

# TITLE 11 – ZONING

## SUBTITLE X GENERAL PROCEDURES

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## **CHAPTER 1 CAMPUS PLANS, SCHOOL PLANS, AND MEDICAL CAMPUS PLANS**

### **100 GENERAL PROVISIONS**

- 100.1 The provisions of this chapter shall apply to the following:
- (a) Education uses as a university or college when permitted as a special exception;
  - (b) Private schools when permitted as a special exception; and
  - (c) Medical campus plans when permitted as a special exception.
- 100.2 The intent of regulating campus facilities is to:
- (a) Promote well planned and designed educational campuses;
  - (b) Encourage long-term facilities planning for these uses;
  - (c) Minimize negative impacts of campuses on surrounding residential areas; and
  - (d) Provide consistency and transparency to the campus planning process.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **101 CAMPUS PLANS**

- 101.1 Education use by a college or university shall be permitted as a special exception subject to review and approval by the Zoning Commission under Subtitle X, Chapter 9 after its determination that the use meets the applicable standards and conditions of this chapter.
- 101.2 The uses shall be located so that they are not likely to become objectionable to neighboring property because of noise, traffic, parking, number of students, or other objectionable conditions.
- 101.3 Any commercial use customarily incidental to a university use in an R, RF, or RA zone, or as an adjunct use to a university building, shall be subject to the following conditions:
- (a) There shall be a demonstrated and necessary relationship between the use and the university functions;

- (b) The total floor area of all commercial uses, including basement or cellar space, shall occupy no more than ten percent (10%) of the gross floor area of the total campus plan floor area; and
- (c) The commercial use shall be located so that it will not become objectionable to non-university residential neighbors due to hours of operation, noise, parking, loading, lighting, trash, or other operational characteristics that are not customarily associated with a residential use.

101.4 The campus plan process shall not serve as a process to create general commercial activities or developments unrelated to the educational mission of the applicant or that would be inconsistent with the Comprehensive Plan.

101.5 The following development standards shall apply to the maximum total density of all buildings and structures on the campus in an R, RF, RA, or RC-1 zone:

**TABLE X § 101.5: MAXIMUM TOTAL DENSITY OF ALL BUILDINGS AND STRUCTURES**

Zone	Maximum Height (Feet)	Maximum Floor Area Ratio
All R and RF zones	50	1.8
RA-1, RA-2, RA-6, RA-7, RA-8, RC-1	50	1.8
RA-3, RA-4, RA-5, RA-9, RA-10	90	3.5

101.6 Because of permissive increases as applicable to normal bulk requirements in the low-density zones regulated by this title, it is the intent of this subsection to prevent unreasonable campus expansion into improved low-density zones.

101.7 In calculating floor area ratio (FAR), the land area shall not include public streets and alleys, but may include interior private streets and alleys within the campus boundaries.

101.8 As a prerequisite to requesting a further processing for each college or university use, the applicant shall have submitted to the Zoning Commission for its approval a plan for developing the campus as a whole, showing the location, height, and bulk, where appropriate, of all present and proposed improvements including, but not limited to, the following:

- (a) Buildings and parking and loading facilities;
- (b) Screening, signs, streets, and public utility facilities;
- (c) Athletic and other recreational facilities; and
- (d) A description of all activities conducted or to be conducted on the campus, and of the capacity of all present and proposed campus development.

- 101.9 The further processing of specific buildings, structures, and uses within an approved campus plan shall be processed as a special exception unless the campus plan approval was included in an order granting a first-stage planned unit development (PUD) for the campus, in which case the further processing shall be in the form of second-stage planned unit development applications filed consistent with the conditions of the approved campus plan/PUD.
- 101.10 Within a reasonable distance of the college or university campus, and subject to compliance with Subtitle X § 101.2, the Zoning Commission may also permit the interim use of land or improved property with any use that the Zoning Commission may determine is a proper college or university function. The land need not be included in the campus plan. When a major new building that has been proposed in a campus plan is instead moved off-campus, the previously designated site shall not be designated for, or devoted to, a different major new building unless the Zoning Commission has approved an amendment to the campus plan applicable to the site; provided, that for this purpose a major new building is defined as one specifically identified in the campus plan.
- 101.11 In reviewing and deciding a campus plan application or new building construction pursuant to a campus plan, the Zoning Commission shall consider, to the extent they are relevant, the policies of the District Elements of the Comprehensive Plan.
- 101.12 As an integral part of the application requesting approval of new building construction pursuant to a campus plan, the college or university shall certify and document that the proposed building or amendment is within the FAR limit for the campus as a whole, based upon the computation included in the most recently approved campus plan and the FARs of any other buildings constructed or demolished since the campus plan was approved.
- 101.13 Pursuant to Subtitle Z § 405.1, as soon as the application is accepted, the Office of Zoning shall refer the application to the Office of Planning, the Department of Transportation, and the Department of Energy and Environment for review and written reports.
- 101.14 Approval of a campus plan shall be based on the determination by the Zoning Commission that the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to affect adversely the use of neighboring property, in accordance with the Zoning Regulations and Zoning Maps, subject to the special conditions specified in this section.
- 101.15 Small deviations from plans approved under further processing that are determined necessary by the Zoning Administrator for compliance with life, safety, or building codes, may be permitted without an amendment to a further processing provided the deviation does not result in an increase in gross floor area of more than four-hundred and fifty square feet (450 sq. ft.) and the addition shall only be used for purposes of ingress, egress, or handicap access.

101.16 A further processing of a campus building shall not be filed simultaneously with a full campus plan application. However, an amendment to an approved campus plan may be considered simultaneously with the further processing if determined necessary by the Zoning Commission.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06P published at 65 DCR 11927 (October 26, 2018).

## **102 SPECIAL EXCEPTION FOR USE OF COMMERCIAL PROPERTY BY A COLLEGE OR UNIVERSITY**

102.1 A property in the low-density mixed-use zones (MU-3, MU-4, MU-18, MU-25 through MU-29, and RC-2) and any NC zone to be used by a university or college for a use other than the matter-or-right uses established in Subtitle F and Subtitle G shall be permitted as a special exception, subject to review and approval by the Zoning Commission and subject to the provisions of this section.

102.2 An application under this section shall be processed under the rules and procedures for a special exception in Subtitle Y or as part of campus plan.

102.3 The proposed use shall be compatible with other uses in the area.

102.4 The use shall not be objectionable because of its effect on the character of the neighborhood or because of noise, traffic, lighting, or other conditions.

102.5 An applicant may request that use of property under this section be considered as part of a campus plan subject to Subtitle X § 101 and, if agreed to by the Zoning Commission, it shall be subject to the conditions of the campus plan approval and no additional special exception shall be required.

102.6 The Zoning Commission may consider the scope of the use and its relationship to any campus plan by the same university or college. The Zoning Commission may determine that an application under this section is more properly considered as part of a campus plan and may require the applicant to include the use and property within a campus plan subject to review and approval of Subtitle X § 101.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **103 MEDICAL CAMPUS PLANS**

103.1 Medical care uses to be located in two (2) or more buildings that would individually be subject to approval as a special exception may be collectively approved as a medical campus plan.

103.2 A medical campus shall be permitted as a special exception, subject to review and approval by the Zoning Commission, after their determination that the use meets the applicable standards and condition of this chapter.

- 103.3 A medical campus plan shall not incorporate a design review of individual buildings but shall focus on the site planning, efficient arrangement of uses and buildings, flexibility to use shared facilities, and mitigation of any adverse impacts.
- 103.4 A medical campus may be comprised of facilities under one (1) or multiple authorities or providers.
- 103.5 A medical campus may include hospitals, clinics, primary care offices, medical office buildings, nursing and convalescence care facilities, continuing care retirement community, related and shared parking and loading facilities, and ancillary retail and services that are customarily incidental to the uses.
- 103.6 A medical campus shall be generally in a defined geography and buildings may be separated by public streets and alleys.
- 103.7 The development standards for a medical campus shall be those of the zone in which the medical campus is located; however, the Zoning Commission may allow for the comprehensive allocation of FAR, shared parking and loading, and other deviations from the requirements of this title that result in an efficient use of land and delivery of services within the campus.
- 103.8 All buildings covered under an approved medical campus may apply for a building permit as a matter-of-right consistent with the conditions of the medical campus plan.
- 103.9 Pursuant to Subtitle Z § 405.1, as soon as the application is accepted, the Office of Zoning shall refer the application to the Office of Planning, the Department of Transportation, and the Department of Energy and Environment for review and written reports.
- 103.10 Approval of a medical campus plan shall be based on the determination by the Zoning Commission that the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to affect adversely the use of neighboring property, in accordance with the Zoning Regulations and Zoning Maps, subject to the special conditions specified in this section and in the applicable special exception provisions of the zone in which the medical campus is located.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **104 PRIVATE SCHOOL PLAN**

- 104.1 Education use by a private school shall be permitted as a special exception subject to review and approval by the Board of Zoning Adjustment after its determination that the use meets the applicable standards of Subtitle X, Chapter 9 and conditions of this section.

