

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING¹

Z.C. Case No. 23-01

Office of Planning

**(Text Amendment to Title 11, Subtitle B § 200.2,
Dormitory Use within Campus Master Plan in MU Zones)**
June 29, 2023

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2018 Repl.), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of the amendment of Subtitle B of the Zoning Regulations, § 200.2 (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified), with the text at the end of this notice.

SETDOWN

On December 30, 2022, the Office of Planning (OP) filed a petition (OP Set down and Prehearing Report) to the Commission proposing text amendments that would clarify that a dormitory within a campus plan may utilize the matter-of-right residential density of the MU zones. (Exhibit [Ex.] 2.)

OP's Set down and Prehearing Report provided background information explaining how the proposed amendments came about. OP stated that, "a dormitory within a campus plan in residential zones is allowed by special exception as part of the campus plan (Subtitle X § 101.5.) stipulates the maximum FAR and height allowed for all buildings and structures on a campus within residential zones. However, the Regulations do not specify how to calculate the density of buildings within the campus plans that are in mixed-use zones. A dormitory is listed as a use included within the Education, College/University use category (Subtitle B § 200.2(j).) It has therefore been limited to the nonresidential FAR of mixed-use zones. This severely limits the density of a mixed-use building within a campus plan intended for campus housing and other uses at locations where higher densities are envisioned and encouraged. The proposed text amendment will clarify that notwithstanding the use category, dormitories are a residential use and may utilize the residential density allowed within a mixed-use zone even when governed by a campus plan." (Ex. 2.)

¹ For Office of Zoning tracking purposes only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 23-01.

At its January 12, 2023 public meeting, the Commission voted to grant OP's request to set down the petition for a public hearing. The Commission asked OP to address whether there is a specific property or development proposal that is motivating this case, and where this proposed amendment would apply.

NOTICE

Pursuant to Subtitle Z § 502, the Office of Zoning (OZ) sent notice of the May 4, 2023 public hearing, on March 1, 2023, and published notice of the public hearing in the March 10, 2023 *District of Columbia Register* as well as on the calendar on OZ's website. (Ex. 4-6.)

COMMENTS

Prior to the public hearing on January 11, 2023, the Committee of 100 on the Federal City (Committee of 100) submitted comments/testimony to the record. (Ex. 3.) The Committee of 100's letter suggested that it believed that the text was likely motivated by a particular situation, and expressed a desire to hear more about what that was, and requested more information and raised questions regarding the Racial Equity Analysis that was provided, what dormitory projects are forthcoming in MU zones, what universities are located in MU zones, and alleged the Commission seemed to be in a rush to approve the proposed changes.

No other comments were filed in the record in response to the public hearing notice.

PUBLIC HEARING

At the May 4, 2023 public hearing, OP presented the petition and responded to questions from the Commission. OP stated that the proposed amendments were intended to clarify that a dormitory within a campus master plan may utilize the matter-of-right residential density of the MU zones.

OP addressed the issues raised in the Committee of 100 letter and raised by the Commission at setdown. OP stated that:

- Howard University is developing a property on Georgia Avenue, which is what motivated it to bring this case; and
- There are only two other campuses where the proposed amendments would be effective under current zoning:
 - The Georgetown University Campus Plan has properties within the MU-3 zone along 36th Street, N.W. between N Street and Prospect Street, N.W. These properties currently are improved with two-story buildings with commercial and university uses and are within the Georgetown historic district. The campus plan does not recommend development of these sites with dormitory or residential uses;
 - The George Washington University has properties within the MU-9 zone fronting Pennsylvania Avenue, N.W. between 20th Street and 22nd Street, N.W. A majority of these buildings are developed with large office buildings and some ground floor retail; and
 - There are no current plans to develop those sites.

OP REPORTS

The OP's Reports (Ex. 2, 7.) stated the intention of the proposed amendments is to clarify that universities can use the residential density allowed in mixed use zones for dormitories.

