

ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF THIRD EMERGENCY AND PROPOSED RULEMAKING

Z.C. Case No. 21-04

(Office of Planning – Text Amendment to Subtitle C to Clarify and Allow Special Exception Relief from Size and Layout Requirements for Vehicle Parking)

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 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 intent to amend 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), with the proposed text at the end of this notice: Subtitle C, General Rules – §§ 712, 714.

SETDOWN

On February 15, 2021, the Office of Planning (OP) filed a petition (Petition) to the Commission proposing the text amendment to:

- Increase the number of required parking spaces that may be compact-sized instead of full-sized;
- Clarify the screening requirements for surface parking; and
- Authorize special exception relief from the minimum size and layout requirements for vehicle parking under certain circumstances to parallel the current special exception relief from the number of required vehicle parking spaces.

These proposed changes would allow an applicant who can partly comply with the vehicle parking requirements with some dimensional changes to seek that partial relief instead of seeking special exception relief from the number of vehicle parking spaces that would result in providing less parking.

EMERGENCY & PROPOSED ACTION

At its February 25, 2021, public meeting, the Commission heard testimony from OP in favor of the Petition. At the close of the meeting, the Commission voted to grant the OP's request to:

- Take emergency action to adopt the Petition with flexibility to work with the Office of the Attorney General (OAG) to refine the proposed text and add any conforming language as necessary;
- Set the Petition down for a public hearing;
- Authorize an immediate publication of proposed rulemaking for the Petition; 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 Petition 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 encourages applicants to seek partial instead of full relief

from the vehicle parking requirements by authorizing special exception relief from the dimensional requirements of parking spaces in addition to the current special exception relief limited to only the number of parking spaces.

VOTE (February 25, 2021): **5-0-0** (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**)

The emergency rule was effective as of the Commission's February 25, 2021, vote until it was superseded by the Commission's revised emergency action on May 10, 2021, as discussed below.

OZ published a Notice of Emergency and Proposed Rulemaking (NOEPR) in the March 19, 2021, *D.C. Register* (68 DCR 002938, *et seq.*).

The Commission received only one comment in response to the NOEPR from ANC 1A, as discussed below.

National Capital Planning Commission (NCPC)

The Commission referred the Petition to NCPC on March 9, 2021, for the thirty- (30) day review period required by § 492(b)(2) of the District Charter (Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(b)(2)); D.C. Official Code 6-641.05 (2018 Repl.).

NCPC filed an April 1, 2021 report, stating that NCPC had determined, pursuant to delegated authority, that the Petition was not inconsistent with the federal elements of the Comprehensive Plan for the National Capital and would not adversely impact any identified federal interests.

ANC 1A Report

Advisory Neighborhood Commission (ANC) 1A filed a resolution (ANC 1A Report) approved by the ANC at its properly noticed April 14, 2021, public meeting at which a quorum was present that identified the following concerns with the Petition:

- The Petition might unnecessarily allow encroachments onto narrow alleys by increasing the number of compact spaces that are shorter and narrower than full-sized spaces even if the property has sufficient space to provide a full-sized length if not the width;
- The Petition might incentivize additional non-required compact parking spaces on a property that could provide fewer, but full-sized, parking spaces;
- The Commission's emergency action interfered with the ANC's negotiations with several developers without giving the ANC an opportunity to respond to the Petition until the public hearing after the emergency rule went into effect; and
- The ANC therefore recommended that the Commission revise the Petition to narrow the relief to only where an applicant demonstrates it is physically necessary and only for required parking spaces.

HEARING

OP filed an April 30, 2021 report (OP Hearing Report) that proposed revisions to the Petition as originally filed to address concerns raised in discussions with the Zoning Administrator staff and clarifications of the text discussed with OAG, including:

- Extending the dimensional requirements and special exception relief from these requirements to non-required parking spaces;
- Clarifying the process for matter-of-right conversions of full-sized to compact spaces; and
- Requiring all spaces to be no smaller than a compact car space.

