GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: Ellen McCarthy, Director

#06-05

DATE April 24, 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

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RECOMMENDATION

The Office of Planning recommends that the Zoning Commission remove reference of the R-4 Zone District in Section 410, delete §§ 410 9 through §§ 410 16 as a correction to reflect the original modifications and amendments of ZC Order No 19, November 17, 1970, published at 7 DCR 306.

BACKGROUND

On February 13, 2006 the Zoning Commission voted to set down the proposal to take emergency action to remove reference to the R-4 Zone in Section 410 and to advertise the alternative to strike the entire Section 410. This action did not apply to any BZA application in need of special exception relief pursuant to Section 410 filed before February 13, 2006.

This action was initiated by citizen petition and supported by the Office of Planning Specifically, the petition expressed concerns regarding the appropriateness of the R-4 Zone District in the provisions of Section 410, including Section 410 12 Section 410 requires Board of Zoning Adjustment review pursuant to Section 3140, 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

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EXHIBIT NO. 4

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The Section seems to permit the introduction of apartment uses where none was intended, creating a conflict to the detriment of the R-4 Zone District. The inclusion of R-4 in this provision provides an avenue for the introduction of apartment buildings contrary to the framers' original intent where "***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] General residence districts are R-5 zoned. Apartment uses and increase in the density in the R-4 Zone District would in fact erode the unique row house character of the District.

ANALYSIS

Historical Profile of § 410

The Office of the Attorney General provided a historical analysis to OP which essentially determined that at some point an error was made in codifying § 410. OAG's research indicated that §§ 410.9 through 410.16 were probably repealed in 1970, but subsequent editions of the Zoning Regulations did not reflect that action.

§ 3307 was identified as the predecessor provision to § 410 and when originally adopted in 1958 it applied to the R-5-A Zone and the R-4 Zone. This was subsequently amended in 1970 to remove the reference to the R-4 with the attendant area and density requirements. Further, the 1995 edition's inclusion of § 410.12 was in error, since the Zoning Commission intended the repeal of this provision in 1970.

Summary of Changes to § 410

Section	1958	1970	1995/1996	Present	Proposed (2006)
§ 3307	Applies to R-5-A Zone – Titled Exceptions to Area and Density Regs. (May 1958) **no reference to R-4** Amended Dec. 1958 to **include reference to R-4**	ZC 70-19 revision **removes** reference to R-4 revises the tile and deletes § 3307.2 and 3307.3	**Renumbered** as 410.1 to 410.16 and **includes** title with references to **R-5 until § 410.12** which included **both R-5 and R-4**		
§ 410			**Includes** reference to **R-4 under § 410.12** which was formerly § 3307.2 and deleted in 1970	**Amended in 2000** with § 410.10 removed as redundant to § 410.4; **includes previous deletions of §§ 3307.2 and 3307.3**	**Delete provisions 410.11 through 410.16. Amend** language of remaining sections **as shown in the recommendation.**

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

R-4 Districts: General Provisions

Section 330

The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) or more families. Very little vacant land shall be included within the R-4 District, since its primary purpose shall be the stabilization of remaining one-family dwellings (§§ 330 1, 330 2)

The 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 (§ 330 3)

Except as provided in Chapters 20 through 25 of the Zoning Regulations, in an R-4 District, no building or premises shall be used and no building shall be erected or altered that is arranged, intended, or designed to be used except for one (1) or more of the uses listed in **§§ 330** through **349** (§ 330.4). These sections do not include apartments as permissible uses within this zone district (§ 330 5)

Harold Lewis's 1956 report provided the basis of the R-4 Zone designation as it describes the district as one where there were no vacant areas, other than occasional lots Further, it was not desirable to encourage construction of multi-family dwellings in areas other than those zoned as general residence districts (R-5) The report established a scale of density whereby a row dwelling would be permitted on a lot of 1,800 square feet, "*but any type of one family dwelling could be converted for the use of two or three families, if it has a lot area of at least 1,000 square feet per family.*" [2]

Current development pressures on neighborhoods within the R-4 Zone District face a dramatic change in character if abandoned property or vacant parcels are assembled for development Indeed, this pressure is also faced in historic neighborhoods with similar properties in common ownership Since no regulation prevents common ownership of consecutive lots, development of apartment structures presents greater financial rewards, albeit to the detriment of the zone district's character. Therefore, § 410 should be corrected to reflect the intent of its framers and the amendments that were adopted by the Zoning Commission in 1970 should be correctly documented in the Zoning Regulations

COMPREHENSIVE PLAN

OP believes that the Comprehensive Plan fully supports the exclusion of the R-4 Zone from the provisions of § 410, since the alternative would be counterintuitive to the general theme of protecting and enhancing the District's neighborhoods particularly the row house districts as indicated in the following sections of the Plan

[2] The 1958 R-4 Zone Regulations prescribes 900 square feet of lot area per family for row house conversions.

102 STABILIZING AND IMPROVING THE DISTRICT'S NEIGHBORHOODS

*102.2 The District elements of the Plan propose that the **residential character of neighborhoods be maintained and improved.** Many city neighborhoods are historic or possess social, economic, and physical qualities that make them unique and desirable places in which to live. **These qualities can also lead to development and redevelopment pressures that threaten the very qualities that make the neighborhoods desirable.** These pressures and potential adverse impacts must be controlled to ensure that the character of our neighborhoods is preserved and enhanced.*

As previously stated, redevelopment pressures would have an adverse impact on the unique character of historic row house districts including Capitol Hill, as well as contributing row structures in Adams Morgan, Bloomingdale, Eckington, Le Droit Park, Trinidad, Ivy City to name a few These are diverse and unique row house neighborhoods which are currently under intense pressure of redevelopment being experienced throughout the metropolitan region.

