

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING
Z.C. Case No. 19-15
(Text Amendment – Subtitle B, H, K, and U of Title 11 DCMR)
(To Authorize Short Term Rentals)
October 24, 2019

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 intent to amend the following provisions of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations,” to which all references are made unless otherwise specified):

- Subtitle B (Definitions, Rules of Measurement, and Use Categories), §§ 100.2 and 200.2;
- Subtitle H (Neighborhood Mixed-Use (NC) Zones), § 1103.1;
- Subtitle K (Special Purpose Zones), §§ 414.3, 616.2, 712.6, and 911; and
- Subtitle U (Use Permissions), §§ 250.1, 505.2, and 600.1.

The Commission proposes to authorize short-term rentals as accessory uses in zones where residential uses are permitted by establishing a definition of a “Short-Term Rental”, by amending the lodging and residential use categories to exclude “Short-Term Rental” uses, and by amending the use permissions. The Commission took action in response to a petition filed by the Council of the District of Columbia, acting through its Chair (Council), proposing these changes to facilitate the administration and implementation of D.C. Law 22-307 that authorizes and regulates short-term rentals (STR Law).

On July 29, 2019, the Council filed a letter that served as a petition proposing text amendments to Subtitle B §§ 100.2 and 200.2 to authorize short-term rentals in residential zones as permitted under the STR Law.

At its publicly-noticed public meeting held on July 29, 2019, the Commission voted to set down the petition for a public hearing and granted authority to the Council to revise the proposed text in consultation with the Office of the Attorney General. Based on that consultation, the proposed text amendments were revised to authorize short-term rentals as an accessory use to a principal residential use in all zones in which residential uses were allowed.

The Office of Planning (OP) filed a Hearing Report on August 30, 2019, as required by Subtitle Z § 400.6, recommending approval of the proposed text amendment and presenting its analysis that the proposed text amendment was not inconsistent with the Comprehensive Plan.

At the October 17, 2019 public hearing, the Commission heard testimony from the Council, OP, from Advisory Neighborhood Commissions (ANC) 1A and 6C, and from members of the public.

The Council noted that it had adopted the STR Law to allow and regulate short-term rentals following a lengthy public hearing process, and that it had first requested that the Commission take action to authorize short-term rentals in residential zones in October 2018. The Council requested

that the Commission take emergency action to authorize short-term rentals in residential zones because the STR Law, which had become effective on October 1, 2019, required short-term rentals to obtain licenses, which could only be issued in compliance with the Zoning Regulations.

The Council stated that the Chief Financial Officer estimated that eighty to ninety percent (80-90%) of short-term rentals currently exist in residential zones, which are not permitted under the Zoning Regulations. These short-term rentals would be ineligible for a license under the STR Law, which required proof of zoning compliance. The District therefore risked losing significant tax revenue from these short-term rentals that would not be able to obtain a short-term rental license until the Commission adopted revisions to the Zoning Regulations to authorize short-term rentals.

OP testified in support of the text amendment, as did most public comments, although some public comments asked the Commission to consider expanding the scope of short-term rentals.

ANC 1A supported the text amendment but expressed its concern that the text amendment defined a “Short-Term Rental” by reference to the STR Law instead of adopting a stand-alone definition in the Zoning Regulations. ANC 1A asserted that this created a potential legal risk if the STR Law was overturned by an appeal as well as effectively allowing the Council to rewrite the Zoning Regulations. ANC 1A therefore asked that the Commission consider adopting a stand-alone definition separate from that in the STR Law.

ANC 6C opposed the text amendment, echoing ANC 1A’s concern about the definition referencing the definition in the STR Law, and expressing its concern that it would allow too many short-term rentals, which would decrease housing availability and affordability in violation of the principles and objections of the Comprehensive Plan. ANC 6C therefore requested the Commission revise the text amendment to restrict the short-term rental uses even further than the STR Law did.

