

MEMORANDUM

TO: District of Columbia Zoning Commission

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DATE: June 6, 2022

SUBJECT: ZC Case 22-01 – Public hearing report to permit as a matter-of-right the residential use of a non-residential building built prior to January 1, 2022, that exceeds the development standards for residential use.

I. RECOMMENDATION

The Office of Planning (“OP”) recommends that the Zoning Commission (“Commission”) **approve** the proposed text amendment, as provided in Appendix I of this report:

1. Revisions to Mixed Use (MU) Zones (Subtitle G §§ 200 and 201).
2. Revisions to Neighborhood Mixed Use (NC) Zones (Subtitle H §§ 200 and 201).
3. Revisions to Downtown (D) Zones (Subtitle I §§ 102 and 200).

The proposal would **not be inconsistent** with the Comprehensive Plan.

OP requests flexibility to work with the Office of Zoning Legal Division (“OZLD”) to further refine the proposed language, if necessary.

II. BACKGROUND

As its January 13, 2022 public meeting, the Commission set down for a public hearing text amendment case 22-01. The proposed text amendment will allow existing non-residential buildings built prior to January 1, 2022 that do not comply with some or all of the residential development standards to convert to residential use as a matter-of-right in the MU, NC, and D zones.

III. CHANGES SINCE SET DOWN

Since the time of set down OP has continued to work with the Zoning Administrator to refine the proposed text to ensure clarity in future administration of the text amendment, if approved. OP’s set down report ([Exhibit 2](#)) proposed zoning text that stated a non-residential building not complying with some or all of the residential development standards could convert some or all of its floor area to residential use as a matter-of-right, without prescribing specific development standards. The

Zoning Administrator recommended that OP revise the text amendment to prescribe specific development standards that do not need to be complied with for residential conversions.

The public hearing notice was revised to prescribe specific development standards for Subtitles G (Mixed Use Zones), H (Neighborhood Mixed Use Zones), and I (Downtown Zones). At the time the public hearing notice was drafted Subtitle I was limited to only floor-area-ratio for the D-3 through D-8 zones whereas Subtitles G and H were provided height, yards, courts, etc. allowances. Upon further review OP finds it appropriate to prescribe additional development standards for all D zones in Subtitle I to match what is proposed for Subtitles G and H, which would include courts, Floor Area Ratio (FAR), Green Area Ratio (GAR), height and yards (provided in Appendix I of this report).

IV. SUMMARY OF PROPOSED TEXT AMENDMENTS

Background

The Zoning Regulations prior to 1978 generally permitted higher floor-area-ratios (“FAR”) for non-residential uses and lower FARs for residential uses in the commercial zones. The Zoning Regulations as of January 1979 contained modifications to the FAR requirements generally prescribing higher FARs for residential uses and lower FARs for non-residential uses. By April 1987, a provision was added to the Zoning Regulations regulating the conversion of existing gross floor area to residential use similar to the provision below from the 2016 Zoning Regulations:

For a building or structure in existence with a valid Certificate of Occupancy prior to November 17, 1978, or for which an application for a building permit was filed prior to November 17, 1978, a conversion of non-residential GFA to residential GFA, even if in excess of otherwise permitted FAR, shall be permitted.

The intent of the provision was to allow an office building (for example) to convert to an apartment house even if the FAR for the residential use exceeded what was permitted prior to the FAR regulations being amended.

The Zoning Administrator has interpreted this provision to also apply to other residential development standards, such as lot occupancy and yards. For instance, an office building built *before* November 17, 1978, that occupies 100 percent of its lot may convert to residential use as a matter-of-right without having to comply with the residential lot occupancy development standard, which is lower than 100 percent. However, for non-residential buildings existing *after* November 17, 1978, a residential conversion would need to either comply with the residential lot occupancy development standard by demolishing part of the building or request relief from the Board of Zoning Adjustment. This post-1978 situation obstructs the intent and purpose of the recent text amendment in case 21-05 to allow the conversion of non-residential buildings to residential use as a matter-of-right.

Proposal

This proposed text amendment is shown in full in Appendix I and would:

- 1) Codify the existing Zoning Administrator interpretation to allow an existing legally built non-residential building to convert some or all of its floor area to residential use even if

the building does not comply with certain residential development standards as stated in the table below;

- 2) Change the existing vesting date from November 17, 1978, to January 1, 2022; and
- 3) Continue to require any enlargement to an existing building to comply with the residential development standards.

Subtitle G (Mixed Use Zones), Subtitle H (Neighborhood Mixed Use Zones), and Subtitle I (Downtown Zones) would be amended so a conversion to residential use would not need to comply with the following development standards if the building is not enlarged:

Zone:	Subtitle G	Subtitle H¹	Subtitle I²
Development Standards:	Courts	Courts	Courts
	FAR	FAR	FAR
	GAR	GAR	GAR
	Height	Height	Height
	Lot Occupancy	Lot Occupancy	
	Yards	Yards	Yards
	Waterfront Setback		

Analysis

OP research found that it would be necessary to ensure that non-residential buildings in any D zone be afforded the same opportunity to convert floor area to residential use as proposed for the Mixed-Use zones in Subtitles G and H. The proposed text amendments in this public hearing report also propose to extend these rules to the D-1-R and D-2 zones to ensure consistency between zones that permit mixed-uses and the regulations that govern conversions.

This proposed text amendment also complements text amendment case 21-05, which applied an Inclusionary Zoning (“IZ”) requirement to non-residential buildings that convert floor area to residential use in most mixed-use zones. As discussed in detail in OP’s public hearing report ([Exhibit 9](#)) and supplemental hearing report ([Exhibit 17](#)) for text amendment case 21-05, *[N]on-residential to residential use conversions represent an opportunity to create both market rate and affordable housing units and is analyzed in OP’s recently released Assessment of Commercial to Residential Conversions in the District of Columbia ([Assessment of Commercial to Residential Conversions](#))*. The proposal seeks to balance keeping ahead of changing market dynamics of conversion of nonresidential buildings to residential use while minimizing the disincentives for conversion.

This text amendment will allow conversions as a matter-of-right and would eliminate the need for a property owner to request zoning relief for non-residential buildings legally built before January 1, 2022, that exceed the residential development standards. Any enlargement to an existing building that is converted to residential use would continue to be subject to all residential development standards.

¹ Lot occupancy is not a proposed development standards for the D zones because all D zones are permitted to have a lot occupancy of 100 percent.

² Waterfront setback is not a proposed development standard for the NC zones because these zones do not have a waterfront setback requirement.

Further, conversions to residential use would still need to comply with the IZ program if the building is in a zone with an IZ requirement and the conversion would result in 10 or more dwelling units.

V. PLANNING CONTEXT

In May 2019, Mayor Bowser issued an Order on Housing directing DC Government agencies to develop policies, tools, and initiatives that would lead to the creation of 36,000 housing units of which 12,000 would be affordable by 2025. The Order requires District agencies to undertake a review of how existing affordable housing is either concentrated in the District, threatened to be removed, or is extremely limited. The District's existing housing stock and projected housing production are currently not enough to meet current or future housing needs, especially for creating new affordable housing.