At the May 10, 2021, public hearing, OP testified in support of the Petition with an additional proposed revision that responded to ANC 1A's concerns by:

- Requiring that applicants demonstrate the physical inability to comply with the parking dimensions and ratios from which the applicants seek relief; and
- Authorizing the Board of Zoning Adjustment (Board) to grant partial relief (Subtitle C § 712.11(e)).

ANC 1A's authorized representative, the only public witness at the May 10, 2021 public hearing, testified that OP's proposed revisions addressed its concerns for projects seeking relief from the Board, but did not address projects using the reduced matter-of-right dimensional requirements for parking spaces, which could now reduce the length of their parking spaces even if the property could provide full-sized spaces and so potentially cause encroachments into narrow alleys.

SECOND REVISED EMERGENCY AND PROPOSED ACTION

At its May 10, 2021, public hearing, the Commission voted to:

- Take **REVISED EMERGENCY AND PROPOSED ACTION** to adopt the Petition as published in the NOEPR with the revisions proposed by the OP Hearing Report and OP's public hearing testimony; and
- Authorize a Notice of Second Emergency and Proposed Rulemaking with a reduced 7-day comment period because the Petition has already been open for public comment for 30 days and these revisions are limited and do not change the substance of the Petition.

The Commission concluded that taking emergency action to adopt the Petition 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 encourages applicants to seek partial instead of full relief from the vehicle parking requirements by authorizing special exception relief from the dimensional requirements of parking spaces in addition to the current special exception relief limited to only the number of parking spaces.

VOTE (May 10, 2021): 5-0-0 (Michael G. Turnbull, Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Peter G. May to **APPROVE**)

The emergency rule was effective as of the Commission's May 10, 2021, vote until it was superseded by the Commission's revised emergency action on June 10, 2021, as discussed below.

OZ published a Notice of Second Emergency and Proposed Rulemaking (NOSEPR) in the May 28, 2021, *D.C. Register* (68 DCR 005722, *et seq.*).

The Commission receive no comments to the NOSEPR except for the letter from ANC 1A's authorized representative, discussed below.

THIRD REVISED EMERGENCY AND PROPOSED ACTION

OP filed a June 1, 2021 report (OP Supplemental Report) that proposed further revisions to the Petition as published in the NOEPR to address concerns raised by ANC 1A's comment and testimony and discussions with OAG:

- Limit the flexibility to provide compact car spaces so that spaces with access from a public alley with a width of fifteen feet or less must meet the full-size parking space length to minimize impacts on these narrower alleys; and
- Consolidate the screening provision of Subtitle C § 712.9(a) into the general screening requirements of Subtitle C § 714, as a new Subtitle C § 714.2(b).

ANC 1A's authorized representative filed a June 8, 2021 letter on behalf of the ANC stating that OP's proposed revisions in the NOSEPR and OP's Supplemental Report appear to address the concerns raised in the ANC 1A Report.

“Great Weight” to the Recommendations of OP

The Commission must give “great weight” to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

The Commission finds OP's recommendations to action to adopt the Petition, as published in the NOSEPR, with the revisions proposed by the OP Supplemental Report, persuasive and concurs in that judgment.

“Great Weight” to the Written Report of the ANCs

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

The Commission finds persuasive the concern expressed by the written report and testimony of ANC 1A, the only ANC to respond to the NOEPR and to testify at the public hearing, that the

Petition's parking space dimensional flexibility, even with OP's proposed revisions, might lead to encroachments into narrow alleys. The Commission therefore revised the emergency and proposed rules to adopt OP's proposed revisions that would partly address ANC 1A's concern by limiting special exception relief to what is physically necessary and requested OP to propose additional revisions to address the ANC's concern with the flexibility granted matter-of-right projects. The Commission notes the letter of ANC 1A's authorized representative supported OP's final revisions as proposed in the OP Supplemental Report as satisfactorily addressing the concerns of the ANC 1A Report.

At its June 10, 2021 public meeting, the Commission voted to:

- Take **REVISED EMERGENCY AND PROPOSED ACTION** to adopt the Petition as published in the NOSEPR with the revisions proposed by the OP Hearing Report and OP's public hearing testimony; and
- Authorize a Notice of Third Emergency and Proposed Rulemaking with a reduced seven (7)-day comment period because the Petition has already been open for public comment for more than thirty (30) days and these revisions are limited and do not change the substance of the Petition.

