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Government of the District of Columbia

ZONING COMMISSION



Z.C. ORDER NO. 614
Case No. 87-31
(Transient Accommodations - Text)
April 10, 1989

The Zoning Commission initiated this case to consider issues about the conversion of residential properties to transient uses in residential zone districts. These issues were presented to the Commission in correspondence, and in testimony and written submissions in Z.C. Case No. 86-29, in which the Commission addressed the subject of home occupations.

The testimony and correspondence persuaded the Commission that it needed to examine issues relating to the categories of transient accommodations, and the effective enforcement of the provisions of the Zoning Regulations which govern such uses. For that reason, in December, 1986, the Commission requested the Office of Planning ("OP") to report on these issues.

In a memorandum dated December 17, 1986, OP reported that the conversion of housing to transient uses presented various issues, including zoning issues which are within the ability of this Commission to address, and issues which arise out of other regulatory mechanisms of the District of Columbia. OP recommended that the Commission consider requiring a minimum length of stay for those classes of rental housing which may have been the basis for illegal conversion to inns. OP also recommended the adoption of clarifying definitions.

OP expanded these recommendations in a comprehensive memorandum dated September 18, 1987, and submitted in Z.C. Case No. 86-24, which had been established to address issues about Bed and Breakfast facilities.

OP also recommended certain limitations on the operation of rooming and boarding houses, to prohibit practices which typically characterize inns and other transient uses.

Thereafter, the Commission determined to hold a public hearing to address these recommendations, and also to

consider a proposal of the Citizens Planning Coalition that the Commission adopt certain definitions of various classes of transient accommodations.

The Commission held a public hearing in this case on February 4 and 11, 1988. The Commission's understanding of the issues relating to inns and other transient facilities was very much aided by the testimony of civic groups, persons who live in various residential zone districts in which inns have been established, the Zoning Administrator, and the Acting Chief of the Office of Compliance of the Department of Consumer and Regulatory Affairs.

By letter dated July 31, 1987, ANC 1C expressed concerns about the following: the use of rooming house certificates of occupancy to establish inns and other transient uses; the conversion of rental accommodations to community-based residential facilities to prepare the way for a later conversion to a transient accommodation; and the need for clear definitions and substantive provisions in the Zoning Regulations.

In its testimony at the public hearing, ANC 2D urged the Commission to consider the impact of its proposals with care, write the final rules in plain English, and tighten restrictions on the conversion of apartment buildings to hotels or inns.

The Commission is persuaded that it is necessary to provide a clearer line between the definitions and substantive provisions which apply to rental housing, particularly rooming and boarding houses, and those which apply to transient accommodations. A clearer distinction will facilitate the administration of the certificate of occupancy process, and provide improved means for the determination of the correct classification of proposed and established uses.

The Commission is not persuaded that it is necessary or prudent to revise the definitions in the Zoning Regulations to conform exactly with definitions in other District regulatory mechanisms which have other purposes. For example, the Council could reasonably determine to classify and tax as a hotel or inn a use which, based upon its pre-dominant characteristics, this Commission might determine to belong to a residential category.

The Commission believes that the amendments that it adopts in this order are compatible with other District regulations, and will serve their intended purpose in the context of the Zoning Regulations.

Further, this Commission is confident that District regulatory officials recognize that, except where one regulatory

mechanism explicitly incorporates another by reference, there is ordinarily no basis for adopting a classification from one mechanism for the administration of another. This applies with particular force to definitions that are drafted with an intent to accomplish discrete technical objectives with respect to taxation or other areas. For that reason, the revised definitions make only limited reference to District revenue laws, and none to other regulations.

Notice of proposed rulemaking to adopt the amendments to the Zoning Regulations appeared in the D.C. Register on February 17, 1989, and comments were received through March 20, 1989.

Advisory Neighborhood Commission 1C ("ANC 1C") submitted comments urging that the rules "more clearly distinguish between transient and residential uses."; "distinguish clearly among the sub-classes of transient uses."; and "extend the protections accorded R-4 zones to R-5-B zones." ANC 1C also reaffirmed its position against the demolition and conversion of residential buildings.

By letter dated March 8, 1989, the National Capital Planning Commission reported that the proposed amendments would not adversely affect the federal establishment or federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the comments of ANC 1C, the Commission concludes that the adopted definitions and substantive provisions appropriately distinguish various classes of transient and non-transient uses.

