

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

TIME AND PLACE: **Thursday, January 7, 2021, @ 4:00 p.m.**
**WebEx or Telephone – Instructions will be provided on
the OZ website by Noon of the Hearing Date¹**

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

**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)**

THIS CASE IS OF INTEREST TO ALL ANCs

Setdown

On October 27, 2020, the Office of Planning (“OP”) filed a petition to the Zoning Commission (the “Commission”) proposing the following amendments to the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references herein refer unless otherwise specified):

- Subtitle C, General Rules - § 204²
- Subtitle U, Use Permissions - § 301
- Subtitle X, General Procedures - § 1001

OP proposed 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 900 square feet 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 900 square feet of land area for each existing unit; and
- Variance relief from the 900 square feet 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 30-day notice period prior to the public hearing by granting a waiver under Subtitle Z § 101.9 from the 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 Anyone who wishes to participate in this case but cannot do so via WebEx or telephone, may submit written comments to the record. (See p. 5, *How to participate as a witness – written statements*.)

² 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 30-day notice period prior to the public hearing by granting a waiver under Subtitle Z § 101.9 from the 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.

The emergency rule is effective as of the Commission's October 29, 2020 vote and will expire on February 26, 2021, which is the 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.

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>.

PROPOSED TEXT AMENDMENT

The proposed amendments to the text of the Zoning Regulations are as follows (text to be deleted is marked in ~~bold and strikethrough~~ text; new text is shown in **bold and underline** 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 ...³
- (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 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**

³ 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.

- (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).**

Proposed amendments to the Zoning Regulations of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01, *et seq.* (2018 Repl.)).

This public hearing will be conducted in accordance with the rulemaking case provisions of Subtitle Z, Chapter 5, as well as the text adopted by the Commission on October 25, 2020, in Z.C. Case No. 20-11, as published in the Notice of Final Rulemaking, published in the October 30, 2020, *D.C. Register*.

How to participate as a witness – oral presentation

Interested persons or representatives of organizations may be heard at the virtual public hearing. All individuals, organizations, or associations wishing to testify in this case are **strongly encouraged to sign up to testify at least 24 hours prior to the start of the hearing** on OZ's website at <https://dcoz.dc.gov/> or by calling Donna Hanousek at (202) 727-0789 in order to ensure the success of the new virtual public hearing procedures.

The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most

important points. The Commission must base its decision on the record before them. Therefore, it is **required that all written testimony be submitted to the record at least 24 hours prior to the start of the hearing, unless approved by the Commission upon request to be introduced at the public hearing.** The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

- | | | |
|----|---------------|----------------|
| 1. | Organizations | 5 minutes each |
| 2. | Individuals | 3 minutes each |

How to participate as a witness – written statements

Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record, **provided that all written comments be submitted to the record at least 24 hours prior to the start of the hearing, unless approved by the Commission upon request to be introduced at the public hearing.** The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by e-mail to zcsubmissions@dc.gov. Please include the case number on your submission. If you are unable to use either of these means of submission, please contact Donna Hanousek at (202) 727-0789 for further assistance.

“Great weight” to written report of ANC

Subtitle Z § 505.1 provides that the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information that the report must contain. Pursuant to Subtitle Z § 505.2, an ANC that wishes to participate in the hearing must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

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

ANTHONY J. HOOD, ROBERT E. MILLER, PETER A. SHAPIRO, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

Do you need assistance to participate? If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or Zelalem.Hill@dc.gov five days in advance of the meeting. These services will be provided free of charge.

¿Necesita ayuda para participar? Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Avez-vous besoin d'assistance pour pouvoir participer ? Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

참여하시는데 도움이 필요하세요? 특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312 로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

您需要有人帮助参加活动吗? 如果您需要特殊便利设施或语言协助服务(翻译或口译)·请在见面之前提前五天与 Zee Hill 联系·电话号码 (202) 727-0312, 电子邮件 Zelalem.Hill@dc.gov 这些是免费提供的服务。

Quý vị có cần trợ giúp gì để tham gia không? Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

ለሙሰተፍ ዕርዳታ ያስፈልግዎታል? የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።