



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

February 11, 2020

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

Re: ZC 19-21 (Text Amendment, Roof Top & Upper Floor Elements)

Dear Chairman Hood:

We write to state our views¹ on the rulemaking proposal put forward by the Office of Planning. As set forth below, we generally support the proposed text and believe it would benefit from a number of revisions.

Background

In ZC 19-14, ANC 6C recommended amendments to several provisions of the zoning regulations related to, but not addressed by, the amendments proposed by the Office of Planning (OP) in that rulemaking. The issues presented in our comments included

- textual inconsistencies between sections E-206 (protecting roof top architectural elements and solar systems) and E-5203.1(d) arising from changes made in ZC 14-11B;
- the absence of guidance in section E-206 on whether damaged/decayed rooftop elements may be replaced in kind without violating the prohibition against removal/alteration;
- the lack of specific criteria under sections E-206.2 and E-5203 for special-exception relief from E-206.1; and

¹ On January 8, 2020, 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.

- the puzzling clause in E-5203.2 allowing for 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).

At the November 2019 hearing, ANC 6C learned that a separate rulemaking—this one—had been set down but not yet noticed for hearing in the Register. We subsequently filed a follow-up letter agreeing with OP’s suggestion that we defer pursuit of our concerns until ZC 19-21.

Our general support for OP’s proposed text

The text put forward by OP in the Notice of Hearing addresses many of ANC 6C’s concerns. Most obviously, it simplifies the tangled text of current section E-5203 by eliminating its treatment of special-exception relief from section E-206, relocating the latter to new section E-5207. In doing so, it clarifies the applicable standards for relief and eliminates the unwarranted waiver provision for special exceptions under both the streamlined section E-5203 and the new section E-5207. In addition, OP has proposed new language in section E-206 addressing the replacement-in-kind issue.

In fact, OP’s efforts have in some places substantially improved on ANC 6C’s earlier recommendations. First, new section E-206 would extend its protections for adjacent solar systems to scenarios involving new construction as well as additions. In addition, OP has proposed extending these protections to properties in the R zones as well as to RF zones.

Recommended revisions

ANC 6C does feel that the proposed text would benefit from additional changes.

1. New Section E-5207 and protection for adjacent solar systems

First, the standards in new section E-5207 are generally appropriate in our view for special-exception relief relating to removal/alteration of rooftop architectural elements such as cornices, turrets, and the like. However, new section E-5207 is extremely ill-suited to requests for relief from the prohibition against significant interference (>5%) with an adjacent solar system. As proposed, new section E-5207 would allow for substantial impairment of an adjacent solar system—up to and apparently including 100% obstruction—so long as the proposed construction does not visually intrude upon the streetfront’s character/scale/pattern or unduly affect the air/light/privacy afforded to neighboring properties.

The first prong—visual intrusion upon streetfront character/scale/pattern—is purely esthetic, and thus entirely unrelated to the functional question of whether proposed construction should be allowed to interfere with a nearby solar system. As for the second prong, in ANC 6C’s experience this standard relates to the air/light/privacy enjoyed by human inhabitants, such as shadows cast upon a yard or window. To our knowledge, shadows cast on uninhabited rooftops have never been taken into consideration. If our understanding is accurate, then proposed new section E-5207.1(a)(1) would offer little or no protection to many rooftop solar systems.

Even if “light” in this context were construed broadly to cover impacts on rooftops, ANC 6C seriously questions the usefulness of this comparatively subjective criterion, especially when

contrasted with the carefully crafted (and highly specific) definition of “significantly interfere” in proposed section E-206.3(c).

Accordingly, ANC 6C respectfully suggests that relief from new section E-206.3 be available only through the more stringent variance process. In doing so, we recognize that this question involves tension between two urgent policies of the District: to promote the construction of new housing and to reduce the District’s carbon footprint by, among other things, fostering the installation and use of solar energy systems.

It may be prudent for the Commission to reconsider whether the 5% threshold of by-right impairment to an adjacent solar system is appropriate. Wherever the Commission chooses to strike that balance, we believe that standard should be clear and easily administered, and that requests for additional adverse impacts should be held to a higher standard than proposed section E-5207 provides. (This recommendation applies equally to the new parallel provisions in subtitle D for R zones.)

2. Protection for vents and chimneys on adjacent properties

Current sections E-206 and E-5203 both prohibit construction that would block or impede an existing, operative chimney or vent on an adjacent property. OP’s proposed text would strike this language from both sections, as well as omit it from new section E-5207.

