



RE: Case No. 20290

4 messages

Elliott, Brandice (OP) <brandice.elliott@dc.gov> Fri, Oct 23, 2020 at 10:02 AM
To: "cgchandra3@gmail.com" <cgchandra3@gmail.com>
Cc: "Jesick, Matthew (OP)" <matthew.jesick@dc.gov>, "mteague@cooley.com" <mteague@cooley.com>

Good morning, Mr. Chandra:

I apologize for the delay in responding to your questions regarding the pending text amendment to the Zoning Regulations (Zoning Commission Case No. 19-21).

As you've summarized, much of the conversion special exception criteria in U-320.2 is being deleted because it was determined to be redundant. A significant portion of the criteria includes development standards that are also provided in E-200 and E-300, and applies to all development projects in the RF zones regardless of whether it involves a conversion.

The conversion of an existing residential building still requires discretionary review under the special exception criteria in X-900 (which references X-901), as well as under the additional criteria in U-320.2 (See U-320.2). X-901 reads as follows:

901.1 The Board of Zoning Adjustment will evaluate and either approve or deny a special exception application according to the standards of this section.

901.2 The Board of Zoning Adjustment is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:

- (a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*
- (b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and*
- (c) Will meet such special conditions as may be specified in this title.*

901.3 The applicant for a special exception shall have the full burden to prove no undue adverse impact and shall demonstrate such through evidence in the public record. If no evidence is presented in opposition to the case, the applicant shall not be relieved of this responsibility.

901.4 The Board of Zoning Adjustment may impose requirements pertaining to design, appearance, size, signs, screening, landscaping, lighting, building materials, or other requirements it deems necessary to protect adjacent or nearby property, or to ensure compliance with the intent of the Zoning Regulations.

901.5 The Board of Zoning Adjustment may impose a term limit on a special exception use when it determines that a subsequent evaluation of the actual impact of the use on neighboring properties is appropriate, but shall consider the reasonable impacts and expectations of the applicant in doing so.

Board of Zoning Adjustment
District of Columbia
CASE NO. 20290
EXHIBIT A

Because this is a discretionary review, the applicant is required to demonstrate that it will not adversely impact neighboring properties and has the full burden to prove that there is no undue adverse impact. Adverse impact would include impacts to light and air and those to neighborhood character. Keep in mind that the development standards for the zone, which address things like height, lot occupancy, rear yard and rear yard additions, generally establish the build out-expectations for the neighborhood and contribute to neighborhood character. However, the Board may also require design changes to the project that would protect adjacent or nearby property.

Although the criteria has been modified and specific issues are no longer highlighted, the general special exception criteria in X-900 provides you with the same opportunity to bring up matters of concern during the public hearing process and the applicant is required to fully address the impacts to adjacent properties and how they will or will not be mitigated.

Please let me know if there are additional questions.

Best,

Brandice



Brandice Elliott, AICP • Development Review Specialist

DC Office of Planning

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From: Chetan Chandra <cgchandra3@gmail.com>
Sent: Wednesday, October 21, 2020 1:33 PM
To: Elliott, Brandice (OP) <brandice.elliott@dc.gov>
Cc: Jesick, Matthew (OP) <matthew.jesick@dc.gov>; Teague, Meghann <
Subject: Fwd: Case No. 20290

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Dear Ms. Elliot,

I have been emailing with Ms. Mehlert about case # 20-290 (in which we were just granted party status) and what effect the text amendment 19-21 would have on the Applicant's proposal. She mentioned that you worked on the amendment language and may be able to help me sort this out.

I've gone into some detail in my email to Keara below, but I think my question boils down to whether the requirements for a residential to apartment conversion are (in reality) changing due to the amendment, and if so, when will they go into effect?

My understanding is that current U320.2(i) has the light, air, character, scale, and pattern requirements for any addition involved in a conversion to apartments. The amended text looks like it deletes that portion of 320.2 and the amendment mentions that these provisions are *redundant* to provisions in E5201.1-5201.4

However, it seems that either intentionally, or unintentionally, the amendment will change the scenarios in which the light, air, privacy, character, etc. requirements in 5201.4 will apply.