- 104.2 The private school shall be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions.
- 104.3 The development standards for a private school shall be those of the zone in which the private school is located.
- 104.4 In calculating density, the land area shall not include public streets and alleys, but may include interior private streets and alleys within the school boundaries.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **105 SCHOOL PLAN REQUIREMENTS**

- 105.1 The applicant shall submit to the Board of Zoning Adjustment for its approval a plan for the school showing the location, height, and bulk, where appropriate, of all present and proposed improvements, including, but not limited to, the following:
- (a) Buildings and parking and loading facilities;
  - (b) Screening, signs, streets, and public utility facilities;
  - (c) Athletic and other recreational facilities;
  - (d) A description of all activities conducted or to be conducted in the school, and of the capacity of all present and proposed school development; and
  - (e) Any other relevant information.
- 105.2 Pursuant to Subtitle Y § 405.2, the Office of Zoning shall, within ten (10) days after the receipt of the application, refer the application to the Office of Planning, the Department of Transportation, and the Department of Energy and Environment for review and written reports
- 105.3 Approval of a private school shall be based on the determination by the Board of Zoning Adjustment that the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to affect adversely the use of neighboring property, in accordance with the Zoning Regulations and Zoning Maps, subject to the special conditions specified in this section.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **106 APPLICATION REQUIREMENTS**

- 106.1 An application for a campus plan/further processing review shall comply with the requirements of Subtitle Z § 302.



106.2 An application for a medical campus plan review shall comply with the requirements of Subtitle Z § 302.

106.3 An application for a school plan review shall comply with the requirements of Subtitle Y § 300.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## CHAPTER 2 CHANCERY APPLICATIONS

### 200 GENERAL PROVISIONS

- 200.1 This chapter provides regulations regarding an application to locate, replace, or expand a chancery use not otherwise permitted as a matter-of-right, to implement the Foreign Missions Act, approved August 24, 1982 (96 Stat. 282, as amended; D.C. Official Code §§ 6-1301 to 6-1315 (2012 Repl.).
- 200.2 For the purposes of this chapter, the term “low- to medium-density residence zones” shall mean all the R and RF zones, and the RA-1, RA-2, RA-3, RA-6, RA-7, RA-8, and RC-1 zones.
- 200.3 For the purpose of this chapter, the term “special purpose zones” shall mean the MU-1, MU-2, MU-15, MU-16, MU-23, and the D-2 zones.
- 200.4 For the purposes of this chapter, the term “medium-high density residential zones” shall mean the RA-4 and RA-9 residential apartment zones, and “high-density residential zones” shall mean the RA-5 and RA-10 residential apartment zones.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### 201 CHANCERY USE CRITERIA

- 201.1 The Board of Zoning Adjustment shall determine whether to “not disapprove” or “disapprove” a chancery application according to the standards of this section.
- 201.2 A chancery shall be permitted in the medium-high density residential zones, high-density residential zones, and special purpose zones, subject to disapproval by the Board of Zoning Adjustment in accordance with the review standards of Subtitle X § 201.8.
- 201.3 For applications requesting to locate, replace, or expand a chancery in a low- to medium-density residence zone, before applying the criteria of Subtitle X § 201.8, the Board of Zoning Adjustment after a hearing on the application shall determine whether the proposed location is in a mixed-use area determined on the basis of existing uses, which includes office and institutional uses.
- 201.4 For the purposes of Subtitle X § 201.3 determination, the “area” shall be the area that the Board of Zoning Adjustment determines most accurately depicts the existing mix of uses adjacent to the proposed location of the chancery.
- 201.5 An area shall be considered to be a mixed-use area if as of the date of the application more than fifty percent (50%) of the zoned land within the area is devoted to uses other than residential uses as defined in Subtitle B, Chapter 2. Notwithstanding the foregoing, the Board of Zoning Adjustment may find that an area with less than or equal to fifty percent (50%) of non-residential uses is a

mixed-use area upon a showing of non-residential uses as may be submitted by the applicant, Secretary of State, or the Mayor of the District of Columbia.

- 201.6 If the Board of Zoning Adjustment finds that the area is a mixed-use area, the Board of Zoning Adjustment shall then determine the merits of the application based on the criteria of Subtitle X § 201.8.
- 201.7 If the Board of Zoning Adjustment finds that the area is not a mixed-use area, the Board of Zoning Adjustment shall disapprove the application.
- 201.8 The Board of Zoning Adjustment’s determination of the merits of all chancery applications shall be based solely on the following criteria:
- (a) The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation’s Capital;
  - (b) Historic preservation, as determined by the Board of Zoning Adjustment. In carrying out this section, and in order to ensure compatibility with historic landmarks and districts, substantial compliance with District of Columbia and federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmark;
  - (c) The adequacy of off-street parking or other parking and the extent to which the area will be served by public transportation to reduce parking needs, subject to such special security requirements as may be determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services;
  - (d) The extent to which the area is capable of being adequately protected, as determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services;
  - (e) The municipal interest, as determined by the Mayor of the District of Columbia; and
  - (f) The federal interest, as determined by the Secretary of State.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **202 EXPANSION OR REPLACEMENT OF EXISTING CHANCERIES**

- 202.1 An existing chancery in a low- to medium-density residential zone may be expanded or replaced, subject to disapproval by the Board of Zoning Adjustment, in accordance with the review standards of Subtitle X § 201.8.

## **203 BOARD OF ZONING ADJUSTMENT REVIEW**

- 203.1 In addition to the procedures for a special exception case set forth in Subtitle Y, the following procedures apply to the review of chancery applications.
- 203.2 The consideration of an application submitted under this section shall be considered a rulemaking proceeding.
- 203.3 Any determination by the Board of Zoning Adjustment shall be based solely on the criteria in Subtitle X § 201.8.
- 203.4 The Board of Zoning Adjustment shall refer each application to the Office of Planning for review and comment. The Board of Zoning Adjustment shall specifically request a determination by the Mayor as to the municipal interest.
- 203.5 The Board of Zoning Adjustment shall refer each application to the United States Secretary of State for review and comment, and shall specifically request a determination of the federal interest, as set forth in Subtitle X § 201.8(f), special security requirements, as set forth in Subtitle X § 201.8(c), and the extent to which the site is capable of being adequately protected, as set forth in Subtitle X § 201.8(d).
- 203.6 If the application would require the construction, demolition, or alteration of a building located in a historic district, the alteration or demolition of a historic landmark, or the construction of a building or structure on the site of a historic landmark, the application shall be referred to the Historic Preservation Review Board, and if the property is located in the Old Georgetown District described in D.C. Official Code § 6-1201, it shall also be referred to the Commission of Fine Arts for the Historic Preservation Review Board and the Commission of Fine Arts to report as to whether the substantive criteria of Subtitle X § 201.9 have been met.
- 203.7 The Board of Zoning Adjustment may grant relief to the requirements of this title for chanceries in all zones, and may grant permission to construct improvements in the public space to be undertaken as part of a chancery application being reviewed by the Board of Zoning Adjustment, consistent with what is permitted under District law and in accordance with the procedures and standard of this chapter.
- 203.8 A final determination on a chancery application shall be published in the *D.C. Register* not later than six (6) months after the date a complete application is filed.
- 203.9 The Board of Zoning Adjustment's determination shall not be subject to administrative proceedings of any other District agency.

## **204 IMPLEMENTATION**

- 204.1 Following the publication of a notice of final rulemaking giving notice of the Board of Zoning Adjustment's decision to not disapprove an application, the applicant may file an application for a building permit with the proper authorities of the District of Columbia.
- 204.2 The Zoning Administrator shall not approve a permit application unless the submitted construction plans conform to the plans approved by the Board of Zoning Adjustment in its final decision, as those plans may have been modified by any guidelines, conditions, or standards that the Board of Zoning Adjustment may have applied.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **205 APPLICATION REQUIREMENTS**

- 205.1 An application for a chancery shall meet the requirements of Subtitle Y § 301.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## CHAPTER 3 PLANNED UNIT DEVELOPMENTS

### 300 PLANNED UNIT DEVELOPMENTS

- 300.1 The purpose of the planned unit development (PUD) process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
- (a) Results in a project superior to what would result from the matter-of-right standards;
  - (b) Offers a commendable number or quality of meaningful public benefits; and
  - (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.
- 300.2 While providing for greater flexibility in planning and design than may be possible under conventional zoning procedures, the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan.
- 300.3 A PUD case shall be heard by the Zoning Commission and follow the contested case procedures of Subtitle Z, Chapter 4.
- 300.4 A PUD application may include a related zoning map amendment. A PUD-related zoning map amendment is valid only in combination with and contingent upon a project being built and operated under the conditions of a PUD approval. PUD-related map amendments establish no precedent for the Zoning Commission's consideration of permanent changes to the zoning of the PUD site or adjacent areas or for consideration of future PUDs.
- 300.5 A comprehensive public review by the Zoning Commission of a PUD is required in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits.
- 300.6 The Zoning Commission may approve a PUD application with or without modifications. In carrying out the purposes of this chapter, the Zoning Commission may establish general standards and, in individual cases, set standards and conditions for height and bulk lesser or greater than the standards established for the affected districts in this chapter or elsewhere in this title.
- 300.7 The Zoning Commission may also set appropriate time limits for benefits conferred as part of a PUD approval to ensure the construction of a proposed development in accordance with the conditions established.

