

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

REGULAR MEETING
12233rd MEETING SESSION (13th OF 2007)

+ + + + +

MONDAY

JULY 9, 2007

+ + + + +

The Regular Meeting of the
District of Columbia Zoning Commission
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 6:30 p.m., Carol J. Mitten,
Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chair
ANTHONY J. HOOD	Vice Chair
GREGORY N. JEFFRIES	Commissioner
MICHAEL G. TURNBULL	Commissioner (ACC)
JOHN PARSONS	Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Secretary
DONNA HANOUSEK	Zoning Specialist
ESTHER BUSHMAN	General Counsel

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
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WASHINGTON, D.C. 20005-3701

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Board of Zoning Adjustment
District of Columbia
CASE NO.18239
EXHIBIT NO.18B29

D.C. OFFICE OF THE ATTORNEY GENERAL:

ALAN BERGSTEIN, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER

JOEL LAWSON

MATT JESICK

TRAVIS PARKER

ART RODGERS

KAREN THOMAS

MAXINE BROWN-ROBERTS

This transcript constitutes the
minutes from the Regular Meeting held on July
9, 2007.

I-N-D-E-X

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1 specific things only.

2 MS. SCHELLIN: Right. If they
3 could file those items by 3:00 o'clock July
4 23rd at the latest.

5 VICE CHAIR HOOD: And what I've
6 asked for sound bites would be greatly
7 appreciated.

8 Okay. Anything else on this?

9 Thank you. Thank you, Madam
10 Chair.

11 CHAIR MITTEN: Thank you, Mr.
12 Hood.

13 Now we're ready to move to Final
14 Action. And the first case under Final Action
15 is Case No. 06-33. And this is the text
16 amendment for parking in historic buildings.
17 And we got a couple of letters after we
18 advertised our proposed rulemaking.

19 And I just have to ask this one
20 question because it's repeated twice. Well,
21 it's repeated in these two letters. And I
22 just have to ask because I just want to be

1 sure I'm not missing something.

2 They say that the proposed change
3 would waive the parking requirements only for
4 the smallest of projects. But that's the
5 smallest of additions. Right? Not anybody
6 can renovate an historic structure, and if
7 they don't --

8 MR. PARKER: Agreed. The historic
9 structure itself is always exempt.

10 CHAIR MITTEN: Okay. That's what
11 I thought. That's what I thought. It just
12 seemed quite extreme. And I just wanted to
13 make sure I understood.

14 So, myself, am not moved to make
15 any changes in what we had advertised other
16 than I think there's a little technical thing
17 about a reference that has been suggested by
18 the OAG. But other than that, I would move
19 approval of Case No. 06-33, and ask for a
20 second.

21 COMMISSIONER TURNBULL: Second.

22 CHAIR MITTEN: Thank you, Mr.

1 Turnbull.

2 Any discussion?

3 (No audible response.)

4 CHAIR MITTEN: All those in favor,
5 please say aye.

6 (A CHORUS OF AYES.)

7 CHAIR MITTEN: Those opposed,
8 please say no.

9 (No audible response.)

10 CHAIR MITTEN: Ms. Schellin?

11 MS. SCHELLIN: I'm sorry. We need
12 to maybe redo the vote. Mr. Turnbull didn't
13 participate.

14 CHAIR MITTEN: We need another
15 second.

16 MS. SCHELLIN: Yes.

17 VICE CHAIR HOOD: Second.

18 CHAIR MITTEN: Thank you, Mr.
19 Hood.

20 Okay. Let's try that one more
21 time.

22 All those in favor, please say

1 aye.

2 (A CHORUS OF AYES.)

3 CHAIR MITTEN: Those opposed,
4 please say no.

5 (No audible response.)

6 CHAIR MITTEN: And we have Mr.
7 Turnbull not participating.

8 MS. SCHELLIN: Actually Mr.
9 Turnbull and Mr. Jeffries.

10 Staff records a vote 3 to 0 to 2
11 to approve Final Action Zoning Commission Case
12 No. 06-33. Commissioner Mitten moving;
13 Commissioner Hood seconding; Commissioner
14 Parsons in favor; Commissioners Jeffries and
15 Turnbull not voting, having not participated.

