

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**NOTICE OF FINAL RULEMAKING**

**Z.C. Case No. 20-25<sup>1</sup>**

**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)**

**February 11, 2021**

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.) (DCAPA)), hereby gives notice of its amendment of 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 - § 204;<sup>2</sup>
- Subtitle U, Use Permissions - § 301; and
- Subtitle X, General Procedures - § 1001.

**Setdown**

On October 27, 2020, the Office of Planning (OP) filed a petition (Petition) to the Zoning Commission proposing a 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 (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 nine hundred (900) square feet of land area for each existing unit; and
- Variance relief from the nine hundred (900) square feet per unit rule is an area variance.

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<sup>1</sup> This Notice of Final Rulemaking shall be known as Z.C. Order No. 20-25 only for Office of Zoning tracking purposes.

<sup>2</sup> 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* (67 DCR 13340 *et seq.*).

### **Emergency & Proposed Action**

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

- Take emergency action to adopt the Petition because the Commission concluded it was necessary for the "immediate preservation of the public ... welfare," as authorized by § 6(c) of the DCAPA, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)) in order to correct the unintended consequences of an inadvertent change in the regulations on nonconforming uses adopted in the Zoning Regulations adopted by the Commission in 2016;
- Set the Petition down for a public hearing;
- Authorize an immediate publication of proposed rulemaking for the Petition; 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.

**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**)

The emergency rule is effective as of the Commission's October 29, 2020, vote and will expire on the effective date of this Notice of Final Rulemaking (at the end of this notice), if prior to the expiration of the emergency rule on February 24, 2021, the one hundred-twentieth (120<sup>th</sup>) day after the adoption of this rule.

OZ published a Notice of Emergency and Proposed Rulemaking (NOEPR) in the November 13, 2020, *D.C. Register* (67 DCR 13340, *et seq.*).

The Commission received no comments in response to the NOEPR.

### **Public Hearing**

OP submitted a December 29, 2020 report (OP Report) that supported the Petition and proposed a minor change to the Petition to clarify that Subtitle U § 301.5 applies only to apartment houses that were legally constructed as such and therefore to delete subparagraphs (a)(1) and (2) as redundant.

At its January 7, 2021 public hearing, the Commission heard testimony from OP in favor of the Petition. No entity or person appeared to testify.

### **Revised Proposed Action**

At the conclusion of its public hearing on January 7, 2021, the Commission voted to amend the Petition to reflect the OP Report's proposed revisions and to authorize a Notice of Second Proposed Rulemaking with a reduced seven (7)-day comment period because the Petition has already been open for public comment for thirty (30) days and these revisions are limited and do not change the substance of the Petition.

**VOTE** (January 7, 2021): **5-0-0** Robert E. Miller, Peter A. Shapiro, Anthony J. Hood, Peter G. May, and Michael G. Turnbull to **APPROVE**)

OZ published a Notice of Second Proposed Rulemaking (NOSPR) in the January 22, 2021, *D.C. Register* (68 DCR 1286, *et seq.*).

The Commission received no comments in response to the NOSPR.

### **National Capital Planning Commission**

The Commission referred the Petition to the National Capital Planning Commission (NCPC) on December 30, 2020, for the thirty (30)-day review period required by Section 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 did not file a response to the Petition within the thirty (30)-day review period.

### **Final Action**

#### ***“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 persuasive OP’s recommendation that the Commission adopt the Petition 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).)

Since no ANC filed a response to the Petition, the Commission has nothing to which it may give “great weight”.

At its February 11, 2021, public meeting, the Commission voted to the Commission voted to take **FINAL ACTION** to grant the Petition as published in the NOSPR and to authorize the publication of a Notice of Final Rulemaking:

**VOTE** (February 11, 2021): **5-0-0** (Anthony J. Hood, Peter G. May, Robert E. Miller, Peter A. Shapiro, and Michael G. Turnbull to **APPROVE**)

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>.

The following amendments to the text of the Zoning Regulations are hereby adopted.

**I. Amendments to Subtitle C, GENERAL RULES**

**Subsection 204.7 of § 204, NONCONFORMING USE, of Chapter 2, NONCONFORMITIES, of Subtitle C, GENERAL RULES, is 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.

**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 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 ...<sup>3</sup>
- (b) Residential uses with a maximum number of principal dwelling units per lot as follows:

**TABLE U § 301.1(b): MAXIMUM NUMBER OF PRINCIPAL DWELLING UNITS**

<b>RF Zone</b>	<b>Number of Principal Dwelling Units</b>
RF-1	2
RF-2	2
RF-3	2
RF-4	3
RF-5	4

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

<sup>3</sup> 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.

...

- 301.5 An apartment house in an RF-1, RF-2, or RF-3 zone that was constructed as an apartment house prior to May 12, 1958, or that was lawfully constructed as an apartment house prior to August 7, 1981, in compliance with the then-applicable zoning regulations, shall be considered a conforming use and may renovate or expand in conformance with the applicable provisions of this title, provided that:
- (a) The apartment house has not been expanded pursuant to a special exception approved by the Board of Zoning Adjustment per 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
  - (c) 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 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 amended to read as follows:**

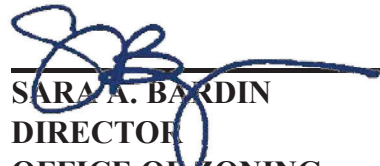
- 1001.3 Examples of area variances are requests to deviate from:
- (a) Requirements that affect the size ...  
...
  - (f) Preconditions to the establishment of a special exception use provided that the variance would not cause the proposed use to meet the definition of a more intense use; and
  - (g) 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).

In accordance with the provisions of Subtitle Z § 604.9, this Notice of Final Rulemaking shall become final and effective upon publication in the *D.C. Register*; that is, on April 2, 2021.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**