

**AGENDA**

ANC 6A Economic Development & Zoning Committee  
Wednesday August 18, 2010, 7-9:00 PM  
Sherwood Recreation Center (640 10<sup>th</sup> St, NE)  
2<sup>nd</sup> Floor Community Room

7:00 pm **Call to order**

7:01 **Community Comments**

7:05 **Ongoing Status Reports:**

1. H Street Connection Redevelopment (Drew Ronneberg) (2 min)
2. Vacant Properties (Dan Golden/Phil Toomajian) (2 min)

7:11 **Old Business** - None

7:11 **New Business**

1. ZC #10-19. Map Amendment to Rezone Portions of Squares 1027, 1049, & 1050, and Lot 157 of Square 4509, and Text Amendment to Chapter 13, 11 DCMR §§ 1320 & 1324). This case was setdown by the Zoning Commission in July with the intent to rezone and extend the H Street Zoning Overlay to properties south of H Street between 13<sup>th</sup> and 15<sup>th</sup> St NE. The map amendment would also rezone the square bounded by 15<sup>th</sup> St, Benning Road, 16<sup>th</sup> St, and Gales St from a residential to commercial zone. (30 min)
2. Nomination of the Atlas Theater for the National Registry of Historic Places. (10 min)
3. MOU with 7-Eleven and Rappaport Companies. Discussion of the latest draft MOU and whether to appeal 7-Eleven's C of O if all parties do not sign the MOU. (20 min)
4. ZC #08-06. Comprehensive zoning rewrite regarding uses and height.

8:45 **Additional Community Comment (time permitting)**

Everyone is welcome! Call Drew Ronneberg with questions at 202 431-4305.

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## MEMORANDUM

**TO:** D. C. Zoning Commission

**FROM:** Jennifer Steingasser, Deputy Director, Development Review & Historical Preservation

**DATE:** July 16, 2010

**SUBJECT:** Zoning Commission Case Number 10- \_\_, Proposed Zoning Map Amendments to Square 1050 and Portions of Squares 1027, 1028 and 4509 and Related Text Amendments to the Zoning Regulations

### I. SUMMARY RECOMMENDATION

The Office of Planning (OP) recommends that the Zoning Commission set down for a public hearing proposed map and text amendments to:

- rezone the portions Squares 1027, 1049 and 1050 currently zoned C-3-A to HS-A/C-2-A (Community Business District within the H Street Northeast Overlay Arts Sub-district);
- rezone a portion of lot 157 on Square 4509 from C-2-B to R-5-C (Residence) district; and
- amend §§ 1320 and 1324 of the Zoning Regulations.

### II. APPLICATION-IN-BRIEF

Location:	Portions of Squares 1027 and 1049, Square 1050 and a portion of lot 157 on Square 4509.
Applicant:	DC Office of Planning at the request of Advisory Neighborhood Commission (ANC) 6A.
Current Zoning:	C-3-A and C-2-B (refer to Exhibit 1)
Future Land Use Map:	Moderate density residential

### III. BACKGROUND

Advisory Neighborhood Commission (ANC) 6A approached OP regarding amending the zoning map and regulations to effectively rezone a number of properties located generally south of the intersection of Maryland Avenue NE and H Street NE. The current zoning over portions of the area exceeds that normally associated with the existing Moderate Density Residential designation of the 2006 Comprehensive Plan Generalized Future Land Use Map. The ANC expressed concern that the zoning would permit, by right or by PUD, density and forms of development inconsistent with the existing and envisioned character for this area. The ANC originally requested more extensive zoning changes over a broader area, including lands along H Street within the H Street Overlay area. While OP could not support the extent of the changes originally proposed by the ANC, it was agreed that that this amendment would be advanced, targeting specific areas where the change in zoning would more clearly reflect existing land use patterns and density, and the Land Use Plan designation.

In June of 2010, OP separately submitted to the Council, as part of a broad package of proposed amendments to the Comprehensive Plan, a proposed amendment to the Generalized Future Land Use Map to change the designation for this area to be more consistent with the existing zoning. As of this date, no action has been taken by the Council.



#### IV. PROPOSAL

The OP proposal consists of three components:

- Rezone a portion of Square 4509 lot 157, currently zoned C-2-B and developed with 4 story apartment buildings, to R-5-C;
- Rezone those properties on in Square 1027 and 1049, and Square 1050 that are currently zoned C-3-A to HS-A/C-2-A; and
- Amend various provisions of Chapter 13, NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT § 1320 H STREET NORTHEAST NEIGHBORHOOD COMMERCIAL OVERLAY to apply them to the referenced portions of Square 1027, 1049 and 1050, as follows (proposed additions are shown in **bold text**<sup>1</sup>):

Amend § 1320.1 as follows:

1320.1 The H Street Northeast Neighborhood Commercial Overlay District (HS) applies to all lots fronting onto H Street, N.E. from 2nd Street to 15th Street, N.E. and zoned C-2-A, C-2-B, C-2-C, C-3-A, or C-3-B, **as well as lots within Squares 1027 and 1049 fronting onto Maryland Avenue NE or 14<sup>th</sup> Street NE; and all of Square 1050.** The Overlay is divided into three sub-districts affecting the following squares:

- (a) H Street Northeast Overlay Housing Sub-district (HS-H) encompasses properties fronting on H Street, N.E. in Squares 751, 752, 776, 777, 808, 809, 832, 833, 858, and 859 from 2nd to 7th Streets, N.E.;
- (b) H Street Northeast Overlay Retail Sub-district (HS-R) encompasses properties fronting on H Street, N.E. in Squares 889, 890, 911, 912, 933, 958, 959, 981, and 982 from 7th to 12th Streets, N.E.;
- (c) H Street Northeast Overlay Arts Sub-district (HS-A) encompasses properties fronting on H Street, N.E. in Squares 1003, 1004, 1026, 1027, 1049N, and 1049 from 12th to 15th Streets, N.E., **as well as lots within Squares 1027 and 1049 fronting onto Maryland Avenue NE or 14<sup>th</sup> Street NE; and all of Square 1050.**

Amend § 1320.2 by adding a new purpose statement as follows:

- (f) **Encourage residential uses, the reuse of existing buildings, and the redevelopment of those portions of Squares 1027, 1049 and 1050 within the Overlay but not fronting H Street.**

Amend specific subsections of § 1324 DESIGN REQUIREMENTS (HS) as follows:

1324.7 Parking structures with frontage on H Street, N.E., **Maryland Avenue NE, 14<sup>th</sup> Street NE, or 15<sup>th</sup> Street NE** shall provide not less than sixty-five percent (65%) of the ground level frontage as commercial space.

1324.8 Each new building on a lot that fronts on H Street, N.E., **Maryland Avenue NE, 14<sup>th</sup> Street NE, or 15<sup>th</sup> Street NE** shall devote not less than fifty percent (50%) of the surface area of the streetwall(s) at the ground level of each building to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to commercial uses or to the building.

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<sup>1</sup> for ease of reference, a complete version of the H Street overlay text is attached as Exhibit 3, with all changes highlighted

1324.10 Each commercial use with frontage on H Street, N.E., **Maryland Avenue NE, 14<sup>th</sup> Street NE, or 15<sup>th</sup> Street NE** shall have an individual public entrance directly accessible from the public sidewalk. Multiple-dwellings shall have at least one primary entrance on H Street directly accessible from the sidewalk.

**V. ANALYSIS**

Square 4059

The proposed amendment in this square s would downzone a portion of one lot from C-2-B to R-5-C. The Comprehensive Plan Generalized Future Land Use Map indicates this area for moderate density residential development. The existing residential buildings have no retail, and have a maximum defined height of 60 feet. The C-2-B district is normally considered a medium density mixed use zone, and allows (though a PUD) a height of 90 feet. Although normally considered a medium density district, R-5-C is the minimum residence district that allows the 60-foot height of the existing buildings.

Standard	Square 4059		Squares 1027, 1049, & 1050		
	C-2-B	R-5-C	C-3-A	C-2-A	HS-A/C-2-A <sup>2</sup>
<b>FAR</b>	3.5	3.0	4.0	2.5	3.0
<b>Non-res FAR</b>	1.5	0.0	2.5	1.5	1.0
<b>PUD FAR</b>	6.0	4.0	4.5	3.0	3.5
<b>PUD non-res FAR</b>	2.0	0.0	3.0	2.0	1.5
<b>Height</b>	65 ft.	60 ft.	65 ft.	50 ft.	55 ft.
<b>PUD Height</b>	90 ft.	75 ft.	90	65 ft.	70 ft.

Squares 1027, 1049, and 1050

The proposed amendments would rezone about 45 properties from C-3-A to HS-A/C-2-A. A comparison table showing what is permitted in each base zone as well as under the HS Overlay is shown above.<sup>3</sup> Generally, each property would have a somewhat reduced permitted height and density. The HS Overlay District is also proposed to be applied to this area, with the area included within the adjacent H Street Arts and Entertainment District. Extending the standards and design requirements established along the H Street corridor would help guide future development in this area. The placement of the H Street Overlay over portions of Squares 1027, 1049 and all of 1050 would also:

- Require that any new fast food restaurant, funeral home, parking garage, or the construction of a new building or enlargement of an existing building by 50% or more on a lot that has at least 6,000 sq. ft. of land area would be subject to BZA approval of a special exception, judged against the purposes and design guidelines of the HS Overlay.
- Prohibit a number of uses, including gas station, automobile sales, and parking lot.
- Apply a series of design related requirements, mainly relate to the provision and design of ground floor arts and retail space.
- Apply a series of additional review criteria and guidelines to special exception review.
- For a Planned Unit Development (PUD) application, limit the use of additional height and density to residential or preferred uses.

