

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING¹
Z.C. Case No. 19-31A
Office of Planning
(Text Amendment to Subtitle B § 100.2)
June 29, 2023

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 an amendment Subtitle B § 100.2 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), to include a definition of Youth Residential Care Home.

SETDOWN

On December 30, 2022, the Office of Planning (OP) filed a petition (OP Set down Report) to the Commission proposing a text amendment to the Zoning Regulations to add a definition for Youth Residential Care Home. (Exhibit [Ex.] 2.) OP stated that changes made to the Zoning Regulations in the 2016 rewrite resulted in some of the uses and definitions not being carried forward which made it difficult for the Department of Consumer and Regulatory Affairs (now Department of Buildings) to interpret and give guidance if a use was permitted in a particular zone and/or if it was permitted as a matter-of-right or by special exception. OP explained that the previously approved Z.C. Case No. 19-31 was intended to address these issues. In the final order for Z.C. Case No. 19-31, the Commission included a Youth Residential Care Home on the Use Permissions list; however, the definition of Youth Residential Care Home was inadvertently omitted both from the public hearing notice and the final order for the case. As a result, the final order created the use, but did not define it.

At its January 12, 2023 public meeting, the Commission noted the following minor typos in the Youth Residential Care Home definition language proposed in OP's Set down Report:

- A typo where the text reads “less that eighteen years of age” when it should read “less than eighteen years of age.”; and
- A typo where the text reads “operator” when it should read “operator”.

¹ For Office of Zoning tracking purposes only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 19-31A.

Accordingly, the proposed definition language should read as follows:

“Youth Residential Care Home: A facility providing safe, hygienic, sheltered living arrangements for one (1) or more individuals less than eighteen years of age, not related by blood, adoption, or marriage to the operator of the facility, who are ambulatory and able to perform the activities of daily living with minimal assistance.”

At its January 12, 2023 public meeting, the Commission voted to grant OP’s request to set down the proposed definition language, as corrected, for a public hearing.

NOTICE

Pursuant to Subtitle Z § 502, the Office of Zoning (OZ) sent notice of the May 4, 2023 public hearing on March 1, 2023 (Ex. 5.) and published notice of the public hearing in the March 10, 2023 *District of Columbia Register*, as well as on the calendar on OZ’s website. (Ex. 3, 4.)

No comments were filed to the record in response to the public hearing notice.

PUBLIC HEARING

At the May 4, 2023 public hearing, OP presented the petition. OP restated that the definition of Youth Residential Care Home was inadvertently omitted from the public hearing notice and final order in Z.C. Case No. 19-31. OP stated that the proposed definition is not inconsistent with Comprehensive Plan policies, specifically housing policies when viewed through a racial equity lens.

No other persons or organizations testified at the public hearing.

OP HEARING REPORT

On April 24, 2023, OP submitted a report (OP Hearing Report) that changed the proposed definition to correct the two typos noted by the Commission at setdown. (Ex. 6.) OP’s Hearing Report largely reiterated its Set down Report and recommended approval of the text amendment concluding that it would not be inconsistent with the Comprehensive Plan.

Citywide Housing Element

OP’s report noted that the proposed amendment would further Comprehensive Plan policy objectives, particularly with respect to Citywide Housing Element policies noted below.

Policy H-4.1.1: Integration of Vulnerable Populations and Residents with Disabilities

Integrate residents with disabilities or vulnerable populations through housing that includes wraparound supportive services throughout Washington, DC rather than segregating them into neighborhoods that already have a significant presence of such housing. (10-A DCMR § 516.3.)

Policy H-4.1.2: Emphasis on Permanent Housing

Emphasize permanent housing-first solutions for persons with disabilities or vulnerable populations, rather than building more temporary, short-term housing facilities. Permanent housing is more conducive to the stability of its occupants and generally has greater support from communities than transient housing. (10-A DCMR § 516.4.)

Policy H-4.1.3: Coordination of Housing and Support Services

Coordinate the siting of housing for persons with disabilities or vulnerable populations with the location of the key services that support the population being housed. The availability of affordable public transportation to reach those services also should be considered. (10-A DCMR § 516.5.)