That is, the current law, under 320.2(i) applies these requirements to all additions involved in a conversion to apartments, regardless of height of the addition.

Under the amendment, however, it appears the provisions of 5201.4 would not apply if the addition meets the height requirements for an RF-1 zone. So, in effect, the amendment does change when light, air, and privacy has to be considered if an addition is being proposed.

On the other hand - I saw responses from OP in the attached exhibit from 19-21 that make it seem like the way the law is being applied is not changing. The response to comment #8 is pasted below, with my highlighting added. In light of these comments, it makes me think that the development standards is not changing.... in contrast to what Ms. Mehlert said below and in contrast to what-I-understand-to-be the actual effect of the text of the amendment.

8. The blanket prohibition against some forms of special exception relief, Subtitle U § 301.2 through Subtitle U § 320.3(a), should not be deleted, as it establishes development standards for conversions of rowhouses to apartments.

All of these development standards (maximum height, rear wall extensions, roof top architectural elements, and solar energy systems) are repeated in Subtitle E, which applies to *all* structures in the RF zones, not just conversions. The proposed text does not propose to modify the development standards eligible for special exception relief. The criteria in Subtitle E would continue to apply to any development in the RF zones for which special exception relief is required, including conversions.

So that we can properly respond to the Applicant's interpretation of the amended regulations, we're trying to get to the bottom of this. In their most recent submission, the Applicant is arguing that the

light air and privacy requirements will not apply to them because of the amendment 19-21.

Thanks in advance for your help with this! I very much appreciate it!

Cheers,

Chetan Chandra, esq.

Owner of [417 T Street NW](#).

----- Forwarded message -----

From: **Mehlert, Keara (DCOZ)** <Keara.Mehlert@dc.gov>

Date: Wed, Oct 21, 2020 at 12:55 PM

Subject: RE: Case No. 20290

To: Chetan Chandra <cgchandra3@gmail.com>

Cc: Rose, Tracey (DCOZ) <tracey.rose@dc.gov>, Teague, Meghann <mteague@cooley.com>

Hi Chetan,

Of course, happy to help!

In regards to specific questions regarding text amendment ZC 19-21, I would reach out to the Office of Planning – specifically Brandice Elliott (brandice.elliott@dc.gov), who worked on this text amendment, and Matt Jesick (matthew.jesick@dc.gov), who is the assigned reviewer to case 20290.

Based on the revised plans, the Applicant changed the design and it appears the project addition now conforms to development standards of the RF-1 zone (i.e. height, lot dimensions), so that's why the only relief requested now is pursuant to U 320.2. I would confirm with OP, but since the addition meets those standards, E 5201 would not apply in this case.

Let me know if you have any other questions –

Keara

Keara Mehlert, AICP
Zoning Specialist

Office of Zoning | *District of Columbia Government*
441 4th Street, NW | Suite 200-S | Washington, DC 20001
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From: Chetan Chandra <cgchandra3@gmail.com>
Sent: Wednesday, October 21, 2020 11:58 AM
To: Mehlert, Keara (DCOZ) <Keara.Mehlert@dc.gov>
Cc: Rose, Tracey (DCOZ) <tracey.rose@dc.gov>; Teague, Meghann <mteague@cooley.com>
Subject: Re: Case No. 20290

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Hi Keara!

Thanks for clarifying this for me - this is the second time we made the same typo - that's what happens when you work from templates that have a typo in them!

As an FYI, we were *just* (minutes ago) granted party status in the case - thank you so much for your guidance on that. I was also wondering if I could ask for clarity on some of the zoning regulations and proposed amendments that the Applicant refers to in their revised application.

Zoning Commission case 19-21 includes a proposed change to 11-U320.2. The proposed rule aims to delete sections of 320.2, including section (i) which includes requirements regarding light, air, privacy, scale, and character of the surrounding homes of any addition or conversion to apartments. The proposed amendment states that the deletions remove redundant sections of the zoning regulations, and states that subtitle E, still recites the same requirements and applies to all additions not just conversions to apartments.

