

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs pursuant to the authority set forth in §316(g)(1) of the Condominium Amendment Act of 1976 ("Act") effective October 22, 1999 (D.C. Law 13-46); D.C. Official Code §42-1903.16 and Mayor's Order 2002-166 dated September 17, 2002 hereby gives notice of its intent to adopt the following amendments to Title 14 of the District of Columbia Municipal Regulations (DCMR). The proposed rules provide for condominium declarant's warranty against structural defects. These rules include the term of the warranty, the amount of security to be posted by the declarant, the form of the security to be posted, and the term of the security to be posted. A Notice of Proposed Rulemaking was published on October 4, 2002 at 49 DCR 9089. Substantive comments were received and changes have been incorporated.

These proposed rules shall be submitted to the Council of the District of Columbia (Council) for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. These rules shall be adopted in not less than thirty (30) days from the date of publication in the *District of Columbia Register* or upon approval by the Council, which ever occurs later.

Title 14 DCMR (Housing) (July 1991) is amended as follows:

A new subtitle H is added to read as follows:

Subtitle H: Condominium Conversion

New Chapter 70 is added to read as follows:

**CHAPTER 70 CONDOMINIUM DECLARANTS' WARRANTY AGAINST
STRUCTURAL DEFECTS****7000 TERM OF WARRANTY**

7000.1 A declarant shall warrant against structural defects in each condominium unit for two (2) years from the date each unit is first conveyed to a bona fide purchaser, and shall warrant against structural defects in all of the common elements for 2 years. As to any portion of the common elements, two (2) year period shall begin on the later of the date the portion has been completed or the date of occurrence of any of the following:

- (a) If within any additional land or portion thereof that does not contain a unit, at the time the additional land is added to the condominium;

- (b) If within any convertible land or portion thereof that does not contain a unit, at the time the convertible land may no longer be converted;
- (c) If within any additional land or convertible land or portion of either that does contain a unit, at the time the first unit therein is first conveyed to a bona fide purchaser; or
- (d) If within any other portion of the condominium, at the time the first unit is conveyed to a bona fide purchaser.

7001 LIMITED WARRANTY CONVERSION CONDOMINIUMS

- 7001.1 A declarant of a conversion condominium may offer the units, common elements, or both in "as is" condition.
- 7001.2 If the conversion condominium is offered in "as is" condition, the declarant's warranty against structural defects shall apply only to a defect in components installed by the declarant or work done by the declarant unless the declarant gives a more extensive warranty in writing.

7002 EXCLUSION OR MODIFICATION OF WARRANTY

- 7002.1 Except with respect to a purchaser of a unit that may be used for residential purposes, the warranty against structural defects:
- (a) May be excluded or modified by agreement of the parties; and
 - (b) Is excluded by an expression of disclaimer such as "as is", "with all faults", or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.

7003 SECURITY FOR WARRANTY TO BE POSTED BY DECLARANT

- 7003.1 Prior to the declarant's first conveyance of a residential unit to a purchaser, the declarant shall provide DCRA with an approved form of security to satisfy any costs that arise from the declarant's failure to satisfy the requirements of this Chapter.
- 7003.2 The amount of security to be posted by the Declarant shall be equal to ten percent (10%) of the estimated construction or conversion costs. For purposes of this section, the total construction or conversion costs shall include all costs to the Declarant associated with constructing or converting the Condominium and, specifically, includes all construction costs associated with the project and all other expenditures by Declarant related to the construction or conversion.
- 7003.3 The Declarant shall estimate the total construction or conversion costs at the same time the Condominium's Registration Statement is submitted for approval. The total estimated construction or conversion costs set forth in the Registration Statement shall be based on actual costs and accurate and reliable cost estimates may be used to the extent actual costs are not available.

- 7003.4 Prior to sale of the first unit and posting of the security, the Declarant shall certify the known construction or conversion costs and estimate the remaining construction or conversion costs in an affidavit to be submitted to DCRA or subpart of agency. Acceptance of the affidavit or the security tendered shall not be interpreted as a determination by DCRA that the amount of security to be posted to meet the requirements of this Chapter.
- 7003.5 Declarant shall file an updated certification with accompanying affidavit every 6 months after the date of initially posting the security, until all construction at the project is completed. If the estimated or actual total construction or conversion costs increase by ten percent (10%) or more from the amount set forth in the affidavit filed prior to sale of the first unit, Declarant shall post additional security in the amount of ten percent (10%) of the increase in total construction or conversion costs.
- 7003.6 Any unit owner or the Unit Owners' Association may challenge the adequacy of the security posted by filing a written notification with DCRA or subpart of agency pursuant to Section 7006.2 herein. The Office of Adjudication of the Department of Consumer and Regulatory Affairs shall determine all such challenges in accordance with that Office's procedures.