<sup>2</sup> Bonuses are allowed for providing specified uses, preserving existing building facades, etc., so not all provisions that impact height or density may apply to each property

<sup>3</sup> This table does not incorporate Inclusionary Zoning (IZ) requirements and allowances. Most of the properties are very small so would not provide 10 or more units, and are currently developed with non-residential development.

## VI. AREA DESCRIPTION

The subject properties are located generally close to the intersection of Maryland Avenue and H Street NW. Although there are some vacant lots in the area, existing development generally consists of a mixture of one- to two-story residential and commercial buildings, institutional uses and vacant properties (including a service station) on Squares 1027, 1049 and 1050; and four-story residential apartment buildings on the subject portion of Square 4509.

Properties to the north on Square 1027 and 1049 are developed with buildings of similar scale occupied by commercial and residential uses with frontage along H Street in an HS/C-3-A district. Properties south of Square 1050 and across G Street are mostly developed with two-story row dwellings in an R-4 district. Properties to the south and east of the commercially zoned portion of lot 157 on Square 4509, in the same Pentacle Limited Partnership development, are occupied by one-family row dwellings and identical four-story apartment buildings, respectively, in an R-5-B district.

The subject area is proximate to H Street, which has good bus service and is anticipated to have streetcar service connections to Union Station. H Street is undergoing a revitalization and is becoming increasingly popular as an arts and entertainment area.

## VII. COMPREHENSIVE PLAN

The 2006 Comprehensive Plan designates the subject properties for moderate-density residential uses. The Plan also provides the following policy guidance:

- The Land Use Element of the Plan lists the following among the critical land use issues facing the District of Columbia: ...
  - Promoting neighborhood conservation
  - Creating and maintaining successful neighborhoods ...
  - Directing growth and new development to achieve economic vitality while minimizing adverse impacts on residential areas and open space ...
- General policy guidance in the Chapter 15, the Capitol Hill Area Element of the Plan, includes:
  - Clustering of Retail (Policy CH-2.1.2):

*“Recognize that the existing supply of retail space on the H Street NE corridor may exceed demand, and that retail development should therefore be clustered on the 700-1100 blocks (1511.7).”*

Rezoning properties on Squares 1027, 1049 and 1050 from C-3-A to HS/C-2-A would support the referenced plan guidance by conserving the existing neighborhood character, restricting the development of higher density mixed-use projects, and establishing standards to guide the potential redevelopment of properties within the area.

Rezoning the portion of Square 4509 from C-2-B to R-5-C would result in zoning consistent with the form and character of existing development, and remove the potential for higher density mixed-use development that would be inconsistent with the current Plan designation, without moving the existing apartment buildings into a nonconforming status.

Accordingly, this proposal is not inconsistent with the intent of the Comprehensive Plan or the neighborhood character.

## VIII. RECOMMENDATION

The Office of Planning recommends that the Zoning Commission set down this application for public hearing.

Attachments: Exhibit 1 - Vicinity of 1400 Maryland Avenue NE  
Exhibit 2 - Proposed Zoning Changes  
Exhibit 3 - Complete H Street Neighborhood Overlay Text Highlighting the Proposed Amendments

Arthur Jackson, Case Manager

JS/afj



CPID0018670



### Zoning Consistency Case in the Vicinity of 1400 Maryland Avenue NE



Government of the District of Columbia  
Office of Planning ~ June 25, 2010

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

**LEGEND**

- Buildings
- Lots
- Zoning Districts
- Zoning Label
- Street Centerlines
- Property Squares
- Buildings



CPI/D0018822



### ZC 10- Zoning Consistency Case Proposed Zoning Changes



Government of the District of Columbia  
Office of Planning ~ July 16, 2010

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

#### LEGEND

- Zoning Districts
- R-5-B Zoning Label
- Street Centerlines
- Property Squares
- Buildings



## Complete H Street Neighborhood Overlay Text Highlighting the Proposed Amendments

### 1320 H STREET NORTHEAST NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT (HS)

- 1320.1 The H Street Northeast Neighborhood Commercial Overlay District (HS) applies to all lots fronting onto H Street, N.E. from 2nd Street to 15th Street, N.E. and zoned C-2-A, C-2-B, C-2-C, C-3-A, or C-3-B, **as well as lots within Squares 1027 and 1049 fronting onto Maryland Avenue NE or 14<sup>th</sup> Street NE; and all of Square 1050.** The Overlay is divided into three sub-districts affecting the following squares:
- (a) H Street Northeast Overlay Housing Sub-district (HS-H) encompasses properties fronting on H Street, N.E. in Squares 751, 752, 776, 777, 808, 809, 832, 833, 858, and 859 from 2nd to 7th Streets, N.E.;
  - (b) H Street Northeast Overlay Retail Sub-district (HS-R) encompasses properties fronting on H Street, N.E. in Squares 889, 890, 911, 912, 933, 958, 959, 981, and 982 from 7th to 12th Streets, N.E.;
  - (c) H Street Northeast Overlay Arts Sub-district (HS-A) encompasses properties fronting on H Street, N.E. in Squares 1003, 1004, 1026, 1027, 1049N, and 1049 from 12th to 15th Streets, N.E., **as well as lots within Squares 1027 and 1049 fronting onto Maryland Avenue NE or 14<sup>th</sup> Street NE; and all of Square 1050.**
- 1320.2 In addition to the purposes in § 1300, the purposes of the HS Overlay District are to:
- (a) Implement the policies and goals of the Comprehensive Plan and the H Street NE Strategic Development Plan as approved by the Council of the District of Columbia on February 17, 2004 (R15-460);
  - (b) Encourage residential uses along the H Street, N.E. corridor, particularly provision of affordable units and reuse of upper floors;
  - (c) Encourage the clustering of uses into unique destination districts along the corridor, specifically a housing district from 2nd Street to 7th Street, N.E.; a neighborhood-serving retail shopping district from 7th Street to 12th Street, N.E.; and an arts and entertainment district from 12th Street to 15th Street, N.E.;
  - (d) Establish design guidelines for new and rehabilitated buildings that are consistent with the historic character and scale of the Overlay District; and
  - (e) Encourage the reuse of existing buildings along the corridor; and
  - (f) **Encourage residential uses, the reuse of existing buildings, and the redevelopment of those portions of Squares 1027, 1049, and 1050 within the Overlay but not fronting H Street.**
- 1320.3 For purposes of § 1302, the designated use area shall include any lot within the HS Overlay District that fronts on H Street, N.E. In addition to the ground floor uses designated by §1302.2, the following uses are also designated in each Sub-district:
- (a) HS-H Sub-district: Residential Uses
  - (b) HS-R Sub-district:
    - (1) Candy store;
    - (2) Computer store;
    - (3) Delicatessen;
    - (4) Fabric store;
    - (5) Health or exercise studio;
    - (6) Ice cream parlor;
    - (7) Plant store or nursery;
    - (8) Secondhand or consignment store;
    - (9) Shoe store;
    - (10) Video rental and sales; and
    - (11) Other similar personal/consumer service establishment or retail use.
  - (c) HS-A Sub-district: Any use listed in §1323.2.
- 1320.4 The following buildings, structures, and uses are permitted only by special exception if approved by the Board of Zoning Adjustment, in accordance with the standards specified in §§ 3104 and 1325 of this Title.

- (a) Any use requiring a special exception in the underlying zone, except a new gasoline service station;
- (b) Accessory parking spaces located off-site from the principal use;
- (c) Fast food restaurant establishment or food delivery service provided:
  - (1) No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a Residence District, unless separated therefrom by a street or alley;
  - (2) If any lot line of the lot abuts an alley containing a zone district boundary line for a Residence District, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line;
  - (3) Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate and shall not face a Residence District; and
  - (4) This use shall occupy no more than twenty-five percent (25%) of the linear street frontage within the HS Overlay District as measured along the lots that face the designated roadway;
- (d) Funeral, mortuary, or undertaking establishment;
- (e) Parking garage; and
- (f) Construction of a new building or enlargement of the gross floor area of an existing building by fifty percent (50%) or more, if located on a lot that has six thousand square feet (6,000 sq. ft.) or more of land area.

1320.5 The following uses are prohibited:

- (a) Automobile and truck sales;
- (b) Automobile laundry;
- (c) Boat or marine sales;
- (d) Gasoline service station;
- (e) Outdoor storage of any materials; and
- (f) Parking lot.

1320.6 The provisions of §1302.5 shall not apply to the HS Overlay District.

1320.7 For purposes of §1303.2, the designated roadway within the HS Overlay Districts shall be H Street, N.E.

**1321 HS OVERLAY HOUSING SUB-DISTRICT (HS-H)**

1321.1 The purpose of the housing sub-district is to encourage housing.

1321.2 The floor area ratio for new construction in the HS-H Sub-district may not exceed 0.5 FAR for non-residential uses, except as provided in §1321.3.

