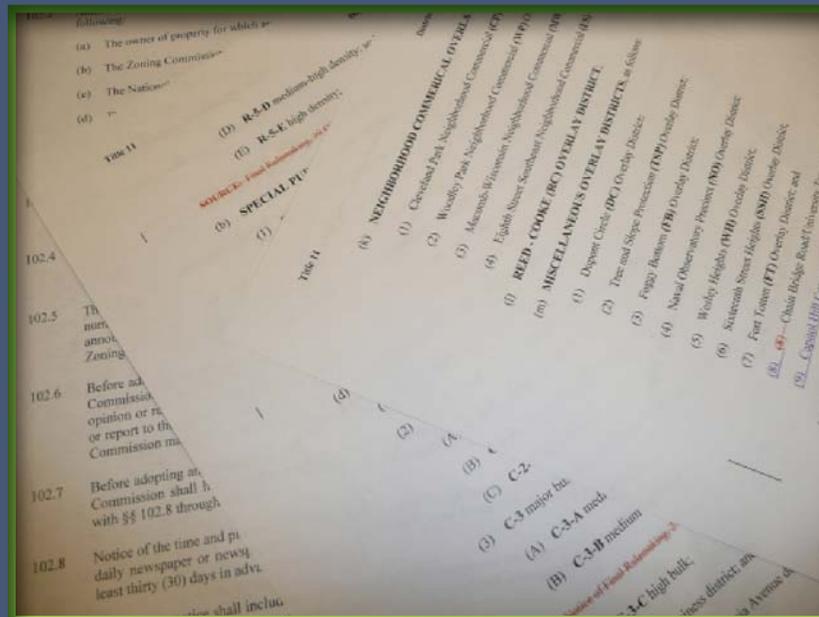


Washington, DC Zoning Regulations Chapter 1 Study

Strengths and Weaknesses



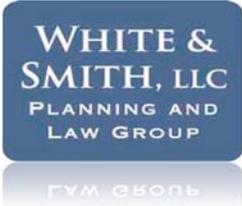
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Part 1 - Introduction

The Washington, D.C. Office of Zoning has retained White & Smith, LLC to provide various services as part of its Zoning Regulation Reengineering project. This project involves, in part, an analysis of specific provisions of the Zoning Regulations.¹ This includes an analysis of the strengths and weaknesses of Chapter 1, which provides the introductory materials for the Zoning Regulations. The study includes an analysis of definitions of terms of art used in the Zoning Regulations, as well as an expanded definitions section.

On September 24, 2007, White & Smith, LLC submitted the *Washington, D.C. Zoning Regulations Reengineering Study: Options for a Modern Technical and Legal Infrastructure* (the “Study”). The Study addressed the strengths and weaknesses of the definitions section and official zoning map provisions of Chapter 1. These are the most important and visible parts of this Chapter. In response to comments by Office of Zoning staff, we are providing this Report to provide additional detail on Chapter 1, along with alternative approaches to accomplishing the introductory and definitional functions of writing zoning regulations. This Report offers several approaches to revising Chapter 1 as the District moves forward with the Zoning Regulations Reengineering project.

Role of Chapter 1

Zoning regulations are legal documents that establish permitted uses, dimensional standards, and rules of procedure for development and redevelopment in a jurisdiction. As a legal document, zoning regulations require rules that are clear and predictable. The rules should put applicants on notice of what the government expects of them when applications are filed and development proceeds or uses are established. The rules also provide guidance for those who administer the regulations. In addition, because zoning involves issues of interest to neighborhood groups, the regulations should explain terms and concepts in a way that makes sense to the general public.

How this Report is Structured

Chapter 1 is the introductory chapter of the District’s Zoning Regulations. The format, content, and layout of Chapter 1 are very typical of conventional zoning regulations. Chapter 1 establishes the formal title of the Zoning Regulations, establishes the districts and zoning map, and lays out definitions and rules of interpretation. This Report breaks Chapter 1 into several parts that relate to its

role in the District’s regulatory structure for zoning. This includes:

Organization and Codification	Chapter 1 includes both introductory materials, as well as substantive materials that relate to the rest of the Zoning Regulations.
Enactment and Title (§ 100) ²	Introductory sections assign a title to the Regulations and recite their regulatory authority.
Interpretation and Application (§ 101)	This section describes how the Zoning Regulations are interpreted, and the basis for developing the zoning districts and associated regulations.
Amendments (§ 102)	This section notes that the Zoning Regulations can be amended, and includes several procedural details about the amendment process.
Zone Districts (§ 105)	This section formally divides the City into various zoning districts.
Zoning Map (§ 106) and District Boundary Lines (§ 107)	The Zoning Regulations formally establish the official Zoning Map, rules for determining where the districts begin and end, and procedures for revising the map.
Definitions (§ 199)	This section defines the terms of art for various words, phrases, and concepts that are used in the Zoning Regulations.