- 300.8 Failure of an applicant to complete a proposed development as directed within the time limits set by the Zoning Commission or the Zoning Regulations shall result in the termination of the benefits granted under the application, and reversion of the zoning controls to the underlying zone regulations.
- 300.9 The PUD process is available as an optional process that may be applied for by a property owner.
- 300.10 The PUD process shall not be used to reduce requirements for designated uses, specifically retail, service, entertainment, and arts uses established within a NC zone.
- 300.11 For the purposes of this chapter, any reference to “zone” or “zone district” shall mean the zone district or districts in which the PUD site is located, unless a PUD-related map amendment is requested, in which case the reference shall mean the zone district or districts in which the PUD site will be located if the map amendment is granted.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016).

### **301 MINIMUM LAND AREA (PUD)**

- 301.1 The minimum area included within a proposed development application, including the area of public streets or alleys proposed to be closed, shall be as follows:

**TABLE X § 301.1: MINIMUM PUD LAND AREA**

<b>Zone Group</b>	<b>Applicable Zone</b>	<b>Minimum Area</b>
1	Any R zone and RF-1, RF-3	2 acres
	RA-2	1 acre
	MU-4, MU-5A	15,000 sq. ft.
2	RA-1 RC-1 MU-11	1 acre
3	RF-2 RA-8, RA-9, RA-10 MU-15, MU-16 MU-22	1 acre
4	MU-17, MU-18, MU-19, MU-20, MU-21	0.5 acre
5	NC-7, NC-8, NC-9, NC-10, NC-11, NC-12, NC-13, NC-14, NC-15, NC-16, NC-17	10,000 sq. ft.
6	Any Other Zone	15,000 sq. ft.

- 301.2 The Zoning Commission may waive not more than fifty percent (50%) of the minimum area requirement of Subtitle X § 301.1 for applications in Zone Group 1, provided that the Zoning Commission shall find after the public hearing that the development is of exceptional merit and is in the best interests of the District of Columbia or the country and one (1) of the following:
- (a) The development is identified in an approved Small Area Plan and will be generally not inconsistent with the Small Area Plan;
  - (b) The development will be constructed or operated by the District of Columbia or federal government and serves a compelling government interest; or
  - (c) If the development is to be located outside the Central Employment Area, at least eighty percent (80%) of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto.
- 301.3 The Zoning Commission may waive the minimum area requirement of Subtitle X § 301.1 to no less than five thousand square feet (5,000 sq. ft.) for applications in Zone Groups 2, 5, and 6, provided the Zoning Commission shall find after the public hearing that the development is of exceptional merit and is in the best interests of the District of Columbia or the country and one (1) of the following:
- (a) The development is identified in an approved Small Area Plan and will be generally not inconsistent with the Small Area Plan;
  - (b) The development will be constructed or operated by the District of Columbia or federal government and serves a compelling government interest; or
  - (c) If the development is to be located outside the Central Employment Area, at least eighty percent (80%) of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto.
- 301.4 The Zoning Commission may waive up to five percent (5%) of the minimum area requirement of Subtitle X § 301.1 for applications in Zone Groups 3 and 4 provided that the Zoning Commission shall find after the public hearing the development is of exceptional merit and is in the best interests of the District of Columbia or the country.
- 301.5 All the property included in a PUD in Zone Groups 1, 2, 5, and 6 shall be contiguous, except that the property may be separated only by public streets, alleys, or rights-of-way.
- 301.6 All property included in a PUD in Zone Groups 3 and 4 shall be contiguous and may neither be separated by a street, alley nor bridge.



SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016); Final Rulemaking & Order No. 08-06F published at 64 DCR 2783 (March 17, 2017).

## **302 PLANNED UNIT DEVELOPMENT APPLICATION TYPES**

302.1 A PUD request may be filed as either a one-stage, consolidated, or a two-stage application.

302.2 A two-stage application has two (2) parts as follows:

- (a) The first-stage application involves a general review of the site's suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with the Comprehensive Plan, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project; and
- (b) The second-stage application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and this title.

302.3 A consolidated application shall incorporate all information and material for both a first- and second-stage application as required by Subtitle A §§ 309.11 and 309.12 into one (1) application, and all information shall be submitted at the time of initial filing.

302.4 When the Zoning Commission considers whether to set down a consolidated application for a hearing, the Zoning Commission shall determine whether the application is sufficiently clear and detailed to be considered at one (1) proceeding.

302.5 The Zoning Commission reserves the right to direct an applicant to revise a consolidated application into a two-stage application, if in the opinion of the Zoning Commission the circumstances and issues surrounding the proposal require a two-stage review.

302.6 If any proposed use or building would require a special exception under the existing zoning for the site, but the special exception would not be required if a proposed zoning amendment is granted, the Zoning Commission need not consider the special exception nor refer the application to the Board of Zoning Adjustment for its consideration.

302.7 The Zoning Commission may dismiss or deny the application at the conclusion of the presentation of the applicant's case or at any point thereafter.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016).

### **303 PLANNED UNIT DEVELOPMENT FLEXIBILITY**

- 303.1 As part of the PUD process, the Zoning Commission may grant relief from any building development standard or other standard referenced in the zone reference table with the exception of use regulations. Housing and arts credits are considered use regulations and are not eligible for flexibility through the PUD process.
- 303.2 The FAR of all buildings shall not exceed the aggregate of the FARs as permitted in the zone or zones included within the PUD boundary, as that may be increased by X § 303.3.
- 303.3 Except as limited in Subtitle X §§ 303.5 and 303.6 , the Zoning Commission may increase the maximum total density permitted on the site by no more than twenty percent (20%) of that maximum matter-of-right permitted by the zone district(s) associated with the PUD As part of the twenty percent (20%) increase, the Zoning Commission may increase the maximum density for non-residential uses by no more than thirty-four percent (34%) of the maximum matter-of-right non-residential density permitted within the zone district associated with the PUD.
- 303.4 The twenty percent (20%) PUD related increase in density permitted under Subtitle X § 303.3 may be calculated using the matter-of-right density and the IZ bonus density when the PUD includes a full allocation of Inclusionary Zoning units consistent with Subtitle C, Chapter 10.
- 303.5 The matter-of-right floor area ratio limits shall serve as the density guidelines for a PUD in the NC zones.
- 303.6 The matter-of-right floor area ratio limits shall serve as the maximum permitted density for a PUD in the following zones:
- (a) MU-15, MU-16, MU-17, MU-18, MU-19, MU-20, MU-21, MU-22, MU-25, MU-26;
  - (b) RF-2; and
  - (c) RA-8, RA-9, and RA-10.
- 303.7 Except as permitted for a penthouse pursuant to Subtitle X § 303.18, no building or structure shall exceed the maximum PUD height permitted in the least restrictive zone district within the PUD site as set forth in the following table; provided, that the Zoning Commission may authorize the deviations permitted pursuant to Subtitle X § 303.10:

**TABLE X § 303.7: MAXIMUM PERMITTED PUD BUILDING HEIGHT IN THE LEAST RESTRICTIVE ZONE DISTRICT**

<b>Zone</b>	<b>Maximum PUD Height (feet)</b>
RF-1, RF-3, RF-4, RF-5	50
RA-1, RA-2, RA-7, RC-1	60
RA-3	75
RA-4, RA-5	90
RA-6	40
MU-1	75
MU-2	90
MU-3	40
MU-4	65
MU-5	90
MU-6	110
MU-7, MU-8	90
MU-9	130
MU-10	110
MU-11	40
MU-12	60
MU-13	80
MU-14	100
MU-23	90
MU-24, MU-25, MU-26	65
MU-27	40
MU-28 (C-3-A/FT)	90
MU-29 (CR/FT)	110
MU-30	130
PDR-7 (M/FT)	90
D zones	As permitted in Subtitle I
PDR-1, PDR-2	60
PDR-3, PDR-4, PDR-5, PDR-6	90
PDR-7 (M/FT)	90
NC-1, NC-2, NC-3, NC-4, NC-5, NC-6, NC-7, NC-8, NC-9, NC-10, NC-11, NC-12, NC-13 NC-14, NC-15, NC-16, NC-17	In these NC zones, the matter-of-right height limits shall serve as the guidelines for a PUD.
RF-2, RA-8, RA-9, RA-10, MU-15, MU-16, MU-17, MU-18, MU-19, MU-20, MU-21, MU-22	The matter-of-right height limits shall serve as the maximum permitted height for a PUD.

