



MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: ^{JLS} Jennifer Steingasser, Deputy Director Development Review & Historic Preservation
DATE: March 25, 2015
SUBJECT: ZC 14-11: Supplemental Report and Worksheet: Chapter 1, Definitions and Chapter 4, R-4 Zones

I. BACKGROUND

The Zoning Commission set the case down for public hearing on June 24, 2014. The Commission included several alternatives in the public hearing notice and the public hearing was held on January 15, 2015.

After the public hearing, the Zoning Commission discussed the case at the public meeting of February 9, 2015 and requested additional information from the Office of Planning on:

- Demographic trends of family size
- General R-4 property value
- Assessment of Inclusionary Zoning on units above three
- Design guidelines or requirements for additions
- Meet with small developers

II. DEMOGRAPHIC TRENDS

The State Data Center, which is the official state office for the US Census, provided a look at the trends in household population and age groups 18 and younger using data from the 2013 American Community Survey, US Census. The most current data is shown which correlates to the growth trends in the District since 2010.

District of Columbia Family Population Trends 2010 to 2013

	2013 Estimate	2012 Estimate	2011 Estimate	2010 Estimate
Household by Type				
Total Hshd	271,651	266,662	268,670	252,388
Family Hshd	44.3%	42.2%	42.4%	40.2%
Family Hshd with own Children under 18	18.9%	17.5%	17.3%	16.7%
Age Group (years)				
Under 5 years	6.4%	6.2%	5.9%	5.4%
5 to 9 years	5.0%	4.8%	4.3%	4.5%
10 to 14 years	3.6%	3.8%	4.2%	4.0%
15 to 19 years	5.7%	6.3%	6.6%	7.1%
0-17 years	17.3%	17.3%	17.1%	16.8%

This recent data shows a slow and steady increase in the percent of family households with children and a slow and steady increase in the number of children below the age of ten.

Additionally, there was recent analysis of data from local DC income tax filings in 2001 and 2013 prepared by the Office of Tax and Revenue (OTR) by zip code that also showed a general increase in Married and Married with Dependents in the zip codes that cover the majority of R-4 zones:

Zip Code	2002 Married / Married with Dependents	2013 Married / Married with Dependents
20001	6% / 8%	8% / 6%
20002	8% / 6%	9% / 8%
20003	15% / 8%	15% / 11%

The introduction and main findings of the OTR analysis are quoted in the below box and the full study is available at <http://districtmeasured.com/>.

Introduction and Main Findings

Since 2000, the population of Washington, D.C. has grown by almost 100,000 people.² Over this time, the number of young adults in the city and the number of people giving birth have grown too.³ The general expectation is that many of these people leave the city after they have children and data seem to support it: we now have more children under the age of five compared to the early 2000s, but fewer children aged five to fourteen.⁴ We wanted to know: to what extent do people leave the city once they have children? Has this trend been changing compared to a decade ago? Are some parents more likely to leave the city than others?

To answer these questions we turned to D.C.'s local income tax data from 2001 to 2012. We tracked people whom the tax data records as new parents during this time. To figure out if and when these new parents moved from the city, we looked to see when they dropped from the tax records.

Our analysis suggests that:

- Once D.C. residents have their first child they're more likely to leave the city than other residents.
- The first four years after having a child is when parents are more inclined to leave compared to the rest of residents. After that, exit rates drop to near or below those of the general population.
- New parents today appear to leave the city at rates similar to the rates of people who became new parents in early 2000's.
- Middle-income new parents are more likely to leave D.C. than low- and high-income new parents.
- The neighborhoods that lose the largest portion of new parents are downtown or close to the city's center. Zip codes 20011 (Brightwood Park, Petworth) and 20002 (Capitol Hill, Eckington, Kingman Park, Trinidad) are the most popular among new parents paying taxes in the city, both the year their first child is born and five years later.

While the data is not conclusive and does not indicate the size of units or number of units within a building, the final bullet identifies the neighborhoods that lose the largest portion of new parents as the downtown or areas close to the city's center, which are the areas with the highest density and multifamily buildings. Whereas the areas identified as "most popular among new parents paying

taxes in the city, both the year their first child is born and five years later” are those predominately zoned R-4 and developed with rowhouses.

The residential pipeline that OP monitors identifies approximately 41,000 multi-family units in predevelopment or under construction. Additionally, OP’s long term capacity analysis of zones that are developed by a floor area ratio suggests there is no shortage of potential capacity for multifamily unit development until approximately 2040 (this uses OP’s official COG forecast of growth).

