

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of Zoning**



**Z.C. CASE NO.: 14-11**

As Secretary to the Commission, I hereby certify that on September 11, 2014 copies of this Z.C Notice of Public Hearing were mailed first class, postage prepaid or sent by inter-office government mail to the following

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ATTESTED BY:



**Sharon S. Schellin**  
**Secretary to the Zoning Commission**  
**Office of Zoning**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF PUBLIC HEARING**

**TIME AND PLACE:** Thursday, January 15, 2015, @ 6:30 p.m.  
Jerrily R. Kress Memorial Hearing Room  
441 4<sup>th</sup> Street, N.W. Suite 220-S  
Washington, D.C. 20001

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**CASE NO. 14-11 (Office of Planning – Text Amendments to Chapters 1, 3, and 4, Definitions, Maximum Height and Minimum Lot Dimension Requirements in Residence Zones, and R-4 Zone Use Permissions)**

**THIS CASE IS OF INTEREST TO ALL ANCs**

On June 24, 2014, the Office of Zoning received a report that served as a petition from the District of Columbia Office of Planning (OP) proposing several text amendments to the Zoning Regulations (11 DCMR). At a public meeting on July 17, 2014, the Zoning Commission set down this case for a public hearing, including alternative concepts offered by both the Office of Planning and the Zoning Commission. The OP Report served as the supplemental filing described in § 3013.1

Since the petition only sought changes to the text of the Zoning Regulations, and not the zoning map, the Commission's decision to hear the petition did not change the *status quo*. Any building permit application that has or will be filed during the pendency of this proceeding will be reviewed in accordance with the Zoning Regulations now in place unless or until amendments are adopted and become effective.

As is always the case, the Commission reserves the right not to adopt any or all of the proposed text and testimony arguing for the retention of the existing rules will be received and considered.

The proposed substantive amendments are summarized in the following table:

<b>Section</b>	<b>Summary Amendment</b>
199, Definitions	Amend the definition of a mezzanine so it would be considered a story
400.1 HEIGHT OF BUILDINGS OR STRUCTURES (R)	Reduce the maximum height in the R-4 zone from 40 feet to 35 feet
400.2 HEIGHT OF BUILDINGS OR STRUCTURES (R)	Adds a reference to proposed new § 400.23 to the list of provisions that allow the height limits to be exceeded. In this instance, proposed new § 400.23 through 400.25 would allow a height of 40 feet by special exception.
400.23 through 400.25 HEIGHT OF BUILDINGS OR STRUCTURES (R)	New subsections to authorize special exception relief to permit an additional five feet in height in the R-4 zone and establish the criteria to be met by an applicant.
400.7 HEIGHT OF BUILDINGS OR STRUCTURES (R)	Limit the height of a roof structure on a one-family dwelling or flat in all residence zones to ten feet above the roof.

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330 5 (e) R-4 DISTRICTS GENERAL PROVISIONS	The provision would be repealed thereby eliminating the matter of right use of an apartment house converted from a building or structure existing prior to May 12, 1958
336 CONVERSIONS OF NON-RESIDENTIAL BUILDINGS OR STRUCTURES TO APARTMENT HOUSES (R-4)	A new section authorizing a special exception to permit the conversion of a non-residential building or structure existing prior to May 12, 1958 to an apartment house and establishing the criteria to be met by the applicant. Because the conversion of a residential building to an apartment house would not be a permitted use nor allowed by special exception, such conversion could only be permitted by variance. A further option would be to expand the special exception to encompass the conversion of all buildings, whether residential or non-residential. The proposed section includes a provision providing that existing apartment houses converted from residential uses would be deemed conforming, but not permitted to expand without the approval of the BZA. Existing apartment houses converted from residential uses would still be deemed conforming by virtue of the definition of "Nonconforming Use" at 11 DCMR 199.1

At the meeting, OP amended its recommendation to include two alternative amendments that the Zoning Commission set down, and are advertised in concept