Policy H-4.3.5: Housing for Returning Citizens

Create adequate housing plans for people exiting the correctional system so that they do not experience homelessness, including the removal of barriers to returning citizens living in affordable housing. Returning citizens should not be concentrated in assisted housing projects, but allowed to find housing throughout Washington, DC. Rental housing providers should not be allowed to discriminate against returning citizens. (10-A DCMR § 518.14.)

Policy H-4.3.6: Persons with Behavioral Health Issues

Support the production of housing for people with behavioral health issues through capital and operating subsidies. Improve the availability and coordination of such housing with wraparound behavioral health and other human services. Steps should be taken to prevent the eviction of persons experiencing behavioral health issues from publicly financed housing, so long as they are following the rules of tenancy, and to maintain each individual’s housing if they need to be hospitalized. (10-A DCMR § 518.15.)

Racial Equity

In applying the standard of review applicable to proposed amendments, the Comprehensive Plan requires the Commission to do so through a racial equity lens. (10-A DCMR § 2501.8.) Consideration of equity is intended to be based on the policies of the Comprehensive Plan, and part of the Commission’s consideration of whether the proposed amendments are “not inconsistent” with the Comprehensive Plan, rather than a separate determination about a zoning action’s equitable impact.

OP’s report stated that the proposal to define the use, Youth Residential Care Home, would not be inconsistent with the Comprehensive Plan when viewed through a racial equity lens. Because the use helps to fulfill racial equity goals of the Comprehensive Plan, including the District’s commitment to “. . .community-based housing options and services that encourage independent living across all Planning Areas.” (10-A DCMR § 516.2.)

PROPOSED ACTION

The Commission found persuasive, and concurred with, OP’s recommendation that the Commission take proposed action to adopt the amendment.

Since no ANC filed a response to the petition as advertised in the public hearing notice, there was nothing to which the Commission could give great weight at proposed action.

At the conclusion of the May 4, 2023 public hearing, the Commission voted to take **PROPOSED ACTION** to:

- Adopt the Petition; and
- Authorize the publication of a Notice of Proposed Rulemaking (NOPR).

VOTE (May 4, 2023): **4-0-1** (Anthony J. Hood, Peter G. May, Robert E. Miller and Joseph S. Imamura, to **APPROVE**; 3rd Mayoral Appointee seat vacant, not voting)

National Capital Planning Commission (NCPC)

The Commission referred the proposed amendment to the NCPC on May 5, 2023, 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.).

On June 2, 2023, pursuant to delegated authority, NCPC filed a letter stating that the proposed amendment was not inconsistent with the Comprehensive Plan for the National Capital and would not adversely impact federal interests. (Ex. 11.)

OZ published a Notice of Proposed Rulemaking (NOPR) in the May 26, 2023 *District of Columbia Register* (70 DCR 007780 *et seq.*)

Prior to its June 29, 2023 public meeting, the Commission received no comments in response to the NOPR.

FINAL ACTION

Great Weight to the Recommendations of OP

The Commission must give great weight to the recommendations of the Office of Planning (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 persuasive, and concurs with, OP's analyses in its reports and its recommendation that the Commission take final action to adopt the amendment to define Youth Residential Care Home.

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).)

Since no ANC submitted comments in response to the NOPR, there is nothing to which the Commission can give great weight.

At its June 29, 2023 public meeting, the Zoning Commission voted to take **FINAL ACTION** to:

- Adopt the Petition; and
- Authorize the publication of a Notice of Final Rulemaking.

VOTE (June 29, 2023): 4-0-1

(Joseph S. Imamura, Peter G. May, Anthony J. Hood, and Robert E. Miller to **APPROVE**; 3rd Mayoral Appointee seat vacant, not voting)

The following amendments to the Zoning Regulations are hereby adopted:

TEXT AMENDMENT

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

Section 100, DEFINITIONS, of Chapter 1, DEFINITIONS, of Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is amended by revising § 100.2 to read as follows:

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

...²


Youth Rehabilitation Home: . . .

Youth Residential Care Home: A facility providing safe, hygienic, sheltered living arrangements for one (1) or more individuals less than eighteen (18) years of age, not related by blood, adoption, or marriage to the operator of the facility, who are ambulatory and able to perform the activities of daily living with minimal assistance.

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 21-21 shall become final and effective upon publication in the *D.C. Register*, that is on August 25, 2023.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.