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Total Records: 79

ID	Status	Register Category	Subject	Register Issue	Action Date
5576025	Submitted to DDAI	Emergency and Proposed	Zoning Commission Notice of Emergency & Proposed Rulemaking - Case No. 14-11 [Text Amendment - 11 DCHR] Technical Correction to Z.C. Order No. 14-11	7/31/2015 Vol 62/31	7/21/2015 11:37:40
5560547	Confirmed	Notices, Opinions	Zoning Commission Order No. 14-014: Jemal's Meats, LLC	7/24/2015 Vol 62/31	7/20/2015 16:36:55
5579573	Confirmed	Notices, Opinions	Zoning Commission Notice of Special Public Meeting: July 30, 2015	7/24/2015 Vol 62/31	7/20/2015 16:31:18
5567420	Confirmed	Notices, Opinions	Board of Zoning Adjustment - Order No. 19043 - Phillips Collection - ANC 2B	7/24/2015 Vol 62/31	7/20/2015 15:18:44
5561131	Confirmed	Notices, Opinions	Board of Zoning Adjustment - Order No. 19031 - Maurice Lendes - ANC 5B	7/24/2015 Vol 62/31	7/20/2015 15:16:52
5565680	Confirmed	Notices, Opinions	Zoning Adjustment, Board of - Order No. 19026 - 1300 H Street NE LLC - ANC 6A	7/24/2015 Vol 62/31	7/20/2015 15:15:29
5554725	Confirmed	Notices, Opinions	Zoning Adjustment, Board of - Order No. 19000 - Stuart F. & Jennifer Pierson - ANC 3D	7/24/2015 Vol 62/31	7/20/2015 14:43:53
5565489	Confirmed	Notices, Opinions	Zoning Adjustment, Board of - Order No. 19002 - Rainbow Child Development Center - ANC 7C	7/24/2015 Vol 62/31	7/20/2015 14:43:10
5557032	Confirmed	Notices, Opinions	Zoning Adjustment, Board of - Order No. 19025 - Persius 1827 Adams Rd Investment LLC - ANC 1C	7/24/2015 Vol 62/31	7/20/2015 14:42:29
5558090	Confirmed	Notices, Opinions	Zoning Adjustment, Board of - Order No. 18906 - Endeia Enterprises and 1320 Penelope LLC - ANC 2B	7/24/2015 Vol 62/31	7/20/2015 14:41:43

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ZONING COMMISSION
District of Columbia
CASE NO. 14-11
EXHIBIT NO. 351
ZONING COMMISSION
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CASE NO. 14-11
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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF EMERGENCY and PROPOSED RULEMAKING
Z.C. Case No. 14-11
(Text Amendment – 11 DCMR)
(Technical Correction to Zoning Commission Order No. 14-11)

The Zoning Commission for the District of Columbia (Commission) pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2012 Repl.)), and the authority set forth in § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of amendments to §§ 330, 336 and 3202 of Title 11 (Zoning), of the District of Columbia Municipal Regulations (DCMR).

Z.C. Order No. 14-11 became effective on June 26, 2015. The Order, among other things, amended rules governing the conversion of residential buildings and non-residential buildings to apartment houses. The rules provided circumstances in which building permit applications to convert residential buildings would be processed under the rules in place on July 17, 2014. The amendments as published inadvertently failed to provide similar vesting rules for the conversion of non-residential buildings to apartment houses, although that was the Commission's intent.

The Office of Planning brought this information to the attention of the Commission through a report dated July 10, 2015, and recommended amendments to correct the omission, as well as other minor clarifying changes to the new rules. The Commission considered whether to propose the amendments at its public meeting held July 13th. In response to a question posed by the Commission, the Office of Planning indicated that there are at least two (2) applications for building permits that will be rejected and required to seek special exception relief because of the absence of a vesting rule. The Commission concluded that any delay in expanding the vesting rules as intended could result in immediate and significant harm to those and other similarly situated projects, and that this would prove detrimental to the goal of encouraging the adaptive reuse of non-residential buildings. For these reasons the Commission, found that the emergency adoption of these amendments is necessary for the "immediate preservation of the public ... welfare." (D.C. Official Code § 2-505(c) (2012 Repl.).)