<u>Alternative 1 (OP)</u> CHAPTER 26., INCLUSIONARY ZONING	If the Commission decides to continue to permit the conversion of a residential structure to an apartment house, either by right or by special exception <sup>1</sup> , OP proposes such conversions be subject to Inclusionary Zoning requirements as follows <ol style="list-style-type: none"> <li>1) If the conversion complies with the requirement of § 401.3 that there be at least 900 square feet of lot area per dwelling unit ("900 SF Requirement"), the fourth unit and all units beyond four would be subject to IZ at 60% Area Median Income (AMI), or</li> <li>2) If the conversion is enabled by zoning relief to the 900 SF Requirement, all units beyond the permitted two, would be subject to IZ at 60% AMI</li> </ol>
<u>Alternative 2 (OP)</u> 401.12 MINIMUM LOT DIMENSIONS (R)	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, with no limit on the number of units that could be permitted

After consideration of the OP proposals, the Commission took action to also set down other alternatives for public comment:

<u>Alternative 3 (ZC)</u> 401.13 MINIMUM LOT DIMENSIONS (R)	Continue to permit the matter of right conversions of all structures to apartment houses subject to the 900 SF of land per unit requirement, but permit special exception relief from the 900 SF requirement for an apartment house conversion of no more than four units
<u>Alternative 4 (ZC)</u> 401.13 MINIMUM LOT DIMENSIONS (R)	Continue to permit the matter of right conversions of all structures to apartment houses subject to the 900 SF of land per unit requirement, but permit special exception relief from the 900 SF requirement with no limit on the number of units that could be permitted.

<sup>1</sup> Although OP's proposal would disallow the conversion of residential structures to apartment houses and only permit the conversion of non-residential structures by special exception, testimony favoring the expansion of this special exception to permit the conversion of residential structures would be within the permitted scope of this hearing

Public comment is requested on the following amendments to the Zoning Regulations and the alternatives. New text is shown in **bold** type and text to be deleted is shown in ~~strike through~~.

1. *Amendment pertaining to mezzanines.*

Amend § 199, DEFINITIONS as follows:

**Mezzanine** - a floor space within a story between its floor and the floor or roof next above it and having an area of not more than one-third (1/3) of the area of the floor immediately below. A mezzanine shall ~~not~~ be considered a story in determining the maximum number of permitted stories in a ~~Residential zone~~ **Residence district**.<sup>2</sup>

2. *Amendments pertaining to the maximum height of buildings and structures in the R-4 District.*

Amend § 400.1, HEIGHT OF BUILDINGS OR STRUCTURES (R), as follows:

Amend § 400.1 AND 400.2 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 (Stories)	MAXIMUM HEIGHT (Stories)
R-4	3540	3
R-1-A,R-1-B,R-2 R-3,R-4,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

400.2 Except as provided in § 2510, the height of buildings or structures specified in § 400.1 may be exceeded as provided in §§ 400.3 through 400.13 **and § 400.23 through 400.25.**

By adding new § 400.23 through 400.25 as follows:

**400.23 In an R-4 District, a building or other structure may be erected to a height not exceeding forty feet (40 ft.) by 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 and 400.25.**

**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:**

<sup>2</sup> This is a technical change requested by the Office of the Attorney General to make the reference consistent with the terminology used in Chapter 4.

- (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) 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.

**400.24** 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.

**400.25** 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.

*3 Amendments pertaining to pertaining to roof structures in residence zones*

Amend § 400.7 and 400.8 as follows

- 400.7** If housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows
- (a) It shall meet the requirements of § 411,
  - (b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located,
  - (c) ~~It shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), height of the housing.~~ For one-family detached, semi-detached and row dwellings, and flats, it shall not exceed ten feet (10 ft.) in height above the roof upon which it is located;
  - (d) For all other buildings and structures it shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located; and
  - (e) For all buildings and structures mechanical equipment shall not extend above the permitted maximum height of the housing, as specified in paragraphs (c) and (d) above.

