

MEMORANDUM

TO: District of Columbia Zoning Commission

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DATE: January 3, 2021

SUBJECT: ZC Case 22-XX – Set down and prehearing 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 **set down** for a public hearing, amendments to Subtitles G, H, and I of the Zoning Regulations, which would allow existing non-residential buildings built prior to January 1, 2022 that do not conform to some or all of the residential development standards to convert to residential use as a matter-of-right.

OP requests flexibility to work with the Office of Zoning Legal Division (“OZLD”) to further refine the proposed language if necessary. This report also serves as the prehearing report required by Subtitle Z § 501.

II. BACKGROUND

The Zoning Regulations prior to 1978 generally permitted higher floor-area-ratios (“FAR”) for non-residential uses and lower FARs for residential uses. A text amendment in 1978 switched the FAR requirements by generally prescribing higher FARs for residential uses and lower FARs for non-residential uses. A provision was added in the Zoning Regulations regulating the conversion of existing gross floor area to residential use:

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 changed in 1978.

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 amendments in case 21-05 to allow the conversion of non-residential buildings to residential use as a matter of right.

III. ANALYSIS

This proposed text amendment (Appendix I) would

- 1) Codify the existing Zoning Administrator interpretation to allow an existing legally built non-residential building to convert to residential use even if the building does not comply with some or all of the residential development standards, and
- 2) Change the existing vesting date from November 17, 1978 to January 1, 2022.

This proposed text amendment also complements Z.C Case No. 21-05, which applied an Inclusionary Zoning 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 Z.C. Case No. 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.

For non-residential buildings that exceed the residential development standards, this text amendment will allow conversions to occur as a matter-of-right and would eliminate the need for a property owner to request zoning relief.

IV. 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.

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

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-conforming 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.

The Office of Planning recommends the case be set down for a public hearing.

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 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.

200.2 When modified or otherwise provided for in the development standards for a specific zone, the modification or zone-specific standard shall apply.

200.3 Notwithstanding Subtitle G §§ 200.1 and 200.2, 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 some or all of the development standards provided either in this chapter or in a specific zone in this subtitle.

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 adding new § 200.3, 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.

200.2 When modified or otherwise provided for in the development standards for a specific zone, the modification or zone-specific standard shall apply.

200.3 Notwithstanding Subtitle H §§ 200.1 and 200.2, 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 some or all of the development standards provided either in this chapter or in a specific zone in this subtitle, subject to the requirements for ground floor designated uses of Subtitle H § 1101, if applicable.

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 §§ 201.1, 201.2, 201.3, and 201.4, to read as follows:

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

~~201.1 The maximum permitted floor area ratio (FAR) in all NC zones may be used for residential purposes, unless specifically required otherwise in an NC zone. However, of the maximum permitted FAR, non-residential uses shall be limited to a maximum non-residential FAR as established in the development standards for each zone. The maximum permitted FAR is inclusive of the non-residential FAR.¹~~

~~201.2 The matter-of-right height, penthouse, and density limits shall serve as the guidelines for planned unit developments except if specifically stated otherwise.²~~

~~201.3 The development standards for lodging uses shall be those for non-residential uses except as specifically stated in FAR.³~~

~~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,~~

¹ Redundant at this rule is stated in every zone chapter under Density- Floor Area Ratio (FAR).

² Redundant as rule exists at Subtitle X §§ 303.5, 303.7, and 303.18.

³ Redundant as rule exists at Subtitle B § 304.2.

~~provided that requirements for ground floor designated uses of Subtitle U §1101 are provided. [DELETED]~~

III. Proposed Amendment to Subtitle I, DOWNTOWN ZONES

Section 200, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 2, GENERAL DEVELOPMENT STANDARDS FOR DOWNTOWN (D) ZONES, of Subtitle I, NEIGHBORHOOD MIXED USE (NC) ZONES, is proposed to be amended by revising § 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, 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 some or all of the residential development standards provided either in this chapter or in a specific zone in this subtitle, provided that subject to the requirements for ground floor designated uses of Subtitle I § 601 are provided, if applicable.