

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING**

Z.C. Case No. 14-11

(Text Amendment – 11 DCMR)

**(Text Amendments to Chapters 1, 3 4, 26, and 31, Maximum Height and Minimum Lot
Dimension Requirements and Use Permissions in the R-4 District)**

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 (2012 Repl.)), hereby gives notice of its intent to amend §§ 199, 330, 336, 337, 400, 401, 2602, 2603, and 3401 of Title 11 (Zoning) of the District of Columbia Municipal Regulations (DCMR).

The proposed rules are intended to address concerns heard by the Commission with respect to what have come to be called “pop ups.” A pop up generally is a row dwelling upon which an addition is constructed that results in the structure visibly rising above the roofs of adjacent dwellings. Pop ups have been on the increase in R-4 Zone Districts where a maximum height of forty (40) feet is permitted and where buildings existing prior to May 12, 1958 may be converted to apartment houses provided there is nine hundred square feet (900 sq. ft.) of land area for each existing and added unit.

If adopted by the Commission, the proposed amendments would reduce the matter-of-right height for R-4 buildings to thirty-five feet (35 ft.), except that a height of forty feet (40 ft.) would be permitted for new construction of three (3) or more immediately adjoining residential row dwellings built concurrently on separate record lots (§ 400.1). The existing three (3)-story limit would remain for all buildings. Special exception relief from the thirty-five foot (35 ft.) height limitation would be available provided that certain conditions are met (§ 400.23). The definition of “mezzanine” would also be amended to provide that in an R-4 Zone District a mezzanine would be considered a story in determining the maximum number of permitted stories within a principal structure, but not for an accessory building.

The proposed text distinguishes between conversion of residential buildings and non-residential buildings through new §§ 330.7 and 330.8. The conversion of non-residential buildings would continue to be permitted without a limit on the number of units (§ 330.8), while the matter-of-right conversion of a residential building would be limited to four (4) units (§ 330.7). Both §§ 330.7 and 330.8 imposed specific sets of conditions for the types of conversions each govern, including the requirement that there must be nine hundred square feet (900 sq. ft.) of land area for each unit. One condition for the conversion of a residential building is that the fourth (4th) unit must be set-aside for eligible moderate-income households pursuant to the Inclusionary Zoning (“IZ”) regulations set forth in Chapter 26.

Special exception relief would be available from most, but not all of the residential and non-residential conversion conditions (§§ 336 and 337). For example, special exception relief for residential conversions is not available from either the IZ set-aside or the minimum land area requirement. If special exception relief is granted from the four (4)-unit maximum applicable to residential conversions, the fourth (4th) unit and every additional even number unit would be

subject to the same Inclusionary Zoning requirement just described. A conversion involving a height in excess of thirty-five feet (35 ft.), would be subject to the special exception relief provisions of §§ 336 or 337, rather than § 400.23.

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following amendments to the Zoning Regulations are proposed:

Chapter 1, THE ZONING REGULATIONS, § 199.1, Definitions, is amended by amending the definition of “Mezzanine” to add the phrase “Except in an R-4 District,” to the second sentence and by adding a new third sentence so that the definition will read as follows:

Mezzanine - a floor space within a story between its floor and the floor or roof next above it and having an area of not more than one-third (1/3) of the area of the floor immediately below. Except in an R-4 District, a mezzanine shall not be considered a story in determining the maximum number of permitted stories. In an R-4 District, a mezzanine shall be considered a story in determining the maximum number of permitted stories within in a principal structure but shall not be considered a story in determining the maximum number of permitted stories within an accessory building.