7004 FORM OF SECURITY TO BE POSTED

- 7004.1 The Declarant may post the required security in the form of a Letter of Credit, a bond, a lien on Declarant's equity in unsold units in the Condominium or such other form of security as may be approved by the DCRA as being a liquid asset which could be drawn upon to satisfy Declarant's warranty obligations (the "security" or "security interest"). Whatever form of security is chosen by the Declarant, the language of the instrument establishing the security interest must be approved in advance by the DCRA. Approval of the language of the instrument does not indicate any determination by the Director as to the sufficiency of the amount of security posted or whether that security has been posted for the appropriate term.
- 7004.2 Security, in the form of a Letter of Credit, must be in the form of an irrevocable standby Letter of Credit drawn on a financial institution insured by the federal government. The Letter of Credit must provide that it may be drawn upon at site, at a location in the District of Columbia, upon presentation of the original or a substitute original of the Letter of Credit. Written notification certified by the Director stating that the Declarant has failed to comply with the terms of the Declarant's warranty contained in the registration package should also be included with the ten (10) day notice of default provided to the Declarant by certified mail or personal service. In addition, the Letter of Credit must contain a provision that obligates the financial institution, upon request of the Declarant and/or the Director, to issue a substitute original of the Letter of Credit and/or any amendments thereto.

7004.3 The Declarant must provide the original of the Letter of Credit to the Director prior to the Declarant's first conveyance of a residential unit to a purchaser. The Declarant must provide the Director with the original of any amendments to the Letter of Credit. In the event that the original of the Letter of Credit and/or any amendments thereto cannot be located, the Declarant, at the request of the Director, must obtain and deliver to the Director a substitute original from the issuing financial institution.

7004.4 Should the Declarant decide to post the required security in the form of a lien (the "Lien") on unsold condominium units, the value of Declarant's equity in a unit shall be computed as follows:

- a. Ninety percent of the current listed sales price of the unit (or, if not listed, then the current list price of comparable units in the Condominium); reduced by
- b. Any lien or encumbrance specifically secured by the unit; and
- c. The unit's pro-rata share of any lien or encumbrance for which the unit stands as security. By way of example, this would include the unit's pro-rata share of a blanket deed of trust against the property created prior to conversion, and the pro rata calculation would be in relation to the other units still securing the lien or encumbrance.

The total equity of the lien must, at all times, equal or exceed ten percent (10%) of the total construction or conversion costs. Should there be any increase in the amount of the liens or encumbrances affecting the unit, or should the listed sales price of the unit(s) (or comparable units) decrease by more than ten percent (10%) from the sales price used to determine Declarant's equity, Declarant must submit a statement to the DCRA who shall then require Declarant to post whatever additional security may be necessary to ensure that ten percent of the Declarant's total construction or conversion costs is available as security.

7005 TERM OF THE SECURITY TO BE POSTED

7005.1 The security posted by the Declarant shall stay in place in its full amount for a minimum of two years following the Declarant's first conveyance of a residential unit to an arm's length purchaser. At the Declarant's request, beginning two years after the conveyance of the first unit, the amount of security may be reduced in pro rata segments. The reduction(s) shall be based on the percentage interest in the residential portion of the Condominium of those residential units first conveyed in an arm's length transaction more than two years prior to the request. The Declarant may request that the amount of Declarant's security may be reduced once every six months. In no event shall the security be reduced below 50% of the original amount of the security until one year after transfer of control of the residential executive board of the Unit Owners' Association to the purchasing residential unit owners other than the Declarant. After five years from the conveyance of the first residential unit to a purchaser, provided at least one year has passed following transfer of control of the residential executive board to purchasing residential unit owners other than the Declarant, the Declarant may treat unsold

residential units as resale units and shall be relieved of the security requirements set forth in these Regulations.