The scope of this case does not extend to amending 11 DCMR 350.4(d), which allows a hotel existing on May 16, 1980 to continue as a matter of right in the R-5-B, R-5-C, and R-5-D Districts, nor to adoption of a general prohibition on the conversion or demolition of buildings occupied by residential uses.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of amendments to the Zoning Regulations regarding rooming and boarding houses and transient accommodations. The specific amendments to DCMR Title 11 (the Zoning Regulations) are as follows:

1. Delete paragraph 330.5(f), and add a new subsection 330.6, to read:

330.6 A rooming or boarding house shall be permitted as a matter-of-right in an R-4 District, provided that:

- (a) Accommodations are not provided to transient guests who stay 90 days or less at the premises, or guests whose occupancies would be subject to the tax imposed by the District of Columbia Hotel Occupancy and Surtax on Corporations and Unincorporated Business Tax Act of 1977;
- (b) No sign is displayed on the premises;
- (c) No advertisement is displayed or published on or off the premises holding out the establishment to be a hotel, motel, inn, hostel, bed and breakfast, private club, tourist home, guest house, or other transient accommodation;
- (d) Cooking facilities are not provided in any individual unit; and
- (e) In a rooming house, no central dining or food preparation area is provided for guests.

2. Provide that rooming and boarding houses in the C-1 and other commercial districts are not subject to the 90-day minimum stay requirement, by adding to subsection 701.6 a new paragraph (i), to read as follows:

(i) Rooming or boarding house, provided that:

- (1) No sign is displayed on the premises;
- (2) No advertisement is displayed or published on or off the premises holding out the establishment to be a hotel, motel, inn, hostel, bed and breakfast, private club, tourist home, guest house, or other transient accommodation;
- (3) Cooking facilities are not provided in any individual unit; and
- (4) In a rooming house, no central dining or food preparation area is provided for guests.

3. Amend paragraph 350.4(c) to read as follows:

(c) Multiple dwellings, subject to the requirements of sections 410 and 303 of this title; Provided, that in an apartment house, accommodations may be provided only to residents who stay at the premises a minimum of one month.

4. Amend paragraph 330.5(c) to read as follows:

(c) The conversion of a building or other structure existing before May 12, 1958, to an apartment house as limited by sections 401.3 and 350.4(c).

5. Amend the first two paragraphs of the definition of "Hotel" in section 199 to read as follows:

Hotel - a building or a part of a building in which not less than thirty (30) habitable rooms or suites are reserved primarily for transient guests who rent the rooms or suites on a daily basis and where meals, prepared in a kitchen on the premises by the management or a concessionaire of the management may be eaten in a dining room accommodating simultaneously not less than thirty (30) persons. The dining room shall be internally accessible from the lobby.

The term "hotel" shall not be interpreted to include an apartment house, rooming house, boarding house, tenement house, or private club. All areas within a hotel shall be included in one (1) of the following categories:

The remaining portion of the definition has not been amended.

6. Amend the definition of "inn" to read as follows:

Inn - a building or part of a building in which habitable rooms or suites are reserved primarily for transient guests who rent the rooms or suites on a daily basis. Guest rooms or suites may include kitchens, but central dining, other than breakfast for guests, is not allowed. The term "inn" may be interpreted to include an establishment known as a bed and breakfast, hostel, or tourist home, but shall not be interpreted to include a hotel, motel, private club, rooming house, boarding house, tenement house, or apartment house.

7. Amend the definitions of rooming house, boarding house, and apartment house to read as follows:

Rooming house: a building or part thereof that provides sleeping accommodations for three (3) or more persons who are not members of the immediate family of the resident operator or manager, and in which accommodations are not under the exclusive control of the occupants. A rooming house provides accommodations on a monthly or longer basis. The term "rooming house" shall not be interpreted to include an establishment known as, or defined in this title as, a hotel, motel, inn, bed and breakfast, private club, tourist home, guest house, or other transient accommodation.

Boarding house: A building or part thereof that provides, for compensation, meals or lodging and meals to three (3) or more guests on a monthly or longer basis. The term "boarding house" shall not be interpreted to include an establishment known as, or defined in this title as, a hotel, motel, inn, bed and breakfast, private club, tourist home, guest house, or other transient accommodation.

Apartment house: A building or part thereof in which there are three (3) or more apartments, or three (3) or more apartments and one (1) or more bachelor apartments, providing accommodation on a monthly or longer basis.

8. Adopt a definition of transient accommodation to read:


Accommodation, transient - a structure or building other than a private club, single-family or two-family dwelling, apartment house, boarding house, rooming house, and tenement house, within which structure or building units are used for transient guests from time to time, or for the guests of which units the landlord thereof is subject to the tax imposed by the "District of Columbia Hotel Occupancy and Surtax on Corporations and Unincorporated Business Tax Act of 1977". Such accommodations may include, but not be limited to: bed and breakfast accommodations, guest houses, guest quarters, hotels, inns, motels, and tourist homes.

Vote of the Zoning Commission at the public meeting on June 13, 1988: 3-0 (John G. Parsons, Lindsley Williams, and Elliott Carroll to approve; Maybelle Taylor Bennett and Patricia N. Mathews, not present, not voting).

This Order was approved by the Zoning Commission at the public meeting on April 10, 1989, by a vote of 3-0 (Maybelle

Taylor Bennett, Lindsley Williams, and John G. Parsons to approve; Elliott Carroll, not voting; and Lloyd Smith, not voting, not having heard the case).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is, on


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat

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