303.8 In the NC-7 and NC-8 zones, any additional height and floor area above that permitted as a matter-of-right shall be for residential use only.

303.9 In the NC-9 through NC-13 zones, any additional height and floor area above that permitted as a matter-of-right shall be used only for housing or the preferred uses of the NC-9 through NC-13 zones.

- 303.10 The Zoning Commission may authorize the following increases; provided, that the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of this chapter:
- (a) An increase of not more than five percent (5%) in the maximum building height but not the maximum penthouse height; or
  - (b) An increase of not more than five percent (5%) in the maximum density.
- 303.11 The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission.
- 303.12 A PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD.
- 303.13 As part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards. Any such flexibility shall be considered the type of development flexibility against which the Zoning Commission shall weigh the benefits of the PUD.
- 303.14 As part of any PUD, the applicant may request the Zoning Commission to grant an area variance to permit additional height and density beyond that permitted by this section. The Zoning Commission shall apply and not deviate from the variance standard stated at Subtitle X, Chapter 10.
- 303.15 The PUD height and density standards for the special purpose zones are contained in Subtitle K for those zones.
- 303.16 An electronic equipment facility (EEF) may occupy more than fifty percent (50%) of the gross floor area of a building in the MU-7, MU-8, MU-9, MU-30 or any D zone, if approved as part of a PUD in accordance with the requirements of this chapter and subject to the following additional criteria:
- (a) The aggregate total area to be devoted to EEF use may not exceed fifty percent (50%) of the permitted gross floor area of the entire project; and
  - (b) The EEF shall be located on a portion of the lot that does not directly front on a street so as to preclude retail, service, and office uses from being developed on the street frontage of the project.
- 303.17 Any additional density (whether residential or non-residential) or development rights granted through a PUD, including PUD-related map amendments, cannot be transferred as part of a combined lot development

303.18 The matter-of-right penthouse height and number of story limits shall serve as the maximum permitted penthouse height and stories for a PUD except in the following zones:

**TABLE X § 303.18: MAXIMUM PUD PENTHOUSE HEIGHT AND STORIES**

<b>Zone</b>	<b>Maximum Penthouse Height</b>	<b>Maximum Penthouse Stories</b>
RA-1	12 ft. except 15 ft. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
MU-4, MU-12, ARTS-1; CG-6 NC-7, NC-9, NC-14, NC-16 PDR-1, PDR-6	12 ft. except 18 ft. 6 in. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
RA-3 MU-1	20 ft.	1; second story permitted for penthouse mechanical space
MU-5, MU-7, MU-8, MU-28 NC-8, NC-10, NC-12, NC-13, NC-15, NC-17 ARTS-2 PDR-2	20 ft.	1 plus mezzanine; second story permitted for penthouse mechanical space

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016); Final Rulemaking & Order No. 17-04 published at 64 DCR 7264 (July 28, 2017); Final Rulemaking & Order No. 08-06P published at 65 DCR 11927 (October 26, 2018).

**304 PLANNED UNIT DEVELOPMENT EVALUATION STANDARDS**

304.1 The Zoning Commission will evaluate and grant or deny a PUD application according to the standards of this section.

304.2 The applicant shall have the burden of proof to justify the granting of the application according to these standards.

304.3 In deciding a PUD application, the Zoning Commission shall judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.

304.4 The Zoning Commission shall find that the proposed development:

- (a) Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;

- (b) Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and
- (c) Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06J published at 64 DCR 6110 (June 30, 2017).

### **305 PLANNED UNIT DEVELOPMENT PUBLIC BENEFITS**

- 305.1 The Zoning Commission shall also evaluate the specific public benefits and project amenities of the proposed development, which features may in some instances overlap.
- 305.2 Public benefits are superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title.
- 305.3 All public benefits shall meet the following criteria:
  - (a) Benefits shall be tangible and quantifiable items;
  - (b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy;
  - (c) Benefits may primarily benefit a particular neighborhood or area of the city or service a critical city-wide need; and
  - (d) Monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.
- 305.4 A majority of public benefits of the proposed PUD should relate to the geographic area of the Advisory Neighborhood Commission in which the application is proposed.
- 305.5 Public benefits of the proposed PUD may be exhibited and documented in any of the following or additional categories:
  - (a) Superior urban design and architecture;

- (b) Superior landscaping, or creation or preservation of open spaces;
- (c) Site planning and efficient and economical land utilization;
- (d) Commemorative works or public art;
- (e) Historic preservation of private or public structures, places, or parks;
- (f) Housing that:
  - (1) Exceeds the amount that would have been required through matter-of-right development under existing zoning;
  - (2) Includes senior housing; or
  - (3) Provides units with three (3) or more bedrooms;
- (g) Affordable housing; except that affordable housing provided in compliance with the Inclusionary Zoning requirements of Subtitle C, Chapter 22, shall not be considered a public benefit except to the extent it exceeds what would have been required through matter-of-right development under existing zoning. In determining whether this standard has been met, the Zoning Commission shall balance any net gain in gross floor area against any loss of gross floor area that would have been set-aside for “low-income households” as defined in the Inclusionary Zoning requirements of Subtitle C, Chapter 10;
- (h) Employment and training opportunities;
- (i) Social services and facilities for the duration of the PUD, including, but not limited to, space dedicated for a day care or elderly care facility. The day care must be available to the general public and open during normal business hours at least five (5) days each week and fifty (50) weeks each calendar year. The space for each child shall be based on the requirement outlined in the Child Development Facilities Regulations;
- (j) Building space for special uses including, but not limited to, community educational or social development, promotion of the arts or similar programs and not otherwise required by the zone district, a grocery store larger than fifteen thousand square feet (15,000 sq. ft.) in areas where a grocery store does not exist within a three mile (3 mi.) radius, or incubation space for small or local businesses;
- (k) Environmental and sustainable benefits to the extent they exceed the standards required by zoning or other regulations including, but not limited to:

- (1) Storm water runoff controls in excess of those required by Stormwater Management Regulations;
  - (2) Use of natural design techniques that store, infiltrate, evaporate, treat, and detain runoff in close proximity to where the runoff is generated;
  - (3) Garden(s) or on-site food production through permanent and viable growing space and/or facilities such as a greenhouse or a garden conservatory which provide fencing, watering systems, soil, secured storage space for tools, solar access, and pedestrian access as applicable. The facility shall be designed to be architecturally compatible with the development and to minimize the visibility of mechanical equipment;
  - (4) Total green area ratio scores that exceed requirements by at least one-tenth (0.1); and
  - (5) Meeting the minimum standards for Leadership in Energy and Environmental Design (LEED) Gold certification. The project does not have to achieve actual LEED certification; however, the developer must include the LEED checklist and documentation in the application, approved by a LEED Accredited Professional (LEED-AP) that shows that the project will comply with LEED requirements;
- (l) Streetscape plans, subject to approval by the Department of Transportation Public Space Committee including implementation and maintenance of the streetscape for the duration of the project for areas where there are no design standards;
  - (m) Outdoor children's play area: a public, active, outdoor children's play area that shall be secure, separated from parking and maneuvering areas, and designed to facilitate adult supervision. The play area shall include play equipment, installed to the manufacturer's specifications, or natural features suitable for children in both preschool and elementary school. The play area shall be a minimum of five hundred square feet (500 sq. ft.);
  - (n) Park maintenance or participation in the Department of Park and Recreation (DPR) "Adopt-a-Park Program" for the life of the development;
  - (o) Transportation infrastructure beyond that needed to mitigate any potential adverse impacts of the application including, but not limited to, dedication and/or construction of a public street or alley; maintenance of a street median; or provision of a public easement for a pedestrian walkway that would not otherwise be required;



- (p) Mass transit improvements, including, but not limited to, location and funding of a shared bike station; accommodation, and/or construction of a Metro station entrance; or donation of space for a transit store or other similar space to provide services such as the sale of transit cards, Metro passes, bus and train schedules, and information on bike and car sharing programs, etc.;
- (q) Uses of special value to the neighborhood or the District of Columbia as a whole; and
- (r) Other public benefits and project amenities and other ways in which the proposed PUD substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.

305.6 Public benefits other than those listed above may be proposed to and considered by the Zoning Commission.

305.7 Public benefits other than affordable housing, such as public facilities or public open space, may be located off-site; provided, that:

- (a) There is a clear public policy relationship between the PUD proposal and the off-site benefit; and
- (b) The off-site benefit shall be located within one-quarter mile (.25 mi.) of the PUD site or within the boundaries of the ANC for the area that includes the PUD site.