- 7005.2 Whatever form of security is used, it must have an initial term of at least two years. The Declarant must periodically extend whatever form of security is posted so that adequate security is consistently in place throughout the period set forth in D.C. Official Code Section 42-1903.16 and in these rules. Declarant shall provide proof of such extensions to the Director no later than 60 days prior to the expiration of the security interest. If the Declarant fails to extend such security as required herein, the DCRA shall take whatever actions are necessary to draw upon the Declarant's Letter of Credit, or liquidate whatever other security has been posted by the Declarant, at least 30 days prior to the premature expiration of the security interest.

7006 WARRANTY CLAIMS

- 7006.1 Notwithstanding any language to the contrary within these Regulations, if claims for structural defects under D.C. Official Code Section 42-1903.16 are pending at the time any security posted would otherwise no longer be required, then the security shall be required to be maintained in at least the amount of the claims until the claims have been finally resolved and the security has been made available to satisfy the Declarant's responsibilities.
- 7006.2 For purposes of these Regulations, the term "claim" shall include any legal action by an owner and/or the Unit Owners' Association claiming defects or deficiencies unremedied by the Declarant in breach of Declarant's warranty obligations under D.C. Official Code Section 42-1903.16. The term "claim" shall also include any written notification to the Director by an owner and/or the Unit Owners' Association claiming that Declarant is in violation of D.C. Official Code Section 42-1903.16 and/or any of these Regulations. Any such notification by an owner and/or the Unit Owners' Association must be supported by a written affidavit and, if applicable, an estimate by an architect, engineer, or other licensed professional, setting forth the cost of the necessary repairs, replacements, modifications and/or other work necessary to remedy the defect/deficiency identified.
- 7006.3 Whenever necessary to ensure compliance with D.C. Official Code Section 42-1903.16 and/or the requirements of these Regulations, the DCRA shall draw upon the Declarant's Letter of Credit and/or liquidate whatever other security has been posted by the Declarant. In the event the DCRA draws upon the Declarant's Letter of Credit or liquidates any other form of security, all funds resulting therefrom shall be deposited into one or more escrow accounts at an FDIC insured financial institution in the District of Columbia. These escrow accounts must be established in such a way as to ensure that no withdrawals therefrom may be made without the signatures of an officer of the Unit Owner's Association and the signature of the DCRA. No withdrawals may be made from these escrow accounts unless said withdrawal is agreed to by Declarant or is allowed under the terms of a final order issued by an administrative law judge of the Office of Adjudication of the Department of Consumer and Regulatory Affairs or a judge in a court of competent jurisdiction.

7007 MAINTENANCE NOT WARRANTED

7007.1 Nothing in this section shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

7099 DEFINITIONS

7099.1 For purposes of chapter 70 of this subtitle, the definitions in D.C. Official Code §47-1901.2 (2001) are applicable to this chapter and the following words and terms shall have the meaning ascribed below:

Conveyance- The transfer of title by written instrument.

Structural Defect- A defect in a component that constitutes any unit or portion of the common elements that reduces the stability or safety of the structure below standards commonly accepted in the real estate market, or restricts the normally intended use of all or part of the structure and which requires repair, renovation, restoration, or replacement.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be sent to Mrs. Karen Edwards, General Counsel, Office of the General Counsel, Suite 9400, D.C. Department of Consumer and Regulatory Affairs, 941 North Capitol Street, N.E., Washington, D.C. 20002. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1) will be charged for each copy of the proposed chapter requested.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs (Director), pursuant to the authority set forth in § 6 (a) (3) of the Education Licensure Commission Act of 1976, effective April 6, 1977 (D.C. Law 1-104; D.C. Official Code § 38-1306 (a) (3)) (2001); Reorganization Plan No. 3 of 1988, effective October 8, 1988; the Educational Licensure Commission Amendments Act of 1988, effective March 16, 1989 (D.C. Law 7-217; D.C. Official Code § 38-1309) (2001), and Mayor's Order 96-15, (February 8, 1996), hereby gives notice of the intent to adopt the following amendments to Title 16 DCMR Chapter 22 (Postsecondary Nondegree Schools), section 2219, in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed rules will bring the refund policy of District of Columbia-based non-degree proprietary schools into conformity with federal regulations.

Pursuant to § 6 (a) (3) of the Education Licensure Commission Act of 1976, effective April 6, 1977 (D.C. Law 1-104; D.C. Official Code § 38-1306 (a) (3)), the proposed rulemaking will be transmitted to the Council of the District of Columbia for a 45-day period of review. The proposed rules will become effective in not less than thirty (30) days from publication of this notice in the D.C. Register, or upon approval by the Council by resolution whichever occurs later. If the Council does not approve or disapprove the proposed rules, in whole or in part, within the 45-day review period, the proposed rules shall be deemed approved.