The Council rebutted ANC 1A’s concern that the proposed text amendment’s reference to the STR Law to define “Short-Term Rental” risked confusion if the STR Law was overturned in a legal challenge by asserting that the cross-referencing reduced potential confusion between the regulation of short-term rentals under the zoning and licensing regulations, particularly as the STR Law’s definition is complex and subject to clarification under regulations authorized by the STR Law. The Council rebutted ANC 6C’s concerns about the impact of short-term rentals by noting that the STR Law was based on substantial public involvement and that the Council had considered the potential impact of short-term rentals on housing supply and affordability in settling on a final balance that allowed short-term rentals only in the host’s primary residence and not permitting investor-owned short-term rentals. The Council noted that the ninety (90)-day annual maximum for vacation rentals was not an outlier in the short-term rental regulations adopted in surrounding jurisdictions, which ran from sixty (60) days to unlimited.

At the close of the October 17, 2019 public hearing, the Commission requested that the Council provide additional justification for its request for emergency rulemaking and that OP provide a concise summary of the law and confirm the impact of the proposal to allow the STR accessory uses in non-residential zones.

On October 22, 2019, OP filed a supplemental report stating that DCRA was waiting to finalize its short-term rental licensing and enforcement rules until the Commission took action to authorize short-term rentals. The Council filed its response the same day further justifying its request for emergency rulemaking based on confirmation that DCRA could not act until it knew the scope and limitations of zoning approval for short-term rentals, and that the uncertainty caused by further delay risked the loss of additional tax revenue and enforcement of consistent rules.

“Great Weight” to the Recommendations of OP

The Commission is required to give “great weight” to the recommendation 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 Y § 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 recommendation that the Commission approve the proposed text amendment 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 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 Y § 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 is not persuaded by the concern shared by ANCs 1A and 6C that defining “Short-Term Rental” by referencing the definition in the STR Law creates legal risks and allows the Council to effectively rewrite the Zoning Regulations because the Commission notes that ANC 1A recognized that existing zoning definitions referenced definitions in District law. The Commission notes that it retained the ability to revise this definition in the future if it did not agree with future action by the Council, or DCRA under the STR Law, or if the STR Law were overturned on appeal. In the meantime, the Commission credits OP’s support and the Council’s testimony that having a single definition reduces potential ambiguities, especially in light of the complexity of the STR Law’s definition of “Short-Term Rental.”

The Commission is also not persuaded by ANC 6C’s concerns that the STR Law is too permissive and will reduce housing affordability and availability and so be inconsistent with the Comprehensive Plan. The Commission credits the Council’s assertion that the STR Law limits the impact on the availability and affordability of housing by barring investor-owner short-term rentals, while also allowing property owners to operate short-term rentals in their primary residence, providing income that some property owners need to stay in their homes thereby supporting housing affordability and home ownership. The Commission also credits OP’s analysis

and recommendation that the proposed text amendment is not inconsistent with the Comprehensive Plan.

The Commission concludes that taking emergency action to adopt the proposed text amendment is necessary to resolve the uncertainty surrounding the implementation of the STR Law, which became effective on October 1, 2019, and to avoid the potential loss of tax revenue pending DCRA’s promulgation of licensing and enforcement regulations. The Commission recognized that the Council had requested the Commission take action a year ago when the STR Law was adopted after an extensive public process, and that the continuing uncertainty for all actors – hosts, guest, and neighbors – was not in the public interest. For these reasons, the Commission agreed with the Council’s justification for the emergency adoption of these amendments as 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) (2012 Repl.).)

At its public meeting of October 24, 2019, the Zoning Commission took **EMERGENCY ACTION** to adopt the proposed text amendment and also took **PROPOSED ACTION** to authorize the publication of a Notice of Proposed Rulemaking by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull).

The emergency rule is effective as of the Commission’s October 24, 2019 vote and will expire February 25, 2020, 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.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice of proposed rulemaking in the *D.C. Register*.

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 ~~striketrough~~ text):

I. Amendments to Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES

Subsection 100.2 of § 100, DEFINITIONS, of Chapter 1, DEFINITIONS, is proposed to be amended by adding a definition of “Short-Term Rental” and revising the definition of “Accessory Use” to read as follows:

100.2 When used in this title, the following terms and phrases shall have the meanings ascribed:

...¹

¹ The uses 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.