305.8 If the off-site public benefit is affordable housing, it shall be provided according to the requirements of Subtitle X § 306.

305.9 Elements or items required as mitigation to potential adverse impacts of the PUD shall not also be considered as benefits for the purposes of this section

305.10 A project amenity is one (1) type of public benefit, specifically a functional or aesthetic feature of the proposed development that adds to the attractiveness, convenience, or comfort of the project for occupants and immediate neighbors.

305.11 The Zoning Commission may not compel an applicant to add to proffered public benefits, but shall deny a PUD application if the proffered benefits do not justify the degree of development incentives requested (including any requested map amendment). Nevertheless, the Zoning Commission may at any time note the insufficiency of the public benefits and suggest how the benefits may be improved.

305.12 A project may qualify for approval by being particularly strong in only one (1) or a few of the categories in this section, but must be acceptable in all proffered categories and superior in many.

## **306 HOUSING LINKAGE**

- 306.1 A PUD application that proposes an increase in gross floor area devoted to office space over and above the amount of office space permitted as a matter-of-right in the underlying existing zone of the PUD site shall comply with the housing linkage requirements of this section.
- 306.2 The applicant shall produce or financially assist in the production of dwellings or multiple dwellings that are affordable to low- and moderate-income people; provided that:
- (a) The quantity of low- and moderate-income housing that is required shall be based upon the requested increase in office FAR; and
  - (b) Income limits shall apply to housing that is constructed on the site of the PUD in accordance with Inclusionary Zoning standards.
- 306.3 The applicant may either provide the required housing by means of new construction or rehabilitation as specified in Subtitle X § 306.5, or may elect to make a financial contribution as provided in Subtitle X § 306.6.
- 306.4 The following exclusions and modifications shall apply:
- (a) Commercial floor area other than office space shall be excluded from these computations for the proposed PUD; provided, that the matter-of-right commercial density of the existing zone shall be reduced by 0.5 FAR to allow for normal retail use;
  - (b) If the proposed PUD provides an amount of housing equal to or greater than the housing that would be required under this section, no additional housing shall be required;
  - (c) No housing requirement pursuant to this section shall apply to a PUD that is proposed for property located in a D zone, or to any PUD application filed by an agency of the federal government, or the Washington Metropolitan Area Transit Authority (WMATA); and
  - (d) An applicant may apply for a reduction or elimination of the housing required under this section as part of a PUD application provided the Zoning Commission finds, after public hearing, that the reduced or eliminated housing requirement is necessitated or justified by the project's provision of extraordinary public benefits that are of both exceptional merit and in the best interests of the city or the country.

306.5

If the applicant constructs or rehabilitates the required housing, the following conditions shall apply:

- (a) The gross square footage of new or rehabilitated housing shall be based upon the gross square footage of increased office space that the PUD provides in excess of that allowed as a matter-of-right by the underlying existing zone of the PUD site; provided, that the amount of housing required shall be as follows:
  - (1) Not less than one-fourth (1/4) of the gross square feet of increased office space if the required housing is part of the PUD or is situated on adjacent property;
  - (2) Not less than one-third (1/3) of the gross square feet of increased office space if the location of the required housing does not comply with subparagraph (1) of this paragraph, but is nonetheless within the same Advisory Neighborhood Commission area as the PUD; and
  - (3) Not less than one-half (0.5) of the gross square feet of increased office space if the location of the required housing is other than as approved in subparagraphs (1) and (2) above;
- (b) The applicant may construct or rehabilitate the housing units, or may secure the housing production by other business arrangements, including, but not limited to, joint venture, partnership, or contract construction;
- (c) If the housing is provided as new construction, the average square feet of gross floor area per dwelling or per apartment unit shall be not less than eight hundred and fifty square feet (850 sq. ft.); provided, that no average size limit shall apply to rooming houses, boarding houses, or units that are deemed single-room occupancy housing;
- (d) For purposes of this section, the word “rehabilitation” means the substantial renovation of housing for sale or rental that is not habitable for dwelling purposes because it is in substantial violation of the Housing Regulations of the District of Columbia (14 DCMR);
- (e) In the case of rental housing, the required housing shall be maintained as affordable dwelling units for the duration of the PUD, but not less than twenty (20) years;
- (f) If the required housing is provided for home ownership, the housing shall be provided at income levels and duration consistent with the Inclusionary Zoning Implementation Amendment Act of 2006 (the IZ Act), effective March 14, 2007 (D.C. Law 16-275; 54 DCR 880 (February 2, 2007)). References to the IZ Act include any Mayor's Order, agency rule, or other administrative issuance promulgated pursuant to that legislation; and

- (g) No certificate of occupancy shall be issued for the office component of a PUD that is subject to the provisions of this section until a certificate of occupancy has been issued for the housing required pursuant to this section.

306.6 As an alternative to constructing or rehabilitating the required housing as provided in Subtitle X § 306.5, the applicant may contribute funds to the District of Columbia's housing production trust fund; provided:

- (a) The contribution shall be equal to one-half (0.5) of the assessed value of the increase in permitted gross floor area for office use;
- (b) The assessed value shall be the fair market value of the property as indicated in the property tax assessment records of the Office of Tax and Revenue as of the date of the PUD application; and
- (c) The contribution shall be determined by dividing the assessed value per square foot of land that comprises the PUD site by the maximum permitted commercial FAR and multiplying that amount times the requested increase in gross square feet proposed for office use.

306.7 If any housing exists on the development site and is to be removed in order to allow construction of the PUD, the total assessed value of the housing removed shall be added to the financial contribution as computed in Subtitle X § 306.6; provided, that this provision shall apply to any housing removed beginning one (1) year prior to the date of the PUD application.

306.8 Not less than one-half (0.5) of the required total financial contribution shall be made prior to the issuance of a building permit for any part of the office component of the PUD, and the balance of the total financial contribution shall be made prior to the issuance of a certificate of occupancy for any part of the office component of the PUD.

306.9 All affordable housing provided pursuant to this section shall be administered consistent with the IZ Act.

306.10 A PUD that is subject to the housing requirement of this section shall not be relieved of the requirement to be found meritorious pursuant to the evaluation standards in Subtitle X § 306.

306.11 The Office of Planning shall refer each application for a PUD subject to the provisions of this section to the Department of Housing and Community Development for an analysis of compliance with the housing requirements of this section and a recommendation.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **307 PLANNED UNIT DEVELOPMENT APPLICATION REQUIREMENTS**

307.1 A PUD application shall meet the requirements of Subtitle Z § 300.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **308 PLANNED UNIT DEVELOPMENT PROCEDURES**

308.1 The Zoning Commission shall refer all PUD applications to the Office of Planning, which shall provide a report to the Zoning Commission that includes whether the application is:

- (a) Not inconsistent with the Comprehensive Plan;
- (b) Consistent with the purpose of the PUD process; and
- (c) Generally ready for a public hearing to be scheduled.

308.2 Following the receipt of the report from the Office of Planning, the Zoning Commission shall review the application and determine whether a public hearing shall be granted. An application may be denied without a hearing, but no application shall be granted unless a public hearing is held.

308.3 If the Zoning Commission determines a second-stage application complies with all of the requirements of the first-stage approval, it shall schedule a public hearing on the second-stage application. It is the intention of the Zoning Commission that any second-stage application that is substantially in accordance with the elements, guidelines, and conditions of the first-stage approval shall be granted a hearing.

308.4 If a public hearing is granted, the Office of Planning shall coordinate review of the application and prepare an impact assessment of the project, which shall include reports in writing from relevant District of Columbia departments and agencies, including, but not limited to, the Departments of Transportation and Housing and Community Development, and, if a historic district or historic landmark is involved, the Historic Preservation Office.

308.5 The Office of Planning shall report as appropriate, on the:

- (a) Suitability of the site for use as a PUD;
- (b) Appropriateness, character, scale, mixture of uses, and design of the uses proposed for the proposed development, and other identifiable public benefits;
- (c) Compatibility of the proposed development with the Comprehensive Plan and the goals of the PUD process;

(d) The quality of the urban design and site design of the proposed development; and

(e) Conformance with the PUD evaluation standards of this chapter.

308.6 At the public hearing, the applicant shall carry the burden of justifying the proposal. Failure of groups or persons to appear in opposition shall not relieve the applicant of the responsibility of demonstrating the merits of the application.

308.7 At the public hearing, the applicant shall advise the Zoning Commission of the efforts that have been made to apprise the affected Advisory Neighborhood Commission and other individuals and community groups concerning the proposed development.

308.8 No later than seven (7) days after the Zoning Commission takes proposed action on any PUD application (or for PUDs not involving map amendments seven (7) days after the close of the hearing), the applicant shall file with the Office of Zoning and serve the Office of Planning, the Office of the Attorney General , and the affected Advisory Neighborhood Commission and any other parties, a final list of the public benefits proffered for the PUD (Proffer) and, for each proffer, provide a draft condition that is both specific and enforceable.