Section 2219 of Title 16 DCMR Chapter 22 is amended to read as follows:

2219 REFUND POLICIES

- 2219.1 A school shall furnish to the Commission a schedule of its tuition and fees and its prepaid tuition plan and refund policy.
- 2219.2 A school shall provide each student a period of seventy-two (72) hours to rescind any contract and to receive a refund of all prepaid tuition unless the student has entered training. This period shall commence from the date of signing, but shall not include or end on any Saturday or Sunday or legal holiday. This subsection shall not apply if a student has begun instruction. For purposes of this Chapter, a student has begun instruction upon attendance of one or more classes.
- 2219.3 A school shall provide each student, in a contract or on a separate sheet, notice of the student's right to rescind the contract within seventy-two (72) hours of signing and notice of the fact that, upon rescission, the school shall refund all prepaid tuition advanced to the school unless the student has begun instruction.
- 2219.4 A school shall provide each student a copy of the school's tuition plan and refund policy at the time of enrollment.

- 2219.5 The Commission shall approve each school's refund policy only when it provides that the amount retained by the school does not exceed an amount calculated in accordance with the following standards:
- (a) A reasonable nonrefundable enrollment or registration fee shall be stated in the contract or separately and shall not exceed the lesser of twenty percent (20%) of the total cost of the course or one hundred dollars (\$ 100);
 - (b) If a student begins instruction and withdraws or is discontinued for any reason after instruction begins prior to completion of sixty percent (60%) of the scheduled program, the school shall refund to the student a sum which is the exact pro rata portion of tuition unexpended by the student, rounded to the nearest ten percent (10%), less any unpaid non-tuition charges owed by the student for the period of enrollment for which the student has been charged, and less a reasonable administrative fee not to exceed the lesser of five percent (5%) of the tuition or one hundred dollars (\$ 100).
- 2219.6 The prorated amount under § 2219.5(b) shall be determined by the ratio of the number of weeks or lessons in series of instruction completed by the student to the total number of weeks or lessons of instruction offered. Any portion of a week's attendance by a student shall be considered a full week's attendance for the purpose of this section. In the case of correspondence schools, any portion of a lesson in series shall be considered as a completed series.
- 2219.7 No school shall request or accept more than thirty percent (30%) of the total tuition prior to commencement of the program or schedule.
- 2219.8 A school shall make every effort to ensure that enrolled students intend to complete the program in which enrolled.
- 2219.9 A school shall keep adequate records to ensure that students who delay in requesting a refund are accommodated; provided, that the school is not required to honor a refund request submitted ninety (90) days after the end of the scheduled program for which the student was enrolled.

All persons desiring to comment on these proposed rules should submit comments in writing no later than thirty days (30) days from the date of the publication of this notice in the D.C. Register. Comments should be filed with Karen Edwards, General Counsel, Department of Consumer and Regulatory Affairs, 941 N. Capitol St., N.E., Washington, D.C. 20002. Additional copies of these rules may be obtained at no cost upon request at the above-referenced address. Please place "School Refund Policy" conspicuously on any correspondence sent in response to this notice.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, D.C. 20005

NOTICE OF PROPOSED RULEMAKING

**Electric Tariff 03-2, In the Matter of the Application of the Potomac Electric Power
Company for Authority to Amend Electric Tariff, P.S.C. D.C. No. 1**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Sections 2-505(a) and 34-601 of the District of Columbia Code,¹ of the Application of the Potomac Electric Power Company ("PEPCO" or "the Company") for Authority to Amend Electric Tariff, P.S.C. D.C. No. 1.² The Commission will act upon PEPCO's Application not less than 30 days from the date this Notice appears in the *D.C. Register*.

2. In its application, PEPCO is requesting authority to amend the following tariff pages:

**ELECTRIC TARIFF, P.S.C.-D.C., No. 1
1st Revised Pages 1, 2, and 33
Original Pages 33A through 41**

While PEPCO seeks to amend all the above-referenced pages, the Company has only changed the language in Original Pages 37 through 40.