OP Setdown and Prehearing Report concluded that the proposal would not be inconsistent with the Comprehensive Plan as it would allow for universities to house more of their students on-campus and allow for the mixed use anticipated by the MU zones. The report further concluded that the proposed text amendment is not inconsistent with the Comprehensive Plan when viewed through a racial equity lens. Therefore, OP recommended that the Commission approve the amendments.

In OP's Hearing Report, OP expanded on the positions stated in its Setdown and Prehearing Report. It stated that approval of the proposed amendments would advance the following Comprehensive Plan policies:

Citywide Elements:

Land Use Element

Policy LU-3.3 Institutional Uses

The growth of private institutions has generated significant concern in many neighborhoods. These concerns relate both to external impacts, such as traffic and parking, and broader concerns about the character of communities where institutions are concentrated or expanding. (10A DCMR § 317.6.)

Education Element

EDU-3 Colleges and Universities

The campus plan requirement provides a formal process for community input on a range of growth-related issues. They are an important tool to proactively address issues that may be of concern to the neighborhood and limit campus expansion into residential areas. However, most of Washington, DC's colleges and universities are engaged in ongoing discussions with the communities around them. Frequently raised issues include the need for student housing, the loss of historic buildings, the compatibility of proposed campus structures with nearby residential areas, and the loss of taxable land associated with university growth. Campus plans have responded to these concerns in a number of ways, such as increasing building intensity on-site to avoid the need for land acquisition, development of new dormitories, and implementation of numerous programs to manage parking, traffic, noise, and other environmental impacts. (10A DCMR § 1214.3.)

OP Analysis

The proposal would allow universities to use their land more efficiently under the MU zones, house the maximum number of students on campus and assist in limiting students being housed in the adjacent community. Many students who live on campus are not allowed to have cars or do not have cars on campus which helps to minimize traffic and parking impacts in the neighborhoods.

Education Element

Policy EDU-3.3.2: Balancing University Growth and Neighborhood Needs

Encourage the growth and development of local colleges and universities in a manner that recognizes the role these institutions play in contributing to the District's character, culture, and economy, and that is also consistent with and supports community improvement and neighborhood conservation objectives. Discourage university actions that would adversely affect the character or quality of life in surrounding residential areas. (10A DCMR § 1214.7.)

OP Analysis

Providing housing on campus would help to minimize the need for students to find housing in the adjacent communities and therefore minimize the effect on the character and quality of life for permanent residents in the surrounding residential areas.

Education Element

Policy EDU-3.3.4: Student Housing

Encourage the provision of on-campus student housing in order to reduce college and university impacts on the housing stock, especially the affordable housing stock, in adjacent neighborhoods. Consider measures to address the demand for student housing generated by non-District institutions with local branches. (10A DCMR § 1214.9.)

OP Analysis

The increased density for on-campus housing that would be allowed under the proposal would diminish the need for students to seek off-campus housing which could reduce the impact on the housing stock available to permanent residents and in particular the availability of affordable units.

Racial Equity

In applying the standard of review applicable to proposed amendments, the Comprehensive Plan requires the Commission to do so through a racial equity lens. (10A DCMR § 2501.8.) Consideration of equity is intended to be based on the policies of the Comprehensive Plan, and part of the Commission's consideration of whether the proposed amendments are "not inconsistent" with the Comprehensive Plan, rather than a separate determination about a zoning action's equitable impact.

OP concluded that one of the key ways the Comprehensive Plan seeks to address equity is by supporting additional housing development. The Comprehensive Plan recognizes that without increased housing, the imbalance between supply and demand will drive up housing prices in a way that creates challenges for many residents, particularly low-income residents. In DC, universities are strongly encouraged and often required to house a portion of their overall student body, particularly undergraduate students, on campus. Providing on campus housing allows for less off-campus student housing, making more units available to residents of the community. Students living off-campus usually show a preference for cheaper, more affordable units and thus cutting into the availability of units for lower income residents, who are generally people of color. The proposed text amendment should not result in the displacement of any tenants or residents but would facilitate the opportunity for additional on-campus housing for students relieving pressure on off-campus housing residents.