Chapter 3, R-2, R-3, R-4, AND R-5 RESIDENCE DISTRICT USE REGULATIONS, is amended as follows:

Section 330, R-2 DISTRICTS: GENERAL PROVISIONS, is amended as follows:

Subsection 330.5(e) is repealed so that the entire subsection reads as follows:

330.5 The following uses shall be permitted as a matter of right in an R-4 District:

- (a) Any use permitted in R-3 Districts under § 320.3;
- (b) Child/Elderly development center located in a building that was built as a Church and that has been used continuously as a church since it was built; provided, that all of the play space required for the center by the licensing regulations shall be located on the same lot on which the center is located;
- (c) Child/Elderly development center or adult day treatment facility; provided, that the center shall be limited to no more than sixteen (16) individuals;

- (d) Community-based residential facility; provided that, notwithstanding any provision in this title to the contrary, the Zoning Administrator has determined that such community-based residential facility, that otherwise complies with the zoning requirements of this title that are of general and uniform applicability to all matter-of-right uses in an R-4 District, is intended to be operated as housing for persons with handicaps. For purposes of this subsection, a "handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more of such person's major life activities, or a record of having, or being regarded as having, such an impairment, but such item does not include current, illegal use of, or addiction to, a controlled substance
- (e) Repealed
- (f) Flat;
- (g) Hospital, sanitarium, or clinic for humans;
- (h) Museum; and
- (i) Private club, lodge, fraternity house, sorority house, or dormitory, except when the use is a service customarily carried on as a business.

By adding new §§ 330.7 and 330.8 to read as follows:

- 330.7 Conversion of an existing residential building existing prior to May 12, 1958 to an apartment house shall be permitted as a matter of right in the R-4 District subject to the following conditions:
- (a) There is an existing residential building on the property at the time of filing an application for a building permit;
 - (b) No more than one (1) dwelling unit may be located in any accessory building or structure on the same lot as the existing;
 - (c) The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.);
 - (d) There shall be nine hundred square feet (900 sq. ft.) of land area per dwelling unit;
 - (e) The conversion shall not result in more than four (4) dwelling units on the lot;

- (f) The fourth (4th) dwelling unit shall be subject to the requirements of Chapter 26, Inclusionary Zoning, including the set aside requirement set forth at § 2603.9;
- (g) No more than thirty percent (30%) of the gross floor area of the residential building shall be demolished as part of the conversion;
- (h) An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property;
- (i) A roof top architectural element original to the residential building such as a turret, tower, or dormers shall not be removed or significantly altered, including increasing its height, elevation, or size;
- (j) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;
- (k) Any addition, including a roof structure or penthouse, shall not interfere with the operation of a solar energy system on an adjacent property; and
- (l) An apartment house in an R-4 District, converted from a residential building prior to [THE EFFECTIVE DATE OF THIS AMENDMENT] shall be considered a conforming use and structure, but shall not be permitted to expand unless approved by the Board of Zoning Adjustment pursuant to §§ 3104.1 and 3104.3 and § 336.

330.8 Conversion of an existing non-residential building or structure existing prior to May 12, 1958 to a residential building or structure shall be permitted as a matter of right in the R-4 District subject to the following conditions:

- (a) There is an existing non-residential building on the property at the time of filing an application for a building permit;
- (b) The maximum height of any additions to the existing structure shall not exceed thirty-five feet (35 ft.);
- (c) There shall be nine hundred square feet of (900 sq. ft.) land area per dwelling unit;
- (d) An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building or structure on an adjacent property;

- (e) A roof top architectural element original to the structure such as a turret, tower, or dormers shall not be removed or significantly altered, including increasing its height, elevation, or size;
- (f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;
- (g) Any addition, including a roof structure or penthouse, shall not interfere with the operation of a solar energy system on an adjacent property; and
- (h) An apartment house in an R-4 District converted from a non-residential building prior to [THE EFFECTIVE DATE OF THIS AMENDMENT] shall be considered a conforming use and structure, but shall not be permitted to expand unless approved by the Board of Zoning Adjustment pursuant to §§ 3104.1 and 3104.3 and § 337.