This Report evaluates these provisions, assessing their strengths and weaknesses, and discussing policy issues for revising or strengthening the provisions as the Zoning Regulations are updated.



Part 2 - Organization and Codification

The introductory section of the Zoning Regulations has several roles. These include explaining the document's structure, providing its authority, and explaining the basis for the regulations. An introduction should limit its scope to global issues that affect the workings and structure of the entire document. Brevity is also important, especially if the District is seeking to improve the document's user-friendliness. In order to maintain flow and to avoid unnecessary length, an introduction should not exceed 5-10 pages in length. Some zoning and land development regulations include introductions that are as short as 2-3 pages.

Chapter 1 has an organizational and clarifying role. As with any piece of technical writing, the introduction should explain the nature of the document to the reader. It should explain the function the document serves, and provide cues as to how to read and to use the rest of the document. As an aid to the reader, the introduction should avoid excessive length and detail, and should not disrupt the document's flow.

Chapter 1's organization, flow, and writing style are standard fare for conventional zoning regulations. It establishes a title, which is discussed in more detail in Part 3 below. These commonly include technical details such as the official zoning map and definitions. This has the advantage of familiarity. Practitioners and applicants familiar with the District's regulations and those in other communities are familiar with this layout, and will be able to quickly locate key information. Members of the general public, and those who do not use zoning regulations on a day to day basis, may find the layout daunting.

In addition, Chapter 1 has a very complete set of general provisions that govern the administration and use of the Zoning Regulations. These include interpretation rules, official zoning map provisions, and definitions. These details are essential to having a workable and enforceable set of zoning regulations. However, there is a trend in jurisdictions that have recently updated their regulations to place these technical details in the rear of the document, or in appendices. While this may be an unfamiliar approach to professionals who deal with zoning on a daily basis (such as architects and attorneys), it is an accepted way to structure technical documents.

Chapter 1's structure includes several weaknesses. It contains few cues about how to read the document or how the Zoning Regulations are organized. Regulations in other jurisdictions - such as the San Antonio, Texas Unified Development Code - include an Executive Summary that provides this function. While

the regulations include some materials about interpreting and applying them (§ 101), these do not describe how the document is structured or provide clues about where to find information.

In addition, one of the most important external influences on the Zoning Regulations is the Comprehensive Plan. The Comprehensive Plan typically establishes a jurisdiction’s fundamental land use policies, and these in turn advise how the zoning rules are written. The Zoning Act provides that the Zoning Regulations “shall not be inconsistent with the comprehensive plan for the national capital” (D.C. Official Code § 6-641.02). In addition, the Comprehensive Plan provides an important source of legislative history and justification for the regulatory content. At present, the Zoning Regulations lack a cross-reference to the most recent Comprehensive Plan. This is a linkage for the regulations to establish.

Weaknesses	✓ Few organizational cues
	✓ Length
Strengths	✓ Commonly Understood format
	✓ Complete
	✓ Not tied to ODAI’s official codification
	✓ Can produce in a variety of formats
	✓ Can provide an official interpretation by Office of Zoning, Zoning Commission or BZA about how a procedure works
Alternatives / Actions / Policy Issues	✓ Provide an Executive Summary to guide readers
	✓ Codify technical details in rear of document
	✓ Add a citation to the 2006 Comprehensive Plan



Part 3 - Enactment, Title, and Legal Authority

Section 100 contains basic introductory matters, such as the title of the Zoning Regulations and legal authority.

