

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 08-17
Z.C. Case No. 08-17
(Text Amendments – 11 DCMR)
Prohibition of Certain Accessory Uses in Reed-Cooke Overlay
September 14, 2009

The Zoning Commission for the District of Columbia (the “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), having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03), and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter, hereby gives notice of adoption of amendments to § 1401 of the Zoning Regulations (Title 11 DCMR). That provision lists uses that are prohibited in the Reed-Cooke Overlay. The proposed amendment adds a new § 1401.2 to indicate if a principal use is prohibited by § 1401.1, the accessory form of the use is prohibited as well. Proposed new § 1401.3 would exempt the off-premises wine and beer sales accessory use in the grocery store located in Square 2572, Lot 36 subject to a cap on the amount of floor space that the accessory use could occupy. That grocery store and accessory use were the subject of *Appeal No. 17675 of the Reed-Cooke Neighborhood Association*, 55 DCR 12552 (2008), in which the Board of Zoning Adjustment (“BZA”) found “that the sale of off-premises alcoholic beverages as an accessory use is not prohibited by § 1401.1(b) and is therefore allowed as a matter of right.”

A Notice of Proposed Rulemaking was published in the *D.C. Register* on August 7, 2009 (54 DCR 9445). The Commission took final action to adopt the amendments at a public meeting held on September 14, 2009. The only change to the advertised text was to include an eight percent cap on the amount of floor space that the accessory use could occupy.

This final rulemaking is effective upon publication in the *D.C. Register*.

Set Down Proceedings

On May 30, 2008, the Office of Zoning received a report from the Office of Planning (“OP”) on behalf of the Reed-Cooke Neighborhood Association (“RCNA”), petitioning the Commission for a text amendment to § 1401.1 of the Zoning Regulations to clarify that the uses listed in § 1401.1(a) to § 1401.1(y) are prohibited both as principal uses and accessory uses. They believed that the Commission intended to prohibit all forms of a prohibited use when it

established the overlay. At the public meeting, OP recommended that their request be amended to add a new § 1401.2 to more explicitly address the intention of the request.

The Commission set down the case for public hearing at its meeting on June 9, 2008. OP's set down report served as the pre-hearing statement.

Public Hearing and Comment

The Commission held a public hearing on the proposed text amendments on June 29, 2008. At the public hearing, OP testified that the genesis of the application was a result of the granting of a permit to allow off-premises alcoholic beverage sales as an accessory use to a supermarket in the Reed-Cooke area. The Zoning Administrator found that the use restrictions in the Reed-Cooke Overlay (at § 1401.1) applied only to principal uses and therefore the sale of wine and beer is allowed by-right in the supermarket as an accessory use.

OP stated that the intention of the proposed text amendment is to bring clarity to the issue and have the text explicitly state that the uses listed in § 1401.1 are prohibited both as a principal use and as an accessory use to any other use. Although not explicitly stated in the record, it is OP's understanding that the circumstances of the original overlay proposal was that some uses presented social and environmental problems within the Reed-Cooke area and the overlay intended to prevent these uses, such as liquor stores, restaurants, bars, etc., from being located within the Reed-Cooke neighborhood. This was reflected in one of the general policies of the Reed-Cooke Overlay, which states "*encourage small scale businesses that will not adversely affect the residential community.*" RCNA was concerned that with the BZA and Zoning Administrator's rulings, the area is susceptible to the listed uses being introduced as accessory to other uses.

The Commission also heard testimony from several persons. Wilson Reynolds, representing Advisory Neighborhood Commission ("ANC") 1C, and Maureen Gallagher and Peter Lyden, representing RCNA, all provided testimony in support of the text amendment. Norman Glasgow, representing Harris Teeter, the occupant of the full-service grocery store at 1631 Kalorama Road, N.W., spoke in opposition to the amendment and requested that an exemption be added so that the adoption of the prohibition would not change the nature of the accessory use from conforming to non-conforming. If the non-conforming use is abandoned, any subsequent use must conform to the regulations of the Zone District in which the use is located.

The public hearing was concluded and the Commission requested additional information on the supermarket's ABC license and requested that the ANC provide a letter that included the vote of the ANC in order to be given great weight.

ANC 1C, through its adoption of a resolution dated July 3, 2009, stated its opposition to the exemption but indicated that, in the event the Commission agreed to it, the accessory use should

be confined to the location it occupied on July 1, 2009, and only to the extent it occupied that location on that date.

Proposed Action

At its July 13, 2009 public meeting, the Commission agreed to include the exemption within the proposed text as well as a cap, but requested that the public comment on the extent of the cap as well as the appropriateness of the exemption. The Commission noted that in finding of fact number 6 of Appeal No. 17675, the BZA found that: “According to the plans submitted with the building permit application, the area to be devoted to the sale of beer and wine would comprise approximately 4% of the store's total floor area.” With this figure as a baseline, the Commission requested that the Zoning Administrator measure the total floor area currently occupied by the accessory use and report his findings prior to the Commission's scheduled public meeting of September 14, 2009. At the conclusion of the public meeting, the Commission voted to refer the proposed text to the National Capital Planning Commission (“NCPC”), which by report dated August 27, 2009, found that the proposed text amendment would not adversely affect the federal interests or be inconsistent with the Federal Elements of the Comprehensive Plan.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on September 14, 2009. The only change to the advertised text was to include a cap on the amount of floor space that the accessory use could occupy. According to a letter dated September 14, 2009 from the Zoning Administrator, the grocery store occupies 25,977 square feet of floor area. A four percent cap would limit the use to 1,039 square feet. The Commission considered it appropriate to allow some matter-of-right expansion for this use, but to limit that expansion to eight percent of the existing floor area, which equates to 2,078 square feet.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Regulations, DCMR Title 11, § 1401 are amended by adding new §§ 1401.2 and 1401.3 to read as follows:

- 1401.2 Except as provided in §1401.3, if any of the principal uses prohibited by § 1401.1 would be permitted as an accessory use in the underling zone district, that accessory use is also prohibited in the RC Overlay District.
- 1401.3 Notwithstanding § 1401.2, the off-premises beer and wine sales accessory use in the grocery store located in Square 2572, Lot 36 may continue as a matter of right

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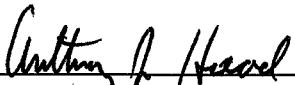
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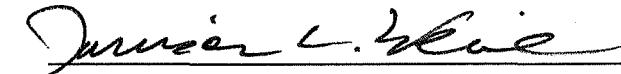
provided that it shall not occupy more than 2,078 square feet of the store's gross floor area.

On July 13, 2009, upon motion of Chairman Hood, as seconded by Commissioner Schlater, the Zoning Commission **APPROVED** the proposed rulemaking at its public meeting by a vote of **4-0-1** (Anthony J. Hood, William W. Keating, III, and Konrad W. Schlater to approve; Peter G, May to approve by absentee ballot; Michael G. Turnbull, not present, not voting).

On September 14, 2009, upon motion of Commissioner Schlater, as seconded by Chairman Hood, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; William W. Keating, III to approve by absentee ballot).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on March 19, 2010.


ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION


JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

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The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 08-17

As Secretary to the Commission, I hereby certify that on MAR 17 2010 copies of this Notice of Final Rulemaking and Z.C. Order No. 08-17 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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|---|--|
| 1. <i>D.C. Register</i> | 5. Councilmember Jim Graham |
| 2. Bryan Weaver, Chair
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Washington, D.C. 20009 | 6. DDOT (Karina Ricks) |
| 3. Commissioner Wilson Reynolds
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Bergstein) |

ATTESTED BY:


Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning