

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 25, 2007
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on October 5, 2007:

1. Z.C. Notice of Final Rulemaking & Order No. 07-15 (also provided on the attached diskette in MS Word format); and
2. Z.C. Notice of Public Hearing (Case No. 02-26A).

Attachment

Office of
Documents and
Administrative
Issuances
2007 SEP 25 PM 2:14

ZONING COMMISSION
District of Columbia

CASE NO. 07-15
EXHIBIT NO. 14

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ZONING COMMISSION
District of Columbia
CASE NO. 07-15
EXHIBIT NO. 14

RULEMAKING TRANSMITTAL FORM

2007 SEP 25

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

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: MS. SHARON SCHELLIN

DATE AND TIME RECEIVED

Office of Documents use only.

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

TELEPHONE: (202) 728-0340

TITLE AND DESCRIPTION OF RULES: ZC Case 07-15: Including Accessory Structures in § 223 Special Exception

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: 11 DCMR 223

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: August 10, 2007 at 54 DCR 7771

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: SEPTEMBER 20, 2007 SIGNED: *Linda Singer* PHONE: (202) 442-9776

FINAL

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 and D.C. Official Code § 2-505(c).

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

DATE OF
APPROVAL
OF VOTE:

9-10-07

APPROVAL
OF ATTEST:

Secretary to the Zoning

TITLE: Commission

PHONE: (202) 727-0340

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. 07-15
Z.C. Case No. 07-15
(Text Amendments – 11 DCMR)
(Including Accessory Structures in § 223 Special Exception)
September 10, 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; 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 § 223 (Additions to One-Family Dwellings or Flats) of the Zoning Regulations (Title 11 DCMR). The amendments allow the Board of Zoning Adjustment to approve construction or enlargement of detached garages and other accessory structures as a special exception pursuant to 11 DCMR § 3104. The Commission took final action to adopt the amendments at a public meeting held on September 10, 2007.

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

Existing Regulations

Section 223 of the regulations allows the Board of Zoning Adjustment to approve, as a special exception, additions to one-family dwellings and flats when the proposed addition would not comply with the applicable area requirements of § 401 (minimum lot dimensions), § 403 (percentage of lot occupancy), § 404 (rear yards), § 405 (side yards), and § 406 (courts) as special exceptions, and caps the maximum lot occupancy that can be achieved. The section currently applies only to additions attached to the primary structure and does not apply to new or enlarged accessory structures.

Description of Text Amendment

The Commission initiated this rulemaking in response to a petition filed by the Office of Planning. The text amendment expands the scope of § 223 to include new and expanded accessory structures. The maximum total lot occupancy that can be achieved through § 223 is unchanged.

Relationship to the Comprehensive Plan

The amendment is not inconsistent with the goals of the Comprehensive Plan and is consistent with the following policies of the Comprehensive Plan: Policy 2.1.3 which recommends conserving, enhancing, and revitalizing neighborhoods; Policy 2.2.4 which advocates the restoration and improvement of buildings; and Policy H-1.4.7 which supports the renovation and rehabilitation of existing housing stock.

Public Hearing and Proposed Action

The Commission held a public hearing on July 23, 2007 and took proposed action immediately thereafter to approve the advertised text. A Notice of Proposed Rulemaking was published in the *D.C. Register* ("DCR") on August 10, 2007 at 54 DCR 7771, for a 30-day notice and comment period.

The Commission received comments on the proposed rulemaking from ANC 2E, and from the Committee of 100 on the Federal City and the Citizens Association of Georgetown, who commented jointly.

ANC 2E stated that it was concerned the proposed amendments would imperil open space and add to the density of development, blur the distinction in R-3 and R-4 Zone Districts between row dwellings and semi-detached dwellings, result in a flood of requests for accessory buildings by special exception, and allow special exception approval of accessory structures that would be used not merely as garages, but as living quarters. ANC 2E requested that the Commission withdraw the proposed rule.

Committee of 100 on the Federal City and the Citizens Association of Georgetown expressed similar concerns, stating that the amendments would serve as an invitation to occupy more open space with accessory buildings, and that they believed the special exception standards are not sufficient to prevent harm to neighbors.

The proposed rulemaking was also referred to NCPC pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated August 30, 2007, found 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 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 September 10, 2007.

In response to the issues and concerns raised in the written comments, including those submitted by ANC 2E, the Commission is not persuaded that the amendments will have the negative consequences predicted. In many instances the only difference between an addition (which currently can take advantage of the provisions of § 223) and an accessory structure (which cannot) is that the addition has a relatively minor physical connection between the original structure and the new construction, and the accessory structure does not. The special exception provisions of § 223 have been in existence for some time, and the Commission is convinced that the provision continues to strike a good balance between the interest of residents who seek to expand and modernize their homes, and neighbors and other community members. The Board of Zoning Adjustment has not faced an overwhelming number of applications, and existence of the provision has not resulted in an unacceptable reduction of open space and/or unacceptable increase in density. The Commission notes that additions approved under the existing provision of § 223 are not restricted to use as garages, and does not believe there is a need to restrict to accessory buildings to use as garages. Finally, the Commission believes that no purpose will be served by postponing this proceeding. At the time it took final action, the Commission asked the Office of Planning whether further dialogue between it and members of the community would be useful. The Office of Planning indicated that it has been aware of the sentiments expressed in the written comments for some time, but nevertheless remained confident that adoption of the proposed rule was in the public interest. The Commission concurs.

Having acknowledge the written issues of concerns of ANC 2E and having indicated why the Commission does not find the advice persuasive, the Commission accordingly has given ANC 2E the "great weight" to which it is entitled.

No substantive changes were made to the advertised prepared text.

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 2 of the Zoning Regulations, Title 11 DCMR. Section 223 is amended to read as follows (added wording is in **bold** and underlined, and deleted wording is shown in ~~striketrough~~ lettering):

223 **ZONING RELIEF FOR ADDITIONS TO ONE-FAMILY DWELLINGS OR FLATS**
(R-1) AND FOR NEW OR ENLARGED ACCESSORY STRUCTURES

223.1 An addition to a one-family dwelling or flat, in those Residence districts where a flat is permitted, **or a new or enlarged accessory structure on the same lot as a one-family dwelling or flat, shall be permitted even though the addition or accessory structure**

~~that~~ does not comply with all of the requirements of §§ 401, 403, 404, 405, 406, and 2001.3 shall be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

223.2 The addition or accessory structure shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

- (a) The light and air available to neighboring properties shall not be unduly affected;
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;
- (c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage; and
- (d) In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways.

223.3 The lot occupancy of all new and existing structures on the lot ~~the dwelling or flat, together with the addition,~~ shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts.

223.4 The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties.

223.5 This section may not be used to permit the introduction or expansion of a non-conforming use.

Vote of the Zoning Commission taken at its public meeting on July 30, 2007, to **APPROVE** the proposed rulemaking: **4-0-1** (John G. Parsons, Anthony J. Hood, Gregory N. Jefferies, and Michael G. Turnbull to approve; Carol Mitten, not present, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on September 10, 2007, by a vote of **4-0-1** (John G. Parsons, Michael G. Turnbull, Anthony J. Hood, and Gregory N. Jeffries (by absentee ballot) to adopt; Carol Mitten, not participating, not voting).

Z.C. NOTICE OF FINAL RULEMAKING & ORDER NO. 07-15
Z.C. CASE NO. 07-15
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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 OCT - 5 2007.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 07-15
Z.C. Case No. 07-15
(Text Amendments – 11 DCMR)
(Including Accessory Structures in §223 Special Exception)**

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