

**MEMORANDUM**

**TO:** District of Columbia Zoning Commission

**FROM:** Brandice Elliott, Development Review Specialist  
*JLS*  
Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation

**DATE:** October 27, 2020

**SUBJECT:** ZC Case 20-  
Clarification of the Regulations Regarding Conforming Apartment Houses in the RF Zones; Revisions to Subtitle C §204.7, Subtitle U §§ 301.1 and 301.5, and Subtitle X §1001.3

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**I. RECOMMENDATION**

The Office of Planning requests the Zoning Commission:

- 1) Waive its ten-day filing rule of Subtitle Z § 504.3 and accept this report for consideration at the October 29, 2020 public meeting;
- 2) Set the case down for a public hearing;
- 3) Take emergency action to adopt the text amendment and authorize immediate publication of the Notice of Proposed Rulemaking; and
- 4) Approve a shorter notice period of thirty (30) days for the Notice of Public Hearing.

**II. PROPOSED TEXT**

The proposed text amendment is intended to clarify that existing, legally constructed apartment houses in the RF zones are conforming uses that may be expanded as a matter-of-right, provided that there is 900 square feet of land area for each existing and new dwelling unit.

The proposed text amendment to the Zoning Regulations for the Commission's consideration is as follows:

**Subsection 204.7 of § 204, NONCONFORMING USE, of Chapter 2, NONCONFORMITIES, of Subtitle C, GENERAL RULES, is proposed to be 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, ~~or to a lawfully existing, nonconforming apartment house located in a Residential Flat (RF) zone.~~

**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 proposed to be 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>1</sup>
- (b) Residential ~~flats~~ **uses** with a maximum number of principal dwelling units **per lot** as follows:

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

RF Zone	Number of Principal Dwelling Units
RF-1	2
RF-2	2
RF-3	2
RF-4	3
RF-5	4

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

301.5 An apartment house in an RF-1, RF-2, or RF-3 zone that **was constructed prior to May 12, 1958, or that was lawfully constructed prior to August 7, 1981, in compliance with the then-applicable zoning regulations, shall be considered a conforming use and may renovate or expand, provided that:**

- (a) **The apartment house** has not been:
  - (~~a~~) **(1)** Converted prior to September 6, 2016;
  - (~~b~~) **(2)** Converted pursuant to Subtitle U §§ 301.2 or 320.2; or
  - (~~c~~) **(3)** Expanded pursuant to 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**
- (b) **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**

<sup>1</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.

~~**units if the apartment house has may not renovate or expand so as to increase the number of dwelling units provided that there shall be**~~ a minimum of nine hundred square feet (900 sq. ft.) of lot area for each existing and new dwelling unit.

**Paragraph (f) of § 1001.3 of § 1001, VARIANCE TYPES, of Chapter 10, VARIANCES, of Subtitle X, GENERAL PROCEDURES, is proposed to be 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 ~~**including, but not limited to, the minimum nine hundred square feet (900 sq. ft.) of land area per dwelling unit required by Subtitle U § 320.2(b) applicable to the conversion of a building to an apartment house as permitted by Subtitle U § 320.2;**~~ 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).**

### **III. BACKGROUND**

This report is being submitted after consultation and agreement between the Zoning Administrator (ZA), Office of the Attorney General (OAG) and Office of Planning (OP).

The Zoning Commission took final action on a text amendment on September 14, 2020 (reference Zoning Commission Case No. 19-21), to expand the application of certain regulations, clarify standards, and eliminate duplicative provisions that apply to the protection of roof top solar energy systems in the R and RF zones. That text amendment also reorganized many of the special exception provisions for the conversion of residential buildings into apartment houses. Central to the current issue are the matter-of-right conversion regulations of Subtitle U §301, which provides when an existing apartment house is conforming and the conditions in which it may be expanded.

Since this text was approved, it has become apparent through Board of Zoning Adjustment cases that clarification regarding the conforming or nonconforming status of apartment houses is necessary. In particular, there are several pending applications requesting area variances from the requirement to provide 900 square feet of land area per unit to expand the number of units an existing apartment house without expanding the building footprint in the RF zone.

All of the subject apartment houses were constructed prior to the 1958 Zoning Regulations and should be considered conforming because they were legally constructed. However, Subtitle C §204.1 reads that “*A nonconforming use of land or structure shall not be extended in ...use intensity,*” suggesting that the internal expansion of an existing apartment house, although it was conforming at the time it

was constructed, would be an intensification of the use, thereby requiring a use variance for the expansion in addition to the area variance for the minimum land area per unit.

The proposed text amendment would render existing apartment houses legally constructed in the RF zones as conforming uses in order to clarify that use variances are not required.

OP requests the Commission grant the following at their October 29<sup>th</sup> public meeting for the proposed text amendment:

- Waive its ten-day filing rule of Subtitle Z § 504.3 and accept this report for consideration at the October 29, 2020 public meeting;
- Set the case down for a public hearing;
- Take emergency action to adopt the text amendment and authorize immediate publication of the Notice of Proposed Rulemaking; and
- Approve a shorter notice period of thirty (30) days for the Notice of Public Hearing.