Government of the District of Columbia
OFFICE OF ZONING

MEMORANDUM

2006 MAY 25 AM 11:38

Office of Documents and Administrative Issuance

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Sharon S. Schellin
Secretary to the Zoning Commission

DATE: May 25, 2006

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on June 2, 2006:

1. Z.C. Notice of Filing (Case No. 06-23);
2. Z.C. Notice of Filing (Case No. 06-24);
3. Z.C. Corrected & Revised Notice of Proposed Rulemaking (Case No. 02-19); and
4. Z.C. Notice of Final Rulemaking & Order No. 03-09 (Case No. 03-09) – also provided on the attached diskette.

Attachments

ZONING COMMISSION
District of Columbia
CASE NO. 03-09
EXHIBIT NO. 21

441 4th St., N.W., Suite 200-S, Washington, D.C. 20001
Telephone: (202) 727-6311 E-Mail Address: zoning_info@dcoz.dc.gov Web Site: www.dcoz.dc.gov

ZONING COMMISSION
District of Columbia
CASE NO.03-09
EXHIBIT NO.21

RULEMAKING TRANSMITTAL FORM

DATE AND TIME RECEIVED
Office of Documents use only

TYPE OF RULEMAKING ACTION: [ ] EMERGENCY RULES [X] FINAL RULES [ ] PROPOSED RULES [ ] COMBINED

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: MS. SHARON SCHELLIN

ADDRESS: 441 4th Street, N.W., Suite 210 South TELEPHONE: (202) 727-0340

TITLE AND DESCRIPTION OF RULES: Case No. ZC 03-09 (Text Amendment – District Government Agency Uses in Public School Buildings - 11 DCMR)

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) Sections

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 52 DCR 10420 DATE: November 25, 2005

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.
DATE: MAY 24, 2006 SIGNED: [signature] PHONE: (202) 442-9777

X	FINAL		CONDITIONAL	NAME: ROBERT J. SPAGNOLETTI	TITLE: ATTORNEY GENERAL

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)
Zoning Commission For The District Of Columbia Title:

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules.

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL OF VOTE: 1/9/06

APPROVAL OF ATTEST: Sharon S. Schellen
TITLE: Secretary to the Zoning Commission PHONE: (202) 727-0340

Office of Documents use only: THIS NOTICE PUBLISHED AT: VOL: DCR: DATE:

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 03-09
Z.C. Case No. 03-09
(Text Amendment – District Government Agency Uses in Public School Buildings - 11 DCMR)
January 9, 2006

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in §§ 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 798 as amended; D.C. Official Code, §§ 6-641.01 and 6-641.03 (2001 ed.)); having held a public hearing as required by § 3 of the Act (D.C. Official Code 6-641.03 (2001 ed.)); and having referred the proposed amendment to the National Capital Planning Commission for a 30-day period of review pursuant to section § 492(b)(2) of the District of Columbia Home Rule Act; hereby gives notice of the adoption of an amendment to Chapter 2 of the Zoning Regulations (11 DCMR).

The purpose of the amendment is to add a new § 222 to authorize the Board of Zoning Adjustment to permit the use of an existing or former public school building, and the land on which it is located, by a District government agency as a special exception. The public school building must be either designated a historic landmark or be within a historic district.

No changes to the text have been made to the text as published in the Notice of Proposed Rulemaking in the November 25, 2005 edition of the *D.C. Register* at 52 *DCR* 10420. The Commission took final action to adopt the amendment at a public meeting on January 9, 2006. This final rulemaking is effective upon publication in the *D.C. Register*.

Description of Text Amendment

The purpose of the text amendment is to create a provision that allows for the use by District government agencies of surplus public school buildings that are either designated landmarks or located within a historic district, subject to certain limitations and special exception approval. The text amendment encourages the preservation and designation of many of the city's surplus and neglected public school buildings, allows for their adaptive reuse, and allows District government agencies to use such buildings.

Relationship to the Comprehensive Plan

The amendment will not be inconsistent with the Comprehensive Plan. Moreover, the amendment advances the following provisions of the Comprehensive Plan:

- § 102 – which encourages locating public facilities in neighborhoods to add to the neighborhoods' livability;
- § 601 – which creates the goal of maintaining the District's public facilities in good condition and in a way that supports neighborhood improvement objectives;
- § 606 – which states that public facilities should be located so as to provide optimum public service and to support the land use, transportation, economic and social development, and neighborhood improvement objectives;
- § 804 – which sets a policy of using historic properties for carrying out government responsibilities to the maximum extent feasible; and
- § 805 – which encourages the adaptive re-use of historic properties.

The amendment is also supported by the all of the individual Ward Plans.

Set Down Proceeding and Public Hearing

The case was initiated by a report filed by the Office of Planning on February 27, 2003, proposing an amendment to § 217 of the Zoning Regulations, Title 11, DCMR. The Zoning Commission set the case down for a public hearing at its March 10, 2003 public meeting. A Notice of the Public Hearing containing the proposed amendments, and setting the hearing date for May 29, 2003, was originally published in the April 11, 2003 edition of the D.C. Register. A Revised Notice of Public Hearing was then published in the April 18, 2003 edition of the *D. C. Register* at 50 *DCR* 3024 to correct minor errors in the original advertisement.