16 CHAIR MITTEN: Okay.

17 Okay. The next case is 03-12C/03-
18 13C. And this is the office building at 250
19 M Street, S.E., which you'll remember we asked
20 the applicant to step -- how did you put it in
21 the last -- step up the architecture? We got
22 them to step it up.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 06-33
Z.C. Case No. 06-33
(Text Amendments – 11 DCMR)
(Parking for Historic Resources)
July 9, 2007

The Zoning Commission for the District of Columbia (the “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), having held a public hearing and referred the proposed amendments to the National Capital Planning Commission (“NCPC”) for a 30-day period of review pursuant to § 492 of the District of Columbia Charter, hereby gives notice of the adoption of amendments to Chapter 21 of the Zoning Regulations (Title 11 DCMR). The proposed amendments clarify parking requirements for historic landmarks and buildings found to be contributing to an historic district (“historic resources”). The Commission took final action to adopt the amendments at a public meeting held on July 9, 2007.

This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

Although the current regulations clearly exempt historic resources from having to provide additional on-site parking due to a change of use for which more parking is required, it is unclear whether this exemption also applies when more parking is required as a result of the physical expansion of the structure. The text amendments are necessary to remove this ambiguity.

Description of Text Amendments

This rulemaking was initiated by the Office of Planning (“OP”). The text amendments set clear standards for when parking requirements apply to additions to historic resources and when they do not. The amendments only require additional parking when an increase in gross floor area would require the provision of four or more parking spaces. Even when that is the case, the amendments provide for special exception relief.

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Relationship to the Comprehensive Plan

The amendments are not inconsistent with the goals of the District Elements of the Comprehensive Plan for the National Capital and are consistent with §§ HP-2.4.1 through 2.4.5, which advocate appropriate adaptation and rehabilitation of historic structures through compatible development. The text amendments promote these goals of historically-sensitive rehabilitation by providing clear relief from aspects of the parking regulations.

Public Hearing and Proposed Action

The Commission held a public hearing on November 27, 2006 and took proposed action on April 9, 2007 to approve the advertised text, except for some minor changes in language and numbering suggested by the Office of the Attorney General ("OAG"). A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 11, 2007, at 54 DCR 4508, for a 30-day notice and comment period. Two comment letters were received, one from the law firm of Pillsbury, Winthrop, Shaw, Pittman and the other from the law firm of Holland & Knight.

Both comment letters suggested that the proposed changes are not necessary and should not be adopted. Both went on to provide alternative language for the Commission to consider if the text amendments were pursued. Both strongly recommended allowing mechanical parking structures to meet parking requirements for historic resources. They suggested expanding the conditions under which parking requirements are waived to include lack of access to curb cuts and vertical-only additions. They also recommended raising the minimum threshold number of parking spaces to greater than four.

The proposed rulemaking was also referred to the National Capital Planning Commission ("NCP") pursuant to § 492 of the District of Columbia Charter. NCP, by report dated May 31, 2007, found that the proposed text amendments would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan.

OAG has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on July 9, 2007, including one non-substantive change made to the wording of new § 2120.3. The change was made at the suggestion of OAG to improve the clarity of the provision. In response to the two comments received, the Commission continues to believe that the current regulations are not sufficiently clear and that the proposed text provides needed protection of historic resources and sufficient relief for extenuating circumstances. The Commission notes that OP intends to examine the use of mechanized parking structures and, if appropriate, will address the subject in a future text amendment.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapter 21 of the Zoning Regulations, Title 11 DCMR. Added wording is in **bold** and underline, and deleted wording is shown in ~~strike through~~ lettering, except for Part D, which is all new text and therefore not annotated:

A. Amend § 2100.4 as follows:

2100.4 Except as ~~provided in § 2100.5~~, **for historic resources as defined in § 2120.2**, when the use of a building or structure is changed to another use that requires more parking spaces than required for the use existing immediately prior to the change or, if the building or structure is vacant, the use that existed immediately prior to the vacancy, parking spaces shall be provided for that additional requirement in the amount necessary to conform to § 2101.

B. Delete § 2100.5.

C. Amend § 2100.6 as follows:

2100.6 **Except as provided in § 2120.3**, ~~When~~ the intensity of a building or structure existing before May 12, 1958, is increased by an addition of employees, dwelling units, gross floor area, seating capacity, or other unit of measurement specified in § 2101, parking spaces shall be provided for the addition, subject to §§ 2100.7 through 2100.9.

D. Add a new § 2120, "Parking for Historic Buildings," as follows:

2120.1 This section sets forth the circumstances under which existing and new uses in historic resources and additions thereto are exempt from providing parking and shall not apply to new unattached structures constructed on the same lot as a historic resource.

2120.2 For the purposes of this section, a historic resource is a building or structure listed in the District of Columbia Inventory of Historic Sites or a building or structure certified in writing by the State Historic Preservation Officer as contributing to the character of the historic district in which it is located.