The Chapter begins with a discussion of legal authority. As a document with legal standing, the Zoning Regulations should explain its source of authority. Section 100.1 of the Zoning Regulations includes a brief citation to the Zoning Act (D.C. Official Code § 6-641.01 et seq.) This is technically correct, because the Zoning Act provides the principal basis and source of authority for the Zoning Regulations as a whole. There are other statutes that affect individual parts of the Zoning Regulations or its administration. These include in part the Advisory Neighborhood Commission statutes (D.C. Official Code §§ 1-207.38(d), 1-309.10(d)(3)(A), 1-309.10(d)(3)(B)), Foreign Missions Act (D.C. Official Code § 6-1306 et seq.), Administrative Procedures Act (D.C. Official Code § 2-510(a)), and the civil infractions legislation (D.C. Official Code, § 2-1801.01 et seq.). These do not need a detailed listing or summary here. A better approach is to recite those sections in the specific provisions that relate to them. The Zoning Regulations currently follow this approach.

The title section is unusual in that it includes both a short (§ 100.5) and a long (§ 100.4) title. The long title includes a lengthy sentence that describes, in all caps, the subject of the Zoning Regulations. This type of material is normally found in an ordinance (or, in the District, a “rulemaking”) that adopts the regulations. It is not necessary to include this in the codified regulations. The “short” title is the “Zoning Regulations of the District of Columbia.” Because the terminology applies only to the document itself, this title can be abbreviated to a truly short title, such as “Zoning Regulations.”

This section also addresses the document’s effective date (§ 100.2) and its continued effectiveness with regard to previously adopted regulations (§ 100.3). In particular, § 100.3 addresses the applicability of the regulations to existing rights accrued - for example, the issuance of a building permit. These are technical details that could move to a later Chapter of the Zoning Regulations. Some jurisdictions create a separate chapter or article called “Legal Provisions” near the back of the zoning regulations. This can include items such as severability, effective date, and similar “boilerplate” language. This type of language is essential, but is not particularly exciting reading for the general public. Section 100.3 could move to the provisions that relate to nonconformities and grandfathering. Currently, this is Chapter 20 of the Zoning Regulations.

Table 2 Enactment, Title, and Legal Authority: Summary of Strengths and Weaknesses	
Weaknesses	✓ Several items out of place ✓ Legalistic and long title
Strengths	✓ Good recitation of authority
Alternatives / Actions / Policy Issues	✓ Create a short title (“Zoning Regulations”) ✓ Move legal boilerplate to a separate chapter



Part 4 - Interpretation and Application

Section 101 establishes several global rules to apply when interpreting and applying the regulations. This includes interpretation of the Zoning Regulations (§§ 101.1-101.2), conflicts with other regulations (§§ 101.3-101.4), enforceability and applicability (§§ 101.5-101.6), and severability (§ 101.7).

As with the balance of the Chapter, these provisions are normally included in conventional zoning regulations. The initial rules of interpretation include several boilerplate items that parrot the zoning purposes established in the Zoning Act. However, they do not mention the Comprehensive Plan. In addition, the language on conflicts and severability can move to a later chapter on rules of interpretation. This is discussed in greater detail in Part 8 - Definitions, below.

The enforceability requirements make clear that building, land use, construction, and land division is subject to the Zoning Regulations. This is customary, and also important. It makes sense to notify property owners up front about the activities that fall within the purview of zoning regulation. It is also a global requirement.

Weaknesses	<ul style="list-style-type: none"> ✓ No reference to 2006 Comprehensive Plan ✓ Legalistic, technical format
Strengths	<ul style="list-style-type: none"> ✓ Recitation to Zoning Act ✓ Provides notice of applicability up front
Alternatives / Actions / Policy Issues	<ul style="list-style-type: none"> ✓ Reorganize technical provisions ✓ Cross-reference Comprehensive Plan



Part 5 - Amendments

Section 102 announces that the Zoning Commission may amend the zoning text and map, and establishes some general rules about how to process amendments. Most of the details about how to process text or map amendments are found in Chapter 30 of the Zoning Regulations. However, there are several important details in this section. These include the persons who can initiate amendments (§ 102.2) and the notice and hearing requirements (§§ 102.8 - 102.11). This requires the reader to flip between this section and Chapter 30 to determine how amendments are processed. Information can be lost on the reader if they believe that one of these provisions includes the complete rules for processing amendments. In addition, this type of detail is out of place, disrupts document flow, and adds length to the introductory section of the document. It is advisable to codify these regulations in a single location.