New § 336, CONVERSION OF A RESIDENTIAL BUILDING EXISTING PRIOR TO MAY 12, 1958 TO APARTMENT HOUSES (R-4) and new § 337, CONVERSIONS OF NON-RESIDENTIAL BUILDINGS OR STRUCTURES EXISTING PRIOR TO MAY 12, 1958 TO APARTMENT HOUSES (R-4), are added to read as follows:

336 CONVERSION OF A RESIDENTIAL BUILDING EXISTING PRIOR TO MAY 12, 1958 TO APARTMENT HOUSES (R-4)

- 336.1 Conversion of an existing residential building existing prior to May 12, 1958 to an apartment house and not meeting one (1) or more of the conditions of § 330.7 shall be permitted as a special exception in the R-4 District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section, except that no special exception relief shall be available from the requirements of § 330.7(a), (d), or (f).
- 336.2 If relief is requested from the four (4)-unit limitation of § 330.7(e), the fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Chapter 26, Inclusionary Zoning, including the set aside requirement set forth at § 2603.9.
- 336.3 Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code.
- 336.4 Any addition, including a roof structure or penthouse, shall not interfere with the operation of a solar energy system on an adjacent property.

336.5 A roof top architectural element original to the house such as a turret, tower, or dormers shall not be removed or significantly altered, including increasing its height, elevation, or size.

336.6 Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

- (a) The light and air available to neighboring properties shall not be unduly affected;
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and
- (c) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the Subject Street or alley.

336.7 In demonstrating compliance with § 336.7, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways.

336.8 The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block.

336.9 The Board may modify or waive not more than two (2) of the requirements specified in § 336.4 through § 336.6; provided, that any modification or waiver granted pursuant to this section shall not be in conflict with § 336.7.

337 CONVERSIONS OF NON-RESIDENTIAL BUILDINGS OR STRUCTURES EXISTING PRIOR TO MAY 12, 1958 TO APARTMENT HOUSES (R-4)

337.1 Conversion of a non-residential building or other structure existing prior to May 12, 1958 to an apartment house and not meeting one (1) or more of the requirements of § 330.8, shall be permitted as a special exception in an R-4 District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section, except that no special exception relief shall be available from the requirements of § 330.8(a).

337.2 Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

- (a) The light and air available to neighboring properties shall not be unduly affected;
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and
- (c) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the Subject Street or alley.

337.3 In demonstrating compliance with § 337.2, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways.

337.4 The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block.

Chapter 4, RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, is amended as follows:

Section 400, HEIGHT OF BUILDINGS OR STRUCTURES (R), is amended as follows:

Subsection 400.1 is amended to provide height limits specific to the R-4 District and § 4001.2 is amended to add a cross-reference to new § 400.23, so that both subsections read as follows:

400.1 Except as specified in this chapter and in Chapters 20 through 25 of this title, the height of buildings or structures in a Residence District shall not exceed that given in the following table:

ZONE DISTRICT	MAXIMUM HEIGHT (Feet)	MAXIMUM HEIGHT (Stories)
R-1-A, R-1-B, R-2, R-3, R-5-A	40	3
R-5-B	50	no limit
R-5-C	60	no limit
R-5-D	90	no limit
R-5-E	90	no limit
R-4 ZONE DISTRICT		
New construction of 3 or more immediately adjoining residential row dwellings built concurrently on separate record lots	40	3
All other structures	35	3

400.2 Except as provided in § 2510, the height of buildings or structures specified in § 400.1 may be exceeded as provided in §§ 400.3 through 400.13 and § 400.23.

A new § 400.23 is added to read as follows:

400.23 In an R-4 District, a building or other structure may be erected to a height not exceeding forty feet (40 ft.) shall be permitted as a special exception in the R-4 District if approved by the Board of Zoning Adjustment, under § 3104, subject to the following conditions, except that if the building is being converted to an apartment house, special exception relief from the thirty-five foot (35 ft.) height limitation is only available pursuant to §§ 336 or 337 as applicable:

- (a) The applicant shall demonstrate that the overall building or structure height or upper addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:
 - (1) The light and air available to neighboring properties shall not be unduly affected;
 - (2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;
 - (3) An addition shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;
 - (4) An addition shall not interfere with the operation of a solar energy system on an adjacent property; and
 - (5) The resulting building or structure height, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage;
- (b) The applicant shall demonstrate that overall building or structure height or upper addition resulting from the additional five feet (5 ft.) will not have a substantially adverse effect on the defining architectural features of the building or result in the removal of such features; and
- (c) In demonstrating compliance with §§ 400.23(a) and (b), the applicant shall use graphical representations such as plans, photographs, or elevation and

section drawings sufficient to represent the relationship of the new or extended building or structure to adjacent buildings and views from public ways.

