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ZONING COMMISSION
District of Columbia
CASE NO.14-11
EXHIBIT NO.359

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

AND

Z.C. ORDER NO. 14-11(1)
Z.C. Case No. 14-11
(Text Amendment – 11 DCMR)
(Technical Correction to Z.C. Order No. 14-11)
September 10, 2015

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.)), hereby gives notice of the adoption of amendments to §§ 330, 336, 401, and 3202 of Title 11 (Zoning), of the District of Columbia Municipal Regulations (DCMR). The final rulemaking is effective upon publication of this notice in the *D.C. Register*.

Z.C. Order No. 14-11 became effective on June 26, 2015. Z.C. Order No. 14-11, 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. Because of the potential adverse impact of the omission on pending developments, the Commission took emergency action to adopt the amendment and also authorized the publication of the rules in a notice of emergency and proposed rulemaking. Also, because the proposed amendments were technical in nature, the Commission determined that no public hearing was required, pursuant to the Consent Calendar provisions set forth in 11 DCMR § 3030 and, for that same reason, no referral to the National Capital Planning Commission was required.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on July 31, 2015, at 62 DCR 10432. No comments were received in response.

The Commission took final action to adopt the amendments at a special public meeting on September 10, 2015, at which time it included several minor revisions suggested by the Office of the Attorney General after consultation with the Office of Planning.

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CASE NO. 14-11
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The first revision permits an applicant for a building permit subject to the vesting provisions of § 3202.10 (grandfathered applicant) to choose to have that application processed under the amendments to the R-4 regulations as adopted in Z.C. Order 14-11. Subsection 3202.10 requires the Zoning Administrator to review permits submitted by grandfathered applicants under the R-4 rules in place on July 17, 2014.

However, a grandfathered applicant may not wish for that to happen if the conversion fails to meet the minimum lot area requirement of § 401.3. That is because the new rules permit special exception relief from the requirement, whereas the former rules require a variance. As proposed, § 3202.10 does not appear to allow a grandfathered applicant to choose by which set of R-4 rules to be bound.

The Commission believes that this choice should be permitted and therefore adds new § 3202.11. The new provision also allows a grandfathered applicant to amend a pending Board of Zoning Adjustment application to reflect the zoning relief needed under the R-4 rules now in effect, if being bound by those rules will be that applicant's choice when filing for a building permit. The Commission wishes to stress that § 3202.11 does not permit a non-grandfathered building permit applicant to choose to have the former rules applied, nor would it permit a grandfathered applicant to pick and choose among the two sets of R-4 rules.

A second set of revisions would clarify that the term "application" as used in § 3202.10(b)(3) refers to an application for a variance, special exception, design, or concept design and not an "Application" for a building permit that is referred to in the introductory paragraph of the subsection. Because this same language is used in §§ 3202.8 and 3202.9, the same revisions to those provisions are being made.

Finally, the Commission made a correction to its amendment of § 400.1 to clarify that a height of forty (40) feet is permitted in the R-4 zone for "new construction of 3 or more immediately adjoining one- or two-family row dwellings, built concurrently on separate record lots." The addition of the underlined phrase is needed because the term "row dwelling" could be misinterpreted as applying only to one- (1) family row dwellings. However, in R-4 zones both one- (1) family and two- (2) family dwellings may be constructed in a row and it was the Commission's intention to apply its amendment to both types of row dwellings.

The Commission made no other changes in the text as published in the notice of emergency and proposed rulemaking.

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 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 existing apartment house.	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 permit) legally filed with, and accepted as complete by the DCRA.	Prior to July 17, 2014
<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 and all residential construction.</u>	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, <u>except that a building permit applicant for conversion of a non-residential building to an apartment house may choose to have the application processed pursuant to the R-4 rules in place as of June 26, 2015.</u>

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.

Title 11 DCMR, ZONING, is amended as follows:

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

Section 330, R-4 DISTRICTS: GENERAL PROVISIONS, § 330.7, is amended to strike the phrase “building or structure shall” in the introductory text and replacing it with the phrase “building shall”, to strike the phrase “building or structure” in paragraph (d), and to 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 subsection.