OP's Hearing Report concluded that on balance, the proposed text amendments would not be inconsistent with the Comprehensive Plan.

PROPOSED ACTION

The Commission found persuasive, and concurred with, OP's recommendations that the Commission take proposed action to adopt the amendments.

Since no ANC filed a response to the petition as advertised in the public hearing notice, there was nothing to which the Commission could give great weight at proposed action.

At the conclusion of the May 4, 2022 hearing, the Zoning Commission voted to take **PROPOSED ACTION** to:

- Adopt the Petition; and
- Authorize the publication of a Notice of Proposed Rulemaking (NOPR).

VOTE (May 4, 2023): **4-0-1** (Robert E. Miller, Peter G. May, Anthony J. Hood, and Joseph S. Imamura to **APPROVE**; 3rd Mayoral Appointee seat vacant, not voting)

National Capital Planning Commission (NCPC)

The Commission referred the proposed amendments to the NCPC on May 5, 2023, for the thirty (30)-day review period required by Section 492(b)(2) of the District Charter (Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(b)(2)); D.C. Official Code 6-641.05 (2018 Repl.).

On June 2, 2023, pursuant to delegated authority, NCPC filed a letter stating that the proposed amendments were not inconsistent with the Comprehensive Plan for the National Capital and would not adversely impact federal interests. (Ex. 12.)

OZ published a Notice of Proposed Rulemaking (NOPR) in the May 26, 2023 *District of Columbia Register* (70 DCR 007799 *et seq.*)

Prior to its June 29, 2023 public meeting, the Commission received no comments in response to the NOPR.

FINAL ACTION

“Great Weight” to the Recommendations of OP

The Commission must give “great weight” to the recommendations of the Office of Planning (OP) pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990. ((D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

The Commission finds persuasive, and concurs with, OP's analyses in its reports and its recommendation that the Commission take final action to adopt the amendments.

“Great Weight” to the Written Report of the ANC’s

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

Since no ANC filed a response to the NOPR, there is nothing to which the Commission can give great weight.

At the June 29, 2023 public meeting, the Commission noted that OP addressed the concerns the Committee of 100 raised regarding the amendments.

At its June 29, 2023 public meeting, the Zoning Commission voted to take **FINAL ACTION** to:

- Adopt the Petition; and
- Authorize the publication of a Notice of Final Rulemaking.

VOTE (June 29, 2023): 4-0-1

(Peter G. May, Robert E. Miller, Anthony J. Hood, and Joseph S. Imamura, to **APPROVE**; 3rd Mayoral Appointee seat vacant, not voting)

The following amendments to the Zoning Regulations are hereby adopted:

TEXT AMENDMENTS

Amendment to Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES

Subsection 200.2(aa) INTRODUCTION, of Chapter 2, USE CATEGORIES of Subtitle B, DEFINITIONS, RULES OF MEASUREMENTS, AND USE CATEGORIES, is amended to read as follows:

200.2 When used in this title, the following use categories shall have the following meanings:

...²

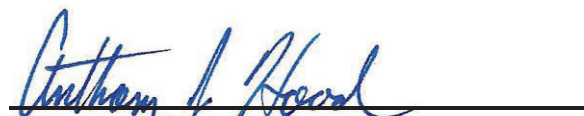
² The use of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

(aa) **Residential:**

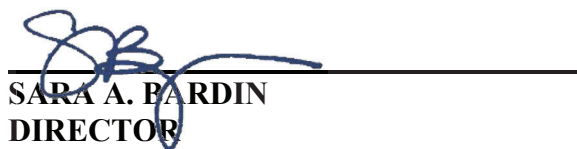
...

- (3) Examples include, but are not limited to: single dwelling unit, multiple dwelling units, community residence facilities, retirement homes, rooming units, substance abusers' home, youth residential care home, assisted living facility, floating homes, dormitories, or other residential uses; and
- (4) Exceptions: This use category does not include uses which more typically would fall within the lodging, or community-based institutional facility use categories or Short-Term Rental;

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 23-01 shall become final and effective upon publication in the *D.C. Register*, that is on August 25, 2023.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.