The Commission concluded that taking emergency action to adopt the Petition, as revised, 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 encourages applicants to seek partial instead of full relief from the vehicle parking requirements by authorizing special exception relief from the dimensional requirements of parking spaces in addition to the current special exception relief limited only from the number of parking spaces.

VOTE (June 10, 2021): 5-0-0 (Anthony J. Hood, Peter G. May, Robert E. Miller, Peter A. Shapiro, and Michael G. Turnbull to **APPROVE**)

The emergency rule is effective as of the Commission's June 10, 2021, vote and will expire on October 8, 2021, which is the one hundred-twentieth (120th) day after the adoption of the rule, or upon a revised emergency action or publication of a Notice of Final Rulemaking in the *D.C. Register* that supersedes the emergency rule, whichever occurs first.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than **seven (7) 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 e-mail at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

Final rulemaking action shall be taken not less than **seven (7) days** from the date of publication of this notice of second proposed rulemaking in the *D.C. Register*. **This proposed rulemaking completely supersedes the prior Notice of Second Emergency and Proposed Rulemaking in this case published in the May 28, 2021, D.C. Register (68 DCR 005722, et seq.).**

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

THIRD EMERGENCY AND PROPOSED TEXT AMENDMENT

The third emergency and 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 underlined** text).

Third Emergency and Proposed Amendments to Subtitle C, GENERAL RULES

Section 712, **SIZE AND LAYOUT REQUIREMENTS**, of Chapter 7, **VEHICLE PARKING**, of Subtitle C, **GENERAL RULES**, is proposed to be amended to read as follows:

712 SIZE AND LAYOUT REQUIREMENTS

712.1 All ~~required~~ parking spaces and parking aisles, **whether required or not required**, shall conform to the ~~dimension~~ **dimensional** requirements of this section, except as provided in Subtitle C §§ **712.2 and** 717.

712.2 An automated parking garage is exempt from the requirements of this section.

~~712.3 At least fifty percent (50%) of the required parking spaces must meet the minimum full-sized parking space standards of Subtitle C § 712.5. All other spaces must meet the minimum compact parking space standards in Subtitle C § 712.6.~~

712.3 The minimum parking space dimensions shall be provided as follows:

(a) Subject to paragraph (f), when four (4) or more spaces are required, at least fifty percent (50%) of the spaces shall meet or exceed the full-sized dimensions specified in Subtitle C § 712.5;

(b) Subject to paragraph (f), when three (3) spaces are required, at least one (1) of the spaces shall meet or exceed the full-sized dimensions specified in Subtitle C § 712.5 and the others shall meet or exceed the compact-sized dimensions specified in Subtitle C § 712.6;

- (c) Subject to paragraph (f), when two (2) or fewer spaces are required, they may meet or exceed the compact-sized dimensions specified in Subtitle C § 712.6;**
- (d) Notwithstanding Subtitle A § 102.6 and Subtitle C § 701.14, any existing parking space may be reduced in size in conformance with the requirements of this subsection by obtaining a building permit approved as zoning compliant;**
- (e) No parking space, whether required or not required, shall have dimensions less than the compact-sized dimensions specified in Subtitle C § 712.6; and**
- (f) No parking space, whether required or not required, shall have a length less than the full-sized dimensions specified in Subtitle C § 712.5 if the space is directly accessible from a public alley that is fifteen (15) feet or less in width.**

712.4 Parking spaces provided on the same lot as a historic resource shall meet the minimum dimensional requirements of Subtitle C § 712.6.

712.5 The minimum dimensions for full-sized parking spaces and aisles are as follows:

TABLE C § 712.5: MINIMUM DIMENSIONS FOR FULL-SIZED PARKING SPACES AND AISLES

Parking Angle	Stall Width	Depth of Stalls Perpendicular to Aisle	One-Way Drive Aisle Width	Two-Way Drive Aisle Width
45°	9 ft.	17.5 ft.	17 ft.	N/A
60°	9 ft.	19 ft.	17 ft.	N/A
90°	9 ft.	18 ft.	20 ft.	20 ft.
Parallel	22 ft.	8 ft.	12 ft.	20 ft.