2120.3 A historic resource and any additions thereto are exempt from the requirement of § 2100.4 to provide additional parking as a result of a change of use and

from the requirement of § 2100.6 to provide additional parking as a result of an increase of intensity of use, except that parking shall be required for any addition where:

- (a) The gross floor area of the historic resource is being increased by 50% or more, and
- (b) The parking requirement attributable to the increase in gross floor area is at least four (4) spaces.

2120.4 Any parking provided for a historic resource in excess of that which existed at the time the historic resource was listed in the District of Columbia Inventory of Historic Sites or the historic district was created shall be exempt from § 2115, and §§ 2117.5 and 2117.6.

2120.5 Parking spaces provided for a historic resource shall be a minimum of eight feet (8 ft.) in width and sixteen feet (16 ft.) in length exclusive of access drives, aisles, ramps, columns, and office and work areas. All required parking spaces shall be clearly striped and lined. Durable all-weather materials shall be used. Striping shall be maintained for as long as the parking spaces requiring the striping are in existence.

2120.6 The Board of Zoning Adjustment may grant relief from all or part of the parking requirements of this section if the owner of the property demonstrates that, as a result of the nature or location of the historic resource, providing the required parking will result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource. The Board shall grant only the amount of relief needed to alleviate the difficulty proved. The applicant shall also demonstrate compliance with the general special exception standard set forth in § 3104 and shall address each of the following criteria as part of its presentation to the Board:

- (a) Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;
- (b) Amount of traffic congestion existing and/or that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood;
- (c) Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the redevelopment is complete; and

Z.C. NOTICE OF FINAL RULEMAKING AND ORDER NO. 06-33

Z.C. CASE NO. 06-33

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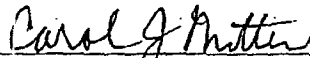
- (d) Proximity to public transportation, particularly Metrorail stations, and availability of either public transportation service in the area, or a ride sharing program approved by the District of Columbia Department of Transportation.

2120.7 Prior to taking final action on an application, the Board shall refer the application to the D.C. Department of Transportation for review and report.

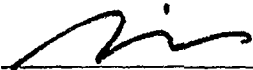
Vote of the Zoning Commission taken at its public meeting on April 9, 2007, to **APPROVE** the proposed rulemaking: **5-0-0** (Carol Mitten, John G. Parsons, Anthony J. Hood, Michael G. Turnbull, and Gregory Jefferies to approve).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on July 9, 2007, by a vote of **3-0-2** (Carol Mitten, Anthony J. Hood, and John G. Parsons to adopt; Michael G. Turnbull and Gregory Jefferies, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on SEP 14 2007.



CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
ORDER NO. 06-33
Z.C. Case No. 06-33
(Text Amendments – 11 DCMR)
(Parking for Historic Resources)
July 9, 2007**

The full text of this Zoning Commission order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
CORRECTED* NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 07-03
Z.C. Case No. 07-03
(Text Amendments – 11 DCMR)
(Minimum lot dimensions in the R (Residential Districts))
July 9, 2007

The Zoning Commission for the District of Columbia (the "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); having held a public hearing and referred the proposed amendments to the National Capital Planning Commission ("NCPC") for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of an amendment to § 401. of the Zoning Regulations (Title 11 DCMR). The amendment clarifies that a building on a lot with less lot area or width than became permitted as of May 12, 1958 may not be expanded or replaced to house a new use, if that use requires more lot area or width than exists on the lot.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 25, 2007, at 54 DCR 5331, for a 30-day notice and comment period.

The Commission took final action to adopt the amendment at a public meeting held on July 9, 2007.

This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

On May 12, 1958, the Zoning Commission adopted the current version of the Zoning Regulations. Among the new provisions were regulations establishing minimum lot area and width requirements in residence zones. The Commission also adopted what is now § 401.3, which permits the construction of new buildings and the enlargement of existing buildings on lots that did not conform with these new requirements, as long as all other provisions of the Zoning Regulations were met. The Board of Zoning Adjustment recently held that § 401.3 not only permits the expansion and replacements of buildings on lots that did not comply with a specific lot or area requirement adopted in 1958, but also permits such construction to disregard

* The first paragraph on p. 3 of this Order was corrected by inserting the underlined words that were previously omitted.

all lot and area requirement, whenever adopted. The BZA's interpretation thus recognizes a wholesale exemption from lot control for the nonconforming lots, while conforming lots must continue to abide by such limitations. The amendment adopted in this order is intended to remove the ambiguity that led to this result.