1321.3 New construction that preserves an existing façade constructed before 1958 is permitted to use an additional 1.0 FAR, for up to a maximum non-residential density of 1.5 FAR, for office uses or neighborhood-serving retail uses as permitted in §§701.1 and 701.4.

1321.4 In the event that a grocery store is constructed on Square 776, a maximum nonresidential density of 1.5 FAR shall be permitted on that Square.

**1322 HS OVERLAY RETAIL SUB-DISTRICT (HS-R)**

1322.1 The HS Overlay Retail Sub-district is intended to encourage retail uses.

1322.2 For the purposes of §§ 1322.3 and 1326.1(a), preferred uses in the HS-R Sub-district are:

- (a) Antique store;
- (b) Apparel and accessories shop;
- (c) Appliance sales or repair;
- (d) Bakery;
- (e) Banking or financial institution (excluding check cashing services);
- (f) Bicycle shop;
- (g) Bookstore;

- (h) Café, delicatessen, or lunch counter (excluding fast food);
- (i) Candy store
- (j) Camera/photo sales;
- (k) Catering establishments;
- (l) Cobbler or shoe repair;
- (m) Collection center for dry cleaning;
- (n) Computer store;
- (o) Cosmetics or toiletries sale;
- (p) Department store;
- (q) Dressmaker or tailor;
- (r) Drug store;
- (s) Dry goods store;
- (t) Electronic sales;
- (u) Fabric store;
- (v) Film exchange or development;
- (w) Florist;
- (x) Gift or card shop;
- (y) Grocery store;
- (z) Gym or exercise studio;
- (aa) Hardware store;
- (bb) Hobby shop;
- (cc) Home furnishing sales;
- (dd) Ice cream parlor;
- (ee) Interior decorating shop;
- (ff) Jewelry shop;
- (gg) Office supplies or services store;
- (hh) Music or instrument sales;
- (ii) Pet shop;
- (jj) Pharmacy;
- (kk) Plant store or nursery;
- (ll) Professional services or office not on the ground floor;
- (mm) Restaurant (excluding fast food);
- (nn) Secondhand or consignment store;
- (oo) Shoe store;
- (pp) Sporting goods; and
- (qq) Video rental and sales.

1322.3 New construction that preserves an existing façade constructed before 1958 is permitted 0.5 FAR in addition to the non-residential density permitted in the underlying zone for non-residential preferred uses listed in §1322.2.

**1323 HS OVERLAY ARTS SUB-DISTRICT (HS-A)**

1323.1 The HS Overlay Arts Sub-district is intended to encourage arts and entertainment uses.

1323.2 For the purposes of §§ 1320.3(c), 1323.4 and 1326.1(a), preferred uses are:

- (a) Art center;
- (b) Art gallery;
- (c) Art or performing arts school;
- (d) Artist housing;
- (e) Artist studio;
- (f) Artists' supply store;
- (g) Arts services, including set design and restoration of artworks;
- (h) Bar, nightclub, or cocktail lounge;
- (i) Book store;
- (j) Cabaret;
- (k) Coffee shop, café, or delicatessen;
- (l) Concert hall or other performing arts space;
- (m) Library;
- (n) Movie theater;
- (o) Museum;
- (p) Musical instruments store;
- (q) Performing arts ticket office or booking agency;
- (r) Photographic studio;
- (s) Picture framing shop;
- (t) Printing, lithographing, or photoengraving establishment, in each case not exceeding twenty-five hundred square feet (2,500 ft.<sup>2</sup>) of gross floor area;
- (u) Record store;
- (v) Recording studio;
- (w) Restaurant; and
- (x) Theater.

1323.3 The floor area ratio in the HS-A Sub-district for new construction may not exceed 1.0 FAR for non-residential uses except as provided in §1323.4.

1323.4 New construction that preserves an existing façade constructed before 1958 is permitted 0.5 FAR in addition to the non-residential FAR permitted in the underlying zone for non-residential preferred uses listed in §1323.2.

#### **1324 DESIGN REQUIREMENTS (HS)**

1324.1 The design requirements of §§ 1324.2 through 1324.16 shall apply to any lot in the HS Overlay District for which a building permit was applied after October 25, 2004.

1324.2 Buildings shall be designed and built so that not less than seventy-five percent (75%) of the streetwall(s) to a height of not less than twenty-five feet (25 ft.) shall be constructed to the property line abutting the street right-of-way. Buildings on corner lots shall be constructed to both property lines abutting public streets.

1324.3 New construction that preserves an existing façade constructed before 1958 is permitted to use, for residential uses, an additional 0.5 FAR above the total density permitted in the underlying zone district for residential uses.

1324.4 In C-2 Districts within the HS Overlay District, a seventy percent (70%) residential lot occupancy shall be permitted.

1324.5 For the purposes of this Section, the percentage of lot occupancy may be calculated on a horizontal plane located at the lowest level where residential uses begin.

1324.6 For the purposes of § 1324.5, "residential uses" includes single-family dwellings, flats, multiple dwellings, rooming and boarding houses, and community-based residential facilities.

1324.7 Parking structures with frontage on H Street, N.E., **Maryland Avenue NE, 14<sup>th</sup> Street NE, or 15<sup>th</sup> Street NE** shall provide not less than sixty-five percent (65%) of the ground level frontage as commercial space.

1324.8 Each new building on a lot that fronts on H Street, N.E., **Maryland Avenue NE, 14<sup>th</sup> Street NE, or 15<sup>th</sup> Street NE** shall

devote not less than fifty percent (50%) of the surface area of the streetwall(s) at the ground level of each building to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to commercial uses or to the building.

- 1324.9 Security grilles shall have no less than seventy percent (70%) transparency.
- 1324.10 Each commercial use with frontage on H Street, N.E., **Maryland Avenue NE, 14<sup>th</sup> Street NE, or 15<sup>th</sup> Street NE** have an individual public entrance directly accessible from the public sidewalk. Multiple-dwellings shall have at least one primary entrance on H Street directly accessible from the sidewalk.
- 1324.11 Buildings shall be designed so as not to preclude an entrance every forty feet (40 ft.) on average, for the linear frontage of the building, excluding vehicular entrances, but including entrances to ground floor uses and the main lobby.
- 1324.12 The ground floor level of each building or building addition shall have a uniform minimum clear floor-to-ceiling height of fourteen feet (14 ft.).
- 1324.13 Buildings subject to § 1324.12 shall be permitted an additional 5 feet (5 ft.) of building height over that permitted in the underlying zone.
- 1324.14 Projection signs shall have a minimum clearance of eight feet (8 ft.) above a sidewalk and fourteen feet (14 ft.) above a driveway, project no more than three feet, six inches (3 ft., 6 in.) from the face of the building, and end a minimum of one foot (1 ft.) behind the curbline or extension of the curbline.
- 1324.15 Façade panel signs shall not be placed so as to interrupt windows or doors and shall project no more than twelve inches (12 in.) from the face of the building. 1342.16 Roof signs are prohibited. [ORDER No. 04-27; 03/10/06]

### 1325 SPECIAL EXCEPTION REQUIREMENTS (HS)

- 1325.1 The buildings, structures, and uses listed in § 1320.4 and exceptions from the requirements of the H Street Overlay District shall be permitted as a special exception if approved by the Board of Zoning Adjustment after public hearing, based on § 3104, provided the following criteria and the requirements of § 1304 are met:
- (a) The project is consistent with the design intent of the design requirements of § 1324 and the design guidelines of the H Street N.E. Strategic Development Plan;
  - (b) The architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located; and, if a historic district or historic landmark is involved, the Office of Planning report to the Board shall include review by the State Historic Preservation Officer and a status of the project's review by the Historic Preservation Review Board;
  - (c) Vehicular access and egress shall be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions;
  - (d) Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences;
  - (e) Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences; and
  - (f) The size, type, scale, and location of signs shall be compatible with the surrounding corridor and consistent the design guidelines of the H Street N.E. Strategic Development Plan.
- 1325.2 An applicant may demonstrate compliance with § 1325.1(f) by demonstrating that the signage will be exclusively located on upper facades, awnings, and transom windows, constructed of durable materials, and sensitively designed; and will not affect more than twenty percent (20%) of display windows, consist of backlit box signs or neon product advertisements, block visibility into a store, or be overly obtrusive.
- 1325.3 The Board may impose requirements pertaining to design, appearance, signs, massing, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the H Street Overlay District.
- 1325.4 Applicants shall demonstrate that projects requiring a special exception shall be consistent with the design intent of the design requirements, of § 1324 and the design guidelines of the H Street N.E. Strategic Development Plan.

