

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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

ZONING COMMISSION ORDER NO. 14-11A
Z.C. Case No. 14-11A

(Minor Modification to Z.C. Order No. 14-11 – Text Amendment to Chapters 1, 3, 4, 26,
31, and 32, Maximum Height and Minimum Lot Dimension Requirements and Use
Permissions in the R-4 District)

July 25, 2016

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of the adoption of amendments to the current version and to the adopted, but not yet effective version of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (DCMR)) to make minor modifications to certain amendments made by Z.C. Order No. 14-11 (Order).

The Order, which took the form of a Notice of Final Rulemaking, adopted amendments to the currently effective version of the Zoning Regulations (Current Regulations) concerning the maximum height, minimum lot dimension requirements, and use permissions in the R-4 Zone District. The substance of the amendments was later included by the Commission in the version of Title 11 DCMR that will become effective on September 6, 2016 (2016 Regulations), which was adopted by the Commission through a Notice of Final Rulemaking published in Part II of the March 4, 2016 edition of the *District of Columbia Register*.

Among other things, the Order amended the R-4 regulations to require special exception approval to convert buildings existing prior to May 12, 1958 to apartment houses. The minor modification adds a special exception condition prohibiting an addition from extending further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property. The modification also adds this condition to the three (3) existing conditions that may be waived, and increases the number of such waivable conditions from two (2) to three (3).

The Commission makes these amendments in response to a January 13, 2016 correspondence from six (6) individuals, which noted that the condition appeared in the notice of proposed rulemaking for Z.C. Case No. 14-11, but did not appear in the final rulemaking notice. At its public meeting of March 28, 2016, the Commission, after reviewing a report submitted by the Office of Planning, voted to propose this modification. In doing so, the Commission noted that the Notice of Proposed Rulemaking included the condition as part of a provision that would have permitted the conversion of residential buildings to apartment houses as a matter of right. At final action, the Commission decided that such conversions should only be permitted by special

441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.zoningdc.com

ZONING COMMISSION
District of Columbia
CASE NO.14-11A
EXHIBIT NO.5

exception. The Commission chose not to add the condition to the special exception criteria because it believed that the Board of Zoning Adjustment would be required to consider the adverse impact of an addition that extended past the furthest rear wall of an adjacent building. However, the Commission concluded that it now would be appropriate to add the condition, subject to the waiver discussed above.

Because the Zoning Commission is merely adding a waivable standard for the Board of Zoning Adjustment to apply in these circumstances, the Commission concluded that the modification is minor and therefore could be made without a hearing as provided by § 3030 of the Commission's rules.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on June 17, 2016, at 63 DCR 8527. No comments were received in response.

The Commission took final action to adopt the amendments at a public meeting on July 25, 2016, making no changes to the proposed text. As to the Current Regulations, the final rulemaking is effective upon publication of this notice in the *D.C. Register*. As to the 2016 Regulations, the Final Rulemaking shall become effective on September 6, 2016.

Current Regulations:

Chapter 3, R-2, R-3, R-4, AND R-5 RESIDENCE DISTRICT USE REGULATIONS, § 336, CONVERSION OF A RESIDENTIAL BUILDING EXISTING PRIOR TO MAY 12, 1958, TO APARTMENT HOUSES (R-4), is amended to prohibit an addition from extending further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property, to allow the prohibition to be modified or waived, to increase the number of waivable conditions from two (2) to three (3), and to make other conforming changes including the renumbering of subsections so that the entire section reads as follows:

336 CONVERSION OF A RESIDENTIAL BUILDING EXISTING PRIOR TO MAY 12, 1958, TO APARTMENT HOUSES (R-4)

336.1 Conversion of an existing residential building existing prior to May 12, 1958, to an apartment house shall be permitted as a special exception in the R-4 District if approved by the Board of Zoning Adjustment under § 3104, subject to §§ 336.2 through 336.14.

336.2 The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit under § 3104, subject to §§ 336.3 through 336.14.

336.3 The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Chapter 26, Inclusionary Zoning, including the set aside requirement set forth at § 2603.9.

- 336.4 There must be an existing residential building on the property at the time of filing an application for a building permit.
- 336.5 There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit.
- 336.6 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.
- 336.7 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 Board of Zoning Adjustment.
- 336.8 A roof top architectural element original to the house 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.
- 336.9 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.
- 336.10 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 additions, 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 or alley.
- 336.11 In demonstrating compliance with § 336.10, 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.
- 336.12 The Board of Zoning Adjustment 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, or to maintain the general character of a block.

- 336.13 The Board of Zoning Adjustment may modify or waive not more than three (3) of the requirements specified in §§ 336.6 through 336.9; provided, that any modification or waiver granted pursuant to this section shall not be in conflict with § 336.10.
- 336.14 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.

2016 Regulations:

Section 320, SPECIAL EXCEPTION USES (RF), of Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, § 320.2, of Subtitle U of Title 11 DCMR, ZONING, is amended to prohibit an addition from extending further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property, to allow the prohibition to be modified or waived, to increase the number of waivable conditions from two (2) to three (3), and to make other conforming changes including the renumbering of subsections and corrections to align the language with the text approved by of Z.C. Case No. 14-11 so that the entire subsection reads as follows:

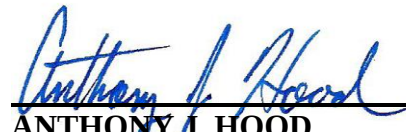
- 320.2 Conversion of an existing residential building existing prior to May 12, 1958, to an apartment house shall be permitted as a special exception in an RF-1, RF-2, or RF-3 zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the following conditions:
- (a) The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit to a maximum height of forty feet (40 ft.) provided the additional five feet (5 ft.) is consistent with Subtitle U §§ 320.2(f) through 320.2(i);
 - (b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6;
 - (c) There must be an existing residential building on the property at the time of filing an application for a building permit;
 - (d) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;

- (e) 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;
- (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 Board of Zoning Adjustment;
- (h) A roof top architectural element original to the house 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;
- (i) Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:
 - (1) The light and air available to neighboring properties shall not be unduly affected;
 - (2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and
 - (3) The conversion and any associated additions, 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 or alley;
- (j) In demonstrating compliance with Subtitle U § 320.2(i) 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;
- (k) The Board of Zoning Adjustment 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, or to maintain the general character of a block;
- (l) The Board of Zoning Adjustment may modify or waive not more than three (3) of the requirements specified in Subtitle U §§ 320.2(e) through § 320.2(h) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle U § 320.2(i); and

- (m) An apartment house in an RF-1, RF-2, or RF-3 zone, converted from a residential building prior to June 26, 2015, or converted pursuant to Subtitle A §§ 301.9, 301.10, or 301.11 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 Subtitle X, Chapter 9, and this section.

On July 25, 2016, upon a motion by Chairman Hood, as seconded by Vice-Chair Cohen, the Zoning Commission **APPROVED** the rulemaking and **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Michael G. Turnbull to approve and adopt; Peter G. May to approve and 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 August 26, 2016 for the Current Regulations, and September 6, 2016 for the 2016 Regulations.



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**

ZONING COMMISSION ORDER NO. 14-11A

Z.C. Case No. 14-11A

**(Minor Modification to Z.C. Order No. 14-11 – Text Amendment to Chapters 1, 3, 4, 26, 31,
and 32, Maximum Height and Minimum Lot Dimension Requirements and Use
Permissions in the R-4 District)**

July 25, 2016

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