

NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 19-21
(Text Amendment – Subtitles D, E, U, & X of Title 11 DCMR)
(Roof Top or Upper Floor Elements Regulations)

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 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).

The proposed amendment expands the application of certain regulations, clarify standards, and eliminate duplicative provisions that apply to the protection of roof top solar energy systems in certain zones, as follows:

- Subtitle D: Residential House (R) Zones
 - § 208 – to introduce a new solar energy system protection standard for semi-detached and row buildings in the R zones to mirror the standard currently applied in the RF zones, as modified by this text amendment (Subtitle E § 206); and
 - § 5207 – to introduce a new special exception standard for relief from § 208.

- Subtitle E: Residential Flats (RF) Zones
 - § 201 – relocated for clarity to Subtitle U § 301.5 with other limited matter of right expansions of apartment houses;
 - § 206 – to clarify the solar energy system protection standard – in particular the applicability of the standard to new construction and to modify how interference is measured;
 - § 5203 – to remove duplicative standards and reorganize for clarity; and
 - § 5207 – to introduce a new special exception provision for relief from § 206.

- Subtitle U: Use Permissions
 - § 301 – to remove duplicative provisions (in favor of Subtitle E §§ 201.4, 205.4, 206, 303, 403, 503, 603, & 5203) and reorganize for clarity;
 - § 320.2 – to remove duplicative provisions (in favor of Subtitle E §§ 201.4, 205.4, 206, 303, 403, 503, 603, & 5203) and reorganize for clarity; and
 - § 320.2(m) – relocated for clarity to § 301.4.

- Subtitle X: General Procedures
 - § 1001.3 – to correct cross references.

Setdown

On October 11, 2019, the Office of Planning (OP) filed a setdown report that served as a petition to the Commission proposing text amendments to the following provisions of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified):

At its regular public meeting held on October 21, 2019, the Commission voted to grant OP's request to set down the proposed text amendment for a public hearing, with flexibility to work with OAG.

On December 3, 2019, OP submitted a request to modify the proposed amendment to exclude properties subject to review by the Historic Preservation Review Board or the U.S. Commission on Fine Arts from regulation by the text amendment.

At its regular public meeting held on December 9, 2019, the Commission accepted OP's proposed addition.

Public Hearing

OP filed a February 3, 2020, hearing report, as required by Subtitle Z § 400.6, that recommended approval of the proposed text amendment attached to the hearing report which included revisions based on:

- OP's review of the issues raised by ANC 6C in Z.C. Case No. 19-14 that applied to this proposed text amendment; and
- OP's consultation with DCRA, DOEE, and OAG.

In addition to proposing several corrections and minor edits, ANC 6C filed a February 11, 2020, report expressing support for the proposed text amendment with the following concerns:

- Objecting to the standards of relief from the 5% maximum interference with existing operative solar systems on abutting property based on the standard special exception criteria, and instead proposing that such relief only be available as a variance (Subtitle E § 5207);
- Objecting to the proposed removal of the prohibition on additions blocking or impeding an existing operative chimney or vent on an abutting property although acknowledging that this prohibition copies the one that included in the Construction Codes (Subtitle E §§ 206 & 5203); and
- Proposing alternate language for exemptions from the requirement for special exception relief to significantly alter or replace an existing protected roof top element (Subtitle E § 206.2).

At its February 13, 2010, public hearing, the Commission heard testimony from OP in support of the proposed text amendment and from the public and ANC 6C. The public comments raised the following concerns:

- The proposed deletion of the 10-foot limitation on rear wall extensions (Subtitle U §§ 301.2 and 320.2);
- The proposed exemption for properties subject to historic preservation review from the limitations on altering roof top architectural elements;
- The consolidation of provisions governing roof top architectural elements into the specific subtitles authorized special exception relief from all roof top architectural element provisions; and
- The proposed deletion of the prohibition on additions impeding chimneys or vents.

ANC 6C testified in support of the proposed text amendment, noting that the current regulations already authorize special exception relief from all roof top architectural elements, that the proposed amendments to Subtitle E § 5203 in particular were needed to address current ambiguities, but that the proposed relief standards for solar shading limitations did not address the impact of the shading,

that the duplicative provisions prohibiting the impeding of chimneys and vents should not be deleted, and that the language governing replacement in kind of architectural elements be refined. The ANC 6C representative also noted, in his individual capacity, that the provisions in Subtitle U § 301.2 and 320.2 governing the expansion of existing apartment houses are inconsistent with regards to the requirement of 900 square feet per dwelling unit.