712.6 The minimum dimensions for spaces and aisles exclusively for compact parking spaces are as follows:

TABLE C § 712.6: MINIMUM DIMENSIONS FOR COMPACT PARKING SPACES AND AISLES

Parking Angle	Stall Width	Depth of Stalls Perpendicular to Aisle	One-Way Drive Aisle Width	Two-Way Drive Aisle Width
45°	8 ft.	16.5 ft.	16 ft.	N/A
60°	8 ft.	17 ft.	16 ft.	N/A
90°	8 ft.	16 ft.	20 ft.	20 ft.
Parallel	20 ft.	8 ft.	12 ft.	20 ft.

712.7 All parking spaces and access ways to and from spaces shall have a minimum vertical clearance of six feet, six inches (6 ft., 6 in.).

712.8 Above grade parking areas shall be designed so that no vehicle shall project over any lot line, front setback line, or building restriction line.

712.9 Except on a lot that only has one (1) or two (2) dwelling units, ~~all:~~**(a) — Wheel bumper guards, curbs, guard rails, or screening shall be installed between the property line and the perimeter of the parking area; and**~~(b) — All~~ parking areas and spaces shall be designed and operated so that sufficient access and maneuvering space is available to permit the parking and removal of any vehicle without moving any other vehicle onto public space.

712.10 All individual compact parking spaces shall be clearly labelled as such **on all plans and at the site.**

712.11 The Board of Zoning Adjustment may grant relief from the requirements of Subtitle C §§ 712.3, 712.5, and 712.6 as a special exception under Subtitle X, Chapter 9 and subject to the following:

(a) The Office of Zoning shall refer any request under this subsection to the Office of Planning and the District Department of Transportation for review and comment;

(b) For a request for relief from the ratio requirement of Subtitle C § 712.3 the applicant shall demonstrate to the Board’s satisfaction a reasonable difficulty in providing the number of full-sized parking spaces;

(c) A request for relief from the dimensional requirements for drive aisles of Subtitle C §§ 712.5 and 712.6 shall be accompanied by vehicle movement and turning diagrams demonstrating to the Board’s satisfaction that vehicles of average dimensions would be able to safely and efficiently access the parking spaces affected by such relief;

(d) No parking space, whether required or not required, shall have dimensions less than the compact-sized dimensions specified in Subtitle C § 712.6;

(e) The Board shall grant relief only to the degree that the applicant demonstrates that physical constraints prevent it from reasonably complying with the requirements; and

(f) The Board may grant full or partial relief.

Subsections 714.1 and 714.2 of § 714, SCREENING REQUIREMENTS FOR SURFACE PARKING, of Chapter 7, VEHICLE PARKING, of Subtitle C, GENERAL RULES, are proposed to be amended to read as follows:

- 714.1 Screening shall be required for any external surface parking spaces except:
- (a) On a property located in a PDR zone that does not abut property that is not within a PDR zone; or
 - (b) On a property devoted to residential uses with a maximum of ~~three (3)~~ **two (2)** dwelling units.
- 714.2 Screening of external surface parking shall be provided in accordance with the following provisions:
- (a) Screening shall be provided around the entire perimeter of the surface parking area;
 - (b) All parking spaces that abut public space, such as sidewalks, streets, or alleys, shall have physical structures, such as wheel bumper guards, curbs, and/or guard rails, installed to separate and protect the abutting public space from vehicular encroachment, except if the abutting public space is the access point or driveway to the parking space;**
 - ~~(b)~~ **(c) Gaps Except as required by paragraph (b) of this section, gaps** in the screening are allowed only to provide driveways and pedestrian exits or entrances that open directly onto a street, sidewalk or alley. No individual gap may exceed twenty feet (20 ft.) in width; and
 - ~~(e)~~ **(d) The Except as required by paragraph (b) of this section, the** screening shall be either:
 - (1) A wall or solid fence at least forty-two (42) inches high; or
 - (2) Evergreen hedges or evergreen growing trees that are thickly planted and maintained, and that are at least forty-two (42) inches in height when planted, and maintained in perpetuity.