### 1326 PLANNED UNIT DEVELOPMENT PROVISIONS (HS)

- 1326.1 A planned unit development (PUD) in the HS Overlay District shall be subject to the following provisions in addition to those of Chapter 24 of this Title:
- (a) The additional height and floor area above that permitted as a matter-of-right shall be used only for housing or the preferred uses listed in §§ 1322.2 and 1323.2 and
  - (b) The PUD process shall not be used to reduce requirements in this Chapter for designated uses, typically retail, service, entertainment, and arts uses.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
HISTORIC PRESERVATION OFFICE



August 9, 2010

Advisory Neighborhood Commission 6A  
P.O. Box 75115  
Washington, DC 20013

Re: National Register of Historic Places Application #00-02  
Atlas Theater and Shops  
1313-1333 H Street, NE (Square 1027, Lot 158)

Dear Commissioners:

This letter is to inform you that the District of Columbia Historic Preservation Review Board has scheduled a public hearing on the D.C. Preservation League's application for listing the property referenced above in the National Register of Historic Places. Although the Board made a positive recommendation for listing the property in October 2002 and the property was designated a D.C. landmark, the nomination was not forwarded to the National Register pending the completion of the rehabilitation work at the site. As the rehabilitation was extensive, and several years have passed, the National Register staff, in accordance with their regulations, has requested that the HPRB, in its capacity as state review board, to make a recommendation about the property in its current condition. It is likely that the Board will place this matter on its Consent Calendar.

The Board will consider the property's nomination to the National Register of Historic Places in a public hearing beginning at 10:00 a.m. on September 23, 2010 at 441 Fourth Street NW (One Judiciary Square), in Room 220 South.

A copy of the application is still on file and available to the public at the Historic Preservation Office, and a copy of the staff recommendation will be available at the office five days prior to the hearing. The office also provides information on the D.C. Inventory of Historic Sites, the National Register of Historic Places, and Federal tax provisions affecting historic property.

The National Register is the Federal government's official list of prehistoric and historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our nation's heritage. Listing provides recognition of the historic importance of properties and assures review of Federal undertakings that might affect the character of such properties. If a property is listed in the Register, certain Federal rehabilitation tax credits for rehabilitation and other provisions may apply. Public visitation rights are not required of owners. The results of listing in the National Register are as follows:

*Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects:*  
Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow

the Advisory Council on Historic Preservation an opportunity to comment on all projects affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

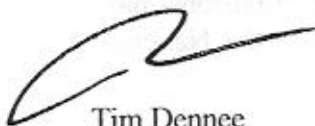
*Eligibility for Federal Tax Provisions:* If a property is listed in the National Register, certain Federal tax provisions may apply. The Tax Reform Act of 1986 (which revised the historic preservation tax incentives authorized by Congress in the Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Reform Act of 1984) provides, as of January 1, 1987, for a 20% investment tax credit with a full adjustment to basis for rehabilitating historic commercial, industrial, and rental residential buildings. The former 15% and 20% Investment Tax Credits (ITCs) for rehabilitation of older commercial buildings are combined into a single 10% ITC for commercial and industrial buildings built before 1936. The Tax Treatment Extension Act of 1980 provides Federal tax deductions for charitable contributions for conservation purposes of partial interests in historically important land areas or structures. Whether these provisions are advantageous to a property owner is dependent upon the particular circumstances of the property and the owner. Because the tax aspects outlined above are complex, individuals should consult legal counsel or the appropriate local Internal Revenue Service office for assistance in determining the tax consequences of the above provisions. For further information on certification requirements, please refer to 36 CFR 67.

*Qualification for Federal Grants for Historic Preservation When Funds Are Available:* The National Historic Preservation Act of 1966, as amended, authorizes the Secretary of the Interior to grant matching funds to the States (and the District of Columbia) for, among other things, the preservation and protection of properties listed in the National Register.

Owners of private properties nominated to the National Register have an opportunity to concur with or object to listing in accord with the National Historic Preservation Act and 36 CFR 60. Any owner or partial owner of private property who chooses to object to listing must submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, and objects to the listing. Each owner or partial owner of private property has one vote regardless of the portion of the property that the party owns. If a majority of private property owners object, a property will not be listed. However, the State Historic Preservation Officer shall submit the nomination to the Keeper of the National Register of Historic Places for a determination of eligibility for listing in the National Register. If the property is then determined eligible for listing, although not formally listed, Federal agencies will be required to allow the Advisory Council on Historic Preservation an opportunity to comment before the agency may fund, license, or assist a project which will affect the property. If an owner chooses to object to the listing of the property, the notarized objection must be submitted to the above address by the date of the Review Board meeting.

For additional information please call me at (202) 442-8847.

Sincerely,



Tim Dennee  
Landmarks Coordinator

DRAFT MEMORANDUM OF UNDERSTANDING BETWEEN ANC 6A, RAPPAPORT COMPANIES AND 7-ELEVEN CORPORATION REGARDING THE BUSINESS OPERATION AT 957 H ST NE, WASHINGTON DC, 20002

1. 7-Eleven agrees to educate and instruct all its employees to engage in active enforcement of no-loitering in front of and around store. The store is on private property and loitering can be construed as trespass – anyone who does not leave when asked should be reported to the police for trespass.
2. 7-Eleven and Rappaport agree to detail and implement debarment procedures for repeat offenders in violation of loitering policy and committing other violations on private property surrounding store. Records of repeat offenders shall be maintained. Upon a third incident of misbehavior or refusal to voluntarily comply with no loitering policy, the parties shall submit the violator for debarment and notify MPD of the same.
3. 7-Eleven agrees to ~~ban~~ not to sell certain minicigars (such as swisher sweets or black and milds) and flavored cigars/ philly blunts, tobacco products individually (aka singles). In addition 7-Eleven agrees not to sell rolling paper, which are commonly refashioned for illicit purposes, including minicigars (such as swisher sweets or black and milds), flavored cigars/ philly blunts, and rolling papers or other products that law enforcement has identified as primarily used in connection with the consumption of marijuana.
4. Minimum staffing levels to ensure adequate safety and staffing in order to enforce no loitering and to prevent criminal activity on property in evening hours. At least two staff members shall be present and on duty at all times
5. ~~7-Eleven aAgrees~~ 7-Eleven agrees to limit sales of fast food items so as not to constitute a “fast food establishment” for zoning purposes. not to sell chicken wings containing bones. However, the ANC agrees that 7-Eleven may sell boneless chicken wings. The sStore may not sell chicken wings, which are Discarded chicken wing bones are -especially problematic ~~for littering and~~ attracting vermin, such as squirrels and rats, and ~~also which~~ cause neighborhood dogs to choke ~~when left on street. The store’s prepared foods section should be limited to no more than 10% of its interior retail space. (Do Not Agree)~~
6. Minimum security standards in and around the facilities (cameras in front and side of store to cover sidewalk and parking area, lighting along both H Street and 10<sup>th</sup> Street sides that amplifies visibility without affecting residential neighbors along 10<sup>th</sup>)
7. Cleanliness standards. Store shall commit to cleaning property, parking lot, and sidewalk from alley on 10<sup>th</sup> around corner onto H Street no less than three times per business day. Rappaport Companies agrees to extend porter service along side street up 1.5 blocks to include area from Sherwood Recreation Center parking lot and back along 10<sup>th</sup> Street to store entrance.
8. Participation in police detail. Rappaport Companies and 7-Eleven agree to participate in any ongoing reimburseable police detail along the eastern end of the H Street Corridor so long as such a program is in operation and 7-Eleven continues to operate after 2 am unless said program’s cost would exceed \$400 per month.
9. Limit after-hours vehicular access to 9<sup>th</sup> St. Rappaport Companies and 7-11 agree to leave the arm of the traffic gate which accesses 10<sup>th</sup> St in the down position when the when the parking booths are unattended. The arm of the 9<sup>th</sup> St traffic gate will remain in



the up position when the traffic booths are unattended to allow vehicular access from H Street. (Agree)

10. This agreement shall carry over if/when the store is transferred to a franchisee. This agreement binds ANC6A, Rappaport Companies, 7-Eleven and any of its successor franchisees who operate in the H Street Connection property on H Street NE.

Signed,

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Kelvin Robinson, ANC 6A Chair

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William Washington, 7-Eleven Corporation

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Mark Bradshaw, Rappaport Companies

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF PUBLIC HEARING**

**TIME AND PLACE:**           **Monday, September 20, 2010, @ 6:30 PM**  
                                  **Office of Zoning Hearing Room**  
                                  **441 4<sup>th</sup> Street, N.W., Suite 220**  
                                  **Washington, D.C. 2001**

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**CASE NO. 08-06 (Comprehensive Zoning Regulations Rewrite: Chapters B-2 & B-4)**

**THIS CASE IS OF INTEREST TO ALL ANCs**

This Notice of Public Hearing announces the first of several proposed draft zoning text chapters the Zoning Commission for the District of Columbia (the “Commission”) will consider under this docket. Both chapters presented here reflect previous recommendations to the Commission from the Office of Planning that were the subject of public hearings.

This hearing will consider proposed text for changes to the Zoning Regulations in relation to the control of uses and the regulation of height. The proposed uses chapter reflects a new use category system of classification that the Office of Planning has recommended be used to control uses in individual zones. Under the proposal, uses would be divided into 29 categories that will each be separately regulated in each zone. In the general chapter, the classification system is described and a detailed definition is provided for each use category.

The proposed height chapter reflects the consolidation of height regulations from throughout the code into one general height chapter. The version being proposed creates street-based height limits in zoning that reflect Height Act limitations. Explicit Height Act interpretations approved by DCRA would also be attached to the Zoning Regulations as an appendix.

The new chapters are based upon a proposed codification of Title 11 into 10 subtitles. A description of this codification can be found at [www.dczoningupdate.org/publicnotices.asp](http://www.dczoningupdate.org/publicnotices.asp). The Commission has not formally approved this codification system.