3. PEPCO seeks to make four substantive changes to the tariff. Under the amended tariff, PEPCO proposes that applicants for service connections shall pay an Initial Service Application Fee of \$100 for residential and \$300 for commercial service connections.³ Secondly, to install underground service to new residential units, the Company seeks to charge the customer a connection fee in the amount of the cost to PEPCO of furnishing and installing wire, cable, and structural components, including conduit, poles, manholes, trenches, paving, and site restoration, minus the residential imbedded cost of \$232.26.⁴ Thirdly, with respect to residential heavy-ups,⁵ the

¹ D.C. Code, 2001 Ed. §§ 2-505(a) and 34-601.

² *Electric Tariff 03-1, In the Matter of the Application of the Potomac Electric Power Company for Authority to Amend Electric Tariff, P.S.C. D.C. No. 1*, Letter from Paul H. Harrington, Of Counsel, Potomac Electric Power Company ("PEPCO"), to Sanford M. Speight, Esq., Acting Commission Secretary, Public Service Commission of the District of Columbia ("Commission") (May 12, 2003) ("PEPCO's Application").

³ *Electric Tariff 03-2, In the Matter of the Application of the Potomac Electric Power Company for Authority to Amend Electric Tariff, P.S.C. D.C. No. 1*, Electric Tariff, P.S.C.-D.C., No. 1, 1st Revised Pages 37.

⁴ *Electric Tariff 03-2, In the Matter of the Application of the Potomac Electric Power Company for Authority to Amend Electric Tariff, P.S.C. D.C. No. 1*, Electric Tariff, P.S.C.-D.C., No. 1, 1st Revised Page 38.

⁵ Heavy-up is the term associated with the addition of new service cables to current electric service customers. The replacement of existing cable with larger service cables is performed to provide increased capacity to meet increased

Company is willing to provide whatever distribution equipment may be necessary to accommodate the increase in load at its expense.⁶ However, the company seeks to charge the customer for "any structural work," such as conduit, poles, manholes, trenching, paving, and site restoration.⁷ Finally, PEPCO seeks to eliminate the one-time credit for construction of a new manhole, when the new manhole will be used solely to provide service to one customer.⁸

4. The proposed tariff pages are on file with the Commission. A copy of the tariff may be reviewed at the Office of the Commission Secretary, Second Floor, West Tower, 1333 H Street, N. W., Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. A copy of the proposed tariff pages and attachments are available, upon request, at a per page reproduction fee. Comments on the proposed tariff revisions, setting forth the specific grounds for each representation, should be made in writing to Sanford M. Speight, Acting Commission Secretary, at the above address. Comments must be received within 30 days of publication of this Notice in the *D.C. Register*.

customer demand for electricity. PEPCO's Application at 5.

⁶ *Electric Tariff 03-2, In the Matter of the Application of the Potomac Electric Power Company for Authority to Amend Electric Tariff, P.S.C. D.C. No. 1, Electric Tariff, P.S.C.-D.C., No. 1, 1st Revised Page 39.*

⁷ *Id.*

⁸ PEPCO's Application at 5; *Electric Tariff 03-2, In the Matter of the Application of the Potomac Electric Power Company for Authority to Amend Electric Tariff, P.S.C. D.C. No. 1, Electric Tariff, P.S.C.-D.C., No. 1, 1st Revised Page 40.*

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
NOTICE OF PROPOSED RULEMAKING
APPLICATION NO. 17020**

The Board of Zoning Adjustment of the District of Columbia, pursuant to the authority set forth in the Foreign Missions Act (Title 2, Public Law 97-241, 96 Stat. 283, August 24, 1982) and the Zoning Regulations of the District of Columbia, hereby gives notice of its intention to permit the Embassy of Portugal to expand a chancery in the DC/SP-2 and DC/C-2-A Districts at premises 2012 Massachusetts Avenue, N.W., (Square 95, Lot 3 subject to disapproval. Final action on this application will be taken in not less than thirty days from the date of publication of this notice.

Written comments may be submitted to the Board of Zoning Adjustment through Jerrily R. Kress, FAIA, Director of the Office of Zoning, 441 4th Street, N.W., Suite 210, Washington, D.C. 20001. Copies of this notice are available from the Office of Zoning. For further information, call the Office of Zoning at 727-6311.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 02-34TA

(Text Amendment – Optical Transmission Nodes)

The Zoning Commission for the District of Columbia, pursuant to its authority under Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01) (2001 Ed.), hereby gives notice of its intent to adopt the following amendment, which will establish optical transmission nodes as a use recognized in the Zoning Regulations and permitted as a matter of right or special exception in specified districts. Final rulemaking action shall be taken in not less than thirty (30) days from the date this notice is published in the *D.C. Register*.