ANC 6C urges the Commission to retain this language. We assume that OP proposes its deletion on the assumption that the Construction Codes—either as applied during the permitting process or after the fact to enforce against illegal construction—are adequate protection. In our experience, this is not the case. Retaining this protection in the zoning regulations would serve both a) to prevent the issuance of improper permits with potentially serious adverse impacts on the habitability of adjacent dwellings and b) to preserve meaningful recourse, in the form of appeals to BZA, for affected owners and occupants of neighboring properties.

3. Replacement in kind of rooftop architectural elements


As noted above, OP has proposed new language in section E-206.2 addressing our earlier question about whether (and if so, when) replacement in kind of cornices, turrets, and other protected rooftop architectural features should be exempt from the general requirement to seek special-exception relief. In several respects, OP’s substantive standards are a significant step forward and improve upon our original suggested language in ZC 19-14.

However, we believe it would be much clearer for the relevant subsection to be couched as a definition, *i.e.*, “For purposes of section 206.1, a roof top architectural element shall not be deemed to be ‘removed or significantly altered’ if” followed by a list of required conditions. The regulations normally take this approach, as OP has done in its treatment of key terms (such as “solar energy system”) in proposed section 206.3.

Attached for the Commission's convenience is ANC 6C's attempt to implement all of the above recommendations in text,² along with a few additional, minor suggested edits. We would be happy to provide any additional information the Zoning Commission desires.

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

Sincerely,



Karen Wirt
Chair, ANC 6C

² For simplicity we have overlaid our comments and proposed edits onto the redline draft attached to OP's Feb. 3 hearing report (Exhibit 6B). Owing to space limitations and the challenges posed in marking up PDF documents, one edit (for section E-206 at page 4) does not show the full redline/strikeout comparison to OP's original language.

PROPOSED TEXT AMENDMENTS

The proposed text amendments are as follows. Text in **bold underline** is new proposed text; the text in **bold strikethrough** is a proposed deletion.

I. Proposed Amendments to Subtitle D, RESIDENTIAL HOUSE (R) ZONES

A new Section 208 is proposed to be added to Chapter 2, GENERAL DEVELOPMENT STANDARDS (R), of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, to read as follows:

208 ROOF TOP OR UPPER FLOOR ELEMENTS

208.1 Any new semi-detached or row building, or an alteration or addition to an existing semi-detached or row building, including a roof structure or penthouse (the “proposed construction”), at the time of application, shall not be designed or constructed such that it will significantly interfere with the operation of a solar energy system on an abutting property, subject to the following:

(a) “Time of application” shall mean the earlier of either:

(1) the Department of Consumer and Regulatory Affairs officially accepts as complete the application for the building permit for the proposed construction; or

(2) the Office of Zoning officially accepts as complete an application for zoning relief for the proposed construction;

(b) “Solar energy system” shall mean a solar energy system of at least 2kW in size that, at the time of application, is either:

(1) Legally permitted, installed, and operating; or

(2) 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;

(c) “Significantly interfere” shall mean that the proposed construction increases the shading incident on the solar energy system by more than five percent (5%) as determined by a comparative solar shading study acceptable to the Zoning Administrator; and

(d) All applications for the proposed construction, whether for a building permit or for zoning relief, must include either one of the following:

- (1) An affidavit by the applicant stating that there is no solar energy system on an abutting property;**
- (2) A comparative solar shading study which meets the minimum standard established by the Zoning Administrator for the purpose of determining the increased annual incident solar shading by percent; or**
- (3) A written agreement executed by the owner of the impacted solar energy system accepting the interference with the solar energy system.**

208.2 Relief from the requirements of Subtitle D § 208.1 may be approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, and subject to the conditions of Subtitle D § 5207.

A new Subsection 5207 is proposed to be added to Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, to read as follows:

5207 SPECIAL EXCEPTION FROM ROOFTOP OR UPPER FLOOR ELEMENTS

5207.1 The Board of Zoning Adjustment may grant relief from the requirements of Subtitle D § 208 as a special exception under Subtitle X, Chapter 9, subject to the following conditions:

- (a) The proposed construction 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 proposed construction, 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;**

(b) In demonstrating compliance with paragraph (a), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the propose construction to adjacent buildings and views from public ways; and

(c) 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.