This hearing, like all others under this case number, is being scheduled without adherence to the set-down requirements stated at 11 DCMR § 3011 because the Commission waived the requirement at its public meeting held April 14, 2008. The Commission also waived the requirement that a pre-hearing statement be submitted before hearing notices can be published.

More detailed information, discussion, and analysis for the proposed text can be found in the accompanying report prepared by OP. This document can be viewed by clicking on “Height and Use Report” at [www.dczoningupdate.org/documentcenter.asp](http://www.dczoningupdate.org/documentcenter.asp).

Title 11 DCMR (Zoning) is proposed to be amended as follows:

**Create new Chapter 2 in Title 11 Subtitle B:**

**CHAPTER 2 USE CATEGORY REGULATIONS**

**200 INTRODUCTION TO USE REGULATION**

200.1 This chapter provides general *use* regulations that apply regardless of *zone*.

200.2 The purpose of *use* regulations is to:

- (a) Ensure an efficient mix, concentration, and separation of uses;
- (b) Provide for a systemic method of permission; and
- (c) Effectively balance the competing demands for land.

200.3 The purpose of this chapter is to:

- (a) Organize and regulate uses into categories based on common functional, activity, or physical characteristics;
- (b) Establish rules for assigning and codifying use categories;
- (c) Provide clear guidance to property owners and administrative officials;
- (d) Establish a use system that remains current and is easily updated and minimizes excessive amendments; and
- (e) Establish regulations for the operation of temporary uses.

**201 RELATIONSHIP TO LAND USE SUBTITLES**

201.1 In addition to the general regulations of this subtitle each land use subtitle shall include a *use categories* regulations chapter containing *use categories* regulations specific to that subtitle, including tables identifying *use* requirements, permissions, conditions, and exceptions specific to each zone.

201.2 Use permissions shall be codified and presented in the appropriate *use category* permission table as follows:

- (a) Each cell in the *use category* permission table shall contain a letter representing the *use category* permission within a specific zone:
  - (1) “P” indicates *uses* that are permitted by-right in the applicable *zone*;

- (2) “N” indicates *uses* that are prohibited in the applicable *zone*;
  - (3) “C” indicates *uses* that are permitted in the applicable *zone* only when the use complies with listed conditions;
  - (4) “S” indicates *uses* that are permitted only upon Board of Zoning Adjustment approval of a special exception; and
  - (5) “A” indicates *uses* that are permitted only as an accessory to a permitted principle use.
- (b) Conditions and special exception criteria shall be indicated within the table by a code reference number within the relevant cell for the use; and
  - (c) Corresponding lists of conditions and special exception criteria shall be located in the *permitted use by condition*, *special exception use*, or *accessory use conditions* sections.

## **202 RULES FOR DETERMINING USE CATEGORIES**

- 202.1 *Use categories* describe activities being performed on-site. They are groups of uses that have similar activities, functions, physical characteristics, impacts, or operational behaviors.
- 202.2 All individual *uses* shall be included in at least one *use category*, and may be included in multiple *use categories*. On-site and off-site activities may cause a use to be included in more than one category.
- 202.3 *Uses* may have one or more *accessory uses*. Buildings or lots with more than one *principle use* are addressed in § B-203. *Accessory uses* are addressed in § B-204.
- 202.4 Descriptions of *use categories* shall include a definition, examples, and potential exceptions:
- (a) Definitions are composed of a series of characteristics that include similar activities, functions, physical characteristics, impacts, or operational behaviors;
  - (b) Examples and exceptions are provided to illustrate typical uses within a category, give clarity to the definitions, and assist in determination of an appropriate categorization of a use; they are not intended to be comprehensive lists of *uses*;
  - (c) The following applies to examples:

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Z.C. CASE NO. 08-06  
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- (1) They may include *uses* which may be particularly difficult to classify;
- (2) They are included based on their operational or functional similarities, or common meanings of terms, they are not included based on business name alone; and
- (3) Where a term is not defined by the regulations, it will have the meanings given in *Webster's Unabridged Dictionary*; and
- (d) Definitions should be applied as the sum of their components, using the content of definitions, examples, and exceptions to determine the use category, rather than an individual subsection alone.

202.5 The Zoning Administrator shall determine a use to be within the *use category*, or categories, whose definition is most consistent with the activities, functions, physical characteristics, and impacts of the use.

202.6 The following items may be considered by the Zoning Administrator when determining what *use category* a use is within, and whether the activities constitute a *use*:

- (a) The description of the activities in relationship to the definition of each *use category*;
- (b) Similarities in function to the examples given in the definition of each *use category*, based on:
  - (1) The relative amount of site or floor space and equipment devoted to the activity;
  - (2) Relative amounts of sales from each activity;
  - (3) The customer type for each activity;
  - (4) The relative number of employees in each activity;
  - (5) Hours of operation;
  - (6) Building and site arrangement;
  - (7) Number and type of vehicles used;
  - (8) The relative number of vehicle trips generated by the activity; or
  - (9) How the *use* advertises itself; and

- (c) Exceptions which are explicitly excluded from the definition of the use category.

202.7 Uses shall be considered to remain within the same *use category* as long as the activities, functions, physical characteristics, and impacts of the occupancy remain consistent with the *use category's* definition. If a use changes the activities, functions, physical characteristics, and impacts of the occupancy to a degree that is inconsistent with the *use category's* definition, the property owner shall apply for a new certificate of occupancy that either changes or adds to the *use categories* applicable to that occupancy.

### **203 APPLICABILITY OF MULTIPLE USES**

203.1 When multiple *uses* within a building fall within different *use categories*, each *use* is classified in the applicable category and is subject to the regulations for that category.

203.2 If a *use* is determined to fall into multiple *use categories*, the use is subject to the regulations for all applicable use categories.

203.3 If there are conflicting conditions or criteria on *uses* in multiple *use categories*, the most stringent conditions must be met.

### **204 ACCESSORY USES**

204.1 A use in any *use categories* can also be determined to meet the definition of an *accessory use*.

204.2 An *accessory use* is a use that meets the following criteria:

- (a) A use that is subordinate in area, extent, and purpose to the principal use; and
- (b) Serves a purpose clearly incidental to and customarily associated with a principal use.

204.3 Any use allowed as a permitted use shall be allowed as an *accessory use*. Any use allowed as a conditional use shall be allowed as an *accessory use* subject to all conditions.

204.4 The following are requirements on *accessory uses*:

- (a) *Accessory uses* shall be allowed only when associated with permitted or conditionally permitted uses;
- (b) The use shall occupy no more than fifteen percent (15%) of the gross floor area of the building in which it is located; and

- (c) The use will meet all of the conditions of the appropriate *use category*.

## 205 TEMPORARY USES

205.1 A use in any *use categories* can also be determined to meet the definition of *temporary uses*.

205.2 A *temporary use* is a use that meets the following criteria:

- (a) Any *use* established for a fixed period of time with the intent that such use will expire automatically unless permission to conduct the *use* is renewed; and
- (b) Examples may typically include but are not limited to circus, or farmers' market.

205.3 The following are requirements on temporary uses:

- (a) The time period of the allowance of the *use* shall be determined by the Certificate of Occupancy; and
- (b) No permanent structures may be erected for a temporary use, although existing permanent structures may be used.

## 206 DEFINITIONS OF USE CATEGORIES

206.1 This section provides the definitions of *use categories* which govern the regulation of *uses* in all *zones*.

206.2 *Accommodation*

- (a) Definition: Any *use* providing customers with temporary lodging for an agreed upon term of less than thirty (30) consecutive days; any *use* where lodging is offered to the public for compensation, and is open to transient rather than permanent guests. These *uses* differ from the *Residential use category* because of the short tenure of residence;
- (b) Examples include, but are not limited to: hotels, motels, inns, or bed and breakfast establishments; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Emergency Shelter*.

206.3 *Agriculture*

- (a) Definition: Any *use* involving the on-site cultivation, or maintenance of plants, or the breeding or keeping of animals and livestock intended for personal use or eventual sale or lease off-site. Typical products of an agricultural use include produce, field crops, flowers, ornamental crops, livestock, poultry, honeybees, or other animal husbandry; and
- (b) Examples include, but are not limited to: farm, truck garden, beekeeping, greenhouse, dairy, horticultural nursery, or community garden.

206.4 *Animal Sales, Care, and Boarding*

- (a) Definition: Any *use* involving the on-site sale, medical care, or short term boarding of animals for a fee. These *uses* may include licensed veterinary practices such as medicine, surgery, or dentistry for animals, or the provision of animal services such as grooming, training, or care-taking; and
- (b) Examples include, but are not limited to: pet shop, veterinary clinic or hospital, pet grooming establishment, dog day care center, animal boarding facility, animal sales establishment, or animal shelter.

206.5 *Antennas*

- (a) Definition: Any *structure* involving conducting, transmitting, or receiving communication signals. This *use category* encompasses the portions of the *structure* responsible for signal transmission and reception, any associated towers, immediately-related support and stabilizing elements, and rotating or other directional mechanisms;
- (b) Examples include, but are not limited to: commercial broadcast antenna, terrestrial microwave dish, satellite earth station, whip, or yagi antennas; and
- (c) Exceptions: The regulation of this *use* does not include antennas constructed on, or affixed to buildings, penthouses, or other rooftop *structures*. The form and location of antenna *uses* are further regulated in § B-XXX.