Z.C. Order No. 14-11 included a table that summarized the circumstances under which a building permit will be processed under the Zoning Regulations in place on July 17, 2014. The following is an update of that table to indicate the added vesting that results from the Commission's emergency adoption of these amendments, with the added vesting shown in underlined and **bold type**:

Type of construction in R-4 Zone District	Circumstance	Date(s)
New one-family dwelling or flat, or an addition to: (a) an existing one-family dwelling; (b) an existing flat; or (c) an <u>existing apartment house</u>	Filing of building permit application (including a foundation-to-grade permit application) legally filed with, and accepted as complete by DCRA.	Prior to February 1, 2015
Conversion of a residential building to apartment house	Filing of building permit application (including a foundation-to-grade	Prior to July 17, 2014

Z.C. Notice of Emergency and Proposed Rulemaking

Z.C. Case No. 15-08

Page 2

	permit) legally filed with, and accepted as complete by the DCRA.	
<u>Conversion of a non-residential building to apartment house</u>	<u>Filing of building permit application (including a foundation-to-grade permit) legally filed with, and accepted as complete by DCRA.</u>	<u>Prior to June 26, 2015</u>
<u>Construction involving the conversion of a non-residential building to an apartment house</u> and all residential construction.	Project has an unexpired approval of variance or special exception by the BZA or an unexpired approval of a design or concept design by HPRB (or staff) or CFA.	Approved prior to the effective date of the amendments; or Approved after the effective date, but application filed prior thereto.

All pending building permit applications for other types of construction involving a non-residential building or structure will be processed in accordance with the Zoning Regulations in place on the date upon which the permit is issued.

The Commission also gives notice of its intent to adopt the following amendment to the Zoning Regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The emergency rule will expire November 10, 2015, which is the one hundred-twentieth (120th) day after the adoption of this rule, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Title 11 DCMR, ZONING, is amended as follows:

Chapter 3, R-2, R-3, R-4, AND R-5 RESIDENCE DISTRICT USE REGULATIONS, is amended as follows:

Section 330, R-4 DISTRICTS: GENERAL PROVISIONS, § 330.7 is amended to strike the phrase “or structure” in the introductory text and in paragraph (d) and insert the phrase “either structurally or through increasing the number of units,” in paragraph (h) so that the subsection reads as follows:

- 330.7 Conversion of an existing non-residential building or structure existing prior to May 12, 1958, to a residential building shall be permitted as a matter of right in the R-4 Zone District subject to the following conditions:
- (a) There is an existing non-residential building on the property at the time of filing an application for a building permit;
 - (b) The maximum height of any addition to the existing structure shall not exceed thirty-five feet (35 ft.);

- (c) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;
- (d) An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property;
- (e) A roof top architectural element original to the structure such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size;
- (f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;
- (g) Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator; and
- (h) An apartment house in an R-4 Zone District converted from a non-residential building prior to June 26, 2015, shall be considered a conforming use and structure, but shall not be permitted to expand either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment pursuant to §§ 3104.1 and 3104.3 and § 337.

Section 336, CONVERSION OF A RESIDENTIAL BUILDING EXISTING PRIOR TO MAY 12, 1958, TO APARTMENT HOUSES (R-4), § 336.13 is amended by adding a reference to new § 3202.10 and inserting the phrase “either structurally or through increasing the number of units” so that the subsection reads as follows:

336.13 An apartment house in an R-4 Zone District, converted from a residential building prior to June 26, 2015, or converted pursuant to §§ 3202.8, 3202.9, or 3202.10, shall be considered a conforming use and structure, but shall not be permitted to expand either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment pursuant to §§ 3104.1 and 3104.3 and this section.

Chapter 32, ADMINISTRATION AND ENFORCEMENT, § 3202, BUILDING PERMITS, is amended as follows:

Subsection 3202.4 is amended by adding a reference to new § 3202.10 so that the subsection reads as follows:

3202.4 Except as provided in §§ 3202.8, 3202.9, and 3202.10, any construction authorized by a permit may be carried to completion pursuant to the provisions of this title in effect on the date that the permit is issued, subject to the following conditions:

- (a) The permit holder shall begin construction work within two (2) years of the date on which the permit is issued; and
- (b) Any amendment of the permit shall comply with the provisions of this title in effect on the date the permit is amended.

A new § 3202.10 is added to read as follows:

3202.10 Notwithstanding § 3202.4, a building permit application (including a foundation-to-grade permit application) (the Application) for construction involving the conversion of an existing non-residential building to an apartment house in the R-4 Zone District shall be processed, and any work authorized by the building permit may be carried to completion pursuant to the provisions of the R-4 regulations in place as of July 17, 2014, if:

- (a) The Application was legally filed with, and accepted as complete by, the Department of Consumer and Regulatory Affairs prior to June 26, 2015:
or
- (b) The project has:
 - (1) An unexpired approval of a variance or special exception by the Board of Zoning Adjustment; or
 - (2) An unexpired approval of a design or concept design by the Historic Preservation Review Board (including a delegated approval made pursuant to 10-C DCMR §§ 319 through 321), or Commission of Fine Arts; and
 - (3) The vote to approve or the delegated action occurred:
 - (A) Prior to June 26, 2015; or
 - (B) On or after June 26, 2015, and the application was filed prior thereto.

Z.C. Notice of Emergency and Proposed Rulemaking
Z.C. Case No. 15-08
Page 5

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001, or signed electronic submissions may be submitted in PDF format to zcsubmissions@dc.gov. Ms. Schellin may also be contacted by telephone at (202) 727-6311 or by email: at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.