400 8           Housing for mechanical equipment, a stairway, or elevator penthouse **that comply with § 400.7** may be erected to a height in excess of that authorized in the district in which it is located

4           *Amendments pertaining to the conversion of buildings or structures in the R-4 District to apartment houses*

Amend § 330, R-4 DISTRICTS: GENERAL PROVISIONS, by repealing § 330 5 (e) as follows

330 5 1           The following uses shall be permitted as a matter of right in an R-4 District

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

If this use permission is retained, Alternative 1 (OP) would add a requirement for the conversion of residential structures that either: 1) the fourth unit and all units beyond four would be subject to IZ at 60% Area Median Income (AMI) if the conversion complies with the 900 SF Requirement, or 2) all units beyond the permitted two, would be subject to IZ at 60% AMI if the conversion is enabled by zoning relief from the 900 SF Requirement. It would also necessitate the amendment of Chapter 26, Inclusionary Zoning to implement the requirement

Add a new § 336 as follows

**336           CONVERSIONS OF NON-RESIDENTIAL BUILDINGS OR STRUCTURES TO APARTMENT HOUSES (R-4)**

**336.1           Subject to the lot area requirement of § 401.3, a non-residential building or other structure in an R-4 District existing before May 12, 1958 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 §§ 336.2 through 336.9.**

**336.2           The building was not built to be part of a residential row of homes.**

**336.3           If the conversion involves an addition, 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; and**
- (c)       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.

If this section is adopted, Alternative 1 (OP) would add a requirement that either 1) the fourth unit and all units beyond four would be subject to IZ at 60% Area Median Income (AMI) if the conversion complies with the 900 SF Requirement, or 2) all units beyond the permitted two, would be subject to IZ at 60% AMI if the conversion is enabled by a variance or special exception (as proposed in Alternative 2 (OP)) from the 900 SF Requirement. It would also necessitate the amendment of Chapter 26, Inclusionary Zoning to implement the requirement.

Amend § 401, MINIMUM LOT DIMENSIONS (R), as follows

Amend the table appended to § 401.3 to modify the R-4 provisions pertaining to the conversion of a building or structure to an apartment house as follows

- 401.3 Except as prescribed in the other provisions of this chapter, the minimum dimensions of a lot in a Residence District shall be as set forth in the following table

ZONE DISTRICT AND STRUCTURE	MINIMUM LOT AREA (square feet)	MINIMUM WIDTH OF LOT (feet)
R-4 Conversion of a <u>non-residential</u> building or structure <u>pursuant</u> <u>§401.12</u> to an apartment house	900/apartment or bachelor apartment	n/a

Amend § 401.11 to note the proposed repeal of §330.5 (e) and the proposed adoption of new § 336 as follows

- 401.11 An apartment house in an R-4 District, whether converted from a building or structure pursuant to former § 330.5 (e) or existing § 336 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.

Both Alternative 2 (OP) and Alternative 3 (ZC) propose permitting special exception relief from the requirement that there be a minimum lot area of 900 square feet for each dwelling unit in a proposed

conversion The Commission would make this special exception relief available even if no change is made to existing § 330 5 (e), which permits the matter of right conversion of any type of building or structure to an apartment house, subject to the lot area per dwelling unit minimum OP proposes to repeal that provision, and to only permit the conversion of non-residential buildings and only by special exception Thus, its alternative to allow special exception relief from the 900 SF Requirement would only be available to non-residential properties seeking the separate special exception relief to convert to an apartment house

Both Alternatives could be codified by adding a new § 401 12 as follows

401 12 The Board of Zoning Adjustment is authorized to grant special exception relief from the lot dimension requirement of § 401.3 applicable to the conversion of a [non-residential] building or structure to an apartment house in the R-4 District

The bracketed text would be included if the Alternative 2 (OP) was accepted and removed if Alternative 3 (ZC) was approved instead.

Proposed amendments to the Zoning Regulations and Map of the District of Columbia are authorized pursuant to the Zoning Act of 1938, approved June 20, 1938 (52 Stat 797, D C Official Code § 6-641 01 *et seq.*)

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning The Commission will impose time limits on testimony presented to it at the public hearing

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record

Information should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, Suite 210, 441 4<sup>th</sup> Street, N W , Washington, D C. 20001 Please include the number of the particular case and your daytime telephone number **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

**FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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