206.6 *Arts Design and Creation*

- (a) Definition: Any *use* involving the on-site design and creation of visual, auditory, or performance art. This use may encompass work space for artists, artisans, or craftsman practicing fine arts or applied arts or crafts;
- (b) Examples include, but are not limited to: artist studio, photographic studio, recording studio, radio, or broadcasting studio; and



- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Entertainment, Assembly and Performing Arts, Educational, or Sexually-based Business Establishment*.

206.7 *Basic Utilities*

- (a) Definition: Any *use* involving the commercial or governmental generation, transmission, distribution, or storage of energy, water, stormwater, or telecommunication-related information. This *use* commonly takes the form of infrastructure services which are provided city-wide. This use may include methods and facilities for renewable energy generation;
- (b) Examples include, but are not limited to: electrical sub-station, telephone exchange, optical transmission node, electronic equipment facility, sewer plant, water treatment plant, or utility pumping station; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Antennas* or *Waste-related Services*.

206.8 *Chancery*

- (a) Definition: The principal offices of a foreign mission used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), including the site and any building on such site that is used for such purposes;
- (b) Examples include, but are not limited to: chancery or embassy; and
- (c) Exceptions: This term does not include uses which more precisely meet the definition of Residential, such as an ambassador's residence.

206.9 *Commercial Parking*

- (a) Definition: Any use involving the on-site short or long-term storage of motor vehicles, when such storage is made available to the public for a fee. *Commercial parking uses* may occur in a variety of formats on surface lots or within *structures*. *Commercial parking uses* may be operated by private commercial or public entities. Separate standards that delineate the form, size, and number of parking spaces allowed as *accessory uses* to other use categories can be found in General Subtitle § B-XXX;
- (b) Examples include, but are not limited to: public parking lot or public parking garage; and

- (c) Exceptions: This term does not include rental of private parking to a car-share company.

206.10 *Community-based Institutional Facility*

- (a) Definition: Any *use* providing monitored care to individuals who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living; been assigned to the facility; or are being detained by the government, other than as a condition of probation;
- (b) Examples include, but are not limited to: adult rehabilitation home, youth rehabilitation home, or detention or correctional facilities; and
- (c) Exceptions: This term does not include uses which more precisely meet the definition of *Emergency Shelter*.

206.11 *Daytime Care*

- (a) Definition: Any *use* involving the non-residential licensed care, supervision, counseling, or training, for a fee, of individuals who are not related by blood, adoption, or marriage to the caregiver, and who are present on the site for less than twenty-four (24) hours per day;
- (b) Examples include, but are not limited to: child care centers and programs, pre-schools, nursery schools, before-and-after school programs, or elder care centers and programs; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Health Care*, or *Parks and Recreation*. This use does not refer to home-based care given by parents, guardians, or relatives of the individuals requiring care which does not require a Certificate of Occupancy.

206.12 *Education*

- (a) Definition: Any use including education and academic institutions at the elementary, middle, junior high, or high school level that provide District or state mandated basic education or educational uses of higher learning which offer courses of general or specialized study leading to a degree. These uses may include accessory play areas, dormitories, cafeterias, recreational, or sports facilities;
- (b) Examples include, but are not limited to: private schools, public schools, charter schools, colleges, community colleges, universities, or boarding schools; and

- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Daytime Care*.

206.13 *Emergency Shelter*

- (a) Definition: Any *use* providing thirty (30) days or less of temporary housing to indigent, needy, homeless, or transient individuals. Emergency Shelter uses may also provide ancillary services such as counseling, vocational training, or similar social and career assistance; and
- (b) Exceptions: This term does not include *uses* which more precisely meet the definition of *Residential*.

206.14 *Entertainment, Assembly, and Performing Arts*

- (a) Definition: Any *use* involving facilities designed primarily for public assembly that enables patrons to experience visual, auditory, performance, or literary art; attend sporting events or conferences; or to participate in active leisure activities. These uses may be characterized by activities and structures that draw large numbers of people to specific events or shows;
- (b) Examples include, but are not limited to: bowling alley, miniature golf, movie theatre, concert hall, or stadium; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Arts Design and Creation, Sexually-based Business Establishment, or Parks and Recreation*.

206.15 *Firearm Sales*

- (a) Definition: Any *use* engaged in the on-site sale, lease, or purchase of firearms or ammunition. A firearm is defined as a gun, pistol, or any other weapon capable of firing a projectile and using an explosive charge as a propellant. This *use category* has been established to identify those *uses* which offer sales of goods whose impacts are incompatible with the intended health, safety, and welfare of other *uses* of land; and
- (b) Examples include, but are not limited to: gun store, ammunition sales, pawn shop carrying guns, or weaponry store.

206.16 *Food and Alcohol Services*

- (a) Definition: Any *use* involving the sale of food, alcoholic drinks, or refreshments prepared on the premises and sold to customers for immediate consumption on or off the premises;

- (b) Examples include, but are not limited to: prepared food shop, café, delicatessen, restaurant, fast food establishment, bar, nightclub, ice cream parlor, or coffee shop; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Sexually-based Business Establishment*.

206.17 *Health Care*

- (a) Definition: Any *use* involving the on-site licensed provision of medical diagnosis, treatment, or prevention of illness or disease of humans. These facilities may provide medical or surgical care to patients or offer overnight care;
- (b) Examples include, but are not limited to: dentist, doctor, optician, hospitals, clinics, or medical offices; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Community-based Institutional Facility* or *Emergency Shelter*.

206.18 *Institutional*

- (a) Definition: Any non-governmental *use* involving the public assembly of people or provision of services for social, cultural, or religious purposes. These uses may include uses of a public, nonprofit, or charitable nature generally providing local service on-site to people of a local community;
- (b) Examples include, but are not limited to: private clubs, private libraries, non-profit social service providers, or religious facilities; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Chancery, Education, Entertainment, Assembly, and Performing Arts, Local Government, Service, Office, or Parks and Recreation*.

206.19 *Local Government*

- (a) Definition: Any *use* involving services owned, managed, or provided by local government and associated with providing neighborhood-scaled services to meet the community needs of the directly adjacent areas;
- (b) Examples include, but are not limited to: public community centers, police stations, libraries, or fire stations; and
- (c) Exceptions: This term does not include large-scale government uses with a regional or larger service area or *uses* which more precisely meet the

definition of *Emergency Shelter, Parks and Recreation, or Motor Vehicle-related*.

206.20 *Marine*

- (a) Definition: Any *use* in which proximity to the waterfront constitutes an integral aspect of its function; or *uses* which depend upon access to the water for their effectuality. This *use category* includes activities associated with water and marine-based travel, movement, storage, and related activities;
- (b) Examples include, but are not limited to: marina, boathouse, boat launch, dock, or pier, boat repair facility, or water facilities; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Motor Vehicle-related*.

206.21 *Motor Vehicle-related*

- (a) Definition: Any *use* engaging primarily in the on-site sale, rental, service, maintenance, or refueling of motor vehicles or their components. These *uses* include the sale, installation or repair of parts, components, accessories, or fuel for motor vehicles;
- (b) Examples include, but are not limited to: gas service station, auto repair facility, carwash, automobile sales, boat sales, or motorcycle sales; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Motor-Vehicle Parking*.

206.22 *Office*

- (a) Definition: Any *use* engaging primarily in on-site administrative, business, professional, research, or laboratory-based activities. These *uses* are characterized by activities in an office setting that focus on the provision of off-site sale of goods or on-site information-based services, usually by professionals. *Office uses* may have infrequent contact with the public, and when applicable, perform service activities off-site;
- (b) Examples include, but are not limited to: real estate agent, attorney, accountant, advertising agency, stockbroker, or laboratory; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Health Care; Education; Local Government; Retail; Production, Distribution, and Repair; or Chancery*.

206.23 *Parks and Recreation*

- (a) Definition: Any *use* involving publicly-accessible passive or active open space or recreation spaces available to the public. This term includes any area, structure, or facility under the jurisdiction of a public agency that is used for community recreation activities. These uses may consist of public plazas or mostly-vegetated landscaping, outdoor recreation, community gardens. *Parks and Recreation* facilities may include accessory kitchen facilities.
- (b) Examples include, but are not limited to:
  - (1) Activities such as picnicking, boating, fishing, bicycling, tennis, or swimming;
  - (2) Classes and services relating to health and wellness, culture, arts and crafts, or education;
  - (3) *Structures* or other recreation facilities such as auditorium, multi-purpose room, gymnasium, meeting space, open space, playground, playing court, golf course, playing field, or swimming pool; and
- (c) Exceptions: This term does not include uses which more precisely meet the definition of *Entertainment, Assembly, and Performing Arts, Arts Design and Creation, Health Care, or Service*.

206.24 *Production, Distribution, and Repair*

- (a) Definition: Any *use* involving the on-site production, distribution, repair, assembly, processing, or sale of materials, products, technology, or goods intended for a wholesale, manufacturing, or industrial application. *Uses* may include firms that provide centralized services or logistics for retail uses. These *uses* typically have little contact with the public;
- (b) Examples include, but are not limited to: material salvage, hauling or terminal yard, chemical storage or distribution, smelting, outdoor material storage, acetylene gas manufacturing, fertilizer manufacturing, rock quarrying, warehouse, ground shipping facility, manufacturing facility, or wholesale sales; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Retail, Service or Waste-related Services*.

