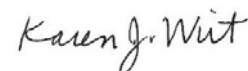
Accordingly, we urge the Commission to address these many deficiencies by amending section E-206 and E-5203. We attached proposed amendments, shown in redline/strikeout text, that would

- Delete current section E-206.2 altogether. Applicants seeking to block or interfere with adjacent chimneys and solar arrays (or to remove/relocate rooftop architectural elements) would still be able to seek variance relief for such work.
- Add a new E-206.2 treating appropriate in-kind replacement of cornices, turrets, etc. (protected from removal under E-206.1) as not being a prohibited removal/significant alteration.
- Strike current section E-5203.3, purporting to allow special-exception relief from E-206.
- Close the loopholes in E-5203 that allow new buildings over 35', but not upper-floor additions, to interfere with adjacent solar systems and/or chimneys or unduly impair the air/light/privacy of adjacent properties.
- Strike E-5203.2, which allows the BZA to arbitrarily waive any two section E-5203.1 requirements.
- Update section E-5203 to harmonize its language with the changes made to section E-206 in ZC 14-11B.

We would be happy to provide any additional information the Zoning Commission feels necessary.

Thank you for giving great weight to the views of ANC 6C.

Sincerely,



Karen Wirt  
Chair, ANC 6C

**206****ROOF TOP OR UPPER FLOOR ADDITIONS**

## 206.1

In an RF zone district, the following provisions shall apply:

- (a) A roof top architectural element original to the building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure's rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure;
- (b) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition; and
- (c) Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system. For the purposes of this paragraph, the following quoted phrases shall have the associated meanings:
  - (1) "Significantly interfere" shall mean an impact caused solely by the addition that decreases the energy produced by the adjacent solar energy system by more than five percent (5%) on an annual basis, as demonstrated by a comparative solar shading study acceptable to the Zoning Administrator; and
  - (2) "Existing solar energy system" shall mean a solar energy system that is, at the time the application for the building permit for the adjacent addition is officially accepted as complete by the Department of Consumer and Regulatory Affairs or an application for zoning relief or approval for the adjacent addition is officially accepted as complete by the Office of Zoning, either:
    - (A) Legally permitted, installed, and operating; or
    - (B) Authorized by an issued permit; provided that the permitted solar energy system is operative within

six (6) months after the issuance of the solar energy system permit not including grid interconnection delays caused solely by a utility company connecting to the solar energy system.

~~206.2 In an RF zone district, relief from the design requirements of Subtitle E § 206.1 may be approved by the Board of Zoning Adjustment as a special exception under Subtitle X Chapter 9, subject to the conditions of Subtitle E § 5203.3.~~

**206.2 For purposes of section 206.1(a), a roof top architectural element shall not be deemed to be “removed or significantly altered” if**

**(a) the original element is so substantially eroded or damaged that repair is not economically feasible, and**

**(b) a replacement element with the same dimensions, profile, and appearance, and made of the same or substantially similar materials, is installed within thirty (30) days of removal.**

## 5203 BUILDING HEIGHT

5203.1

The Board of Zoning Adjustment may grant as a special exception a maximum building height for a principal residential building and any additions thereto of forty feet (40 ft.) subject to the following conditions:

- (a) The building is not on an alley lot;
- (b) Any new principal building or addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition; ~~Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;~~
- (c) As described in Subtitle E § 206.1(c), any new principal building or addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system; ~~Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator;~~
- (d) A roof top architectural element original to the building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure's rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure; ~~A roof top architectural element original to the house such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size;~~
- (e) Any new principal building or addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:
  - (1) The light and air available to neighboring properties shall not be unduly affected;

- (2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and
- (3) The ~~conversion and any associated~~ **new principal building or** additions, 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; and
- (f) In demonstrating compliance with Subtitle E § 5203.1(e) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the **new principal building or** addition to adjacent buildings and views from public ways.

5203.2

~~The Board of Zoning Adjustment may modify or waive not more than two (2) of the requirements specified in Subtitle E §§ 5203.1(a) through (f) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle E § 5203.1(e).~~

~~5203.3~~

~~A special exception to the requirements of Subtitle E § 206 shall be subject to the conditions of Subtitle E § 5203.1(b), (c), and (d). If relief is granted from compliance with Subtitle E § 206.1(b) or (c), the special exception shall not be conditioned upon compliance with that same requirement as stated in Subtitle E § 5203.1(b)(3) and (4).~~

5203.45203.2

The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block.