

# ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

## NOTICE OF FINAL RULEMAKING

### Z.C. CASE NO. 19-21<sup>1</sup>

(Text Amendment – Subtitles D, E, U, & X of Title 11 DCMR)

(Roof Top or Upper Floor Elements Regulations)

September 14, 2020

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 its amendment of the following sections of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning Regulations of 2016, to which all references are made unless otherwise specified), with the specific text at end of this notice:

- Subtitle D: Residential House (R) Zones - §§ 208, 5207
- Subtitle E: Residential Flats (RF) Zones - §§ 201, 206, 5203, 5207
- Subtitle U: Use Permissions - §§ 301, 320
- Subtitle X: General Procedures - § 1001.3

### Setdown

On October 11, 2019, the Office of Planning (OP) filed a petition to the Commission proposing the text amendment to expand the application of solar energy system protections to the R zones, clarify standards, and eliminate duplicative provisions that apply to the protection of roof top solar energy systems in certain zones.

At its October 21, 2019, regular public meeting, the Commission voted to grant OP's request to set down the proposed text amendment for a public hearing, with flexibility to work with the Office of the Attorney General (OAG).

On December 3, 2019, OP submitted a request to modify the proposed text amendment to exclude properties subject to review by the Historic Preservation Review Board (HPRB) or the U.S. Commission on Fine Arts (CFA) from regulation by the text amendment.

At its December 9, 2019, regular public meeting, the Commission accepted OP's proposed modification.

### Public Hearing

OP filed a February 3, 2020, hearing report recommending approval of the proposed text amendment attached to the hearing report, which included revisions based on:

---

<sup>1</sup> For Office of Zoning tracking only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 19-21.

(b) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per each existing and new dwelling unit.

301.3 An apartment house in an RF-1, RF-2, or RF-3 zone converted from a non-residential building prior to June 26, 2015, shall be considered a conforming use and structure, but shall not be permitted to expand, either structurally or through increasing the number of units, except as provided by Subtitle U § 320.4.

301.4 An apartment house in an RF-1, RF-2, or RF-3 zone that was converted from a residential building either prior to June 26, 2015, or pursuant to Subtitle A §§ 301.9, 301.10, or 301.11, shall be considered a conforming use and structure, but shall not be permitted to expand either structurally or through increasing the number of units, except as provided by Subtitle U § 320.2.

301.5 An apartment house in an RF-1, RF-2, or RF-3 zone that has not been:

- (a) Converted prior to September 6, 2016;
- (b) Converted pursuant to Subtitle U §§ 301.2 or 320.2; or
- (c) Expanded pursuant to Subtitle U §§ 301.4, 320.2, or 320.4;

may renovate or expand so as to increase the number of dwelling units provided that the apartment house has a minimum of nine hundred square feet (900 sq. ft.) of lot area for each existing and new dwelling unit.

**Section 320 SPECIAL EXCEPTION USES (RF), of Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, of Subtitle U, USE PERMISSIONS, is amended by revising §§ 320.2 and 320.3 and by adding a new § 320.4, to read as follows:**

320.1 The uses in this section shall be permitted as a special exception ...

320.2 The conversion of an existing residential building existing on the lot prior to May 12, 1958, to an apartment house, or the renovation or expansion of an existing apartment house deemed a conforming use under Subtitle U § 301.4 that increases the number of units, shall be permitted as a special exception in an RF zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the following conditions:

- (a) The building to be converted or expanded is in existence on the property at the time the Department of Consumer and Regulatory Affairs accepts as complete the building permit application for the conversion or expansion;

- (b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6; and
- (c) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per each existing and new dwelling unit.

320.3 The conversion of a non-residential building or other structure to an apartment house and not compliant with Subtitle U § 301.2(b), shall be permitted as a special exception in an RF zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the following provisions:

- (a) Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:
  - (1) The light and air available to neighboring properties shall not be unduly affected;
  - (2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and
  - (3) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street or alley;
- (b) In demonstrating compliance with Subtitle U § 320.3(a), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways; and
- (c) The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block.

320.4 An existing apartment house deemed a conforming use under Subtitle U § 301.3 shall be permitted to renovate or expand so as to increase the number of dwelling units as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the provisions of Subtitle U §§ 320.3(a), (b), and (c).

#### **IV. Amendments to Subtitle X, GENERAL PROCEDURES**

**Subsection 1001.3 of § 1001, VARIANCE TYPES, of Chapter 10, VARIANCES, of Subtitle X, GENERAL PROCEDURES, is amended by revising paragraph (f), to read as follows:**

1001.3 Examples of area variances are requests to deviate from:

- (a) Requirements that affect the size ...
- (b) Minimum parking or loading requirements ...
- (c) Limitations on the extent to which the gross floor area ...
- (d) Limitations on the alteration or conversion of certain structures on alley lots ...
- (e) The prohibition against certain enlargements ...
- (f) Preconditions to the establishment of a special exception use including, but not limited to, the minimum nine hundred square feet (900 sq. ft.) of land area per dwelling unit required by Subtitle U § 320.2(b) applicable to the conversion of a building to an apartment house as permitted by Subtitle U § 320.2; provided, that the variance would not cause the proposed use to meet the definition of a more intense use.

In accordance with the provisions of Subtitle Z § 604.9, this Notice of Final Rulemaking shall become final and effective upon publication in the *D.C. Register*; that is, on November 13, 2020.