Table 4

Amendments: Summary of Strengths and Weaknesses

Weaknesses	<ul style="list-style-type: none"> ✓ Codification is out of place ✓ Lengthens introduction
Strengths	<ul style="list-style-type: none"> ✓ Explains important processing details for amendments
Alternatives / Actions / Policy Issues	<ul style="list-style-type: none"> ✓ Move these provisions to the rulemaking requirements in Article 30 ✓ A cross-reference or brief sentence referencing amendments could be added to benefit readers who are used to this form



Part 6 - Zone Districts

Section 106 lists the District’s zoning districts. This formally establishes the districts as an entity. The districts are divided by general use category (residential, commercial, industrial, mixed use), overlay, and miscellaneous (e.g., Tree and Slope Protection district). This is a conventional format, and is concise in its presentation. One potential alternative to the existing layout is to use a matrix, with separate columns describing whether the district is a base, overlay, or other type of district.

In the code update process, some members of the public have expressed an interest in the concept of “form based zoning.” This is a regulatory technique that divides districts principally on the basis of design and building typology, rather than land use. Many proponents of form based zoning believe that it is a completely different technique than conventional zoning. However, the basics of establishing the districts (discussed here) and drawing the district boundaries (see Part 7 - Zoning Maps, below), are the same. If the District opts for this approach, the process of formally establishing and mapping the district will mirror what is done with today’s conventional districts. Only the standards within the district regulations will differ.

Weaknesses	✓ Older, conventional format
Strengths	✓ Brevity
Alternatives / Actions / Policy Issues	✓ Could be revised to include a matrix form, but this is not absolutely essential



Part 7 - Zoning Maps

Zoning maps are the most important graphic in any set of Zoning Regulations. A zoning map is needed to mark the various zoning district boundaries. This puts property owners on notice of the use, dimensional and other district regulations that apply to their property. Historically, most jurisdictions have maintained zoning maps on large paper maps, or on a series of paper zoning atlases. Many jurisdictions now have state of the art GIS maps that are viewable online. The use of interactive mapping technology was discussed in the September 24, 2007 report, and is not repeated here. This discussion focuses on how that technology is addressed in the zoning text. It is the zoning text that gives the map legal, binding status.

Section 106.1 adopts the Baist Atlas as the official zoning map.³ Section 106 addresses where the maps are on file in the District (§ 106.2), describes how they are authenticated (§ 106.3), requires compliance with the mapped district regulations (§§ 106.7-106.8), and incorporates the map by reference (§ 106.10). The regulations also provide for an unofficial, summary map (§§ 106.11-106.12).

Incorporation by reference (§ 106.10) is an important concept. This statement gives the map the same legal status as the zoning text. Without this bridge, the map would not be tied to the text of the regulations, and the Zoning Regulations would lack a basis for determining where the various districts begin and end. Printed maps are typically bulky and significantly larger than a typical 8½" x 11" printed page, making distribution of the maps awkward.⁴ Most courts do not require the zoning regulations to physically attach the map, but they do require clear identification of a map that is in existence.

The Baist Atlas is a printed map set that was formerly updated on a decennial basis. The Office of Zoning is in the process of converting the Baist maps into vector property maps, which will eventually become the official zoning map (Telephone interview with Nyambi Nyambi, Office of Zoning, Chief Technology Officer, September 10, 2007). The Office of Zoning is presently working with the District's Office of Chief Technology Officer (OCTO) to build linkages between OCTO's GIS data and the Zoning Regulations.

This will require new language to address the internet location of the map, how it is hosted, and protocols for revising it. While online zoning maps are now very common, few jurisdictions have addressed the process of how to authenticate and maintain digital maps. However, this is important to ensure that records are properly kept and authenticated.

Several provisions of this section are out of place, or better codified elsewhere. Sections 106.4 - 106.6 address the applicability of the Zoning Regulations to the federal and district buildings. This is not a mapping issue, so it should be codified either in a general applicability section, or as a separate section relating to the zoning of government property.

Section 107 addresses the interpretation of zoning district boundary lines. This language is needed due to the differences in scale between the zoning maps and actual physical dimensions. The sheer amount of data involved with entering and tabulating physical dimensions on a map results in occasional discrepancies between lot or street locations and the lines indicated on the map. Rules of interpretation are needed to determine where the zoning district boundaries lie. The use of street and lot lines in § 107 is an established and accepted technique of interpretation. The major issue with this section is that it is a highly technical item placed in the introduction. While it relates to the zoning map, it is also a rule of interpretation. This language could remain with the official zoning map codification, or could move to a later section on rules of interpretation. See Part 8 - Definitions, below, for a discussion of rules of interpretation.

