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GOVERNMENT OF THE DISTRICT OF COLUMBIA

Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance

From: Sharon S. Schellin ⁸³
Secretary to the Zoning Commission

Date: September 5, 2007

Re: Publication for the Office of Zoning

Please publish the following in the *D C. Register* on September 14, 2007:

1. Z.C. Notice of Final Rulemaking & Order No. 07-08;
2. Z.C. Notice of Final Rulemaking & Order No. 07-03;
3. Z.C. Notice of Final Rulemaking & Order No. 06-47;
4. Z.C. Notice of Final Rulemaking & Order No. 06-33; and
5. Z.C. Notice of Final Rulemaking & Order No. 05-21A.

These Final Rulemakings and Orders are also provided on the attached diskette. Thank you in advance for your assistance in this matter.

Attachment

ZONING COMMISSION
District of Columbia

CASE NO. 06-33

EXHIBIT NO. 25

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ZONING COMMISSION
District of Columbia
CASE NO.06-33
EXHIBIT NO.25

RULEMAKING TRANSMITTAL FORM

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

DATE AND TIME RECEIVED

Office of Documents use only

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: SHARON SCHELLIN

ADDRESS: 441 4th Street, N.W., Suite 210 South

TELEPHONE: (202) 727-0340

TITLE AND DESCRIPTION OF RULES A new § 2120 will be added to Title 11 to clearly establish parking requirements for historic resources, and necessary conforming amendments will also be done.

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed. Title 11 (Zoning), Chapter 21 -- §§ 2100.4 and 2100 6 will be amended, § 2100.5 will be repealed, and a new § 2120 will be added.

FINAL RULES ONLY. Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 54 DCR 004508 DATE: MAY 11, 2007

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Sections 1, 3, and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 798, and 799), D C Official Code §§ 6-641.01, 6-641.03, and 6-641.07(c)

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: JULY 2, 2007

SIGNED: *Linda Singer*

PHONE: (202) 442-9777

| | | | |
|---|--------------------------------------|--------------------|-------------------------|
| <input checked="" type="checkbox"/> FINAL | <input type="checkbox"/> CONDITIONAL | NAME: LINDA SINGER | 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. Sections 1, 3, and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat 797, 798, and 799), D C Official Code §§ 6-641.01, 6-641 03, and 6-641 07(c).

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

DATE OF APPROVAL
OF VOTE:

7-9-07

APPROVAL OF ATTEST: *Sharon Schellin*

TITLE: Secretary to the Zoning Commission

PHONE: (202) 727-0340

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THIS NOTICE
PUBLISHED AT:

VOL:

DCR:

DATE:

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

and

Z.C. ORDER NO. 06-33

Z.C. Case No. 06-33

(Text Amendments – 11 DCMR)

(Parking for Historic Resources)

July 9, 2007

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, as amended; D.C. Official Code § 6-641.01), having held a public hearing and referred the proposed amendments to the National Capital Planning Commission (“NCPC”) for a 30-day period of review pursuant to § 492 of the District of Columbia Charter, hereby gives notice of the adoption of amendments to Chapter 21 of the Zoning Regulations (Title 11 DCMR). The proposed amendments clarify parking requirements for historic landmarks and buildings found to be contributing to an historic district (“historic resources”). The Commission took final action to adopt the amendments at a public meeting held on July 9, 2007.

This final rulemaking is effective upon publication in the *D C Register*.

Existing Regulations

Although the current regulations clearly exempt historic resources from having to provide additional on-site parking due to a change of use for which more parking is required, it is unclear whether this exemption also applies when more parking is required as a result of the physical expansion of the structure. The text amendments are necessary to remove this ambiguity.

Description of Text Amendments

This rulemaking was initiated by the Office of Planning (“OP”). The text amendments set clear standards for when parking requirements apply to additions to historic resources and when they do not. The amendments only require additional parking when an increase in gross floor area would require the provision of four or more parking spaces. Even when that is the case, the amendments provide for special exception relief.

Relationship to the Comprehensive Plan

The amendments are not inconsistent with the goals of the District Elements of the Comprehensive Plan for the National Capital and are consistent with §§ HP-2.4.1 through 2.4.5, which advocate appropriate adaptation and rehabilitation of historic structures through compatible development. The text amendments promote these goals of historically-sensitive rehabilitation by providing clear relief from aspects of the parking regulations

Public Hearing and Proposed Action

The Commission held a public hearing on November 27, 2006 and took proposed action on April 9, 2007 to approve the advertised text, except for some minor changes in language and numbering suggested by the Office of the Attorney General ("OAG"). A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 11, 2007, at 54 DCR 4508, for a 30-day notice and comment period. Two comment letters were received, one from the law firm of Pillsbury, Winthrop, Shaw, Pittman and the other from the law firm of Holland & Knight.