108 PRESERVING THE HISTORIC CHARACTER OF THE DISTRICT

108 1 The Nation's Capital contains many buildings and collections of buildings, which contribute to its beauty and fabric, as well as affording a picture of its history. Over the years, individual buildings and collections of buildings have been protected through historic preservation laws. The Plan recognizes the importance of historical Washington and provides policies to nurture this historic urban center.

Many of the District's historic neighborhoods have a high percentage of row structure residences, including Georgetown and Capitol Hill. Conflicting R-4 regulations would provide avenues for differing interpretations to the detriment of the Zone Plan and the historic character of these neighborhoods

1102 OBJECTIVES FOR RESIDENTIAL NEIGHBORHOODS

1102.1 The residential neighborhood objectives are as follows:

(a) To conserve and enhance the essentially satisfactory qualities of the District's many stable residential neighborhoods including those qualities that make them unique;

(b) To enhance other neighborhoods and achieve stability;

1104 POLICIES IN SUPPORT OF THE RESIDENTIAL NEIGHBORHOOD OBJECTIVES

1104 1 The policies established in support of the residential neighborhoods objectives are as follows:

*(a) **Promote the conservation**, enhancement, and revitalization **of the residential neighborhoods** of the District for housing and neighborhood-related uses;*

*(b) **Conserve and maintain the District's sound, established neighborhoods through the strict application and enforcement of housing**, building, **and zoning codes and the maintenance of the general level of existing residential uses, densities, and heights**;*

(c) Ensure a broad range of residential neighborhood options ranging from quiet, low density, park-like neighborhoods to active, high density, mixed-use urban neighborhoods;

*(d) **Develop** neighborhood improvement programs and **neighborhood land use proposals for residential areas that have deficiencies which threaten neighborhood quality,** coordinated community and government action programs and plans, systematic monitoring of neighborhood social and physical conditions, and continuing assessment of land use and regulatory actions to correct deficiencies;*

The R-4 Zone Regulations require strict application if neighborhoods are to remain intact for the enjoyment of future generations of the District Any deficiency that threatens the neighborhood quality should be addressed as proposed to ensure the continued viability of the neighborhoods which comprise the R-4 districts

1231 WARD 1 ACTIONS TO IMPLEMENT LAND USE OBJECTIVES

1231 1 The actions to implement land use objectives are as follows

*(d) **To protect the character of residentially zoned row house neighborhoods** by **limiting the density of development** and preventing intensification of use through the subdivision of structures by doing the following. .*

*(4) **Amending the R4 and R5 zoning regulations** to prevent intensive unit subdivision of row houses or rezone predominantly row house areas to lower unit subdivision density where currently zoned for intensive unit subdivision; and*

*(5) **Sponsoring these zoning changes for rowhouse areas** in Adams Morgan, the area between 14th and 16th Streets, S and U Streets, and selected areas north of U Street and east of 16th Street, and certain areas along the length of 16th Street and on Connecticut Avenue at selected locations between Florida Avenue and Calvert Street;*

Inclusion of the R-4 Zone in the provisions of § 410 would have the unintended consequence of increasing the density of development in this zone district, contrary to the stated objectives § 410 12 would permit development in both R-5-A and R-4 districts of groups of flats or apartments houses to be deemed a single building, in direct conflict with the bulk requirements of the Zone District which prescribes a minimum lot size of 1,800 square feet

Therefore, OP believes that the recommended corrections would prevent an increase in the intensity for the R-4 Zone beyond that was intended OP believes that the changes would conform to the Comprehensive Plan and Generalized Land Use Map

ZONING COMMISSION'S ALTERNATIVE PROPOSAL

At the February 13, 2006 Zoning Commission Meeting, the Commission voted to advertise in the alternative that the entire Section 410 be struck from the Zoning Regulations The Office of Planning reviewed this request and determined that the provision should be amended and retained, exclusive of its reference to the R-4 zone, in order to retain public comments through the BZA hearing process for development of apartment buildings in the R-5 Districts

The R-5 zones are intended as general residence districts created to permit flexibility of design by permitting in a single district, except as provided in §§ 350 through 361, all types of urban residential development if they conform to height, density and area requirements established for the districts In addition, the R-5 Districts also permit institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive Residence Districts (§350 1)

OP believes that some regulation should be retained which would allow development flexibility in the R-5 Zones subject to the Board of Zoning Adjustment's and OP's input on the site design of proposed developments in these districts since they may be larger developments with potential adverse impacts due to light, air and traffic In addition, additional guidelines are provided by §§ 353 and 2516 for the required special exception review

RECOMMENDATION AND PROPOSED TEXT

Based on the above discussion, including the intent of the R-4 regulations and the objectives of the Comprehensive Plan, the Office of Planning recommends that the Zoning Commission

- Remove reference of the R-4 Zone District in Section 410,
- Delete §§ 410 9 through §§ 410.16 as a correction to reflect the original modifications and amendments of ZC Order No 19, November 17, 1970, published at 7 DCR 306

OP believes the amended language addresses protects against 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.

Amend 11 DCMR § 410 as follows:

(New text is shown in **bold** and deleted text is shown with ~~strikethrough~~):

1. Delete references to the R-4 in:

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

2. **Delete** Sections 410.11 through 410.16

EMcC/kt