

MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: Brandice Elliott, Development Review Specialist
JLS
Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation

DATE: December 29, 2020

SUBJECT: ZC Case 20-25 – Public Hearing Report for a Proposed Text Amendment to Clarify Apartment Houses in the RF Zones; Revisions to Subtitle C § 204.7, Subtitle U §§ 301.1 and 301.5, and Subtitle X §1001.3

REQUEST TO ACCEPT LATE REPORT

This report concerning Zoning Commission Case 20-25 is being submitted less than ten (10) days prior to the Zoning Commission’s public hearing. The Office of Planning respectfully requests that the Commission waive its rule and accept this report into the record.

I. BACKGROUND

At its October 29, 2020 public meeting, the Zoning Commission took emergency action to adopt the text amendment and to authorize immediate publication of the Notice of Proposed Rulemaking for text amendment case 20-25. The text amendment clarifies that existing, legally constructed apartment houses in the RF zones are conforming uses that may be expanded as a matter-of-right, provided that there is 900 square feet of land area for each existing and new dwelling unit.

II. RECOMMENDATION

The Office of Planning recommends that the Zoning Commission **approve** the proposed text amendments, as provided in draft form in Section IV of this report. The proposal would *not be inconsistent* with the Comprehensive Plan.

III. CHANGES TO THE APPLICATION SINCE SET-DOWN

Minor organizational changes have been made to Subtitle U §301.5 that are intended to clarify that purpose-built apartment houses are considered conforming uses and may be expanded. Converted apartment houses require BZA review as specified further in the section in order to expand or renovate.

IV. PROPOSED TEXT AMENDMENTS

The proposed text amendments are as follows. Text in **bold underline** is new proposed text; the text in **bold strikethrough** is a proposed deletion.

I. Amendments to Subtitle C, GENERAL RULES

Subsection 204.7 of § 204, NONCONFORMING USE, of Chapter 2, NONCONFORMITIES, of Subtitle C, GENERAL RULES, is proposed to be amended, to read as follows:

204.7 Ordinary repairs, alterations, or modernizations may be made to a structure or portion of a structure devoted to a nonconforming use. Structural alterations shall not be allowed, except those required by other municipal law or regulation; provided that structural alterations shall be permitted to a lawfully existing, nonconforming flat or apartment house located in a Residential House (R) zone, ~~or to a lawfully existing, nonconforming apartment house located in a Residential Flat (RF) zone.~~

II. Amendments to Subtitle U, USE PERMISSIONS

Subsections 301.1 and 301.5 of § 301, MATTER-OF-RIGHT USES (RF), of Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, of Subtitle U, USE PERMISSIONS, is proposed to be amended, to read as follows:

301.1 The following uses shall be permitted as a matter of right in an RF zone subject to any applicable conditions:

- (a) Any use permitted in the R zones ...¹
- (b) Residential **flats uses** with a maximum number of principal dwelling units **per lot** as follows:

TABLE U § 301.1(b): MAXIMUM NUMBER OF PRINCIPAL DWELLING UNITS

RF Zone	Number of Principal Dwelling Units
RF-1	2
RF-2	2
RF-3	2
RF-4	3
RF-5	4

- (c) A permitted principal dwelling unit ...

301.5 An apartment house in an RF-1, RF-2, or RF-3 zone that **was constructed as an apartment house prior to May 12, 1958, or that was lawfully constructed as an apartment house prior to August 7, 1981, in compliance with the then-applicable**

¹ The use of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

zoning regulations, shall be considered a conforming use and may renovate or expand, provided that:

(a) The apartment house has not been:

~~(a) (1) Converted prior to September 6, 2016;~~

~~(b) (2) Converted pursuant to Subtitle U §§ 301.2 or 320.2; or~~

~~(c) (3) Expanded ~~expanded~~ pursuant to a special exception approved by the Board of Zoning Adjustment per Subtitle U §§ 301.4, 320.2, or 320.4;~~

(b) An apartment house with less than nine hundred square feet (900 sq. ft.) of lot area per existing dwelling unit does not increase the number of dwelling units; and

(b) An apartment house with more than nine hundred square feet (900 sq. ft.) of lot area per existing dwelling unit may only add additional dwelling units if the apartment house has ~~may not renovate or expand so as to increase the number of dwelling units~~ provided that there shall be a minimum of nine hundred square feet (900 sq. ft.) of lot area for each existing and new dwelling unit.

III. Amendments to Subtitle X, GENERAL PROCEDURES

Paragraph (f) of § 1001.3 of § 1001, VARIANCE TYPES, of Chapter 10, VARIANCES, of Subtitle X, GENERAL PROCEDURES, is proposed to be amended, to read as follows:

1001.3 Examples of area variances are requests to deviate from:

(a) Requirements that affect the size ...