III. PROPERTY VALUE BY BEDROOM IN R-4

Table 1 compares the change in prices by unit type and R-4 neighborhood over the past 3 years. Table 2 compares the average sales prices of properties by zone. The data shows:

- 1) Prices for 3-bedroom and 4-bedroom units in R-4 neighborhoods are, in general, rising more rapidly than smaller units, suggesting a larger gap in supply and demand; and
- 2) That the R-4 homes are more affordable than other single-family zones, with the exception of R-2 which tends to be mapped in the outer neighborhoods of DC. R-4 homes therefore represent a significant opportunity to keep new families in the District.

Table 1

Rate of Change in the Home Value Index by bedrooms in R-4 Neighborhoods					
12/11-12/14					
Neighborhood	Studio	1-Bedroom	2-bedroom	3-bedroom	4-bedroom
Bloomingdale		16.8%	9.9%	16.3%	15.2%
Brightwood				13.7%	11.8%
Brightwood Park		6.7%	7.0%	17.5%	19.6%
Capitol Hill	5.6%	5.4%	9.1%	8.7%	8.4%
Columbia Heights	7.0%	5.8%	8.2%	12.4%	11.3%
Eckington			12.8%	19.6%	13.6%
Edgewood		7.3%	16.3%	16.8%	17.0%
Kingman Park		10.7%	14.3%	15.5%	13.9%
Ledroit Park				14.5%	
Logan Circle	4.1%	5.9%	5.8%	7.3%	7.7%
Mount Pleasant		4.0%	6.9%	7.9%	9.4%
Near Northeast	8.9%	9.0%	12.2%	13.1%	12.0%
Park View			14.6%	18.3%	17.8%
Petworth		12.2%	14.6%	16.5%	16.2%
Truxton Circle			13.2%	13.1%	12.6%

Source: Zillow.com

Table 2

Average 2013 Sales Prices by Zone		
	Properties	Avg Sales Price
R-1-A	3,716	\$ 1,678,964
R-1-B	22,310	\$ 873,397
R-2	21,061	\$ 432,398
R-3	15,444	\$ 810,956
R-4	34,051	\$ 611,975

Source DC Office of Tax and Revenue

IV. R-4 INCLUSIONARY ZONING FEASIBILITY ANALYSIS

OP ran a feasibility analysis that applies the Inclusionary Zoning (IZ) program to small R-4 developments starting at the fourth unit. The analysis is presented below and suggests that a fourth unit could be included at 80% of the Median Family Income (MFI). This is a different approach from IZ in larger projects where there are bonus market units to balance the potential loss created by units at 50% of the MFI.

OP has met with representatives of several of the developers and they agreed that subject to a matter of right scenario, they could work with a height of 35 feet and with the fourth unit being subject to Inclusionary Zoning.

The analysis uses the HUD 2015 Median Family Income (referred to as AMI in the current IZ regulations) of \$109,200 and IZ's current purchase price/rent methodology. Per square foot rents and estimates of development costs suggests that rents for IZ units at 80% of the MFI would provide positive land value while rents at 50% of the MFI would be at a loss. Therefore units at the 50% of MFI level would be unlikely to ever be built, but developers may be willing to build units at 80% of MFI without an accompanying bonus market rate unit. In fact, the analysis suggests that smaller units may provide the developer significant positive value and may inflate the value of the land, while a two-bedroom unit might not significantly inflate the value to land, but would still provide the developer a modest profit and therefore an incentive to build the fourth unit.

Rents per Square Foot

Unit Type	Unit Size	Occupancy	Utilities	50%	80%	
studio	500	1	152	\$ 1.61	\$ 2.75	
1-bedroom	625	1.5	227	\$ 1.27	\$ 2.26	
2-bedroom	900	3	301	\$ 1.03	\$ 1.85	
Averages	675			\$ 1.30	\$ 2.29	\$ 1.80

Simple Per Square Foot Residual Land Value Analysis

		Factor	50%	80%	Average
Monthly Rent			\$ 1.30	\$ 2.29	\$ 1.80
Parking Revenue			\$ -	\$ -	\$ -
Annual Income	12		\$ 15.65	\$ 27.44	\$ 21.55
Vacancy/Economic Loss	5%		\$ 0.78	\$ 1.37	\$ 1.08
Operating Expenses	26%		\$ 4.07	\$ 7.14	\$ 5.60
Net Operating Income			\$ 10.80	\$ 18.94	\$ 14.87

Cap Rate	6.00%			
Estimated Value		\$179.97	\$ 315.59	\$ 247.78
Hard Costs	\$145 per SqFt	90%	\$ 161.11	\$ 161.11
Parking		50%	\$ -	\$ -
Soft Costs		28%	\$ 45.11	\$ 45.11
Minimum Return		15.5%	\$ 31.94	\$ 31.94
Total Costs			\$ 238.16	\$ 238.16
Return on Cost			15.5%	15.5%
Residual Land Value			\$ (58.19)	\$ 77.44

Based on this preliminary analysis and the lack of objection from the developers to a matter of right scenario, should the Commission proceed with a matter of right permission for conversions, OP continues to recommend that there be no more than four units permitted as a matter of right and that the fourth unit be included in the IZ program at 80% MFI.

