**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**Zoning Commission**

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# ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
# NOTICE OF FINAL RULEMAKING
# and
# Z.C. ORDER NO. 06-05
# Z.C. Case No. 06-05
# (Text Amendment – Repeal of Section 410)
# June 12, 2006

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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 ; D C Official Code § 6-641 01), having held a public hearing as required by § 3 of the Zoning Act (D C. Official Code § 6-641.03), and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of the following amendments to repeal § 410 in its entirety and remove all references to § 410 in Chapters 3, 4, 25, and 31 of the Zoning Regulations (Title 11 DCMR) Section 410 had authorized the Board of Zoning Adjustment to permit, within the R-4 and R-5 Zone Districts, construction of a group of one-family dwellings, flats, apartment houses, or a combination of these buildings, with division walls erected from the ground up or from the lowest floor up, to be erected and deemed a single building

A Notice of Emergency and Proposed Rulemaking was published in the *D C Register* on March 10, 2006 at 53 DCR 1793. The emergency portion of that notice removed the R-4 reference in § 410, in order to safeguard the character of the R-4 Districts and ensure that their densities were protected while the Commission considered the merits of retaining § 410. As a part of that same rulemaking, the Commission also proposed, in the alternative, the repeal of § 410 in its entirety. No comments were received during the 30-day comment period and, other than adding the conforming amendments, no change was made with respect to the alternative proposal to repeal § 410 in its entirety

These final rules will become effective upon publication of this notice in the *D C Register*

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## Description of Text Amendment

The amendment repeals § 410 from Chapter 4 and removes references thereto from the named chapters The text amendment was initiated by citizen petition and supported by the Office of Planning ("OP") OP agreed with the petitioner that § 410 provided a mechanism for the introduction of apartment buildings into the R-4 District, contrary to the intent of the R-4 District as stated in § 330 of 11 DCMR, which reads, "[T]he R-4 District shall not be an apartment house district as contemplated under the General Residence (R-5) Districts since the conversion of existing structures shall be controlled by a minimum lot area per family requirement." In



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addition, historical research of § 410 indicated that it was the intent of the Zoning Commission in 1970 to remove the reference to the R-4 District with the attendant area and density requirements

Although the petition focused only on the application of the section to the R-4 District, the Commission broadened the scope of the hearing to include the issue of whether the entire section should be repealed

**Relationship to Comprehensive Plan**

The amendment removes § 410 from Chapter 4 and references thereto from the named chapters, because it is contrary to the intent of the R-4 District The repeal of the section is consistent with several sections of the Comprehensive Plan, specifically those that call for stabilizing, maintaining, and improving the residential character of District neighborhoods (§§ 102, 1102, and 1104), as many of the R-4 rowhouse neighborhoods are also in historic districts, the repeal of § 410 is also consistent with § 108 of the Comprehensive Plan that calls for preserving the historic character of the District The stabilization of the R-4 District as a rowhouse zone furthers the housing and neighborhood character goals without increasing density as called for in the Ward 1 (§ 1231) and the Ward 6 (§ 1707) Elements of the Comprehensive Plan

**Public Hearing and Proposed Action**

The Commission held a public hearing on this case on May 4, 2006. Following the conclusion of the hearing, the Commission took proposed action to repeal § 410. The Commission determined that the review required by sections §§ 353 and 2516 was adequate to address any impacts of development in the R-5 Zone Districts.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter NCPC, by report to the Office of Zoning on May 18, 2006, determined that there is no adverse impact to the Federal interests in the District

No public comments were received

**Final Action**

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on June 12, 2006 No substantive changes were made to the advertised text other than the inclusion of conforming amendments The Commission also readopted the emergency rules to avoid a lapse in the application of the emergency amendments pending publication of this Final Rulemaking in the *D C Register*. The readopted emergency rules were at 53 DCR 5057 on June 23, 2006

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 and consistent with the purpose of the Zoning Regulations and the Zoning Act

The Office of the Attorney General has determined that this rulemaking is legally sufficient

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to the Zoning Regulations, Title 11 DCMR

A Chapter 3 (R-2, R-3, R-4, AND R-5 RESIDENCE DISTRICT USE REGULATIONS) is amended as follows

1 Paragraphs (a) and (c) of § 350 4 are amended by striking the phrase "§§ 353 and 410" wherever it appears and inserting the phrase "§ 353" in its place.

