

**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)

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 § 401.1 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 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

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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.

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AppleTree submitted a second letter during the comment period contending that it should not "penalize" because the Zoning Administrator denied the building permit. The Commission decision to permit special exemption relief for properties with noncompliant lots was made 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

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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.

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