Table 6 Zoning Maps: Summary of Strengths and Weaknesses	
Weaknesses	✓ Outdated - the text is not up to date with the District's digital mapping capabilities
	✓ Misplaced regulations
Strengths	✓ Includes key items such as incorporation by reference, boundary interpretation rules, etc.
Alternatives / Actions / Policy Issues	✓ Update to incorporate digital and online maps
	✓ Move misplaced items



Part 8 - Definitions

Chapter 1 of the Zoning Regulations defines key terms of art. Definitions are important for several reasons. First, they provide meaning to particular terms or phrases that do not otherwise have a commonly understood meaning. Second, they can abbreviate text by collapsing long lists into single terms.⁵ Older codes often have the following problems with their definitions:⁶

- **Definitions that Include Standards (Embedded Standards).** Definitions can include standards or an excessive number of qualifications. This tends to “bury” the standards because most readers look to the substantive provisions of a regulation for rules. In addition, these standards are rarely indexed. This is one of the most common problems in zoning regulations. A better practice is to move the standards to the regulatory sections. Reserve definitions for statements that describe a thing or a concept.
- **Conflicting Definitions.** A term is sometimes defined in different ways in different regulations. This can create confusion and inconsistencies. If both sets of regulations affect development and the development process, a better practice is to use the same term throughout. However, where the zoning rules address a concept in greater detail – such as with permitted uses – a more refined definition is appropriate. However, the code should address the differences in order to avoid confusion.
- **Unused Definitions.** This includes terms or phrases that are not used in the body of the regulations. This practice adds unnecessary length and potential confusion.
- **Unnecessary Definitions.** Some definitions are identical to their generally understood meaning. Providing a definition for these terms adds no value, while unnecessarily expanding the length of the Zoning Regulations. Courts normally give words their commonly understood meaning. If necessary, they resort to dictionaries to interpret words or phrases. If the dictionary definition suffices, avoid defining the term.
- **Ambiguous Definitions.** Definitions that are vague can create more problems than they solve, while taking up unnecessary space.
- **Terms that are Not Defined.** The Zoning Regulations contain many specialized words and phrases that require a specialized definition. Where the dictionary does not supply a precise meaning, or where the meaning differs

from its ordinary use, the term should be defined.

- **Outdated Definitions.** Terms that are no longer in common use should either be discarded or replaced with more contemporary language. Defining these terms can avoid legal issues such as vagueness challenges. However, their use causes confusion and makes the Zoning Regulations difficult to read.
- **Placement of Definitions.** Some codes include all definitions in a common definitions section. Definitions that relate only to a particular section, such as signs or floodplain regulations, are sometimes placed in that section rather than the common definitions section. This has several advantages. First, it avoids having to flip around the document to find the definition. Second, where the same term has a different meaning in that section, it avoids confusion by placing the precise term in the section that applies to it.

The definitions in the Zoning Regulations have been criticized more for their substance than their failings in the area of drafting. The existing definitions do an exemplary job of avoiding embedded standards, unnecessary definitions, and similar problems found in many regulations. However, some of the threshold criteria might be addressed better in supplementary regulations. For example, the term “cellar” is presently defined as “that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade.” A cellar is then, in turn, excluded from the definition of “gross floor area.” The connection between the definition of “cellar” and the resulting development potential of a lot is lost on many members of the general public. As an alternative, the relationship between cellars and permitted floor area could be addressed through a general standard relating to how permitted floor area is determined.

While the Zoning Regulations largely avoid the problem of embedded standards or substance, there is at least one instance of this. The definition of “party” for contested cases in Chapters 30 and 31 (11 DCMR §§ 3099, 3199) establish who has party status. ANCs are listed as having automatic party status in the definitions. However, the contested case rules (e.g., 11 DCMR §§ 3022, 3106) do not indicate that ANCs have automatic party status. In fact, in at least one instance, the rules require the ANC to file a written report in order to have party status (11 DCMR § 3012.5).⁷ A consolidated section establishing who has party status and what must be submitted and shown to obtain it, with a cross-reference in the definitions, might clarify this issue.