206.25 *Residential*

- (a) Definition: Any *use* offering habitation to one or more *households* on a continuous basis of at least thirty (30) days. The continuous basis is established by tenancy with a minimum term of a month or property ownership. This use category also includes residential facilities which provide housing and supervision for persons with disabilities. This may include twenty four (24) hour on-site supervision, lodging, and meals for individuals who require supervision within a structured environment, which may include specialized services such as medical, psychiatric, nursing, behavioral, vocational, social, or recreational services;
- (b) Examples include, but are not limited to: single dwelling unit, multiple dwelling units, community residence facilities, retirement homes, substance abusers' home, youth residential care home, assisted living facility, floating homes, and other residential uses; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Accommodation, Education, or Community-based Institutional Facility*.

206.26 *Retail*

- (a) Definition: Any use engaging primarily in the on-site buying or selling of goods, wares, or merchandise directly to the consumer or persons without a resale license. These *uses* include goods, commonly sold to individuals in small quantities for their direct use. These *uses* may have moderate to frequent contact with the public;
- (b) Examples include, but are not limited to: antique shop, drugstore, card shop, grocery store, jewelry store, fabric store, or bicycle shop; and
- (c) Exceptions: This term does not include wholesale goods commonly sold to businesses in bulk or *uses* which more precisely meet the definition of *Arts Design and Creation, Automobile-related, Firearm Sales, Marine, Production, Distribution, and Repair, or Sexually-based Business*.

206.27 *Service*

- (a) Definition: Any *use* engaging primarily in the on-site buying, selling, or renting of work performed for a fee by a person or machine that does not in itself result in a tangible commodity. These uses may provide personal services or provide small-scale product repair or services for consumer and business goods on-site. These *uses* may have moderate to frequent contact

with the public. *Service uses* which provide services off-site are typically *Office uses*;

- (b) Examples include, but are not limited to: bank, appliance repair, travel agency, fitness center, yoga studio, tailor shop, or parcel delivery service; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Food and Alcohol Services, Entertainment, Assembly, and Performing Arts, Local Government, Parks and Recreation, Animal Care and Boarding, Motor Vehicle-related, Accommodation, Daytime Care Facility, Health Care, Sexually-based Business Establishment, Arts Design and Creation, Marine, or Waste-related Services*.

206.28 *Sexually-based Business Establishment*

- (a) Definition: Any *use* involving goods, services, or live performances that are characterized by their emphasis on matter depicting, describing, or related to specified sexual activities. Specified sexual activities include, but are not limited to: acts of sexual stimulation or arousal including human genitals in a discernibly turgid state, human masturbation, sexual intercourse, sodomy, or bestiality; or any erotic touching of human genitals, pubic region, buttock, or breast. This *use category* has been established to identify those *uses* which offer services or goods whose sexually-oriented impacts are incompatible with the intended health, safety, and welfare of other uses of land; and
- (b) Examples include, but are not limited to: sexually-themed bookstores, newsstands, theatres, and amusement enterprises.

206.29 *Transportation Infrastructure*

- (a) Definition: Any *use* involving structures or conveyances designed for individual mode or multimodal public transportation purposes. These uses may include land or facilities for the movement or storage of transportation system components;
- (b) Examples include, but are not limited to: streetcar or bus passenger depots, transportation rights of way, Metro stations, mass transit stations, bus stops, bicycle paths, bus transfer stations, accessways, airports, bicycle facilities, multi-use paths, pedestrian connections, or streets; and
- (c) Exceptions: This term does not include *uses* which more precisely meet the definition of *Basic Utilities*.



206.30 *Waste-related Services*

- (a) Definition: Any *use* involving the collection, transportation, recycling, or elimination of trash or other refuse. Disposal or processing may be on-site or transfer to another location. This term may include the collection of sanitary wastes or *uses* that produce goods or energy from wastes; and
- (b) Examples include, but are not limited to: solid waste handling facility or non-intensive recycling facility,

**Create new Chapter 4 in Title 11 Subtitle B:**

**CHAPTER 4 HEIGHT**

**400 INTRODUCTION TO HEIGHT REGULATION CHAPTER**

400.1 This chapter provides height regulations for the District.

400.2 The intent of regulating height is to:

- (a) Promote successful transitions between areas of differing density;
- (b) Ensure adequate light and air to neighboring properties and zones; and
- (c) Provide vertical control to accommodate appropriate density and good design.

400.3 This chapter identifies general limitations, rules of measurement, and exceptions for height. The regulations in this chapter shall apply to all land use subtitles.

400.4 In addition to the height limitations of the zoning regulations described in this chapter, all buildings are also subject to the height limitations of the Height Act, D.C. Official Code 6-601.08. Height Act language adopted by the Department of Consumer and Regulatory Affairs matches the general height limitations of this chapter and is attached as Appendix A.

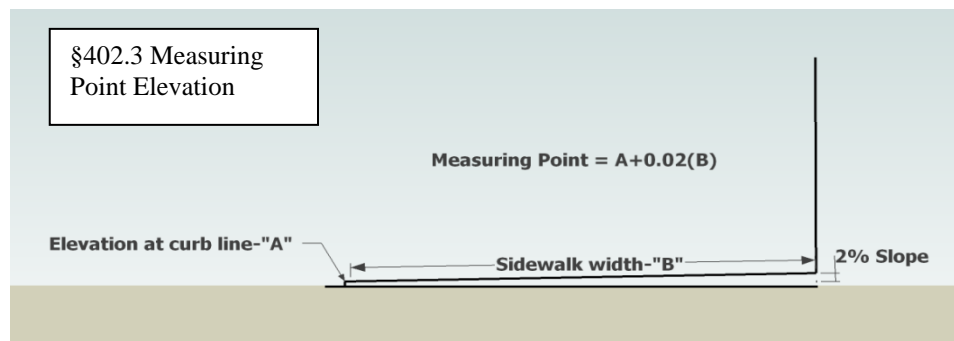
**401 RELATIONSHIP TO THE LAND USE SUBTITLES**

401.1 In addition to the general regulations of this subtitle, each land use subtitle shall include a height regulations chapter containing height regulations specific to the zones within that subtitle, including tables identifying zone-specific height maximums, conditions, and exceptions.

- 401.2 Zone height limitations shall be codified and presented in the development standards table within each land use subtitle.
- 401.3 Where the maximum height permitted within a zone differs from the maximum height permitted by the street-based limitations, the more restrictive maximum height will apply.
- 401.4 *Zone* height limits shall be stated in terms of feet, and shall be evenly divisible by five (5).
- 401.5 Street-based limits and the height limits in each zone district apply to structures located in the public space included within the zone district's boundary.

## 402 GENERAL RULES OF MEASUREMENT

- 402.1 This section provides rules of measurement applicable to both the street-based and zone height limitations.
- 402.2 The height of a *building* shall be measured from its midpoint along any abutting *street frontage*. Where no *street frontage* exists, the height of a *building* shall be measured from its midpoint along its façade nearest to a public street.
- 402.3 The measuring point for determining height shall be the elevation at the midpoint of the adjacent curb, plus a two percent (2%) gradient between the curb and the property line, up to a maximum height difference of twelve inches (12 in.) except as provided in §102.4. When an adjacent curb does not exist, the elevation for the measuring point shall be the elevation at the property line midpoint, where the street right of way meets the property line.



- 402.4 When the curb grade has been artificially changed by a bridge, viaduct, embankment, ramp, abutment, excavation, tunnel, or other type of artificial elevation, the height of a *building* shall be measured from either:

- (a) A *street frontage* not affected by the artificial elevation;
  - (b) A level determined by the Zoning Administrator to represent the logical continuation of the surrounding street grid where height is not affected by the discontinuation of the natural elevation;
  - (c) An elevation previously determined by the Zoning Administrator; or
  - (d) An elevation or means of determination established for a specific zone elsewhere in this title.
- 402.5 One-family dwellings and any building setback from all lot lines by a distance at least equal to its own height shall be measured from ground level at the midpoint of the building face closest to the nearest public right-of-way.
- 402.6 *Building* height shall be measured to the top of the roof including any parapet or balustrade on exterior walls, or any other continuation of the exterior walls. For purposes of calculating the *zone*-specific height, a parapet or balustrade of up to four feet (4 ft.) may be excluded from the height measurement. This exclusion does not apply in calculating maximum height for the street-based height limitation.
- 402.7 Structures that are separated from the ground up by common division walls or contain multiple sections separated horizontally, such as wings or additions, are separate buildings for the purposes of determining height, unless such structures are connected. At least one connection must be:
- (a) Fully above grade,
  - (b) Completely enclosed;
  - (c) Heated and artificially lit; and
  - (d) Either:
    - (1) Common space shared by users of all portions of the building, such as lobby or recreation room, or
    - (2) Space that is designed and used to provide free and unrestricted passage between separate portions of the building, such as an unrestricted doorway or walkway.

