

Government of the District of Columbia
OFFICE OF ZONING



MEMORANDUM

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

FROM: Sharon S. Schellin *SS*
Secretary to the Zoning Commission

DATE: June 14, 2006

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D C Register* on June 23, 2006.

- 1 Z C Order No. 06-03 (Case No. 06-03), and
- 2 Z C Notice of Emergency Rulemaking (06-05)

Attachments

COPIES
10/14/06 2:33
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ZONING COMMISSION
District of Columbia

CASE NO. 06-05
EXHIBIT NO. 7

RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION: ☒ EMERGENCY RULES
☐ FINAL RULES ☐ PROPOSED RULES ☐ COMBINED

DATE AND TIME RECEIVED

Office of Documents use only

AGENCY: ZONING COMMISSION

AGENCY REPRESENTATIVE: SHARON S SCHELLIN

ADDRESS 441 4th Street, NW, Suite 210 S

TELEPHONE 727-6311

TITLE AND DESCRIPTION OF RULES

REMOVING REFERENCE TO R-4 ZONE DISTRICT FROM 11 DCMR 410, SPECIAL EXCEPTIONS FOR GROUPS OF RESIDENTIAL BUILDINGS

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed 11 DCMR 410

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: DCR DATE.

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules. §1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D C. Official Code § 6-641 01 (2001)) and section 6 (c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206, D.C Official Code §2-505 (c) (2001))

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. 6/13/06

SIGNED *Ala Byler Jr.*

PHONE: (202) 442-9777

X	FINAL	CONDITIONAL
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 NAME: Robert J Spagnoletti TITLE: Attorney General for the District of Columbia

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

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. §§1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, D C. Official Code §§ 6-641 01 and 6-641.03 (2001))

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

DATE OF APPROVAL

OF VOTE

DATE

June 12, 2006

APPROVAL OF ATTEST

Sharon S. Schellin
Secretary of the Zoning

TITLE: Commission

PHONE: 727-6311

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THIS NOTICE PUBLISHED AT:

VOL.

DCR

DATE

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF EMERGENCY RULEMAKING**

Case No. 06-05

**(Text Amendment – Removing the reference to R-4 Districts from Section 410, Special
Exceptions for Groups of Residential Buildings)**

June 12, 2006

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2001)) and section 6 (c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206, D.C. Official Code § 2-505 (c) (2001)) hereby gives notice of the re-adoption, on an emergency basis, of amendments to § 410 of the Zoning Regulations (11 DCMR) to strike the reference to the R-4 Zone District from subsection 410.12.¹ Section 410 permits an exception to the rule that no more than one principal structure may be built on a single record lot in residence zones, by authorizing the Board of Zoning Adjustment (“BZA”) to deem such multiple structures to be a single building in R-4 and R-5 Districts.

These amendments were first adopted on an emergency basis on February 13, 2006, and became effective on that date. This emergency action was taken because of 1) the influx of recent, and the anticipation of future, special exception requests under § 410 to allow development projects of multiple units in the R-4 Zone District, and 2) the adverse land use and character implications for the R-4 Zone if multiple units can continue to be deemed a single building in that district. The current rule promotes the transformation of the R-4 District into an apartment house district, contrary to the intent and purposes of the R-4 Zone District prescribed in 11 DCMR § 330. In light of the growing number of requests for relief under § 410 for properties located in the R-4 District, this emergency action is necessary for the immediate preservation of the public welfare by addressing a pressing land use issue that threatens the continued existence of the R-4 Zone District.

A Notice of Emergency and Proposed Rulemaking and a Notice of a Public Hearing on the proposed rule were published in the *D.C. Register* on March 10, 2006. The notices included an alternative proposal to repeal § 410 in its entirety. At the conclusion of the public hearing held on May 4, 2005, the Commission voted to forward the repeal alternative to the National Capital Planning Commission. The Zoning Commission took final rulemaking action to repeal the provision at its public meeting on June 12, 2006. The existing emergency rulemaking shall expire on June 13, 2006. The final rule will not be effective until published in the *Register*. To maintain the *status quo*, the Commission adopted this emergency rule on June 12, 2006, and it became effective immediately.

¹ The version of § 410.12 that appears in the current edition of the Zoning Regulations does not contain this reference, but the prior edition of Title 11 did. A review of all amendments made to § 410.12 between the publications dates of the two editions reflects no amendment to § 410.12. However, the Commission has been advised by the Office of the Attorney General that all of § 410.12 may have been repealed in 1970. For the purposes of this rulemaking only, the Commission will assume that, prior to the first emergency rulemaking, § 410.12 was in effect and that it included a reference to the R-4 Zone District.

The emergency rule will expire on September 9, 2006, which is the 120th day after the adoption of the rule, or upon the publication of a Notice of Final Rulemaking in the *Register*, whichever occurs first

Section 410 in Chapter 4 RESIDENCE DISTRICTS: HEIGHT, AREA AND DENSITY REGULATIONS of Title 11 (DCMR) is amended as follows

1 The heading is amended to reads as follows.

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

2 Section 410.12 is amended by striking the phrase "In the R-5-A and R-4 Districts," and inserting the phrase "In an R-5-A District," in its place.