A public hearing was held on May 29, 2003. At the public hearing, issues were raised about potentially incompatible government uses in Residence Districts, and the definition of "non-profit organizations" as it is used in § 217.

The record was left open for a period of time to allow for additional written comments. Two letters were submitted to the record in opposition citing concerns about not knowing the exact location of potential historic schools, the appropriateness of government uses within residential neighborhoods, and expanding § 217 to include non-residential structures.

Proposed Rulemaking

Following the public hearing and review of the public record, the Commission considered proposed action at the meeting of July 31, 2003. During consideration of proposed action, the Commission discussed issues related to the "non-profit" uses permitted by § 217. The Commission expressed concern about the lack of guidance within § 217 for reviewing non-profit uses, and the potential locations of such uses.

To effectuate the intent of the original text amendment of allowing local government uses in historically designated or contributing public school buildings, but avoid the issues related to "non-profit" uses permitted by § 217, the Office of Planning proposed inserting the proposed advertised text as a new stand-alone section, § 222. The Commission agreed and took no action pending re-insertion of the proposed text as a new § 222.

At its regular meeting of September 15, 2005, the Commission reviewed the renumbered text and concluded that there were no substantive changes to the text as it was originally advertised. The Commission took proposed action pursuant to 11 DCMR § 3027.2, on September 15, 2005 to approve the revised text amendment to be codified. A Notice of Proposed Rulemaking to create § 222 was published in the November 25, 2005 edition of the *D.C. Register* at 52 *DCR* 10420.

National Capital Planning Commission

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") in accordance with § 492 of the District of Columbia Charter and was reviewed pursuant to the Commission's delegation of authority adopted on August 6, 1999. NCPC found that the proposed text would not adversely affect the identified federal interests, and is not inconsistent with the Comprehensive Plan for the National Capital.

Final Rulemaking

After publication of the proposed rulemaking, the Commission received no written comments. The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on January 9, 2006.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Based upon 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 purposes of the Zoning Regulations, and not inconsistent with the District of Columbia Comprehensive Plan.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the new § 222 of the Zoning Regulations, Title 11, DCMR:

Title 11 DCMR (Zoning), Chapter 2, R-1 RESIDENCE DISTRICT USE REGULATIONS, is amended by adding a new § 222 to read as follows

222 DISTRICT GOVERNMENT AGENCY (R-1)

222.1 The use of an existing or former public school building, and the land on which it is located, by a District government agency shall be permitted as a special exception in an R-1 District in the following instances if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

222.2 The school building must either be:

(a) Listed in the District of Columbia's Inventory of Historic Sites contained in the comprehensive statewide historic preservation survey and plan prepared pursuant to § 101 of the National Historic Preservation Act, approved October 15, 1966 (80 Stat. 915, as amended; 16 U.S.C. § 470); or

(b) Located within a district, site, area, or place listed on the District of Columbia's Inventory of Historic Sites.

222.3 The use of the property shall not tend to adversely affect the character or use of the neighboring properties as a result of noise, traffic, or other objectionable conditions.

222.4 The use of the property shall not intrude upon the privacy of the residents of the neighborhood.

222.5 The Board may limit the hours of operation of the use so as to assure compliance with §§ 222.3 and 222.4.

222.6 The property may house more than one District agency and more than one principal use, provided each principal use shall be found consistent with the provisions of this section.

222.7 The principal use of the property shall not be interior or exterior storage or vehicle parking.

222.8 The use shall not extend outside the building unless accessory and incidental to the principal interior uses.

222.9 Any storage shall be fully enclosed.

222.10 The following uses shall not be permitted:

(a) Vehicle storage, vehicle maintenance, storage of impounded vehicles, or storage of seasonal vehicles or equipment; or

(b) Any use first permitted in the CM zone district.

222.11 The amount and arrangement of parking spaces and loading spaces shall be adequate and located to minimize traffic impact on the adjacent neighborhood.

222.12 Any additions to the building or any major modifications to the exterior of the building or to the property shall require the approval of the Board of Zoning Adjustment. The Board shall refer any proposed addition or modification to the Historic Preservation Office, for a report identifying possible detrimental consequences that the proposed

addition or modification may have on the architectural or historical significance of the building or property or district in which the building is located.

222.13 Any special exception application made pursuant to this section may be heard and decided together with any other special exception or variance relief required. The Applicant shall have the burden of proving compliance with all applicable special exception requirements, whether stated in this section or elsewhere in this title. In the event of any inconsistency between the requirements, the most restrictive criteria shall apply.

Vote of the Zoning Commission to **APPROVE** the proposed rulemaking was taken during its public meeting on September 15, 2005: 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Kevin Hildebrand to adopt; Carol J. Mitten, not having participated, not voting).

The Zoning Commission at its public meeting of January 9, 2006 adopted the Order by a vote of: 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Kevin Hildebrand to adopt; Carol J. Mitten, not having participated, 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 _____.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 03-09
Z.C. Case No. 03-09
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January 9, 2006

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