308.9 The description of each public benefits shall be identical to the description contained in the applicant's proposed order unless a revision is required for clarity or to reflect a revision.

308.10 The information required by Subtitle X § 308.8 shall be presented in the form of a chart in which with each proffered public benefit is described in one (1) column and a corresponding condition is described in a second. For example:

<b>Proffer</b>	<b>Condition</b>
42. The applicant has agreed to contribute _____ to _____ for the purpose of _____ prior to applying for a certificate of occupancy for the PUD.	B.4. Prior to applying for a certificate of occupancy for the PUD, the applicant shall contribute _____ to _____ for the purpose of _____.

308.11 No later than fourteen (14) days after the Zoning Commission takes proposed action on any PUD application (or for PUDs not involving map amendments, fourteen (14) days after the close of the hearing), the Office of the Attorney General, Office of Zoning, and Office of Planning shall complete any dialogue they feel is needed with the applicant with respect to any deficiencies in the applicant's proposed conditions.

308.12 No later than twenty-one (21) days after the Zoning Commission takes proposed action on any PUD application (or for PUDs not involving map amendments twenty-one (21) days after the close of the hearing) the applicant shall file with

Office of Zoning and serve the Office of Planning, Office of the Attorney General, and the affected Advisory Neighborhood Commission and any other parties, any revisions to the Proffer and conditions, or a statement that none have been made.

- 308.13 No later than twenty-eight (28) days after the Zoning Commission takes proposed action on any PUD application (or for PUDs not involving map amendments, twenty-eight (28) days after the close of the hearing), the Office of the Attorney General, Office of Planning, and the affected Advisory Neighborhood Commission and any other party may file any responses each has to the applicant's final Proffer and conditions. The responses shall be limited to whether the conditions in the final Proffer are specific and enforceable.
- 308.14 The Office of the Attorney General response will be treated as a confidential attorney client communication. The Zoning Commission will consider the PUD to contain only those public benefits described in the final Proffer
- 308.15 The Zoning Commission may relieve an applicant of some or all of the responsibilities of Subtitle X §§ 308.7 through 308.12 in circumstances when it believes the process is unnecessary, such as when it is considering a modification that does not involve a change to the PUDs public benefits.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **309 PLANNED UNIT DEVELOPMENT APPROVALS**

- 309.1 The Zoning Commission's first-stage approval shall set forth the appropriate zoning classification to apply to the project, and shall state in detail the elements, guidelines, and conditions that shall be followed by the applicant in the second-stage application.
- 309.2 If the Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Zoning Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Zoning Commission's decision.
- 309.3 At the point at which a decision is made on a consolidated review application, the Zoning Commission may also determine that a second review is required, and rather than approving the application in a consolidated review, grant first-stage approval only and require that the applicant file additional plans for second-stage approval.
- 309.4 Provisions conserving the duration and implementation of an approved first- or second-stage PUD appear in Subtitle Z § 702.

- 309.5 Provisions setting forth the procedure and standards for requesting an extension of the Zoning Commission's first- or second-stage approvals are set forth in Subtitle Z § 706.
- 309.6 The procedures for modifying or correcting an order approving a PUD are set forth in Subtitle Z.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **310 LIMITATIONS ON DEVELOPMENT OF A PUD SITE**

- 310.1 No order approving a PUD shall be deemed to include relief from any zoning regulation, including, but not limited to, the Inclusionary Zoning requirements of Subtitle C, Chapter 26 unless such relief was expressly requested by the applicant and expressly granted in the order.
- 310.2 The grant of a PUD prohibits any construction on the PUD site that is not authorized in the order approving the PUD, including development under matter-of-right standards, until:
- (a) The validity of the PUD order expires; or
  - (b) The Zoning Commission issues an order granting the applicant's motion to extinguish the PUD.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **311 IMPLEMENTATION**

- 311.1 Following approval of an application by the Zoning Commission, the applicant may file an application for a building permit with the proper authorities of the District of Columbia.
- 311.2 The Zoning Administrator shall not approve a permit application unless the plans conform in all respects to the plans approved by the Zoning Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Zoning Commission may have applied. Nor shall the Zoning Administrator accept the establishment of an escrow account in satisfaction of any condition in the Zoning Commission's order approving the PUD unless the order expressly authorizes an escrow.
- 311.3 The Zoning Administrator shall not approve a permit application unless the applicant has recorded a covenant in the land records of the District of Columbia between the owner or owners and the District of Columbia satisfactory to the Office of the Attorney General and the Zoning Administrator, which covenant will bind the owner and all successors in title to construct on and use the property only in accordance with the adopted orders, or amendments thereof, of the Zoning Commission.



- 311.4 Following the recordation of the covenant, the PUD boundaries shall be designated on the Zoning Map.
- 311.5 The orders of the Zoning Commission issued in accordance with this chapter shall have all the force of this title, and violations shall be prosecuted in accordance with the provisions of Subtitle A § 305 of this title.
- 311.6 - 311.9 [REPEALED]
- 311.6 The Zoning Administrator shall not approve an application for a certificate of occupancy for a PUD if the order approving the PUD includes a condition requiring the provision of affordable housing unless the owner has executed monitoring and enforcement documents with the District of Columbia, which will bind the owner and all successors in title to abide by such terms as the District considers necessary to ensure that the affordable housing will be constructed, marketed, sold, re-sold, rented, and occupied, so as to be affordable to the target households during the specified control period and safeguarded regarding foreclosure.
- 311.7 A condition in an order approving or modifying a PUD that requires the provision of affordable housing shall automatically terminate if title to the mortgaged property is transferred following foreclosure by, or deed-in-lieu of foreclosure to, a mortgagee in the first position, or a mortgage in the first position is assigned to the Secretary of the U.S. Department of Housing and Urban Development provided the owner has executed monitoring and enforcement documents per the requirements of Subtitle X § 311.10.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06F published at 64 DCR 2783 (March 17, 2017).

## **CHAPTER 4 PETITIONS FOR AMENDMENT TO CREATE A NEW ZONE**

### **400 AMENDMENT TO CREATE A NEW ZONE**

- 400.1 Petitions for the creation of a new zone shall be consistent with the conditions of this section.
- 400.2 The new zone shall be for a well-defined geographic area with generally similar development characteristics and land use.
- 400.3 Proposed new zones shall not be inconsistent with the Comprehensive Plan or with applicable small area plans.
- 400.4 Proposed new zones shall not result in adverse impacts on the environment or adjacent lands.
- 400.5 Proposed new zones shall not result in the undue diminution of property rights.
- 400.6 Petitions for a new zone shall be accompanied by the following:
- (a) Evidence of significant community support for the zone including property owners within the defined area, relevant civic, community and business groups, and the Advisory Neighborhood Commission, including the single member district representation; and
  - (b) Surveys, plats, maps, scaled elevations, or similar information documenting any proposed changes to applicable development standards; Petitioners are encouraged to inquire with the Office of Planning about available public resources.
- 400.7 If the proposed new zone involves a reduction in any development standard or property right, an effected property owner in opposition shall be given an equal amount of time as the petitioner to present their opposition. The opposing property owner shall not be required to meet the same burden as that of significant community support.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **401 PETITION REQUIREMENTS**

- 401.1 A petition to create a new zone shall meet the requirements of Subtitle Z §§ 304 and 305.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **CHAPTER 5 MAP AMENDMENTS**

### **500 MAP AMENDMENTS**

- 500.1 The Zoning Commission will evaluate and approve, disapprove, or modify a map amendment application or petition according to the standards of this section.
- 500.2 In a contested case, the applicant shall have the burden of proof to justify the granting of the application according to these standards.
- 500.3 In all cases, the Zoning Commission shall find that the amendment is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **501 APPLICATION/PETITION REQUIREMENTS**

- 501.1 An application/petition for a map amendment shall meet the requirements of Subtitle Z § 304.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## CHAPTER 6 DESIGN REVIEW

### 600 DESIGN REVIEW PURPOSE

- 600.1 The purpose of the design review process is to:
- (a) Allow for special projects to be approved by the Zoning Commission after a public hearing and a finding of no adverse impact;
  - (b) Recognize that some areas of the District of Columbia warrant special attention due to particular or unique characteristics of an area or project;
  - (c) Permit some projects to voluntarily submit themselves for design review under this chapter in exchange for flexibility because the project is superior in design but does not need extra density;
  - (d) Promote high-quality, contextual design; and
  - (e) Provide for flexibility in building bulk control, design, and site placement without an increase in density or a map amendment.
- 600.2 The design review process is intended to be shorter and less intensive than the PUD process and allow less deviation from matter-of-right zone standards.
- 600.3 A comprehensive public review by the Zoning Commission of the specific development proposal is required in order to evaluate the design of the project in proportion to the design flexibility requested.
- 600.4 While providing for greater flexibility in planning and design than may be possible under matter-of-right zoning procedures, the design review process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan.
- 600.5 A map amendment or an increase in density shall not be permitted as part of a design review application.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### 601 APPLICABILITY

- 601.1 Except for Subtitle I, this chapter applies to any instance when the Zoning Regulations require Zoning Commission review of any building, structure, or use other than a campus plan. Such a review shall hereinafter be referred to as a “Non-Voluntary Design Review.
- 601.2 As to all zones, this chapter also applies when a property owner voluntarily seeks design review development, which shall hereinafter be referred to as a “Voluntary Design Review.”