Proposed language is shown in **bold and underlined**.

Title 11, DCMR is amended as follows:

- A. Amend Section 199, subsection 199.1, DEFINITIONS by adding the following definition, to read as follows:

Optical Transmission Node – an interior or exterior facility that is utilized as remote terminal units for the operation of such things as cable television systems, high-speed internet access and interactive video, not including any broadcast antenna or related towers for the transmission of radio waves.

- B. Amend Section 509, UTILITIES (SP), subsections 509.2 and 509.3 to read as follows:

509.2 Use as an optical transmission node shall be permitted in an SP district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in § 3104, subject to the following:

(a) Any new construction of a freestanding structure used primarily for the purpose of housing an optical transmission node shall be built to appear compatible with surrounding construction, including exterior building material, fenestration, and landscaping; and

(b) There shall be no advertisement on the structure.

509.3 The utilities allowed in § 509.1 **and optical transmission nodes in § 509.2** shall be subject to requirements for setbacks, screening, or other requirements as the Board deems necessary for the protection of neighboring or adjacent property.

C. Amend Section 608, UTILITIES (CR), to read as follows:

608 UTILITIES (CR)

608.1 Use as an electric substation, natural gas regulator station, public utility pumping station, **optical transmission node**, or telephone exchange, shall be permitted in a CR district as a special exception when authorized by the Board of Zoning Adjustment under § 3104, if the Board considers that this use is appropriate in furthering the objectives of the CR Districts, subject to the provisions of this section.

608.2 Any new construction of a freestanding structure used primarily for the purpose of housing an optical transmission node shall be subject to the following:

(a) The structure shall be built to appear compatible with surrounding construction, including exterior building material, fenestration, and landscaping; and

(b) There shall be no advertisement on the structure.

608.3 The Board may impose any requirements for setbacks, screening, or other safeguards that it deems necessary for protection of the neighborhood.

D. Section 701, USES AS A MATTER OF RIGHT (C-1), subsection 701.6, is amended as follows:

1) Paragraph (h) is amended by deleting the word "and".

2) By adding a new paragraph (j) to read as follows:

(j) Optical Transmission Node.

E. Amend Section 907, UTILITIES (W), to read as follows:

907 UTILITIES (W)

907.1 If the Board of Zoning Adjustment considers that it is appropriate in furthering the objectives of the Waterfront district, an electric sub-station, natural gas regulator station, public utility pumping station, **optical transmission node**, or telephone exchange shall be permitted as a special exception in a Waterfront district when authorized by the Board under § 3104, subject to the provisions of this section.

907.2 Any new construction of a freestanding structure used primarily for the purpose of housing an optical transmission node shall be subject to the following:

(a) The structure shall be built to appear compatible with surrounding construction, including exterior building material, fenestration, and landscaping; and

(b) There shall be no advertisement on the structure.

907.3 The Board shall establish requirements for setbacks and screening.

907.4 The Board shall establish other safeguards as deemed necessary for protection of the neighborhood.

F. Chapter 21, SCHEDULE OF REQUIREMENTS FOR PARKING SPACES, subsection 2101.1, is amended by adding the following use:

<u>USES</u>	<u>NUMBER OF PARKING SPACES REQUIRED</u>
<u>Optical Transmission Nodes:</u> All districts	1 for each 3,000 sq. ft of gross floor area

All persons wishing to comment on the subject matter of this proposed rulemaking should file comments in writing to the Zoning Commission for the District of Columbia, c/o Alberto P. Bastida, AICP, Secretary to the Zoning Commission, 441 Fourth Street, N.W., Suite 210S, Washington, D.C., 20001. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of this proposal may be purchased at cost by writing to the above address.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Case No. 02-41
(Map Amendment – A Portion of US Reservation 501 (Parcel 236, Lot 114))

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code, 2001 Ed. §6-641.01), hereby gives notice of its intent to amend the Zoning Map of the District of Columbia. The purpose of this Zoning Map amendment is to establish a zoning designation for unzoned property that is owned by the United States Government (the National Park Service) with jurisdictional authority transferred to the District of Columbia (Department of Parks and Recreation) and which has been leased to a non-profit organization (Building Bridges Across the River, Inc.) that will operate a community center and related facilities to be known as the Town Hall Education Arts Recreation Center (THE ARC). Final rulemaking action shall be taken in not less than thirty (30) days from the date this notice is published in the *D.C. Register*.