...

(f) Preconditions to the establishment of a special exception use ~~including, but not limited to, the minimum nine hundred square feet (900 sq. ft.) of land area per dwelling unit required by Subtitle U § 320.2(b) applicable to the conversion of a building to an apartment house as permitted by Subtitle U § 320.2;~~ provided, that the variance would not cause the proposed use to meet the definition of a more intense use; **and**

(g) Notwithstanding paragraph (f) of this section, the minimum nine hundred square feet (900 sq. ft.) of land area per dwelling unit required by Subtitle U §§ 301.2(b), 301.5, and 320.2(b).

V. ANALYSIS

In its report dated October 27, 2020 and located at Exhibit 2 in the record, OP provided background information detailing the purpose of the text amendment. After consulting with the Zoning

Administrator (ZA) and Office of the Attorney General (OAG), OP worked with both offices to draft a text amendment that would clarify that existing apartment houses that were legally constructed are conforming uses.

At the time the previous report was filed, there were several cases pending before the Board of Zoning Adjustment seeking to expand existing apartment houses. These applications sought area variance relief from the 900 square feet of land area per unit provision so that the number of units in an existing apartment house in the RF zone could be increased without expanding the building footprint.

Although the apartment houses were legally constructed prior to the 1958 Zoning Regulations, or legally constructed with the approval of a special exception prior to 1981, Subtitle C §204.1 suggested that the internal expansion of an existing apartment house, even if it was conforming at the time it was constructed, would require a use variance for increasing the intensity of the use. Therefore, the applications before the BZA would have required use variances for the expansion in addition to area variances for the minimum land area per unit.

The purpose of the text amendment is to clarify that existing apartment houses legally constructed in the RF zones are considered conforming uses in order to clarify that use variances are not required.

In addition, a small amendment to Subtitle U §301.1 replaces “flats” with “units,” as some RF zones permit more than two principle dwelling units.

VI. PLANNING CONTEXT

a. COMPREHENSIVE PLAN

The proposed text amendment would further Comprehensive Plan policy objectives, particularly with respect to policies within the Housing Citywide Element. The proposed text amendment also would be not inconsistent with the Comprehensive Plan Future Land Use Map and Generalized Policy Map.

Policy H-1.1: Expanding Housing Supply *Expanding the housing supply is a key part of the District’s vision to create successful neighborhoods. Along with improved transportation and shopping, better neighborhood schools and parks, preservation of historic resources, and improved design and identity, the production of housing is essential to the future of our neighborhoods. It is also a key to improving the city’s fiscal health. The District will work to facilitate housing construction and rehabilitation through its planning, building, and housing programs, recognizing and responding to the needs of all segments of the community. The first step toward meeting this goal is to ensure that an adequate supply of appropriately zoned land is available to meet expected housing needs. 503.1*

Policy H-1.1.3: Balanced Growth *Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing. 503.4*

Policy H-1.5.1: Land and Building Regulations *Ensure that the District’s land regulations, including its housing and building codes, its zoning regulations, its construction standards, and its permitting fees, enable the production of housing for all income groups. Avoid regulations which make it prohibitively expensive or difficult to construct housing. 507.2*

The text amendment would allow for minor increases in housing supply that would have less impact than new construction, as it would be located in existing apartment houses. Further, it allows for

additional housing in predominantly moderate density neighborhoods that are well-served by public transportation and/or are located along major corridors. The amendment provides clarification regarding the expansion of existing apartment houses, which removes a barrier to housing.

VII. COMMUNITY COMMENTS

Since emergency action was taken on this text amendment, OP has communicated further with ANC 6C regarding apartment house expansions in general. OP provided the following information summarizing the differences between types of apartment house expansions and their corresponding relief:

Type of Apartment House Expansion	Section	Special Exception	Variance
Conversion of a <i>residential building</i> into an apartment house.	U-320.2	Required when there is 900 sq. ft. of land area per dwelling unit.	Area variance is required when there is less than 900 sq. ft. of land area per dwelling unit.
Conversion of a <i>non-residential building</i> into an apartment house.	U-320.3	Required when there is less than 900 sq. ft. of land area per dwelling unit. (Matter of right when 900 sq. ft. of land area per dwelling unit provided.)	--
Expansion of apartment houses that were already <i>converted from non-residential buildings to apartment houses</i> prior to June 26, 2016.	U-320.4	Required to renovate or expand so as to increase the number of dwelling units.	--