Both comment letters suggested that the proposed changes are not necessary and should not be adopted. Both went on to provide alternative language for the Commission to consider if the text amendments were pursued. Both strongly recommended allowing mechanical parking structures to meet parking requirements for historic resources. They suggested expanding the conditions under which parking requirements are waived to include lack of access to curb cuts and vertical-only additions. They also recommended raising the minimum threshold number of parking spaces to greater than four.

The proposed rulemaking was also referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated May 31, 2007, found that the proposed text amendments would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan.

OAG has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on July 9, 2007, including one non-substantive change made to the wording of new § 2120.3. The change was made at the suggestion of OAG to improve the clarity of the provision. In response to the two comments received, the Commission continues to believe that the current regulations are not sufficiently clear and that the proposed text provides needed protection of historic resources and sufficient relief for extenuating circumstances. The Commission notes that OP intends to examine the use of mechanized parking structures and, if appropriate, will address the subject in a future text amendment.

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, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapter 21 of the Zoning Regulations, Title 11 DCMR. Added wording is in **bold** and underline, and deleted wording is shown in ~~strikethrough~~ lettering, except for Part D, which is all new text and therefore not annotated.

A. Amend § 2100.4 as follows:

2100.4 ~~Except as provided in § 2100.5,~~ **for historic resources as defined in § 2120.2,** when the use of a building or structure is changed to another use that requires more parking spaces than required for the use existing immediately prior to the change or, if the building or structure is vacant, the use that existed immediately prior to the vacancy, parking spaces shall be provided for that additional requirement in the amount necessary to conform to § 2101.

B Delete § 2100.5.

C. Amend § 2100.6 as follows:

2100.6 **Except as provided in § 2120.3,** ~~When~~ the intensity of a building or structure existing before May 12, 1958, is increased by an addition of employees, dwelling units, gross floor area, seating capacity, or other unit of measurement specified in § 2101, parking spaces shall be provided for the addition, subject to §§ 2100 7 through 2100.9.

D. Add a new § 2120, "Parking for Historic Buildings," as follows.

2120.1 This section sets forth the circumstances under which existing and new uses in historic resources and additions thereto are exempt from providing parking and shall not apply to new unattached structures constructed on the same lot as a historic resource.

2120.2 For the purposes of this section, a historic resource is a building or structure listed in the District of Columbia Inventory of Historic Sites or a building or structure certified in writing by the State Historic Preservation Officer as contributing to the character of the historic district in which it is located.

2120.3 A historic resource and any additions thereto are exempt from the requirement of § 2100 4 to provide additional parking as a result of a change of use and

from the requirement of § 2100.6 to provide additional parking as a result of an increase of intensity of use, except that parking shall be required for any addition where:

- (a) The gross floor area of the historic resource is being increased by 50% or more, and
- (b) The parking requirement attributable to the increase in gross floor area is at least four (4) spaces.

2120.4 Any parking provided for a historic resource in excess of that which existed at the time the historic resource was listed in the District of Columbia Inventory of Historic Sites or the historic district was created shall be exempt from § 2115, and §§ 2117.5 and 2117.6.

2120.5 Parking spaces provided for a historic resource shall be a minimum of eight feet (8 ft.) in width and sixteen feet (16 ft.) in length exclusive of access drives, aisles, ramps, columns, and office and work areas. All required parking spaces shall be clearly striped and lined. Durable all-weather materials shall be used. Striping shall be maintained for as long as the parking spaces requiring the striping are in existence

2120.6 The Board of Zoning Adjustment may grant relief from all or part of the parking requirements of this section if the owner of the property demonstrates that, as a result of the nature or location of the historic resource, providing the required parking will result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource. The Board shall grant only the amount of relief needed to alleviate the difficulty proved. The applicant shall also demonstrate compliance with the general special exception standard set forth in § 3104 and shall address each of the following criteria as part of its presentation to the Board:

- (a) Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;
- (b) Amount of traffic congestion existing and/or that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood;
- (c) Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the redevelopment is complete; and

- (d) Proximity to public transportation, particularly Metrorail stations, and availability of either public transportation service in the area, or a ride sharing program approved by the District of Columbia Department of Transportation

2120.7 Prior to taking final action on an application, the Board shall refer the application to the D.C. Department of Transportation for review and report.

Vote of the Zoning Commission taken at its public meeting on April 9, 2007, to **APPROVE** the proposed rulemaking: **5-0-0** (Carol Mitten, John G. Parsons, Anthony J. Hood, Michael G. Turnbull, and Gregory Jefferies to approve)

This Order was **ADOPTED** by the Zoning Commission at its public meeting on July 9, 2007, by a vote of **3-0-2** (Carol Mitten, Anthony J. Hood, and John G. Parsons to adopt; Michael G. Turnbull and Gregory Jefferies, 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 ~~SEP 14 2007~~.

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

and

ORDER NO. 06-33

Z.C. Case No. 06-33

(Text Amendments – 11 DCMR)

(Parking for Historic Resources)

July 9, 2007

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