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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 ^{SS}
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. 06-47
EXHIBIT NO. 21

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ZONING COMMISSION
District of Columbia
CASE NO.06-47
EXHIBIT NO.21

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:

TITLE AND DESCRIPTION OF RULES: ZC Case No. 06-47: Text Amendment – 11 DCMR: Minimum Lot Area and Lot Occupancy Requirements for Apartment Houses in the R-4 Zone District.

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) Subsections 330.5, 401.3, 403.2, and adds a new subsection 401.11.

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 54 DCR 5329 DATE: May 25, 2007

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

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 9, 2007

SIGNED: *[Signature]*

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. Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

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

DATE OF
APPROVAL
OF VOTE:

APPROVAL
OF ATTEST:

TITLE: Secretary to the Zoning
Commission

PHONE: (202) 727-0330

Office of Documents
use only:

THIS NOTICE
PUBLISHED AT:

VOL:

DCR:

DATE:

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

and

Z.C. ORDER NO. 06-47

Z.C. Case No. 06-47

(Text Amendment – 11 DCMR)

**(Minimum Lot Area and Lot Occupancy Requirements for
Apartment Houses in the R-4 Zone District)**

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 referred the proposed amendments to the National Capital Planning Commission (“NCPC”) for a 30-day period of review pursuant to § 492 of the District Charter; hereby gives notice of the adoption of text amendments to Chapters 3 and 4 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The amendments clarify that the number of apartment units in existing apartment houses located in the R-4 Zone District may not be increased unless there are 900 square feet of lot area for each unit (whether new or existing). The amendments also impose a lot occupancy limit for buildings or structures converted to apartment houses in the R-4 Zone District.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 25, 2007, at 54 DCR 5329, for a 30-day notice and comment period.

The Commission took final action to adopt the amendment at a public meeting held on July 9, 2007.

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

Existing Regulations

The matter of right provisions for the R-4 District do not permit new apartment houses, but allow “the conversion of a building or other structure existing before May 12, 1958, to an apartment house as limited by ... [§] 401.3.” (11 DCMR § 330.5.) Subsection 401.3 lists, for each residential zone, lot area requirements by structure type. For the R-4 Zone District, § 401.3 lists separate requirements for row dwellings and flats, single-family semi-detached dwellings, and for a “conversion to apartment house.” The lot area requirement for a structure converted to an apartment house is 900 square feet per dwelling unit.

The Board of Zoning Adjustment held in a recent case that the lot occupancy limits of §§ 330.5 and 401.3 do not apply when the number of units in an apartment house existing before May 12, 1958 is increased, because such an increase is not a “conversion to apartment house.”

Description of Text Amendment

This rulemaking was initiated by the Office of Planning (“OP”). The text amendment clarifies that the number of apartment units in existing apartment houses located in the R-4 Zone District may not be increased unless there are 900 square feet of lot area for each unit, regardless of whether the apartment is a new conversion or has existed as an apartment building since 1958. It also imposes a lot occupancy limit for buildings or structures converted to apartment houses in the R-4 Zone District. The text amendment amends §§ 330.5(c), 401.3 and 403.2 and adds a new § 401.11 to the Zoning Regulations.

Relationship to Comprehensive Plan

The proposed text amendment is fully consistent with the Comprehensive Plan, which supports protecting existing row house neighborhoods.

Public Hearing and Proposed Action

The Commission held a public hearing on the case on April 4, 2007. Lindsley Williams testified at the hearing, offering comments and recommendations to the proposed text, and submitted his comments by letter dated April 19, 2007. The Commission requested that OP respond to his comments in a supplemental filing.

Mr. Williams proposed:

- Inclusion of a special exception provision to provide a range of 600-899 square feet of lot area per unit (not to exceed a lot occupancy of 70%) to avoid the burden of a variance in the R-4 Zone District, which would be next to impossible to pursue because the circumstances would not be unique;
- Inclusion of apartment houses existing prior to May 12, 1958 as conforming matter-of-right uses in the R-4 District, with increases to the floor area limited by §§ 401.3 and 403.2 ;
- A more general examination of the conversion of structures existing prior to May 12, 1958 to apartment houses in all Zone Districts.

OP responded through a supplemental report dated April 20, 2007. OP’s report stated that the recommendations undermined the intent of the proposed text amendment -- stabilizing the row house and single-family aspects of the R-4 District’s character. OP further contended that the

current Zoning Regulations and proposed amendments provided adequate control over the conversions of structures existing prior to May 12, 1958 such that a more general examination of the regulations was not necessary.

The Commission took proposed action to adopt the amendments as originally advertised at its regularly scheduled public meeting on May 14, 2007. The Notice of Proposed Rulemaking was published in the *D.C. Register* on May 25, 2007 at 54 *DCR* 5329 for a 30-day notice and comment period. The Commission received comments from ANC 6A and ANC 1B in support of the amendments.

The proposed rulemaking was referred to NCPC under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated May 31, 2007, determined that the proposed text amendment would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan.

The Office of the Attorney General 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. No changes were made to the text published in the Notice of Proposed Rulemaking:

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 purposes of the Zoning Regulations and the 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 the Zoning Regulations, Title 11 DCMR. New text is shown in **bold** and underline and deleted text is shown in ~~striketrough~~ text:

- A. Chapter 3 (R-2, R-3, R-4, AND R-5 RESIDENCE DISTRICT USE REGULATIONS), § 330.5(c), is amended as follows:

330.5 The following uses shall be permitted as a matter of right in an R-4 District:

....

- (c) The conversion of a building or other structure existing before May 12, 1958, to an apartment house as limited by §§ ~~350.4(e) and 401.3~~ **and 403.2**

B. Chapter 4 (RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS) is amended as follows:

1. The table in § 401.3 is amended to read as follows:

| ZONE DISTRICT AND STRUCTURE | MINIMUM LOT AREA (square feet) | MINIMUM WIDTH OF LOT (feet) |
|--|--------------------------------------|-----------------------------------|
| R-4 Conversion <u>of a building or structure</u> to <u>an</u> apartment house | 900/apartment or bachelor apartment | None prescribed |

2. The table in § 403.2 is amended to read as follows:

| ZONE DISTRICT AND STRUCTURE | MAXIMUM PERCENTAGE OF LOT OCCUPANCY |
|---|--|
| R-4 Conversion to multiple dwelling Conversion <u>of a building or structure to an apartment house</u> | None prescribed <u>Greater of 60% or the lot occupancy as of the date of conversion</u> |

3. Add a new § 401.11 to read as follows:

401.11 An apartment house in an R-4 District, whether converted from a building or structure pursuant to § 330.5 or existing before May 12, 1958, may not be renovated or expanded so as to increase the number of dwelling units unless there are 900 square feet of lot area for each dwelling unit, both existing and new.

The Zoning Commission voted to **APPROVE** the proposed rulemaking at its public meeting on May 14, 2007, by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, Gregory N. Jeffries, and Michael G. Turnbull to approve).

Z.C. NOTICE OF FINAL RULEMAKING & ORDER NO. 06-47
Z.C. CASE NO. 06-47
PAGE 5

The Zoning Commission, at its public meeting on July 9, 2007, **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 to adopt).

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
Z.C. ORDER NO. 06-47
Z.C. Case No. 06-47
(Text Amendment – 11 DCMR)
(Minimum Lot Area and Lot Occupancy Requirements for
Apartment Houses in the R-4 Zone District)
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*.