Description of Text Amendment

This rulemaking was initiated by the Office of Planning. The text amendment limits the exemption from complying with the lot area and width requirements of § 401.3 to just the nonconforming aspect of the lot that made it substandard in 1958. Thus, although a building existing as of May 1, 1958 may still be expanded or replaced by a new building, even though its lot is smaller or narrower than required as of that date, the new text provides that this may not occur if there will also be a change to a use that requires more lot area or width than the lot currently possesses.

Relationship to the Comprehensive Plan

The amendment is not inconsistent with the goals of the District Elements of the Comprehensive Plan. No Comprehensive Plan sections deal specifically with residential lot size, but the change is consistent with the general themes of the Plan including the protection of residential character and the encouragement of compatible land uses. This text amendment would promote these goals of by confirming the existing lot size requirements for all types of structures and uses.

Public Hearing and Proposed Action

The Commission held a public hearing on April 5, 2007 and took proposed action on May 14, 2007 to approve the advertised text. A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 25, 2007 at 54 DCR 5331, for a 30-day notice and comment period.

At the time of it took final action, the Commission noted a letter received from the AppleTree Institute for Education Innovation requesting an exemption from the rule. Just days before the Zoning Commission took emergency action to establish new lot area and width requirements for charter schools, AppleTree filed an application for a building permit to expand a building to house that use. The application was denied because the lot did not meet the new requirements. AppleTree successfully appealed to the Board of Zoning Adjustment, arguing that the new requirements did not apply because its building was on a substandard lot and therefore could be expanded pursuant to the lot area exception granted under § 401.3. As this rulemaking makes clear, it was not the Commission's intent to apply the new lot area requirement only to schools on conforming lots. And though the issuance of this order might negate AppleTree's successful appeal, it does not preclude it from establishing the use. Rather, a charter school that cannot meet the lot or other area requirements in residence zones may seek a special exception. The BZA, through its public hearing process, is in a far better position to decide the affect of permitting AppleTree to establish a charter school on this lot than the Commission.

AppleTree submitted a second letter during the comment period contending that it should not be "penalize" because the Zoning Administrator denied the building permit. The Commission decision to permit special exemption relief for properties with noncompliant lots was made not to penalize such lot owners, but rather to offer a means to obtain a building permit without having to meet the stricter standards of a variance. Since the special exception option existed for AppleTree since the day the Commission took emergency action, so that any injury to AppleTree resulting from the need to now begin such proceedings is entirely self-inflicted.

The proposed rulemaking was also referred to NCPC pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated May 31, 2007, found that the proposed text amendment would not adversely affect the federal interests or be inconsistent with the Federal Elements of the Comprehensive Plan.

The Office of the Attorney General determined that this rulemaking meets its standards of legal sufficiency; however it recommended adding a reference to the replacement of an existing building since the § 401.1 exemption includes both the expansion *and* replacement of a building on a substandard lot.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on July 9, 2007. No substantive changes were made to the advertised prepared text, except for the additional language suggested by the Office of the Attorney General. The Commission found that the proposed text amendment was in conformance with the original intent of § 401.1 and the lot size requirements of the regulations.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapter 21 of the Zoning Regulations, Title 11 DCMR. Added wording is in **bold** and underlined lettering:

1. Amend § 401.1 to read as follows:

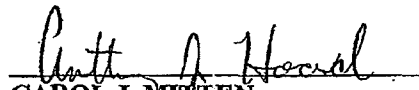
401.1 Except as provided in chapters 20 through 25 of this title **and in the second sentence of this subsection**, in the case of a building located, on May 12, 1958, on a lot with a lot area or lot width, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title.

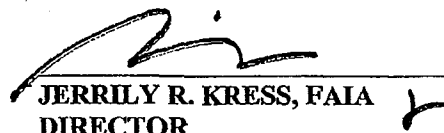
Notwithstanding the above, the lot area requirements of § 401.3 must be met when the building is being converted to a use or replaced by a building intended to house a use that would require more lot area or lot width than is on the building's lot.

Vote of the Zoning Commission taken at its public meeting on May 14, 2007 to **APPROVE** the proposed rulemaking: **5-0-0** (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Gregory N. Jefferies, and Michael G. Turnbull to approve).

This order was **ADOPTED** by the Zoning Commission at its public meeting on July 9, 2005 by a vote of **5-0-0** (Carol J. Mitten, Michael G. Turnbull, Anthony J. Hood, Gregory N. Jefferies, and John G. Parsons to approve).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on **SEP 14 2007**.


CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION


JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 07-03
Z.C. Case No. 07-03
(Text Amendments – 11 DCMR)
(Minimum lot dimensions in the R (Residential Districts))**

The full text of this Zoning Commission order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.