Defining terms between different versions of the Zoning Regulations, and between permits and the Zoning Regulations, has posed a difficult enforcement is-

sue. In *Kuri Bros., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 891 A.2d 241 (D.C. 2006), for example, a certificate of occupancy was granted to operate an “automobile service center” in the C-3-A district. The term “automobile service center” was not defined in the Zoning Regulations. The DCRA brought an enforcement action when it determined that the property owner was operating an “automobile repair garage.” An automobile repair garage was a defined term, and was only permitted as a special exception. The applicant had not obtained a special exception to operate an automobile repair garage. The court upheld DCRA’s interpretation, finding that the application fell within the “automobile repair garage” definition.

One enhancement that was suggested early in this study is replacing jargon with “Plain English” terms. Outmoded terms include “bachelor apartment” and “tenement.” These terms are no longer in wide use, and have negative connotations. The definitions should be updated with contemporary terms and an expanded list of uses. In the residential context, this could include apartments, townhouses, and related uses.

A further improvement to the definitions could involve moving them to a broader section entitled “rules of interpretation.” This would include not only definitions, but also broader rules of interpretation. These could include:

- **Graphics** - this would explain that graphics are used only as an aid to the reader, and do not supersede the text
- **Language** - general rules about usage, such as that plural terms include singular terms, etc.
- **Omitted terms** - a reference to statutes, dictionaries, or other sources that define the terms not used in the Zoning Regulations.
- **Abbreviations** - a comprehensive list of abbreviations

Finally, definitions and rules of interpretation are usually regarded as technical, and sometimes boring, reading material. However, definitions are an essential ingredient of a complete zoning regulation. Definitions can be moved to the rear of the document, where they will not disrupt the document’s flow, while still providing a reference for key terms.

Table 7 Definitions: Summary of Strengths and Weaknesses	
Weaknesses	✓ Placed at beginning of document
	✓ Incomplete rules of interpretation
	✓ Some outdated and archaic terms
	✓ Some concepts (such as “cellar”) better left to supplemental regulations
Strengths	✓ Few embedded regulations
	✓ Writing style
Alternatives / Actions / Policy Issues	✓ Move definitions to rear of document
	✓ Create a broader set of rules of interpretation



Conclusion

Chapter 1 provides the introductory material for the District’s Zoning Regulations. This is the first text that readers engage when they review the Zoning Regulations. Zoning regulations are not intended for reading from cover to cover. However, it is a good practice to have a strong and useful introduction that engages the reader’s interest, establishes a basis for the regulations, and guides the reader to the parts of the regulations that are of interest to them.

Chapter 1 has some significant strengths. It clearly lays out the regulatory authority for zoning, uses a conventional format that is comfortable for many professional users, and incorporates most well established general regulatory matters. This avoids some of the technical mistakes and enforcement failures of poorly drafted regulations.

However, the Chapter 1 could be improved by better organization and integration with the balance of the document. It includes many pages of technical materials that are better codified elsewhere – particularly in the rear of the document. Before engaging the substantive regulations, a reader must skim through 30 pages of technical materials, including 22 pages of definitions. Most readers are accustomed to looking in the back of manuals and similar publications for a glossary of terms, abbreviations, and other explanatory materials. Placing these, along with other technical and boilerplate language to the rear of the document would significantly improve its readability.

1. Note: all capitalized references in this report to the “Zoning Regulations” refer to the District of Columbia’s Zoning Regulations codified at Title 11, DCMR, as amended. References to “zoning regulations” in small letters refer generically to the concept of a codified set of zoning rules.
2. Note: all section or “§” references in this Report are to the Zoning Regulations, unless otherwise indicated.
3. *Russell v. District of Columbia Bd. of Zoning Adjustment*, 402 A.2d 1231, 1236 n. 9 (1979).
4. *2 Anderson’s Am. Law*. Zoning § 9:3 (4th ed., Nov. 2007).
5. White, “Classifying and Defining Uses and Building Forms: Land-Use Coding for Zoning Regulations,” *Zoning Practice* (Sept. 2005).
6. See Jefferson County, West Virginia, *Ordinance Critique and Recommendations* (Draft, June 2006).
7. The result of this rule is that in order to be accorded “great weight”, the ANC must provide a written report. While the ANC starts automatically as a party, it does not automatically get great weight unless it chooses to participate as such by meeting and filing its written report. This is in keeping with the Zoning Regulations and the subsequently passed ANC law.
8. According to their revocation notice, DCRA “created the category of ‘Automobile Service Center’ to allow the applicant “to sell small automotive parts and make installations of same.” The notice stated that “[t]his facilitation did not include or permit any major automotive engine, body work or other automotive garage functions.”

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