

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

Z.C. Case No. 20-25

Office of Planning

**(Text Amendment to Subtitles C, U, and X to Clarify Conforming Use Status of
Lawfully Constructed Apartment Houses in the RF zones)**

October 29, 2020

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 (2018 Repl.)), and pursuant to § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of its amendment on an emergency basis, as well as its intent to amend on a permanent basis, the following provisions of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified) (specific text at end of this notice):

- Subtitle C, General Rules - § 204¹
- Subtitle U, Use Permissions - § 301
- Subtitle X, General Procedures - § 1001

Setdown

On October 27, 2020, the Office of Planning (OP) filed a petition to the Commission proposing the text amendment to clarify that:

- Existing, legally constructed apartment houses in the RF zones are conforming uses that may be renovated and expanded as a matter-of-right, provided that there is nine hundred square feet (900 sq. ft.) of land area for each existing and new dwelling unit or that the number of existing units are not increased if there is less than nine hundred square feet (900 sq. ft.) of land area for each existing unit; and
- Variance relief from the nine hundred square feet (900 sq. ft.) per unit rule is an area variance.

OP requested that the Commission:

- Consider taking emergency action to adopt the text amendment;
- Set the petition down for a public hearing;
- Authorize an immediate publication of proposed rulemaking for the text amendment; and
- Authorize a thirty (30)-day notice period prior to the public hearing by granting a waiver under Subtitle Z § 101.9 from the forty (40)-day requirement of Subtitle Z § 502.1 for good cause because the conforming status of these lawfully existing apartment houses had been unintentionally affected by the amendment of the regulations on nonconforming uses as part of the 2016 rewrite of the Zoning Regulations.

¹ All references are made to the text adopted by the Commission in Z.C. Case No. 19-21 as published in the Notice of Final Rulemaking in the November 13, 2020 *D.C. Register*.

Emergency & Proposed Action

At its October 29, 2020 public meeting, the Commission heard testimony from OP in favor of the amendment. At the close of the meeting, the Commission voted to grant's OP's requests to:

- Take emergency action to adopt the text amendment;
- Set the petition down for a public hearing;
- Authorize an immediate publication of proposed rulemaking for the text amendment; and
- Authorize a thirty (30)-day notice period prior to the public hearing by granting a waiver under Subtitle Z § 101.9 from the forty (40)-day requirement of Subtitle Z § 502.1 for good cause as detailed below.

The Commission concluded that taking emergency action to adopt the proposed text amendment is necessary for the “immediate preservation of the public ... welfare,” as authorized by § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)(2016 Repl.)), because it corrects the unintended consequences of a change in the regulations on nonconforming uses adopted in the Zoning Regulations adopted by the Commission in 2016.

VOTE (October 29, 2020): **5-0-0** Anthony J. Hood, Peter G. May, Robert E. Miller, Peter A. Shapiro, and Michael G. Turnbull to **APPROVE**)

Emergency Action

The emergency rule is effective as of the Commission's October 29, 2020, vote and will expire on February 24, 2021, 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* that supersedes this emergency rule, whichever occurs first.

Proposed Action

The Commission hereby also gives notice of its intent to adopt on a permanent basis the following text 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*.

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, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may 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.

The complete record in the case can be viewed online at the Office of Zoning's Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

EMERGENCY AND PROPOSED TEXT AMENDMENT

The following amendments to the Zoning Regulations are adopted on an emergency basis, and are proposed for the Commission’s final consideration (additions are shown in **bold** and underlined text and deletions are shown in **bold** and ~~strikethrough~~ text):

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 ...²
- (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

² 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.

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

...

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