Meet with Developers

OP has met with representatives of Association of Responsible Developers, and the representatives stated that they could work within the 35 foot height maximum and the fourth unit triggering IZ provided it was a matter of right scenario. The main concerns expressed were maintaining a matter of right level of development and establishing an extended effective date. The effective date was suggested at 18 months after the final adoption of the amendments. They stated that developers in the R-4 zone are typically small firms that do one to two projects at a time but invest in projects upwards of twelve months out.

Design Standards

Should the Commission proceed with a matter of right scenario, OP recommends the regulations be amended to include the following development design standards

- 1) Maximum height as a matter of right = 35 feet
- 2) Maximum height as a special exception = 40 feet
- 3) A mezzanine shall count toward the maximum number of floors
- 4) There shall be 900 square feet of land area per dwelling unit and no more than 4 units shall be permitted.
- 5) The 4th unit shall be subject to IZ at no more than 80% MFI.
- 6) A conversion shall not result in the demolition of more than 30 percent of the gross floor area of the original structure.
- 7) A rear addition shall not extend further than ten feet past the rear wall of any adjacent residential row structure.
- 8) An upper floor addition shall not result in the removal or significant alteration of a roof top architectural element original to the house such as a turret or tower.
- 9) Any addition shall not block or impede the functioning of a chimney or other external vent required by any municipal code on an adjacent property.
- 10) Any addition shall not interfere with the operation of any neighboring solar energy system.

The following shall require review and approval by the BZA as a special exception:

- Conversion of a residential structure in the R-4 zone proposed for more than 4 units regardless of lot size
- New construction on a lot that is not improved with a principal residential structure

- An application that does not meet the criteria for matter of right.

Should the Commission proceeds with a special exception for conversions of a residential rowhouse OP also recommends the following development design standards be included as part of the special exception criteria:

- 1) There shall be a minimum lot area of 900 square feet for each dwelling unit.
- 2) The conversion and any addition shall not have a substantially adverse effect 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 effectiveness of any chimney, vents or solar energy system on neighboring properties shall not be substantially reduced; and
 - (d) The resulting structure 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.
- 3) An upper floor addition shall not result in the removal or significant alteration of a roof top architectural element original to the house such as a turret or tower.
- 4) Any upper floor addition shall not block or impede the functioning of a chimney or other external vent required by any municipal code on an adjacent property.
- 5) An upper or rear addition shall not interfere with the operation of any neighboring solar energy system.
- 6) 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.

Regarding non-residential structures, OP recommends the design criteria that was advertised and recommends inclusion of the additional language referencing chimneys and solar energy systems on adjacent properties be added to proposed section 336.4

- Any upper floor addition shall not block or impede the functioning of a chimney or other external vent required by any municipal code on an adjacent property.
- An upper or rear addition shall not interfere with the operation of any neighboring solar energy system.

OP has attached a worksheet to help organize the issues. Proposed draft language is provided at the end of the worksheet. OP will work with the Office of Attorney General on the exact language subject to Zoning Commission action.

This section of the worksheet summarizes the existing provisions and advertised options regarding Height of residential rowhouses in the R-4 zone. In summary they represent options for answering the questions:

- 1) Should the matter of right height be changed from 40 feet to 35 feet for a structure in the R-4 zone?
- 2) Should a mezzanine count as story?

HEIGHT

1) **Residential Rowhouse - Additions to existing rowhouse and New construction of two or fewer adjoining rowhouses**

- Existing Provisions: 40 feet as a matter of right height
- Setdown Proposal Establish height of 35 feet as a matter of right and 40 feet by special exception
- Recommendation:
 - 1) Establish height of 35 feet as a matter of right and 40 feet by special exception
 - 2) Maintain the matter of right height of 40 feet for 3 or more adjoining units built simultaneously

ZC Decision: _____

2) **Non-Residential Buildings - New Construction and Additions to Existing**

- Existing Provisions: 40 feet as a matter of right height
- Setdown Proposal Establish height of 35 feet as a matter of right and 40 feet by special exception
- Recommendations:
Establish height of 35 feet as a matter of right and 40 feet as a special exception