601.3 The minimum area included within a proposed voluntary design review development application, including the area of public streets or alleys proposed to be closed, shall be as follows:

- (a) A total of two (2) acres for a development to be located in any R, RF, or RA zone; and
- (b) No minimum area required for a development in any other zone.

601.4 All the property included in a design review application shall be contiguous, except that the property may be separated only by a public street, alley, or right-of-way.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06P published at 65 DCR 11927 (October 26, 2018).

## **602 APPLICATION REQUIREMENTS**

602.1 An application for a design review shall meet the requirements of Subtitle Z § 301.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **603 DESIGN REVIEW FLEXIBILITY**

603.1 As part of the design review process, the Zoning Commission may grant relief from the development standards for height, setbacks, lot occupancy, courts, and building transitions; as well as any specific design standards of a specific zone. The design review process shall not be used to vary other building development standards including FAR, Inclusionary Zoning, or green area ratio.

603.2 Except for height, the amount of relief is at the discretion of the Zoning Commission, but provided that the relief is required to enable the applicant to meet all of the standards of Subtitle X § 604. The Zoning Commission may grant no greater height than that permitted if the application were for a PUD.

603.3 An application for a special exception or variance that would otherwise require the approval of the Board of Zoning Adjustment may be heard simultaneously with a design review application, and shall be subject to all applicable special exception criteria and variance standards and the payment of all applicable fees.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **604 DESIGN REVIEW STANDARDS**

604.1 The Zoning Commission will evaluate and approve or disapprove a design review application subject to this chapter according to the standards of this section and

for Non-Voluntary Design Reviews subject to this chapter according to the standards stated in the provisions that require Zoning Commission review.

- 604.2 For non-voluntary design review, the application must also meet the requirements of the provisions that mandated Zoning Commission approval.
- 604.3 The applicant shall have the burden of proof to justify the granting of the application according to these standards.
- 604.4 The applicant shall not be relieved of the responsibility of proving the case by a preponderance of the evidence, even if no evidence or arguments are presented in opposition to the case.
- 604.5 The Zoning Commission shall find that the proposed design review development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.
- 604.6 The Zoning Commission shall find that the proposed design review development will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of Subtitle X, Chapter 9.
- 604.7 The Zoning Commission shall review the urban design of the site and the building for the following criteria:
- (a) Street frontages are designed to be safe, comfortable, and encourage pedestrian activity, including:
    - (1) Multiple pedestrian entrances for large developments;
    - (2) Direct driveway or garage access to the street is discouraged;
    - (3) Commercial ground floors contain active uses with clear, inviting windows;
    - (4) Blank facades are prevented or minimized; and
    - (5) Wide sidewalks are provided;
  - (b) Public gathering spaces and open spaces are encouraged, especially in the following situations:
    - (1) Where neighborhood open space is lacking;
    - (2) Near transit stations or hubs; and
    - (3) When they can enhance existing parks and the waterfront;
  - (c) New development respects the historic character of Washington's neighborhoods, including:

- (1) Developments near the District’s major boulevards and public spaces should reinforce the existing urban form;
  - (2) Infill development should respect, though need not imitate, the continuity of neighborhood architectural character; and
  - (3) Development should respect and protect key landscape vistas and axial views of landmarks and important places;
- (d) Buildings strive for attractive and inspired façade design, including:
- (1) Reinforce the pedestrian realm with elevated detailing and design of first (1<sup>st</sup>) and second (2<sup>nd</sup>) stories; and
  - (2) Incorporate contextual and quality building materials and fenestration;
- (e) Sites are designed with sustainable landscaping; and
- (f) Sites are developed to promote connectivity both internally and with surrounding neighborhoods, including:
- (1) Pedestrian pathways through developments increase mobility and link neighborhoods to transit;
  - (2) The development incorporates transit and bicycle facilities and amenities;
  - (3) Streets, easements, and open spaces are designed to be safe and pedestrian friendly;
  - (4) Large sites are integrated into the surrounding community through street and pedestrian connections; and
  - (5) Waterfront development contains high quality trail and shoreline design as well as ensuring access and view corridors to the waterfront.

604.8 The Zoning Commission shall find that the criteria of Subtitle X § 604.7 are met in a way that is superior to any matter-of-right development possible on the site.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06G published at 64 DCR 22 (January 6, 2017); Final Rulemaking & Order No. 08-06P published at 65 DCR 11927 (October 26, 2018).

## **CHAPTER 7 AIRSPACE DEVELOPMENT**

### **700 INTRODUCTION TO AIRSPACE DEVELOPMENT**

- 700.1 This chapter provides regulations for developing air rights above public streets or alleys (“airspace”) in the District of Columbia.
- 700.2 Under § 5 of the District of Columbia Public Space Utilization Act, approved October 17, 1968 (D.C. Official Code §§ 10-1121.01 *et seq.*), the Zoning Commission shall, after public hearing and after securing the advice and recommendations of the National Capital Planning Commission, review and approve all air space development.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **701 GENERAL RULES FOR AIRSPACE DEVELOPMENT**

- 701.1 No development of airspace may occur without approval of the Zoning Commission.
- 701.2 The Zoning Commission shall determine the use to be permitted in the proposed airspace consistent with regulations applicable to the abutting privately owned property, including limitations and requirements respecting the height of any structure to be erected in such airspace, off-street parking and development standards applicable to such structure, and easements of light, air, and access.
- 701.3 Airspace cases may be processed as a part of a design review, PUD, or project-specific rezoning application and shall be subject to the evaluation criteria and follow the procedures of the relevant chapter, except as provided in this section.
- 701.4 The Zoning Commission may impose any conditions or restrictions on airspace development that it deems necessary to ensure:
- (a) Compatibility with surrounding private property;
  - (b) The accessibility of the public to traverse as appropriate the public space;
  - (c) A high quality design of any building, landscape or public realm;
  - (d) Appropriate treatment and protection of viewsheds; and
  - (e) No undue adverse impacts on the surrounding area.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).



## **702            APPLICATION REQUIREMENTS**

702.1            An application for an airspace development shall meet the requirements of Subtitle Z § 303.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016).

## **CHAPTER 8 WATER TOWER ON THE EAST CAMPUS OF SAINT ELIZABETHS**

### **800 PROCEDURES FOR A WATER TOWER ON THE EAST CAMPUS OF SAINT ELIZABETHS**

- 800.1 Notwithstanding any other provision of this title, a water tower or elevated water tank (Water Tower) owned and operated by the District of Columbia Water and Sewer Authority may be established on unzoned property owned by the District of Columbia and located on the East Campus of Saint Elizabeths Hospital.
- 800.2 No building permit to construct a Water Tower in excess of ninety feet (90 ft.) in height may be issued unless the Zoning Commission finds that said tower, as designed, meets the standards of Subtitle X, Chapter 9 and is not inconsistent with the Comprehensive Plan, small area plan(s), and other adopted planning studies that pertain to the site.
- 800.3 An application pursuant to Subtitle X § 800.2 shall include such plans and illustrations necessary to adequately represent the final proposed appearance of the tower, including its materials, final elevation, and location on the East Campus. The application shall also identify how the proposed design meets the standard for approval set forth in Subtitle X § 800.2.
- 800.4 An application shall be included as a “Final Action” item for a Zoning Commission meeting scheduled after the completion of the thirty- (30) day review period allowed the affected Advisory Neighborhood Commission(s). The notice to the affected Advisory Neighborhood Commission(s) shall include the date of the final action and a tentative public hearing date.
- 800.5 The only motion that can be made at that time is for approval of the application in accordance with Subtitle Z § 604 and without the need for a public hearing.
- 800.6 If no motion is made, or if the motion fails, the matter shall be moved to the “Hearing Actions” portion of the agenda, at which point the Commission may take any of the actions authorized by Subtitle Z §§ 400.12 through 400.15.
- 800.7 The Office of Planning may submit a report as to whether the Zoning Commission should approve the application. Any such report shall be filed no later than ten (10) days prior to the date of the public meeting at which the final action item will be considered.
- 800.8 A request to modify an approved design shall be subject to the same review criteria and approval process as set forth in this section for the original application.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **CHAPTER 9 SPECIAL EXCEPTIONS**