2 Subsection 353 1 is amended by striking the phrase " § 410 and"

B Chapter 4 (RESIDENCE DISTRICTS HEIGHT, AREA, AND DENSITY REGULATIONS) is amended by repealing § 410

C Chapter 25 (MISCELLANEOUS ZONING REQUIREMENTS) is amended by repealing § 2516 8

D Chapter 31 (BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE) is amended as follows·

1. Section 3104.1 is amended by striking the phrase "Residential Buildings, groups of Districts R-4, and R-5-A and R-5-B Districts §§ 410 12, 410 14 and 410 16 "

2 Section 3180 1(b)(4) is amended as follows:

(4) For a residential use in the R-5-A District under § 353 four hundred dollars ($400) for each dwelling unit, and

Vote of the Zoning Commission taken at its public hearing on May 4, 2006 to **APPROVE** the proposed rulemaking by a vote of **5-0-0** (Carol J Mitten, Gregory N Jeffries, Anthony J Hood, John G. Parsons, and Michael G. Turnbull to approve).

The Zoning Commission, at its public meeting on June 12, 2006, **ADOPTED** this Order by a vote of 5-0-0 (Carol J Mitten, Anthony J Hood, John G Parsons, Gregory N Jeffries, and Michael G Turnbull in favor)

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 APR - 6 2007

**CAROL J. MITTEN**
**CHAIRMAN**
**ZONING COMMISSION**

**JERRILY R. KRESS, FAIA**
**DIRECTOR**
**OFFICE OF ZONING**

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**and**
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**(Text Amendment – Repeal of Section 410)**
**June 12, 2006**

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

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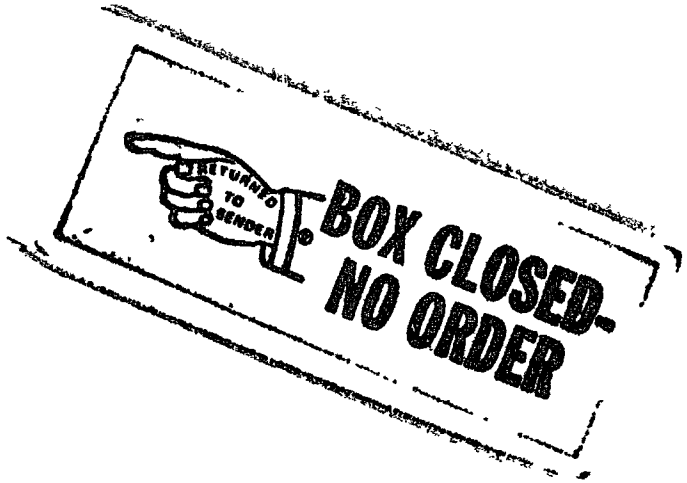

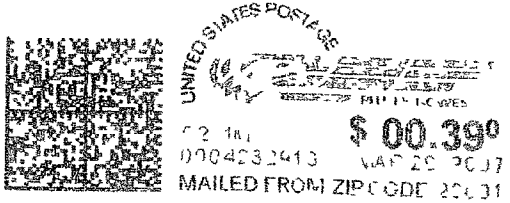

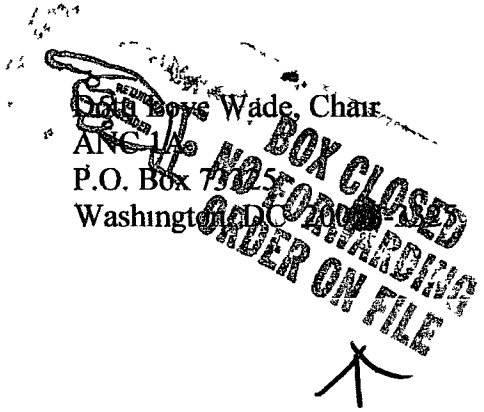

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