The Zoning Map of the District of Columbia is amended as follows:

The property located on the southern side of Mississippi Avenue, S.E., between Stanton Road, S.E. and Southern Avenue, S.E., which is a portion of US Reservation 501 (Parcel 236, Lot 114) shall be changed from **unzoned** to the **SP-1** District.

All persons wishing to comment on the subject matter of this proposed rulemaking should file comments in writing to Alberto Bastida, Secretary to the Zoning Commission for the District of Columbia, Office of Zoning, 441 Fourth Street, N.W., Suite 210S, Washington, D.C. 20001. Comments must be received no later than thirty (30) days after the date of publication on this notice in the *D.C. Register*. Copies of this proposal may be obtained at cost by writing to the above address.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING**

Z.C. Case No. 02-33

(Map Amendment – Square 4327)

(Fort Lincoln Urban Renewal Area)

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2001)), hereby gives notice of its intent to amend the Zoning Map of the District of Columbia in the manner described below. The purpose of this rezoning initiative is to adopt a zoning designation in conformity with the Fort Lincoln Urban Renewal Area Plan and the Comprehensive Plan Generalized Land Use Map. As depicted on maps in the official file of Case No. 02-33, the proposed map amendment applies to a portion of Square 4327 bounded by the east side of South Dakota Avenue, N.E., the south side of 33rd Place, N.E. and Fort Lincoln Drive, N.E., the west side of the exit ramp between New York Avenue, N.E. and Fort Lincoln Drive N.E., and the north side of New York Avenue N.E.

Final rulemaking action shall be taken in not less than thirty (30) days from the date this notice is published in the D.C. Register.

The specific proposed amendment to the Zoning Map of the District of Columbia is as follows:

A portion of Square 4327 bounded by the east side of South Dakota Avenue, N.E., the south side of 33rd Place, N.E. and Fort Lincoln Drive, N.E., the west side of the exit ramp between New York Avenue, N.E. and Fort Lincoln Drive N.E., and the north side of New York Avenue N.E. rezone from C-3-C, R-5-D and SP-2 to C-2-B.

The proposed amendment is consistent with the Comprehensive Plan Generalized Land Use Map designation of the subject site as moderate density commercial. The C-2-B district is designated to serve commercial and residential functions. The C-2-B district permits matter-of-right development standards of 3.5 maximum Floor-Area-Ratio (FAR), of which no more than 1.5 FAR may be devoted to non-residential uses; 65 feet maximum building height; 80% maximum lot occupancy for residential development; and 100% lot occupancy for non-residential development. The C-2-B also requires a minimum rear yard setback of 15 feet. If a side yard is provided, a minimum width of six feet is required, except for a hotel which requires a minimum width of eight feet.

All persons wishing to comment on the subject matter of this proposed rulemaking should file comments in writing to the Zoning Commission for the District of Columbia,

c/o Alberto P. Bastida, AICP, Secretary to the Zoning Commission, 441 Fourth Street, N.W., Suite 210S, Washington, DC 20001. Comments must be received no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Copies of this notice of proposed map amendment may be purchased at cost by writing to the above address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new section 928 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Adaptive Equipment Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for adaptive equipment devices and related services provided by qualified professionals to participants with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). The rules also authorize reimbursement for adaptive equipment devices and related services. There are numerous types of adaptive equipment devices authorized pursuant to this Waiver. Therefore, descriptions of each adaptive equipment device and corresponding reimbursement rate are set forth in a separate fee schedule maintained by the Medical Assistance Administration. The fee schedule is available upon request.

The Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration has advised the District that the maintenance and expansion of adaptive equipment services to persons with mental retardation and developmental disabilities is essential to the continuation of the Waiver. These rules establish standards governing the provision of adaptive equipment services. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of adaptive equipment devices and related services.

The emergency rulemaking was adopted on April 2, 2003 and became effective on that date. The emergency rules will remain in effect for 120 days or until July 31, 2003, unless earlier superceded by another emergency rulemaking of by publication of a notice of final rulemaking in the *D.C. Register*.

The Director gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Amend Title 29 DCMR by adding the following new section 928 to Chapter 9 (Medicaid Program) to read as follows:

SECTION 928 ADAPTIVE EQUIPMENT SERVICES

- 928.1 Adaptive equipment services shall be reimbursed by the Medicaid Program for each participant with mental retardation in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements in this section.