Citywide Elements

The proposed amendments would further Comprehensive Plan policy objectives, particularly with respects to policies within the Citywide Housing Element. The most significant of the Housing Element policies are:

Policy H-1.1.1: Private Sector Support

Encourage or require the private sector to provide both new market rate and affordable housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives. 503.3

Policy H-1.1.2: Production Incentives

Provide suitable regulatory, tax, and financing incentives to meet housing production goals, prioritizing affordable housing production in support of the targets in Policy H-1.2.2. These incentives should continue to include zoning regulations that permit greater building area for commercial projects that include housing than for those that do not, and relaxation of height and density limits near transit. Strongly encourage incentives and strategies that result in the production of more deeply affordable housing, such as the use of income averaging across a range of affordable housing income levels. 503.4

Policy H-1.1.3: Balanced Growth

Strongly encourage the development of new housing, including affordable housing, on surplus, vacant, and underused land in all parts of Washington, DC. Ensure that a sufficient supply of land is planned and zoned to enable the District to meet its long-term housing needs, including the need for low- and moderate density single-family homes, as well as the need for higher-density housing. 503.5

Policy H-1.1.8: Production of Housing in High-Cost Areas

Encourage development of both market rate and affordable housing in high-cost areas of the District, making these areas more inclusive. Develop new, innovative tools and techniques that support affordable housing in these areas. Doing so increases costs per unit but provides greater benefits in terms of access to opportunity and outcomes. 503.10

Policy H-1.2.2: Production Targets

Consistent with the Comprehensive Housing Strategy, work toward a goal that one-third of the new housing built in Washington, DC from 2018 to 2030, or approximately 20,000 units, should be affordable to persons earning 80 percent or less of the area-wide MFI. Newly produced affordable units shall be targeted toward low-income households in proportions roughly equivalent to the proportions shown in Figure 5.8. 504.8

Racial Equity Lens

Background

The Implementation Element calls for “*the Zoning Commission to evaluate all actions through a racial equity lens as part of its Comprehensive Plan consistency analysis*”^{2501.8}. Achieving equity and more specifically racial equity, requires a broad range of policies and tools, some of which fall under the zoning authorities granted to the Zoning Commission and some of which do not. Zoning Commission actions are land use focused, but the broader equity goal includes public policies, budget investments, civic improvements and social services which are beyond the scope of the Zoning Commission.

Equity is conveyed throughout the Comprehensive Plan, particularly in the context of zoning, where avoiding displacement of existing residents, the provision of affordable housing and creating access to opportunity is a priority. One of the keyways the Comprehensive Plan seeks to address equity is by supporting additional housing development. The Comprehensive Plan recognizes that without increased housing, the imbalance between supply and demand will drive up housing prices in a way that creates challenges for many residents, particularly low-income residents.

Analysis

The rising cost of housing in the District limits the ability to provide housing for a variety of household types, including family and senior housing, rental and ownership housing, and housing for all income levels. The Comprehensive Plan defines affordable housing as housing available to households earning 80 percent or less of the MFI (§ 304.3). Given the land use characteristics of the District, only a small amount of the total land area (28.1 percent) is dedicated to residential use (§ 205.3). The scarcity of land increases the cost of building new housing, limits the availability of housing, and intensifies housing cost burdens, particularly for lower- and middle-income households. The Comprehensive Plan states that “residents of color are a majority of lower-income households in the District and, therefore, face a disproportionate share of the problems caused by housing insecurity and displacement” (§ 206.4).

The expected goal of the zoning action is the removal of a potential barrier to the provision of housing that results from a change in use of existing buildings. The Commission’s racial equity tool serves as a guide to considering potential impacts.

The proposed text amendment should not result in the displacement of any tenants or residents because it would apply to non-residential floor area where there would be no existing housing.

This text amendment will reduce procedural barriers by allowing buildings to convert to residential use without having to obtain relief at the Board of Zoning Adjustment. This will provide the

opportunity for additional housing, including affordable housing, to be constructed faster and will reduce overall projects costs that are normally associated with discretionary approvals. The text amendment will help facilitate the provision of new affordable housing by applying the Inclusionary Zoning regulations to conversions in those zones where the IZ applies.

The Commission will be considering the application of the IZ regulations to other zones through case number ZC 21-23. A public roundtable will be held this fall after a series of outreach by the Office of Planning.