In reading the proposed amendment, I am not sure I understand how the revised code will work. The Applicant made some comments in a recent LPCA hearing that, when/if the proposed amendment is adopted, that the light, air, privacy, scale, character requirements for additions would no longer apply. This seems to contradict several of the statements made in the proposed amendment.

I am trying to get confirmation on how all of this would work. The Office of Planning responded to community comments and said that the proposed amendment would maintain the requirements of 320.2(i). (See ex. 67, response to comment #8 on pages 4-5. Also attached). But the language in section E 5201.3(c) (see screenshot below) includes an additional phrase "houses along the subject street frontage" that is not contained in current section 320.2(i)(3). Basically, we are trying to understand how the changes to the law will affect the Applicant's requested relief under 320.2. Will subtitle E5201.3(c) apply to the Applicant's request for relief under 320.2 (i.e. the light, air, privacy, scale, and character requirements)?

5201.3 An applicant for special exception under this section shall demonstrate that the addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

Subtitle E-31

-
- (a) The light and air available to neighboring properties shall not be unduly affected;
 - (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;
 - (c) The addition or accessory structure, together with the original building, 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 frontage;
 - (d) In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways; and

Do you have sometime to discuss this potential amendment? Or is there someone else I should/could reach out to for clarification on this?

Thanks again for your help - sorry to bombard you with so many questions!

Best,

Chetan

On Mon, Oct 19, 2020 at 4:54 PM Mehlert, Keara (DCOZ) <Keara.Mehlert@dc.gov> wrote:

Hi Chetan,

We can add the revised letter - while we can't delete the original, we can put "superseded" in the description and direct viewers to the new exhibit.

Let me know if you have additional questions!

Keara

On Oct 19, 2020, at 4:47 PM, Chetan Chandra <cgchandra3@gmail.com> wrote:

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Hello,

Please see my email below, regarding canceling our upload so that we can send in a corrected version (attached).

On Mon, Oct 19, 2020 at 4:45 PM Chetan Chandra <cgchandra3@gmail.com> wrote:

Hello,

Can we actually cancel this upload, we accidentally left a typo and will re-upload a revised version.

A very minor error, but we'd like to correct if possible.

On Mon, Oct 19, 2020 at 3:20 PM <system@dcoz.dc.gov> wrote:

[Redacted]

Thank you for submitting the document(s) entitled Other-Letter regarding postponement and motion to waive deadline.pdf, in Application No. 20290. DCOZ will be titling this exhibit and reserves the right to modify the document type you selected.

<Letter regarding postponement and motion to waive deadline - minor revision.pdf>

For the latest information on the District Government's response to COVID-19 (Coronavirus), please visit coronavirus.dc.gov.

To: "Elliott, Brandice (OP)" <brandice.elliott@dc.gov>
Cc: "Jesick, Matthew (OP)" <matthew.jesick@dc.gov>, "Teague, Meghann" <mteague@cooley.com>

Hi Ms. Elliot,

It is no problem at all, I very much appreciate your response!

So I am struggling with the term "redundant" and how it is viewed in terms of this amendment. To me, it sounds like the specific provisions of 320.2(i) are not redundant, because their deletion changes how the regulations work and raises questions about what falls under "undue adverse impacts." In my view, if they were redundant, then I would think that the deletion would not change anything except the amount of words in the regulations?

From what I understand from your email, the amendment will remove specific language about light, air, privacy, and character/pattern, but the view is that the phrase "no undue adverse impact" includes the provisions of 320.2(i), and that the board would have to consider those issues and the applicant must prove no undue adverse impact.

As you stated below "*adverse impact would include impacts to light and air and those to neighborhood character.*" Is there somewhere in the code or some case law that would require this or further define the term "undue adverse impacts"? If not, then it seems like the language of 320.2(i) is not redundant, but was actually establishing standards that stood separately from other parts of the code.