- 928.2 Adaptive equipment services eligible for reimbursement are as follows:
- (a) Adapted or Modified Equipment for Activities of Daily Living;
 - (b) Adaptive Communication Devices;
 - (c) Functional Mobility Aids;
 - (d) Installation costs, if applicable; and
 - (e) Repair and Maintenance Costs.
- 928.3 All adaptive equipment devices shall be the most cost-effective method of meeting the client's needs and comply with applicable standards of manufacture, design, usage and installation.
- 928.4 All requests for adaptive equipment services shall be supported by a physician's order and related clinical assessment performed by a speech pathologist, audiologist, physical therapist or occupational therapist.
- 928.5 Any physician or clinician performing the required assessment set forth in section 928.5 shall not be a provider of adaptive equipment nor have a financial relationship with a provider or manufacturer of adaptive equipment.
- 928.6 Providers of speech, language and hearing services shall meet all of the requirements set forth in section 932 of Title 29 DCMR.
- 928.7 Providers of physical therapy services shall meet all of the requirements set forth in section 934 of Title 29 DCMR.
- 928.8 Providers of occupational therapy services shall meet all of the requirements set forth in section 935 of Title 29 DCMR.
- 928.9 Adaptive equipment services shall be pre-authorized and provided in accordance with each client's individual habilitation plan (IHP) or individual support plan (ISP).
- 928.10 The client's IHP or ISP shall indicate whether the equipment is for initial use or replacement.
- 928.11 The Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) shall approve or deny the request for adaptive equipment based upon its review of the following:
- (a) Form 719A;
 - (b) Clinical Assessment;
 - (c) Physician's Order;

- (d) Results of the Health-Risk Screening Tool;
- (e) ISP or IHP with identified outcomes; and
- (f) Vendor information.

928.12 MRDDA shall submit the approved 719A Form to the Department of Health, Medical Assistance Administration (MAA) for appropriate action.

928.13 Each provider of adaptive equipment services shall:

- (a) Be a non-profit organization, home health agency, social service agency or other business entity;
- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for adaptive equipment services; and
- (c) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 *et seq.*).

928.14 Adaptive equipment services expenditures shall be limited to three thousand dollars (\$3,000.00) per client during any one (1) year period, which shall commence on the date that the service is authorized.

928.15 MAA shall maintain the fee schedules which sets forth the description and reimbursement amount for adaptive equipment services.

928.99 **DEFINITIONS**

When used in this section, the following terms and phrases, shall have the meanings ascribed:

Activities of Daily Living - The ability to get in and out of bed, bathe, dress, eat, take medication prescribed for self-administration and to engage in toileting.

Adapted or Modified Equipment - Equipment and supplies the client would not be qualified to receive under the District's Medicaid Durable Medical Equipment Program that would assist a client with impairments related to activities of daily living and is necessary for the client to meet functional goals toward a least restrictive environment.

Adaptive Communication Device - A speech, hearing, visual or other communication aid the client would not be qualified to receive under the

District's Medicaid Durable Medical Equipment Program that provides a client with severe communication impairment the ability to meet their functional communication goals toward a least restrictive environment .

Audiologist - A person who meets the education and experience requirements for a Certificate of Clinical Competence in the area of audiology granted by the American Speech Hearing Language Association or is licensed or certified as a audiologist in the state where the services are provided.

Client - An individual with mental retardation who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Functional Mobility Aids - Equipment and supplies the client would not be qualified to receive under the District's Medicaid Durable Medical Equipment Program that would assist a client with impairments related to mobility in and out of the home and is necessary for the client to meet mobility goals towards a least restrictive environment.

Individual Habilitation Plan (IHP) - The plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code, § 7-1304.03).

Individual Support Plan (ISP) - The successor to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Occupational Therapist - A person who is licensed or authorized to practice occupational therapy pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1201 *et seq.*) or licensed as an occupational therapist in the jurisdiction where services are being provided.

Physical Therapist - A person who is licensed or authorized to practice physical therapy pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1201 *et seq.*) or licensed as a physical therapist in the jurisdiction where services are provided.

Speech Pathologist - A person who meets the education and experience requirements for a Certificate of Clinical Competence in the areas of speech pathology or audiology granted by the American Speech Hearing Language Association or is licensed or certified as a speech pathologist in the state where the services are provided.

Comments on the proposed rules shall be submitted in writing to Wanda Tucker, Interim Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol

Street, N.E., 5th Floor, Washington, DC 20002, not later than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.