ZC Decision: _____

MEZZANINE

- Existing Provisions: Do not include a mezzanine from the limit on the number of stories
- Setdown Proposal Include a mezzanine within the limit on the number of stories
- Recommendation:
Include a mezzanine within the limit on the number of stories

ZC Decision: _____

CONVERSIONS

This section of the worksheet summarizes the existing provisions and advertised options regarding conversions of residential rowhouses. In summary they represent options for answering the questions:

- 1) Should there be a M-o-R option for conversion of residential rowhouses?
- 2) Should they be permitted only by special exception?
- 3) If there is a M-o-R option:
 - Should there be a minimum land area per dwelling unit
 - Should there be maximum number of M-o-R units?
 - Should IZ apply to any of the M-o-R? at 80% AMI? At the 4th unit?
- 4) If conversions are permitted only by special exceptions what should the conditions be?

1) **Residential Rowhouse**

- Existing Provisions: Keep existing M-o-R provisions for conversions of residential rowhouses subject to 900 sf land/ dwelling unit; zoning relief only by variance
- Setdown Proposal: Prohibit conversions of residential rowhouses
- Advertised Alternatives:
 1. Allow M-o-R conversions subject to 900 sf land /dwelling unit with all units beyond 3 subject to IZ at 60% AMI.
 2. If conversion results from variance all units beyond 2 would be subject to IZ at 60% AMI.
 3. Allow M-o-R conversions subject to 900 sf land /dwelling unit, but permit special exception relief from the 900 sf land /dwelling unit for a maximum of 4 units; IZ *would not be* applicable.
 4. Allow M-o-R conversions subject to 900 sf land/dwelling unit, but permit special exception relief from the 900 sf land/dwelling unit with no established maximum number of units; IZ *would not be* applicable.
- Other Options:
 1. Allow M-o-R conversions subject to a requirement of 900 sf land /dwelling unit
 - Maximum number of matter of right units = 4;
 - IZ would apply to 4th unit, a maximum AMI of 80%.
 - Permit more units by special exception subject to a requirement of 900 sf land/dwelling unit with IZ applicable to every other additional unit after 3 (i.e. 4th, 6th, 8th unit)
 - Less than 900 sf /dwelling unit would require a variance
 1. Allow conversions only by special exceptions, subject to a requirement of 900 sf land /dwelling unit
 - Maximum number of units = 4;

- IZ would apply to 4th unit, a maximum AMI of 80%

2. For those units subject to IZ, use the 80% AMI for conversions in the R-4

Recommendation:

- If the Commission chooses a M-o-R option OP recommends “Other Option 1” above with the following conditions:
 - Maximum height as a matter of right = 35 feet
 - A mezzanine shall count toward the maximum number of floors
 - There shall be 900 square feet of land area per dwelling unit and no more than 4 units shall be permitted.
 - The 4th unit shall be subject to IZ at 80% AMI.
 - A conversion shall not result in the demolition of more than 30 percent of the gross floor area of the original structure.
 - A rear addition shall not extend further than ten feet (10 ft.) past the rear wall of any adjacent residential row structure.
 - An upper floor addition shall not result in the removal or significant alteration of a roof top architectural element original to the house such as a turret or tower.
 - Any upper floor addition shall not block or impede the functioning of a chimney or other external vent required by any municipal code on an adjacent property.
 - An upper or rear addition shall not interfere with the operation of any neighboring solar energy system.
- If the Commission chooses a Special Exception option, OP recommends the following conditions be established as part of the special exception review:
 - There shall be a minimum lot area of 900 square feet for each dwelling unit.
 - The conversion shall not have a substantially adverse effect 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 effectiveness of any chimney, vents or solar energy system on neighboring properties shall not be substantially reduced; and
 - (d) The resulting structure 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.
 - An upper floor addition shall not result in the removal or significant alteration of a roof top architectural element original to the house such as a turret or tower.
 - Any upper floor addition shall not block or impede the functioning of a chimney or other external vent required by any municipal code on an adjacent property.
 - An upper or rear addition shall not interfere with the operation of any neighboring solar energy system.
 - 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. (draft text attached)

ZC Decision: _____

2) **Non-Residential Structures - New Construction and Additions to Existing**

This section of the worksheet summarizes the existing and options for the conversions of NON-residential buildings in the R-4.

- **Existing Provisions:** Keep existing M-o-R provisions for conversions of non-residential buildings subject to 900 sf land/ dwelling unit; IZ applicable at 10 units; zoning relief only by variance.
- **Setdown Proposal:** Permit the conversions of non-residential properties only by special exception and allow for relief from the 900 SF of land per unit requirement as part of that special exception.
- **Recommendation:**
 - Allow M-o-R conversions subject to 900 sf land/dwelling unit requirement, and IZ would be applicable 10th unit.
 - Permit special exception relief from the 900 sf land/dwelling unit requirement with advertised design standards and reference to neighboring rooftop chimneys and solar energy systems.