Chapter 4, RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, Section 400, HEIGHT OF BUILDINGS OR STRUCTURES (R), § 400.1, is amended by striking from the “R-4” portion of its table the phrase “residential row dwellings” and inserting the phrase “one- or two-family row dwellings” in its place so that the subsection reads as follows:

400.1 Except as specified in this chapter and in Chapters 20 through 25 of this title, the height of buildings or structures in a Residence District shall not exceed that given in the following table:

ZONE DISTRICT	MAXIMUM HEIGHT (Feet)	MAXIMUM HEIGHT (Stories)
R-1-A, R-1-B, R-2, R-3, R-5-A	40	3
R-5-B	50	no limit
R-5-C	60	no limit
R-5-D	90	no limit
R-5-E	90	no limit
R-4 ZONE DISTRICT		
New construction of 3 or more immediately adjoining one- and two-family row dwellings built concurrently on separate record lots	40	3
All other structures	35	3

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.

Subsections 3202.8 and 3202.9 are amended by twice inserting the word “Permit” prior to the word “Application” in the introductory paragraphs and by twice inserting the phrase

“the variance, special exception, design, or concept design,” in paragraph (3) of each subsection so that the subsection reads as follows:

3202.8 Notwithstanding § 3202.4, a building permit application (including a foundation-to-grade permit application) (the Permit Application) for construction of a new one- (1) family dwelling or flat, or for construction of an addition or alteration to an existing one- (1) family dwelling or an existing flat not involving a conversion to an apartment house, or an addition or alteration to an existing apartment house in the R-4 Zone District shall be processed, and any work authorized by the 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 Permit Application was legally filed with, and accepted as complete by, the Department of Consumer and Regulatory Affairs prior to February 1, 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 105 DCMR §§ 319 through 321), or the Commission of Fine Arts; and
 - (3) The vote to approve the variance, special exception, design, or concept design or the delegated action occurred:
 - (A) Prior to June 26, 2015; or
 - (B) On or after June 26, 2015, and the application for the variance, special exception, design, or concept design was filed prior thereto.

3202.9 Notwithstanding § 3202.4, a building permit application (including a foundation-to-grade permit application) (the Permit Application) for construction involving the conversion of a one- (1) family dwelling or flat 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 Permit Application was legally filed with, and accepted as complete by, the Department of Consumer and Regulatory Affairs prior to July 17, 2014; 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 the Commission of Fine Arts; and
 - (3) The vote to approve the variance, special exception, design, or concept design or the delegated action occurred:
 - (A) Prior to June 26, 2015; or
 - (B) On or after June 26, 2015, and the application for the variance, special exception, design, or concept design was filed prior thereto.

New §§ 3202.10 and 3202.11 are added to read as follows:

- 3202.10** Notwithstanding § 3202.4 and except as provided in § 3202.11, a building permit application (including a foundation-to-grade permit application) (the Permit 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 Permit 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

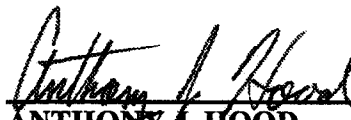
- (2) An unexpired approval of a design or concept design by the Historic Preservation Review Board (including a delegated approval made pursuant to 10-C DCMR §§ 319 through 321), or the Commission of Fine Arts; and
- (3) The vote to approve the variance, special exception, design, or concept design or the delegated action occurred:
 - (A) Prior to June 26, 2015; or
 - (B) On or after June 26, 2015, and the application for the variance, special exception, design, or concept design was filed prior thereto.


3202.11 Notwithstanding § 3202.10, an applicant for a building permit described in § 3202.10 may choose to have its building permit application processed in accordance with the R-4 regulations in place as of June 26, 2015 by indicating its choice in writing as part of its building permit application. A Board of Zoning Adjustment application may be amended to reflect the applicant's intended choice.

On July 13, 2015, upon a motion by Commissioner Cohen, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the publication of a notice of proposed rulemaking for this case, at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On September 10, 2015, upon a motion by Commissioner Miller, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order, at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt; Marcie I. Cohen to adopt by absentee ballot).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on September 25, 2015.


ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION


SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



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

AND

Z.C. ORDER NO. 14-11(1)

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(Text Amendment – 11 DCMR)

(Technical Correction to Z.C. Order No. 14-11)

September 10, 2015

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