**403 STREET-BASED HEIGHT LIMITS FOR RESIDENTIAL BLOCKS**

403.1 A residential block is any *blockface* that:

- (a) Contains a lot, or portion thereof with a [neighborhood residential] *zone* designation; or
- (b) Is entirely located within a [apartment residential] *zone*.

403.2 The street-based height limit on residential blocks abutting a street with a right-of-way width of seventy feet (70 ft.) or more shall be the right-of-way width minus ten feet (10 ft.), to a maximum of ninety feet (90 ft.).

403.3 The street-based height limit on residential blocks abutting a street with a right-of-way width of less than seventy feet (70 ft.) shall be equal to the width of the right-of-way, up to a maximum of sixty feet (60 ft.).

**404 STREET-BASED HEIGHT LIMITS FOR BUSINESS BLOCKS**

404.1 A business block is any *blockface* that does not meet the definition of a residence block in § 403.1.

404.2 The street-based height limit on business blocks shall be the right-of-way width plus twenty feet (20 ft.), to a maximum of one hundred thirty feet (130 ft.) except as provided in § 104.3

404.3 The street-based height limit for a *building* with frontage/building face on the north side of Pennsylvania Avenue N.W. between 1<sup>st</sup> and 15<sup>th</sup> Streets N.W. shall be one hundred -sixty feet (160 ft.).

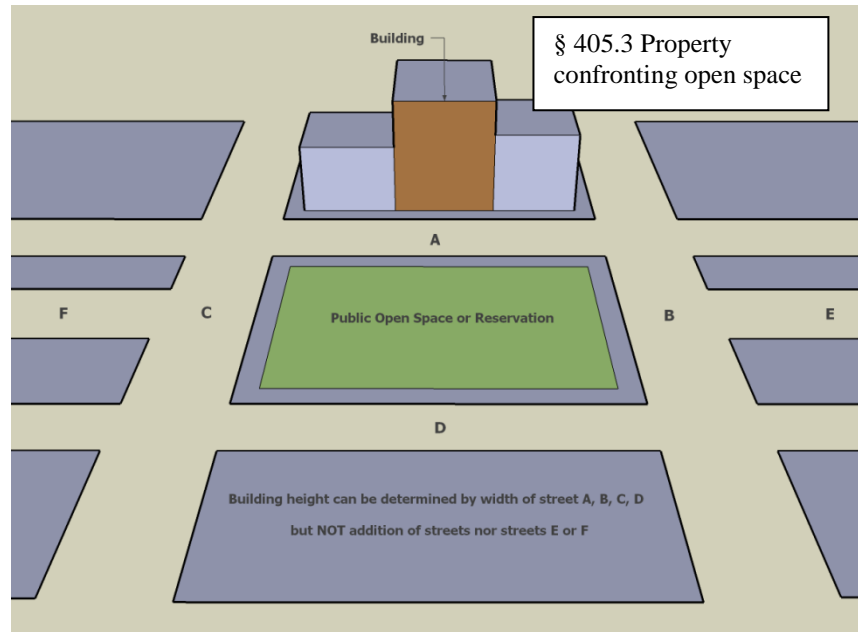
**405 RULES OF INTERPRETATION FOR STREET-BASED HEIGHT LIMITS**

405.1 The abutting street with the widest right-of-way shall be used to determine the street-based height limit for a *building*. This need not be the same as the *street frontage* used to measure per § 402.2.

405.2 When the abutting street used to determine the street-based height limit for a *building* varies in width, the maximum height may be determined by using the widest portion of the street along the *street frontage* of the *building*.

405.3 When an open space or reservation is directly across the abutting street that would otherwise be used to determine the general height limit for a *building*, the street-based

height limit shall be determined by using the widest portion of any street directly abutting the open space or reservation. The open space or reservation itself shall not be included in the right-of-way width, nor shall the width of two rights-of-way divided by an open space or reservation be combined for height determination purposes.



#### 406 HEIGHT LIMIT EXCEPTIONS

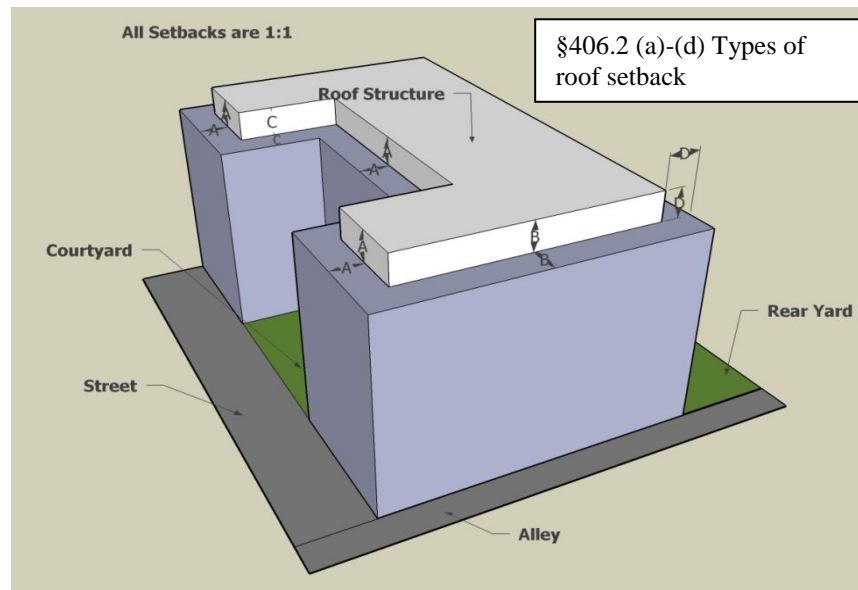
406.1 The following *structures* may be built above the street-based or zone height limitations, subject to the conditions of this section:

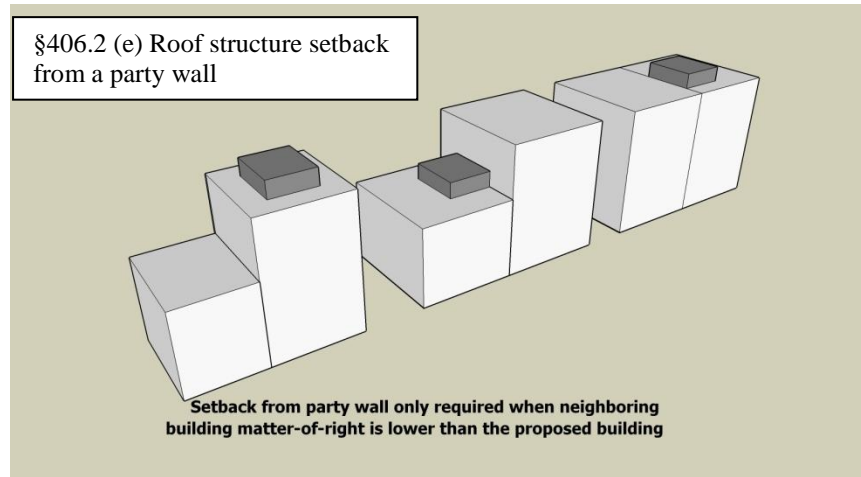
- (a) Spires;
- (b) Towers, including towers erected from the ground;
- (c) Domes, minarets, pinnacles, pergolas and similar architectural embellishments;
- (d) Chimneys or smokestacks;
- (e) Skylights;
- (f) Penthouses over utilitarian features, including, but not limited to, mechanical equipment and its housing, elevators, and stairwells;

- (g) Building appurtenances dedicated to safety, including safety railings;
- (h) Building components or appurtenances dedicated to the environmental sustainability of the building;
- (i) Penthouses over accessory amenity features, such as communal enclosed recreation space, and structures accessory to outdoor recreation space; and
- (j) Antennas.

406.2 A structure listed under § 403.1 (f) through (j) must be *setback* greater than or equal to its height above the roof on which it is situated from:

- (a) Any wall facing a public street;
- (b) Any wall facing a public alley;
- (c) Any wall facing a *courtyard* open to a public street;
- (d) Any wall that maintains a *setback* from and faces a lot line; or
- (e) Any wall that abuts a lot line and that is taller than the greater of the adjacent property's existing or matter-of-right height.





406.3 Structures listed under § 403.1 (f) through (j) shall not rise more than twenty feet (20 ft.) above the roof.

406.4 Space enclosed by walls on a roof is limited to forty percent (40%) of the *building's* total footprint.

#### **407 HEIGHT SPECIAL EXCEPTION STANDARDS**

407.1 The Board may grant, by special exception, relief from §§ 406.2 (b) through (e) or 406.4 if, in addition to meeting the general requirements of [§ 3104], the applicant demonstrates that granting the relief would not:

- (a) Be incompatible with the purpose and intent of height regulations listed in § 400.2; or
- (b) Result in adverse impact on:
  - (1) Existing solar or wind power generation facilities in the immediate vicinity; or
  - (2) The visual character of the surrounding neighborhood.

#### **PROCEDURES**

The public hearing on this part of Case No. 08-06 will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning. The Commission will impose time limits on testimony presented to it at the public hearing.

**Z.C. NOTICE OF PUBLIC HEARING  
Z.C. CASE NO. 08-06  
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All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, Suite 200-S, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001. Please include the number of the particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

**ANTHONY J. HOOD, KONRAD W. SCHLATER, GREG M. SELFRIDGE, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JAMISON L. WEINBAUM, FAIA, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.**