Although not precisely quantifiable from this text amendment, there is job opportunity and economic spin-off that comes from the relationship of new housing opportunity and renovation construction. Environmentally, the adaptive reuse of buildings almost always offers environmental savings over demolition and new construction. According to the U.S. Environmental Protection Agency, more than 90% of total construction debris is produced by demolition of existing buildings. A study by the National Trust for Historic Preservation titled *The Greenest Building: Quantifying the Environmental Value of Building Reuse*, summarizes their findings “Reusing existing buildings can offer an important means of avoiding unnecessary carbon outlays and help communities achieve their carbon reduction goals in the near term.”

Summary of Planning Context

On balance, the proposed text amendments would not be inconsistent with the Comprehensive Plan and would further the housing priorities of the District. The varying policies cited in this report work together to support new ways to provide additional housing and to distribute additional mixed income housing more equitably across the entire District. Many buildings with the potential to be converted from non-residential to residential use are located in high-cost areas and these text amendments will help increase the supply of housing in these areas without the need for additional zoning relief.

When evaluated through a racial equity lens, the proposed text amendments will reduce barriers to converting existing non-complying non-residential buildings to residential use. Such conversions could increase the total supply of housing units in the District, which could help alleviate the pressure on housing costs overall. Making room for additional housing, including affordable housing has the potential to benefit non-white populations who on average have lower incomes than white residents.

VI. COMMUNITY COMMENTS

The Committee of 100 on the Federal City and the Office of Attorney General filed comments to the record at Exhibits 3, 7, and 7A. Several comments focused on the IZ program in general, the relation of the proposed text amendment to the D, downtown zones and about the proposed text amendment in case number ZC 21-23 to apply IZ to all D downtown zones.

As discussed above, buildings that convert to residential use will be subject to IZ in zones where the program is already applicable. OP is studying the applicability of an IZ requirement in the D downtown zones that do not have an IZ requirement. A public roundtable will be held this fall after a series of outreach by OP for case no. 21-23.

APPENDIX I – 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. Proposed Amendment to Subtitle G, MIXED USE (MU) ZONES

Section 200, GENERAL PROVISIONS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS FOR MU ZONES, of Subtitle G, MIXED USE (MU) ZONES, is proposed to be amended by revising §§ 200.1 and 200.2 and adding new § 200.3, to read as follows:

200 GENERAL PROVISIONS

200.1 The provisions of this chapter apply to all MU zones except as may be modified or otherwise provided for in a specific zone **or as provided in Subtitle G § 200.3.**

200.2 When modified or otherwise provided for in the development standards for a specific zone, the modification or zone-specific standard shall apply, **except as provided in Subtitle G § 200.3.**

200.3 A building or structure in existence with a valid Certificate of Occupancy prior to January 1, 2022, may convert existing gross floor area to the “Residential” use category of Subtitle B § 200.2 as a matter-of-right even if the building or structure or portion thereof to be converted does not comply with the following development standards of this subtitle for residential use:

(a) Courts;

(b) Floor Area Ratio (FAR);

(c) Green Area Ratio (GAR);

(d) Height;

(e) Lot Occupancy;

(f) Waterfront Setback or

(g) Yards.

Section 201, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 2, GENERAL DEVELOPMENT STANDARDS FOR MU ZONES, of Subtitle G, MIXED USE (MU) ZONES, is proposed to be amended by deleting in its entirety § 201.1, to read as follows:

~~**201 DENSITY – FLOOR AREA RATIO (FAR)**~~

~~201.1 For a building or structure in existence with a valid Certificate of Occupancy prior to November 17, 1978, or for which an application for a building permit was filed prior to November 17, 1978, a conversion of non-residential GFA to residential GFA, even if in excess of otherwise permitted FAR, shall be permitted. [DELETED]~~

II. Proposed Amendment to Subtitle H, NEIGHBORHOOD MIXED USE (NC) ZONES

Section 200, GENERAL PROVISIONS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS, of Subtitle H, NEIGHBORHOOD MIXED USE (NC) ZONES, is proposed to be amended by revising §§ 200.1 and 200.2 and adding new §§ 200.3 and 200.4, to read as follows:

200 GENERAL PROVISIONS

200.1 The provisions of this chapter apply to all zones except as may be modified or otherwise provided for in a specific zone or as provided in Subtitle H § 200.3.