It seems like amendments make the law less clear, since the first question will be "what falls under undue adverse impact." As opposed to 320.2(i), which clearly sets forth that visual intrusions into light, air, privacy, character, pattern, etc. are to be specifically considered.

I would appreciate your response on the characterization of the 320.2(i) as being redundant, as it appears the deletion of the language makes light, air, and privacy no longer a codified requirement. Instead, with the amendments language it will be up to the Board's discretion to decide whether light, air, privacy, etc. fall within "adverse impacts"?

And, if there is any part of the code or any cases that define "undue adverse impact" as including the provisions of 320.2(i), that would be greatly appreciated.

Again, I am trying to make sense of all of this and I may have misunderstood some parts, so I'm sorry for the two-thousand questions!

Cheers,

Chetan

[Quoted text hidden]

8 attachments



image001.png
5K

8. The blanket prohibition against certain forms of special exceptions relief, Subtitle U § 301.2 through Subtitle U § 320.3(a), should not be deleted, so it establishes development standards for conversions of row houses to apartments.

All of these development standards (maximum height, rear wall extensions, roof top architectural elements, and solar energy systems) are repeated in Subtitle E, which applies to all structures in the RF zones, not just conversions. The proposed text does not propose to modify the development standards that apply for special exceptions relief. The criteria in Subtitle E would continue to apply to any development in the RF zones for which special exceptions relief is required, including conversions.

image002.png
102K

320.3 An applicant for special exception under this section shall demonstrate that the addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

Section 320.3

- (a) The light and air available to neighboring properties shall not be unduly affected;
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;
- (c) The addition or accessory structure, together with the original building, 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 frontage;
- (d) In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs or elevations and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways; and

image003.png
95K

image004.jpg



image001.png
5K

image004.jpg
1K

8. The Master prohibits against some forms of special exception relief. Subtitle U § 901.2 through Subtitle U § 120.3(a), should not be deleted, as it establishes development standards for conversions of rowhouses to apartments.

All of these development standards (maximum height, rear wall extensions, roof top architectural elements, and solar energy systems) are repeated in Subtitle E, which applies to all structures in the RF zones, not just conversions. The proposed text does not propose to modify the development standards eligible for special exception relief. The criteria in Subtitle E would continue to apply to any development in the RF zones for which special exception relief is required, including conversions.

image002.png
102K

120.3 An applicant for special exception under this section shall demonstrate that the addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

Subtitle E.3:

- (a) The light and air available to neighboring properties shall not be unduly affected.
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised.
- (c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public ways, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage.
- (d) In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevations and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways, and

image003.png
95K

Elliott, Brandice (OP) <brandice.elliott@dc.gov>

Mon, Oct 26, 2020 at 1:42 PM

To: Chetan Chandra <cgchandra3@gmail.com>

Cc: "Jesick, Matthew (OP)" <matthew.jesick@dc.gov>, "Teague, Meghann" <mteague@cooley.com>

Hi Chetan –

Thank you for your email. The general special exception criteria under Subtitle X § 901.2(b) provides the Board with broad consideration of adverse impacts to neighboring properties that go beyond analyzing what was previously explicitly listed under Subtitle X § 320.2(i) for an apartment house conversion. For additional information about case law and Board precedent, you may reach out to the Office of Zoning and they can provide you with a contact person at the OAG.

As part of a special exception review, the applicant is required to address the concerns of neighbors as part of the discretionary review process and has the full burden of proving that the impacts to adjacent properties are undue and/or have been mitigated. Members of the public including adjacent property owners are also provided the chance to give public testimony directly to the Board about any concerns they have regarding adverse impacts to their property as a result of the conversion. Every case is different in regard to impacts, but the issues you identified (light, air, etc.) generally are analyzed by OP in the staff reports. The Office of Zoning provides a searchable database of cases where you can further research how OP has analyzed special exception requests.

Best,

Brandice

[Quoted text hidden]

Chetan Chandra <cgchandra3@gmail.com>
To: "Teague, Meghann" <mteague@cooley.com>

Thu, Dec 17, 2020 at 9:20 PM

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