ZC Decision: _____

ADDITIONAL ISSUES

- Include references to adjacent rooftop chimneys, vents and solar energy systems in design standards.
- Change any IZ standard to an 80% AMI from the advertised 60% AMI.

ZC Decision: _____

The following draft text is proposed based on the decisions of the Zoning Commission

DRAFT LANGUAGE

SPECIAL EXCEPTION FOR 40 FEET

Draft Language as advertised except new language to reference chimneys and solar panels added and underlined.

400.23 In an R-4 District, a building or other structure may be erected to a height not exceeding forty feet (40 ft.) as a special exception if approved by the Board of Zoning Adjustment, provided that the Applicant demonstrates compliance with the general special exception standard of § 3104.1 and the specific criteria of § 400.24 through 400.26.

400.24 The Applicant shall demonstrate that the overall building or structure height or upper addition will not have a substantially adverse effect 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; ~~and~~
- (c) **Any upper floor addition shall not block or impede the functioning of a chimney or other external vent required by any municipal code on an adjacent property.**
- (d) **An upper or rear addition shall not interfere with the operation of any neighboring solar energy system; and**
- (e) The resulting building or structure height, 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.

400.25 The Applicant shall demonstrate that overall building or structure height or upper addition resulting from the additional five feet (5 ft.) will not have a substantially adverse effect on the defining architectural features of the building or result in the removal of such features.

400.26 In demonstrating compliance with § 400.24 and 400.25, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the new or extended building or structure to adjacent buildings and views from public ways.

DRAFT LANGUAGE

SPECIAL EXCEPTION FOR CONVERSIONS OF A NON-RESIDENTIAL STRUCTURE

- 336.1 ~~Subject to the lot area requirement of § 401.3, A non-residential structure in an R-4 District existing before May 12, 1958~~ A non-residential structure in an R-4 District may be converted to an apartment house by special exception if approved by the Board of Zoning Adjustment, provided that the Applicant demonstrate compliance with the general special exception standards of § 3104.1 and with the specific criteria of this section.
- 336.2 The building was not built to be part of a residential row of homes.
- 336.3 If the conversion involves an addition to be constructed on a parking lot or yard abutting a street right of way, the addition shall maintain or create a streetwall consistent with the immediate neighborhood.
- 336.4 Any addition shall not have a substantially adverse effect 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) **Any upper floor addition shall not block or impede the functioning of a chimney or other external vent required by any municipal code on an adjacent property.**
 - (d) **An upper or rear addition shall not interfere with the operation of any neighboring solar energy system; and**
 - (d) The conversion and any associated addition, 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.
- 336.5 In demonstrating compliance with § 336.4, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways.
- 336.6 The lot occupancy of all new and existing structures on the lot shall not exceed seventy percent (70%).
- 336.7 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.
- 336.8 This section may not be used to permit the introduction or expansion of a nonconforming use.
- 336.9 An apartment house in an R-4 District, converted from a residential building prior to [THE EFFECTIVE DATE OF THIS AMENDMENT] shall be considered a conforming use and structure, but shall not be permitted to expand unless approved by the Board of Zoning Adjustment pursuant to § 3104.1 and 3104.3.

DRAFT LANGUAGE

SPECIAL EXCEPTION FOR CONVERSIONS of RESIDENTIAL ROWHOUSES

337.1 A residential building may be converted to an apartment house as a special exception in an R-4 District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

337.2 There shall be a minimum lot area of 900 square feet for each dwelling unit.

337.3 The Applicant shall demonstrate that the conversion and any addition will not have a substantially adverse effect 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) Any upper floor addition shall not block or impede the functioning of a chimney or other external vent required by any municipal code on an adjacent property.

(d) An upper or rear addition shall not interfere with the operation of any neighboring solar energy system; and

(e) The resulting structure 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;

337.4 The Applicant shall demonstrate that conversion and any building alterations or additions will not have a substantially adverse effect on the defining architectural features of the building or result in the removal of such features.

337.5 In demonstrating compliance with this section, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the new or extended building or structure to adjacent buildings and views from public ways.

337.6 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.

337.7 An apartment house in an R-4 District, converted from a residential building prior to [THE EFFECTIVE DATE OF THIS AMENDMENT] shall be considered a conforming use and structure, but shall not be permitted to expand unless approved by the Board of Zoning Adjustment pursuant to § 3104.1 and 3104.3.