OP Supplemental Reports

OP filed a March 19, 2020 supplemental report that responded to the comments raised at the public hearing and in submissions to the record and clarified the intent and purpose of the proposed text amendment. The OP supplemental report emphasized that the provisions in Subtitle U governing the alteration of the 10-foot limitation on rear wall extensions in conversions and roof top architectural elements are proposed to be deleted because they are duplicative of the same provisions in Subtitle E which remain in effect. The OP supplemental report responded to ANC 6C's concerns as follows:

- Relief from the solar shading limitations - proposing revisions to Subtitle D § 208.2 and E § 206.4 requiring that an applicant for special exception relief demonstrate "good cause" and that the shading impact had been mitigated to the extent possible; and
- Proposed removal of current prohibitions on impeding chimneys or vents – continuing to support this proposed change with detailed citation of the relevant provisions of the Construction Codes with which the zoning provision duplicates and sometimes contradicts; and accepted several of the corrections.

At its April 27, 2020 virtual public meeting, the Commission expressed concern that the "good cause" and "mitigation to the extent possible" standard for relief from the solar shading limitation proposed in OP's supplemental report was too vague and asked OP to refine further in consultation with OAG.

OP filed a May 4, 2020 second supplemental report that responded to the Commission's concerns with the "good cause" standard for relief from the solar shading limitations and proposed revisions to Subtitle D § 208.2 and E § 206.4.¹

"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 Z § 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.

¹ Pursuant to OP's requested flexibility to work with OAG on the final language, this language has been moved to Subtitle D § 5207.1 and Subtitle E § 5207.2 without any substantive change for organizational consistency and clarity because specific special exception criteria are located in Chapter 52 of each subtitle.

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).)

The Commission welcomed ANC 6C’s support for the proposed text amendment and found persuasive ANC 6C’s concern that the standards for relief from the solar shading limitations address the shading impact - and believes that OP’s proposed revisions address this concern. However, the Commission was not persuaded by ANC 6C’s concerns that the prohibition on impeding chimneys and vents, which the ANC agreed were duplicative, based on the OP supplemental report’s detailed citations to the various Construction Code provisions that overlap and potentially conflict with the zoning provisions. The Commission was also not persuaded by ANC 6C’s concern that the provision governing replacement in kind of architectural roof top elements needed to be further refined as the Commission believes that the proposed language clearly defines the parameters of this provision.

At the close of its May 11, 2020, public hearing, the Commission voted to take **PROPOSED ACTION** and to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (May 11, 2020): **5-0-0** (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood, Peter A. Shapiro, and Peter G. May 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~~ text; new text is shown in **bold and underline** text).

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

A new § 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 one (1) 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 § 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 CRITERIA ROOF TOP OR UPPER FLOOR ELEMENTS

5207.1 The Board of Zoning Adjustment may grant relief from the requirements of Subtitle D § 208.1 as a special exception under Subtitle X, Chapter 9, and subject to the following conditions:

- (a) The application demonstrates the applicant has made its best efforts to minimize and mitigate the potential shading impact to solar energy systems on abutting properties to the extent reasonably practical, including possible design alternatives to the application's proposed construction and potential solar access easements;
- (b) The application shall include illustrations of the shading impact on solar energy systems on abutting properties:
- (1) As proposed by the application;
- (2) As allowed as a matter of right; and
- (3) Of possible design alternatives considered by the applicant; and
- (c) The Board may require special treatment and impose reasonable conditions as it deems necessary to mitigate shading impacts identified in the consideration of the application.

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

Subsection 201.7 of § 201, DENSITY – LOT DIMENSTIONS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLATS (RF) ZONES, is proposed to be deleted in its entirety.

~~201.7 An apartment house in an RF-1, RF-2, or RF-3 zone, whether existing before May 12, 1958, or converted pursuant to the 1958 Regulations, or pursuant to Subtitle U §§ 301.2 or 320.2, may not be renovated or expanded so as to increase the number of dwelling units unless there are nine hundred square feet (900 sq-ft.) of lot area for each dwelling unit, both existing and new.~~

The title of § 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 roof top 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~~

206.2 For the purposes of Subtitle E § 206.1, ordinary repairs to a roof top architectural element shall be permitted. Ordinary repairs may include the replacement of an original roof top architectural element when the Zoning Administrator has determined, based on photographs provided by the owner and other evidence acceptable to the Zoning Administrator, that:

- (a)** The original roof top architectural element is substantially eroded or damaged due to no overt actions of the owner or affiliates; and
- (b)** The replacement will be visually indistinguishable from the original in style, dimensions, profile, and appearance when viewed from a public right of way.