II. Proposed Amendments to Subtitle E, RESIDENTIAL FLATS (RF) ZONES

The title of section 206, ROOF TOP OR UPPER FLOOR ADDITIONS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLATS (RF) ZONES, is proposed to be amended as follows:

206 ROOF TOP OR UPPER FLOOR ADDITIONS ELEMENTS

Section 206, ROOF TOP OR UPPER FLOOR ELEMENTS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLATS (RF) ZONES, is proposed to be amended as follows:

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

~~(a) A Except for properties subject to review by the Historic Preservation Review Board or their designee, or the U.S. Commission of Fine Arts, a roof top architectural element original to the a principal 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; provided that:~~

~~(a) 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; and~~

~~(b) 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 [Retain this language]~~

206.2 ~~For the purposes of Subtitle E § 206.1, ordinary repairs to a roof top a roof top architectural element shall not be deemed to be “removed or significantly altered” if (a) ordinary repairs are made or (b) the Zoning Administrator has determined, based on photographs provided by the owner and other evidence acceptable to the Zoning Administrator, that an original rooftop architectural element is substantially eroded or damaged, due to no overt actions of the owner or affiliates, and the replacement will be visually indistinguishable from the original in style, dimensions, profile, and appearance when viewed from a public right of way.~~

206.3 (c) Any new building, or alteration or addition to an existing building, including a roof structure or penthouse (the “proposed construction”) at the time of application, shall not significantly interfere with the operation of an existing a solar energy system of at least 2kW on an adjacent abutting 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, subject to the following:

(a) “Time of application” shall mean the earlier of either:

(1) the Department of Consumer and Regulatory Affairs officially accepts as complete the application for the building permit for the proposed construction; or

(2) the Office of Zoning officially accepts as complete an application for zoning relief for the proposed construction;

(b) “Solar energy system” shall mean a solar energy system of at least 2kW in size that, at the time of application, is either:

(1) Legally permitted, installed, and operating; or

(2) 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;

(c) ~~(1)~~ “Significantly interfere” shall mean an impact caused solely by the addition that the proposed construction increases the decreases the energy produced by the adjacent solar energy system by more than five percent (5%) on an annual basis shading incident on the solar energy system by more than five percent (5%) as demonstrated determined by

a ~~comparative solar shading study acceptable to~~ 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.~~

(d) All applications for the proposed construction, whether for a building permit or for zoning relief, must include either one of the following:

(1) An affidavit by the applicant stating that there is no solar energy system on an abutting property;

(2) A comparative solar shading study which meets the minimum standard established by the Zoning Administrator for the purpose of determining the increased annual incident solar shading by percent; or

(3) A written agreement executed by the owner of the impacted solar energy system accepting the interference with the solar energy system.

~~206.2~~ 206.4 ~~In an RF zone district, relief~~ Relief from the ~~design~~ requirements of Subtitle E ~~§ 206.1~~ § 206.1 may be approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, and subject to the conditions of Subtitle E
~~§ 5203.3~~ 5207.

Section 5203, BUILDING HEIGHT, of Chapter 52, RELIEF FROM DEVELOPMENT STANDARDS, of Subtitle E, RESIDENTIAL FLATS (RF) ZONES, is proposed to be amended as follows:

5203.1 The Board of Zoning Adjustment may grant as a special exception under Subtitle X, Chapter 9, and subject to the conditions of this subsection, a maximum building height of up to forty feet (40 ft.) for a principal residential building and any additions thereto ~~of forty feet (40 ft.)~~ located on a non-alley lot subject to the following conditions:

(a) ~~The building is not on an alley lot;~~

~~(b) 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;~~ [Retain this language]

~~(c) 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 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) (a) Any addition~~ The proposed construction 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 additions~~ proposed construction, 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) (b) In demonstrating compliance with paragraph (a), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed construction's height to adjacent buildings and views from public ways; and~~

~~(c) 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.

~~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).~~

~~5203.4 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.~~

A new Subsection 5207 is proposed to be added to Chapter 52, RELIEF FROM DEVELOPMENT STANDARDS, of Subtitle E, RESIDENTIAL FLATS (RF) ZONES, to read as follows:

5207 SPECIAL EXCEPTION FROM ~~ROOTOP~~PROOFTOP OR UPPER FLOOR ELEMENTS [This title format isn't parallel to E-5203]

5207.1 The Board of Zoning Adjustment may grant special exception relief from the design requirements of Subtitle E § 206.1 pursuant to Subtitle X, Chapter 9, subject to the following conditions:

(a) The proposed construction 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 proposed construction, 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; [plus restore language protecting chimneys/vents]

- (b) In demonstrating compliance with paragraph (a), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed construction to adjacent buildings and views from public ways; and**
- (c) 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.**

III. Proposed Amendments to Subtitle U, USE PERMISSIONS

Section 301, MATTER-OF-RIGHT USES (RF), of Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, of Subtitle U, USE PERMISSIONS, is proposed to be amended by revising subsection 301.2 and adding new subsections 301.3 and 301.4, to read as follows:

- 301.1 The following uses shall be permitted as a matter of right ...
- 301.2 Conversion of an existing non-residential building or structure to an apartment house shall be permitted as a matter of right in an RF-1, RF-2, or RF-3 zone subject to the following conditions:
 - (a) The building or structure to be converted is in existence on the property at the time of filing an application for a building permit; **and**
 - ~~(b) The maximum height of any addition to the existing structure shall not exceed thirty-five feet (35 ft.);~~
 - (e b)** There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit, **both existing and new.**
 - ~~(d) An addition shall not extend farther than ten feet (10 ft.) past the farthest rear wall of any adjoining principal residential building on any adjacent property;~~
 - ~~(e) A roof top architectural element original to the structure 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;~~

~~(f) 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;~~

~~(g) 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 meaning:~~

~~(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; and~~

~~(h) An apartment house in an RF-1, RF-2, or RF-3 zone converted from a non-residential building prior to June 26, 2015, shall be considered a conforming use and structure, but shall not be permitted to expand, either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment pursuant to Subtitle X, Chapter 9, and Subtitle U § 320.3.~~

- 301.3** **An apartment house in an RF-1, RF-2, or RF-3 zone converted from a non-residential building prior to June 26, 2015, shall be considered a conforming use and structure, but shall not be permitted to renovate or expand, so as to increase the number of dwelling units, except as provided by Subtitle U § 320.4.**
- 301.4** **An apartment house in an RF-1, RF-2, or RF-3 zone that was either converted from a residential building prior to June 26, 2015, or converted pursuant to Subtitle A §§ 301.9, 301.10, or 301.11, shall be considered a conforming use and structure, but shall not be permitted to renovate or expand so as to increase the number of dwelling units, except as provided by Subtitle U § 320.2.**
- 301.5** **An apartment house in an RF-1, RF-2, or RF-3 zone, other than one converted pursuant to the 1958 Regulations, or pursuant to Subtitle U §§ 301.2, 301.3, 301.4, or 320.2, may renovate or expand so as to increase the number of dwelling units provided that there shall be a minimum of nine hundred square feet (900 sq. ft.) of lot area for each dwelling unit, both existing and new.**

Section 320 SPECIAL EXCEPTION USES (RF), of Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, of Subtitle U, USE PERMISSIONS, is proposed to be amended by revising subsections 320.2 and 320.3, to read as follows:

- 320.1 The uses in this section shall be permitted as a special exception ...
- 320.2 Conversion of an existing residential building existing on the lot prior to May 12, 1958, to an apartment house, **or renovation or expansion so as to increase in number of dwelling units of an existing apartment house converted from a residential building and deemed a conforming use under Subtitle U § 301.4,** shall be permitted as a special exception in an RF-1, RF-2, or RF-3 zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the following conditions:
- (a) ~~The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit to a maximum height of forty feet (40 ft.) provided the additional five feet (5 ft.) is consistent with Subtitle U §§ 320.2(f) through 320.2(i);~~
- (a) **The building to be converted or expanded is in existence on the property at the time of filing an application for a building permit;**

- (b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6; **and**
- ~~(e) — There must be an existing residential building on the property at the time of filing an application for a building permit;~~
- (c) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit, **both existing and new; and**
- ~~(e) — An addition shall not extend farther than ten feet (10 ft.) past the farthest rear wall of any adjoining principal residential building on any adjacent property;~~
- ~~(f) — 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;~~
- ~~(g) — 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 meaning:~~
 - ~~(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;~~
- ~~(h) A roof top architectural element original to the house 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;~~
- ~~(i) Any 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 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;~~~~
- ~~(j) In demonstrating compliance with Subtitle U § 320.2(i) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways;~~
- ~~(k) 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;~~
- ~~(l) The Board of Zoning Adjustment may modify or waive not more than three (3) of the requirements specified in Subtitle U §§ 320.2(e) through~~

~~§ 320.2(h) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle U § 320.2(i); and~~

~~(m) An apartment house in an RF-1, RF-2, or RF-3 zone, converted from a residential building prior to June 26, 2015, or converted pursuant to Subtitle A §§ 301.9, 301.10, or 301.11 shall be considered a conforming use and structure, but shall not be permitted to expand either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment pursuant to Subtitle X, Chapter 9, and this section.~~

320.3 Conversion of a non-residential building or other structure to an apartment house and not meeting Subtitle U § 301.2(b) ~~one (1) or more of the requirements of Subtitle U § 301.2~~, shall be permitted as a special exception in an RF-1, RF-2, or RF-3 zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9 subject to the following provisions:

~~(a) No special exception relief shall be available from the requirements of Subtitle U § 301.2(a);~~

(b a) Any 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 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;

(e b) In demonstrating compliance with Subtitle U § 320.3**(b a)**, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways; and

(d c) The Board 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.

320.4 **An existing apartment house deemed a conforming use under Subtitle U § 301.3 shall be permitted to renovate or expand so as to increase the number of dwelling units as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the provisions of Subtitle U § 320.3(a), (b) and (c) .**