### **900 GENERAL PROVISIONS**

- 900.1 Except for those special exceptions heard by the Zoning Commission pursuant to Title 11 DCMR, special exception cases shall be heard by the Board of Zoning Adjustment and follow the procedures of Subtitle Y, Chapter 4.
- 900.2 The Board of Zoning Adjustment is authorized to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the requested special exception meets the standards of Subtitle X § 901 and any specific conditions specified in this subtitle.
- 900.3 In the case of a use that was originally permitted and lawfully established as a matter-of-right and for which the Zoning Regulations now require special exception approval from the Board of Zoning Adjustment, any extension or enlargement of that use shall require special exception approval from the Board of Zoning Adjustment.
- 900.4 In determining whether to approve any extension or enlargement under Subtitle X § 900.3, the Board of Zoning Adjustment shall apply the standards and criteria of the Zoning Regulations to the entire use, rather than to just the proposed extension or enlargement.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **901 SPECIAL EXCEPTION REVIEW STANDARDS**

- 901.1 The Board of Zoning Adjustment will evaluate and either approve or deny a special exception application according to the standards of this section.
- 901.2 The Board of Zoning Adjustment is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:
- (a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
  - (b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
  - (c) Will meet such special conditions as may be specified in this title.
- 901.3 The applicant for a special exception shall have the full burden to prove no undue adverse impact and shall demonstrate such through evidence in the public record. If no evidence is presented in opposition to the case, the applicant shall not be relieved of this responsibility.

901.4 The Board of Zoning Adjustment may impose requirements pertaining to design, appearance, size, signs, screening, landscaping, lighting, building materials, or other requirements it deems necessary to protect adjacent or nearby property, or to ensure compliance with the intent of the Zoning Regulations.

901.5 The Board of Zoning Adjustment may impose a term limit on a special exception use when it determines that a subsequent evaluation of the actual impact of the use on neighboring properties is appropriate, but shall consider the reasonable impacts and expectations of the applicant in doing so.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016).

## **902 APPLICATION REQUIREMENTS**

902.1 An application for a special exception shall meet the requirements of Subtitle Y § 300.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **CHAPTER 10 VARIANCES**

### **1000 GENERAL PROVISIONS**

- 1000.1 With respect to variances, the Board of Zoning Adjustment has the power under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3) (formerly codified at D.C. Official Code § 5-424(g)(3) (2012 Repl.)), "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."
- 1000.2 Only the owner of the property for which a variance is sought, or an agent authorized by the property owner, may apply for variance relief.
- 1000.3 Except for those variances heard by the Zoning Commission as part of any discretionary review process, variance cases are heard by the Board of Zoning Adjustment and follow the procedures of Subtitle Y, Chapter 4.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **1001 VARIANCE TYPES**

- 1001.1 Variances are classified as area variances or use variances.
- 1001.2 An area variance is a request to deviate from an area requirement applicable to the zone district in which the property is located.
- 1001.3 Examples of area variances are requests to deviate from:
- (a) Requirements that affect the size, location, and placement of buildings and other structures such as height and FAR;
  - (b) Minimum parking or loading requirements to an extent greater than what may be permitted by special exception;
  - (c) Limitations on the extent to which the gross floor area of a building may be occupied by a matter of right non-residential use;

- (d) Limitations on the alteration or conversion of certain structures on alley lots as stated in Subtitle D § 1610; Subtitle E § 1104; Subtitle F § 903; and Subtitle G § 1503;
- (e) The prohibition against certain enlargements and additions to nonconforming structures as stated at Subtitle C § 202; and
- (f) Preconditions to the establishment of a matter-of-right use including, but not limited to, the minimum land area requirement of Subtitle U § 301.2(c) applicable to the conversion of a building to an apartment house as permitted by Subtitle U § 301.2; provided, that the waiver would not cause the proposed use to meet the definition of a more intense use.

1001.4 A use variance is a request to permit:

- (a) A use that is not permitted matter of right or special exception in the zone district where the property is located;
- (b) A use that is expressly prohibited in the zone district where the property is located; or
- (c) An expansion of a nonconforming use prohibited by Subtitle C § 204.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016); Final Rulemaking & Order No. 08-06J published at 64 DCR 6110 (June 30, 2017); Final Rulemaking & Order No. 08-06P published at 65 DCR 11927 (October 26, 2018).

## **1002 VARIANCE REVIEW STANDARDS**

1002.1 The standard for granting a variance, as stated in Subtitle X § 1000.1 differs with respect to use and area variances as follows:

- (a) An applicant for an area variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property; and
- (b) An applicant for a use variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the property.

1002.2 The applicant for a variance shall have the burden of proof to justify the granting of the application according to these standards and shall demonstrate such through evidence in the public record. If no evidence is presented in opposition to the case, the applicant shall not be relieved of this responsibility.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

**1003            APPLICATION REQUIREMENTS**

An application for a variance shall meet the requirements of Subtitle Y § 300.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **CHAPTER 11 ZONING APPEALS**

### **1100 INTRODUCTION TO THE ZONING APPEALS PROCESS**

- 1100.1 This chapter provides regulations and instructions for the zoning appeals process.
- 1100.2 The Board of Zoning Adjustment shall hear and decide zoning appeals where it is alleged by the appellant that there is an error in any order, requirement, decision, determination, or refusal made by the Zoning Administrator or any administrative officer or body, including the Mayor, in the administration or enforcement of the Zoning Regulations.
- 1100.3 The Board of Zoning Adjustment has no jurisdiction to hear and decide any appeal or portion of any appeal where the order, requirement, decision, determination, or refusal was not based in whole or in part upon any zoning regulation or map.
- 1100.4 Zoning appeals cases are heard by the Board of Zoning Adjustment and follow the procedures of Subtitle Y, Chapter 5.
- 1100.5 The zoning appeals governed by this chapter do not involve appeals of orders issued by Administrative Law Judges involving infractions of the Height Act or the Zoning Regulations, which are governed by Subtitle X, Chapter 12.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **1101 ZONING APPEAL PROCEDURES**

- 1101.1 In exercising its zoning appeal powers, the Board of Zoning Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, determination, or refusal appealed from, or may make such order as may be necessary to carry out its decision or authorization, and to that end shall have all the powers of the officer or body from whom the appeal is taken.
- 1101.2 The appellant shall have the burden of proof to justify the granting of the appeal. If no evidence is presented in opposition to the case, the appellant shall not be relieved of this responsibility.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **1102 APPLICATION REQUIREMENTS**

- 1102.1 A zoning appeal shall meet the requirements of Subtitle Y § 302.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).



## **CHAPTER 12 CIVIL INFRACTION APPEALS**

### **1200 INTRODUCTION TO THE CIVIL INFRACTION APPEALS PROCESS**

- 1200.1 This chapter provides regulations for the civil infraction appeals process.
- 1200.2 The Board of Zoning Adjustment shall entertain and decide civil infraction appeals timely filed by persons aggrieved by orders issued by Administrative Law Judges (ALJ) pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code, §§ 6-2701 *et seq.*) (Civil Infractions Act) involving infractions of the Height Act or of the Zoning Regulations.
- 1200.3 Civil infraction cases are decided by the Board of Zoning Adjustment and follow the applicable procedures of Subtitle Y, Chapter 5.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **1201 CIVIL INFRACTION APPEAL PROCEDURES**

- 1201.1 In exercising its civil infraction appeal powers the Board of Zoning Adjustment shall, in conformity with the Civil Infractions Act, make a determination of each appeal on the basis of the record established before the ALJ.
- 1201.2 The Board of Zoning Adjustment shall set aside any ALJ's order that is without observance of procedure required by law or regulations, including any applicable procedure required by Titles I and II of the Civil Infractions Act, D.C. Official Code §§ 2-1801.01 to 2-1802.05, or any administrative law judge or attorney examiner order that is unsupported by a preponderance of the evidence on the record.
- 1201.3 The Board of Zoning Adjustment shall apply the rule of harmless error, and shall have the power to affirm, reverse, or modify the order of the ALJ.
- 1201.4 The Board of Zoning Adjustment may remand a case for further proceedings before the ALJ.
- 1201.5 The Board of Zoning Adjustment shall not modify a monetary sanction imposed by an ALJ if that sanction is within the limits established by law or regulation.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **1202 APPLICATION REQUIREMENTS**

- 1202.1 A civil infraction appeal shall meet the requirements of Subtitle Y § 303.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **CHAPTER 13 TEXT AMENDMENTS**

### **1300 TEXT AMENDMENTS**

- 1300.1 The Zoning Commission will evaluate and approve, disapprove, or modify a text amendment petition according to the standards of this section.
- 1300.2 The Zoning Commission shall find that the petition is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject text.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **1301 PETITION REQUIREMENTS**

- 1301.1 A petition for a text amendment shall meet the requirements of Subtitle Z § 305.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016).