Sexually-Oriented Business Establishment: ...

Short-Term Rental: A use as defined by the Short-Term Rental Regulation Act of 2018 (D.C. Law 22-307), that has a valid Basic Business License from the Department of Consumer and Regulatory Affairs with a “Short-Term Rental” or “Short-Term Rental: Vacation Rental” endorsement.

Specified Anatomical Areas: ...

...

Use, Accessory: A use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use. **Except for Short-Term Rentals and unless** ~~Unless~~ otherwise specifically permitted, an accessory use ~~in a residential dwelling in a residential zone~~ shall be limited to twenty percent (20%) of the gross floor area.

Subsection 200.2 of § 200, INTRODUCTION, of Chapter 2, USE CATEGORIES, is proposed to be amended by revising paragraphs (s) and (aa) to exclude Short Term Rentals from the “Lodging” and “Residential” use categories to read as follows:

200.2 When used in this title, the following use categories shall have the following meanings:

(a) Agriculture, ...

...

(s) Lodging:

(1) A use providing ...

...

(3) Exceptions: This use category does not include uses which more typically would fall within the emergency shelter or residential use categories **or Short-Term Rental;**

...

(aa) Residential:

(1) A use offering ...

...

(4) Exceptions: This use category does not include uses which more typically would fall within the lodging, education, or community-based institutional facility use categories **or Short-Term Rental;**

(bb) ...

II. Amendments to Subtitle H, NEIGHBORHOOD MIXED-USE (NC) ZONES

Subsection 1103.1 of § 1103, MATTER-OF-RIGHT USES (NC-USE GROUPS A, B, AND C), of Chapter 11, USE PERMISSIONS FOR NC ZONES, of, is proposed to be amended by adding a new paragraph (r) and reordering alphabetically to read as follows:

1103.1 The following uses in this section shall be permitted as a matter of right subject to any applicable conditions:

(a) NC zone designated uses;

...

(q) Services, financial; **and**

(r) Short-Term Rental as an accessory use to a principal residential use; and

~~(r)~~**(s)** Transportation infrastructure.

III. Amendments to Subtitle K, SPECIAL PURPOSE ZONES

Section 414, ACCESSORY USES (HE), of Chapter 4, HILL EAST ZONES – HE-1 THROUGH HE-4, is proposed to be amended by adding a new § 414.3 to read as follows:

414.3 Short-Term Rental shall be permitted as an accessory use to a principal residential use in the HE zones.

Section 616, ACCESSORY USES (STE), of Chapter 6, SAINT ELIZABETHS EAST CAMPUS ZONES – STE-1 THROUGH STE-19, is proposed to be amended by adding a new § 616.2 to read as follows:

616.2 Short-Term Rental shall be permitted as an accessory use to a principal residential use in the StE zones.

Section 712, MATTER-OF-RIGHT USES (RC), of Chapter 7, REED-COOKE ZONES – RC-1 THROUGH RC-3, is proposed to be amended by adding a new § 712.6 to read as follows:

712.6 Short-Term Rental shall be permitted as an accessory use to a principal residential use in the RC zones.

Section 911, USE PERMISSIONS (WR), of Chapter 9, WALTER REED ZONES – WR-1 THROUGH WR-8, is proposed to be amended by adding a new paragraph in alphabetical order to §§ 911.1, 911.2, 911.3, and 911.5 to read as follows:

911.1 The uses in this section shall be permitted as a matter of right in the WR-1 zone, subject to any applicable conditions:

(a) Agriculture ...
...

(m) Retail subject to the conditions of Subtitle K § 912.10;

(n) Short-Term Rental as an accessory use to a principal residential use;

~~(n)~~ **(o)** Transportation infrastructure; and

~~(o)~~ **(p)** Utilities, basic.

911.2 The uses in this section shall be permitted as a matter of right in the WR-2, WR-3, WR-4, and WR-5 zones, subject to any applicable conditions:

(a) Agriculture ...
...

(x) Service, general subject to the conditions of Subtitle K § 912.11; **and**

(y) Short-Term Rental as an accessory use to a principal residential use;
and

~~(y)~~ **(z)** Transportation infrastructure.