200.2 When modified or otherwise provided for in the development standards for a specific zone, the modification or zone-specific standard shall apply, except as provided in Subtitle H § 200.3.

200.3 A building or structure in existence with a valid Certificate of Occupancy prior to January 1, 2022, may convert existing gross floor area to the “Residential” use category of Subtitle B § 200.2 as a matter-of-right even if the building or structure or portion thereof to be converted does not comply with the following development standards of this subtitle for residential use:

(a) Courts;

(b) Floor Area Ratio (FAR);

(c) Green Area Ratio (GAR);

(d) Height;

(e) Lot Occupancy; or

(f) Yards.

200.4 Notwithstanding Subtitle H § 200.3, the requirements for ground floor designated uses of Subtitle H § 1101 shall apply.

Section 201, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 2, GENERAL DEVELOPMENT STANDARDS, of Subtitle H, NEIGHBORHOOD MIXED USE (NC) ZONES, is proposed to be amended by deleting in its entirety § 201.4, to read as follows:

201 DENSITY – FLOOR AREA RATIO (FAR)

201.1 The maximum permitted floor area ratio (FAR)...

...

~~201.4 For a building or structure in existence with a valid Certificate of Occupancy prior to November 17, 1978, or for which an application for a building permit was filed prior to November 17, 1978, a conversion of non-residential GFA to residential GFA, even if in excess of otherwise permitted FAR, shall be permitted, provided that requirements for ground floor designated uses of Subtitle U §1101 are provided. [DELETED]~~

III. Proposed Amendment to Subtitle I, DOWNTOWN ZONES

Section 102, GENERAL PROVISIONS, of Chapter 1, INTRODUCTION TO DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended by revising §§ 102.3 and 102.5 and adding new §§ 102.6 and 102.7, to read as follows:

102 GENERAL PROVISIONS

102.1 Unless otherwise noted in this subtitle...

...

102.3 Unless otherwise stated or as provided in Subtitle I § 102.6, the requirements, restrictions, and incentives of this subtitle apply to all new buildings and to existing buildings where any additions, alterations, or repairs made within a consecutive twelve (12)-month period exceed one hundred percent (100%) of the assessed value of the building as set forth in the records of the Office of Tax and Revenue as of the date of the building permit application.

...

102.5 Where there are conflicts between regulations within this subtitle, the stricter regulations apply, except as provided in Subtitle I § 102.6.

102.6 A building or structure in existence with a valid Certificate of Occupancy prior to January 1, 2022, may convert existing gross floor area to the “Residential” use category of Subtitle B § 200.2 as a matter-of-right even if the building or structure or portion thereof to be converted does not comply with the following development standards of this subtitle for residential use:

- (a) Courts;
- (b) Floor Area Ratio (FAR);
- (c) Green Area Ratio (GAR);
- (d) Height; or
- (e) Yards.

102.7 Notwithstanding Subtitle I § 102.6, the requirements for ground floor designated uses of Subtitle I, Chapter 6, Location-Based Regulations for Downtown Sub-Areas and Designated Street Segments, shall apply.

Section 200, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 2, GENERAL DEVELOPMENT STANDARDS FOR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended by deleting in its entirety § 200.7, to read as follows:

~~200.7 Within the D-3 through D-8 zones, for a building or structure in existence with a valid Certificate of Occupancy prior to November 17, 1978, or for which an application for a building permit was filed prior to November 17, 1978, a conversion of non-residential GFA to residential GFA, even if in excess of otherwise permitted FAR, shall be permitted, provided that requirements for ground floor designated uses of Subtitle I § 601 are provided. [DELETED]~~