~~206.1(e)~~ **206.3** Any new building, or alteration or addition to an existing building, including a roof structure or penthouse (**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 decreases the energy produced by increases the shading incident on** the ~~adjacent~~ solar energy system by more than five percent (5%) ~~on an annual basis~~, as **demonstrated determined** 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.~~

(d) All applications for the proposed construction, whether for a building permit or for zoning relief, must include one (1) 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 that 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~~ 206.4 ~~In an RF zone district, relief~~ Relief from the ~~design~~ requirements of Subtitle E §§ 206.1 ~~and 206.2~~ 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.

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

5203 SPECIAL EXCEPTION CRITERIA BUILDING HEIGHT

Section 5203, SPECIAL EXCEPTION CRITERIA 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 40 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;~~
- ~~(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~~

~~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 — (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.

A new § 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 CRITERIA ROOF TOP OR UPPER FLOOR ELEMENTS**

5207.1 **The Board of Zoning Adjustment may grant relief from the requirements of Subtitle E § 206.1 as a special exception pursuant to Subtitle X, Chapter 9, and 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 street or alley frontage;**

(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.**

5207.2 **The Board of Zoning Adjustment may grant relief from the requirements of Subtitle E § 206.3 as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:**

- (a) The application demonstrates the applicant has made its best efforts to minimize and mitigate the potential shading impact to solar energy systems on abutting properties to the extent reasonably practical, including possible design alternatives to the application’s proposed construction and potential solar access easements;**
- (b) The application shall include illustrations of the shading impact on solar energy systems on abutting properties:**
 - (1) As proposed by the application;**
 - (2) As allowed as a matter of right; and**
 - (3) Of possible design alternatives considered by the applicant; and**
- (c) The Board may require special treatment and impose reasonable conditions as it deems necessary to mitigate shading impacts identified in the consideration of the application.**

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 § 301.2 and adding new §§ 301.3, 301.4, and 301.5, to read as follows:

301.1 The following uses shall be permitted as a matter of right ...²

301.2 ~~Conversion~~ **The conversion** of an existing non-residential building or structure to an apartment house shall be permitted as a matter of right in an RF 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~~ the building permit application for the conversion is accepted as complete by the Department of Consumer and Regulatory Affairs; and**

² The use 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.

- ~~(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 **each existing and new** dwelling unit;
- ~~(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 roof top 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 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, except as provided by Subtitle U § 320.4.

301.4 An apartment house in an RF zone that was converted from a residential building either prior to June 26, 2015, or 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, except as provided by Subtitle U § 320.2.

301.5 An apartment house in an RF zone that has not been:

(a) Converted prior to September 6, 2016;

(b) Converted pursuant to Subtitle U §§ 301.2 or 320.2; or

(c) Expanded pursuant to Subtitle U §§ 301.4, 320.2, or 320.4;

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 existing and new dwelling unit.

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 and by adding a new 320.4, to read as follows:

320.1 The uses in this section shall be permitted as a special exception ...

320.2 **Conversion** **The conversion** of an existing residential building existing on the lot prior to May 12, 1958, to an apartment house, **or the renovation or expansion of an**

existing apartment house deemed a conforming use under Subtitle U § 301.4 that increases the number of units, shall be permitted as a special exception in an RF zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and 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 the Department of Consumer and Regulatory Affairs accepts as complete the building permit application for the conversion or expansion;
- (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;~~
- ~~(d) (c)~~ There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per each existing and new dwelling unit.;
- ~~(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 roof top 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 The conversion of a non-residential building or other structure to an apartment house and not ~~meeting one (1) or more of the requirements of compliant with~~ Subtitle U § 301.2**(b)**, shall be permitted as a special exception in an RF zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and 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;
- ~~(c)~~ **(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, and subject the provisions of Subtitle U §§ 320.3(a), (b), and (c).

IV. 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 by revising paragraph (f), to read as follows:

- 1001.3 Examples of area variances are requests to deviate from:
- (a) Requirements that affect the size ...
 - (b) Minimum parking or loading requirements ...
 - (c) Limitations on the extent to which the gross floor area ...
 - (d) Limitations on the alteration or conversion of certain structures on alley lots ...
 - (e) The prohibition against certain enlargements ...
 - (f) Preconditions to the establishment of a ~~matter of right~~ **special exception** use including, but not limited to, the minimum land area requirement of Subtitle U § ~~301.2(e)~~ **320.2(c)** applicable to the conversion of a building to an apartment house as permitted by Subtitle U § ~~301.2~~ **320.2**; provided, that the ~~waiver~~ **variance** would not cause the proposed use to meet the definition of a more intense use.