

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



Office of the Director

MEMORANDUM

TO: D C Zoning Commission

FROM: *JLS for*
Ellen McCarthy, Director

DATE February 2, 2006

SUBJECT: Final Report for Emergency Rulemaking of Zoning Text Amendments to Section 410 to remove reference to the R-4 Zone District; initiated by citizen petition and supported by the Office of Planning and Preliminary Report to request that the text be set down for public hearing

06-05

2006 FEB - 3 PM 4: 57

DC OFFICE OF ZONING

RECEIVED

RECOMMENDATION

The Office of Planning recommends the adoption of a text amendment on an emergency basis to remove the reference and applicability of the R-4 Zone District to Section 410 and requests that the matter be set down for hearing. The Office of Planning also requests that the Commission authorize the issuance of a Notice of Proposed Rulemaking for the text and that the Commission allow the immediate advertisement of the text, without waiting for the submission of a supplemental report. This will allow for full consideration of the proposed rule within the 120-day length of the emergency.

Although the version of § 410 that appears in the current version of Title 11 contains reference to R-4, it appears that that inclusion was as a result of a codification error. The prior version of Title 11 contained a reference to the R-4 Districts in 410.12. Yet, further investigation into the history of § 410 reveals that the Zoning Commission likely repealed this reference in 1970. The Office of the Attorney General will be providing a memorandum fully explaining this issue.

However, even if the reference to the R-4 District is correct, OP believes that there are reasons to immediately repeal it. The reference to the R-4 Zone in Section 410.12 has the unintended consequence of being interpreted to allow the introduction of multiple units in a single building, defined as an apartment building by Section 199, which is contrary to the intent and purposes of the R-4 Zone District prescribed in Section 330. This

ZONING COMMISSION

CASE NO.

06-05
District of Columbia

EXHIBIT NO.

CASE NO. 06-05
EXHIBIT NO. 1

continued reference could have substantial adverse impacts on the character of the established zone and the existing established residential properties in the R-4 zone throughout the District

BACKGROUND

The Office of Planning and the Zoning Commission have received letters from property owners petitioning for an emergency text amendment addressing concerns regarding the appropriateness of the R-4 Zone District in the provisions of Section 410, including Section 410.12. Section 410 allows Board of Zoning Adjustment review (through the special exception process), for a structure to be considered as a single building if it is comprised of a group of dwellings, or combinations of dwellings erected from the ground up.

The letters express concern regarding the introduction of apartment uses where none was intended. Therefore, the provision introduces a conflict to the detriment of the R-4 Zone District.

As noted, the Office of the Attorney General believes it is possible that the reference to the R-4 District was struck by the Commission in 1970 and will provide a memorandum to explain this conclusion.

OP concurs with the concerns regarding the applicability of Section 410 to the R-4 Zone District. Specifically, OP is concerned that continued inclusion of R-4 in this provision provides an avenue for the introduction of apartment buildings in the R-4 Zone District where clearly none are intended. In its original intent, ***“no vacant areas, other than occasional lots, have been mapped in R-4 Districts, since it is not desirable to encourage construction of multi-family dwellings in areas other than those zoned as general residence districts.”***¹ Allowing for apartment uses and increase in the density in the R-4 Zone District would erode the row house character of the District.

RECOMMENDATION AND PROPOSED TEXT

OP recommends that the following text be adopted on an emergency basis to immediately eliminate the introduction of multiple dwelling unit projects into the R-4 zone Districts.

(New text is shown in **bold** and underline and deleted text is shown with ~~striketrough~~.)

Amend 11 DCMR § 410 as follows:

Delete references to the R-4 in

¹ *Harold Lewis - A New Zoning Plan for the District of Columbia – Final Report of the Zoning Study. November 9, 1956*

410 SPECIAL EXCEPTIONS FOR GROUPS OF RESIDENTIAL BUILDINGS IN ~~R-4~~ and R-5 DISTRICTS

410 12 In an ~~R-4~~ and R-5-A District, if approved by the Board of Zoning Adjustment

OP believes this language addresses potential adverse impacts that could result from the unintended inclusion of the R-4 Zone District into a regulation which clearly intended to address the special exception requirements for structures proposed for the R-5 Zone Districts

The proposed text is not intended to inhibit the uses of residential properties in the R-4 Zone District but rather to address a pressing land use threat. If the Zoning Commission agrees to set down the proposed text amendment, OP will provide further analysis to support the promulgation of an amendment to § 410 that reflects the Commission's prior intent that the R-4 District not be eligible for consideration under section 410. OP, in a second phase of this case, would also include additional proposed amendments to section 410 to provide clarity to its provisions.

Attachment

Letter from Karl La Cour, January 25, 2006

EMC/kt

Karl A. La Cour
1722 4th Street, N.W.
Washington, DC 20001
(202) 462-3004
Sir.sting@verizon net

The DC Office of Zoning
Attn: Jerrily Kress, Director of the Office of Zoning
441 4th Street, N.W.
Suite 210-S
Washington, DC 20001

January 25, 2006

Re: BZA Application No. 17404
410-416 Richardson Place, N.W.

Dear Ms Kress:

As the authorized representative of the opposition group granted Party Status regarding the above referenced BZA Application, I write requesting a text amendment and review of 11 DCMR 3104, Section 410. Our opposition group, representing more than 80 DC residents asks that any reference to "R4 District" be removed from Section 410

We assert that special exception relief pursuant to Section 410 to construct a single building with four (4) single-family units on a consolidated lot is inconsistent and contrary to the nature of an R4 District and the Zoning Regulations. Our request is consistent with DC Office of Planning's written technical report, the Advisory Neighborhood Commission 5C written opposition letter, and it does not conflict with any know case precedent or Zoning Regulation promulgated in Title 11. In fact, our research indicates that applying Section 410 to an R4 District would have an unintended result and one inconsistent with the drafters of the 1958 Section as it was originally promulgated and anticipated to apply.

To apply Section 410 to an R4 District would permit apartments to be built and proliferate where not intended under the current Zoning Regulations or the drafter's intent under Section 410. To apply Section 410 to the R4 District would clearly result and affect the character of any and all R4 neighborhoods – clearly an unanticipated but nevertheless contrary result to the Zoning Regulations and the drafter's of Section 410. To apply Section 410 in an R4 District is clearly in direct conflict with the intent of the uses proscribed in the R4 Zone District Regulations

Thank you for your prompt attention to this very important matter. We cannot stand idly by and watch traditional R4 District family dwellings be turned under or converted into apartment buildings because of a "glitch" in the law or a misinterpretation of it by the Zoning Board as it relates to Section 410.

We ask that this be considered as an emergency amendment by the Zoning Commission as it directly affects the above referenced BZA Application where the Board has not rendered a decision yet. We would rather have this issue resolved prior to any decision by the Board which could be later over-turned or create a bad precedent if not immediately addressed and corrected

Sincerely yours,

Karl A. La Cour

Cc.

Ellen McCarthy, Director of the DC Office of Planning
Jennifer Steingasser, Deputy Director DC Office of Planning
Ellen Bergstein, Office of the Attorney General
Richardson Place Focus Group
Mr. James D. Berry, Jr , Commissioner 5C01