911.3 The uses in this section shall be permitted as a matter of right in the WR-7 zone, subject to any applicable conditions:

(a) Agriculture ...
...

(h) Retail; **and**

(i) Short-Term Rental as an accessory use to a principal residential use;
and

~~(h)~~ **(i)** Transportation infrastructure.

...

911.5 The uses in this section shall be permitted as a matter of right in the WR-6 zone, subject to any applicable conditions:

(a) Agriculture ...

...

(n) Retail subject to the conditions of Subtitle K § 912.10; ~~and~~

(o) Short-Term Rental as an accessory use to a principal residential use; and

~~(o)~~ **(p)** Transportation infrastructure.

III. Amendments to Subtitle U, USE PERMISSIONS

Subsection 250.1 of § 250, ACCESSORY USES (R), of Chapter 2, USE PERMISSIONS RESIDENTIAL (R) ZONES, is proposed to be amended by adding a new paragraph (f) and reordering alphabetically to read as follows:

250.1 The following accessory uses shall be permitted as a matter of right in all R zones subject to the associated conditions:

(a) An accessory apartment subject to the conditions of Subtitle U § 253;

~~(a)~~ **(b)** Two (2) boarders within the principal dwelling;

~~(b)~~ **(c)** No more than two (2) car-sharing ...

~~(c)~~ **(d)** Child development home ...

~~(d)~~ **(e)** Home Occupation subject to the conditions of Subtitle U § 251; ~~and~~

~~(e)~~ ~~**(f) An accessory apartment subject to the conditions of Subtitle U § 253;**~~
~~**and**~~

(f) Short-Term Rental as an accessory use to a principal residential use; and

~~(f)~~ **(g)** Other accessory uses, buildings or structures

Subsection 505.2 of § 505, MATTER-OF-RIGHT USES (MU-USE GROUP B), of Chapter 5, USE PERMISSIONS MIXED USE (MU) ZONES, is proposed to be amended by adding a new paragraph (h) and reordering alphabetically to read as follows:

505.2 The following marine uses shall be permitted as a matter of right:

- (a) Boat construction on an occasional basis by a local community organization;
- (b) Community garden operated by a local community organization or District government agency;
- (c) Floating homes within a permitted marina or yacht club, provided that the maximum density of floating home berths shall not exceed fifty percent (50%) of the total number of berths in the marina or yacht club;**
- (d) A home occupation within a floating home;**
- ~~(e) Publicly accessible park or open space, playground, or athletic field, including pedestrian and bicycle trails, necessary support facilities, and fitness circuits;~~
- ~~(d) Public nature education or interpretive center including a boat dock;~~
- (e) Seasonal or occasional market for produce, arts, and crafts, with non-permanent structures;
- ~~(f) Floating homes within a permitted marina or yacht club, provided that the maximum density of floating home berths shall not exceed fifty percent (50%) of the total number of berths in the marina or yacht club; and~~
- ~~(g) A home occupation within a floating home.~~
- (f) Publicly accessible park or open space, playground, or athletic field, including pedestrian and bicycle trails, necessary support facilities, and fitness circuits;**
- (g) Public nature education or interpretive center including a boat dock; and**
- (h) Short-Term Rental as an accessory use to a principal residential use.**

Subsection 600.1 of § 200, MATTER-OF-RIGHT USES ON ALLEY LOTS (R, RF, AND RA), of Chapter 6, USE PERMISSIONS FOR ALLEY LOTS, is proposed to be amended by adding a new paragraph (g) to read as follows:

600.1 The following uses in this section shall be permitted as a matter of right subject to any applicable conditions:

(a) Agricultural, both ...

...

(e) Parking subject to ...

(1) Surface parking spaces ...

...

(3) Parking garage ...

(A) No more than two ...

...

(C) The building shall open directly onto an alley; ~~and~~

(f) Residential dwelling ...

(1) The alley lot ...

...

(5) If the Zoning Administrator or other authorized building official ... referred to the Board of Zoning Adjustment; ~~and~~

(g) Short-Term Rental as an accessory use to a principal residential use.

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.