Section, 401, MINIMUM LOT DIMENSIONS (R), is amended as follows:

By amending the portion of the table appended to § 401.3 pertaining to the conversion of a building or structure to an apartment house in an R-4 District by inserting the phrase “pursuant §§ 330.6 or 330.7” in the left hand column, so that portion of the table reads as follows:

n/a	MINIMUM LOT AREA (square feet)	MINIMUM WIDTH OF LOT (feet)
R-4 Conversion of a building or structure pursuant §§ 330.6 or 330.7 to an apartment house	900 sq. ft. /apartment or bachelor apartment	None prescribed.

By amending § 401.11 to strike the phrase “pursuant to § 330.5(e)” and insert the phrase “pursuant to former § 330.5(e) or existing §§ 330.6 or 330.7” in its place, so that the subsection reads as follows:

401.11 An apartment house in an R-4 District, whether converted from a building or structure pursuant to former § 330.5(e) or existing §§ 330.6 or 330.7, or existing before May 12, 1958, may not be renovated or expanded so as to increase the number of dwelling units unless there are nine hundred square feet (900 sq. ft.) of lot area for each dwelling unit, both existing and new.

Chapter 26, INCLUSIONARY ZONING, is amended as follows

Section 2602, APPLICABILITY, § 2602 is amended to read as follows:

2602.2 A development with less than ten (10) dwelling units shall become subject to this chapter upon the filing of an application for a building permit to:

- (a) Add one (1) or more dwelling units to a new development within a two (2)-year period after the issuance of the last certificate of occupancy, if the construction for which application has been filed would result in the development having ten (10) or more dwelling units;
- (b) Convert a one (1)-family dwelling or flat to an apartment house in the R-4 District for four (4) or more dwelling units; or

- (c) Convert a non-residential building to an apartment house in the R-4 District for ten (10) or more units.

Section 2603, SET-ASIDE REQUIREMENTS, is amended to as follows:

Subsection 2603.1 is amended by adding the phrase “Except as provided in § 2603.8” so that the entire subsection reads as follows:

- 2603.1 Except as provided in § 2603.8, an inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an R-2 through an R-5-B District or in a C-1, C-2-A, W-0, or W-1 District shall devote the greater of ten percent (10%) of the gross floor area being devoted to residential use or seventy-five percent (75%) of the bonus density being utilized for inclusionary units.

Subsection 2603.3 is amended by adding the phrase “Except as provided in § 2603.9” so that the entire subsection reads as follows:

- 2603.3 Except as provided in § 2603.9, Inclusionary developments located in R-3 through R-5-E, C-1, C-2-A, StE, W-0, and W-1 Districts shall set aside fifty percent (50%) of inclusionary units for eligible low-income households and fifty percent (50%) of inclusionary units for eligible moderate-income households. The first inclusionary unit and each additional odd number unit shall be set aside for low-income households.

New §§ 2603.8 and 2603.9 are added to read as follows:

- 2603.8 An Inclusionary development that results from a conversion of a one (1)-family dwelling or flat to an apartment house in the R-4 District for four (4) or more dwelling units shall set aside every even numbered dwelling unit beginning at the fourth unit as an inclusionary unit.
- 2603.9 An Inclusionary development that results from a conversion of a one (1)-family dwelling or flat to an apartment house in the R-4 District for four (4) or more dwelling units shall set aside one hundred percent (100%) of inclusionary units for eligible moderate-income households.

Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, § 3104, SPECIAL EXCEPTIONS, is amended by inserting alphabetically the following new special exceptions into the chart appended to § 3104.1:

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Height in excess of 35 feet to a maximum of 40 feet in R-4 Districts as specified in § 400.1	R-4 District	§ 423
Conversion of non-residential building to apartment house not meeting the requirements of 330.8	R-4 District	§ 337
Conversion of residential building to apartment house not meeting the requirements of § 330.7	R-4 District	§ 336

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001. Ms. Schellin may also be contacted by telephone at (202) 727-6311 or by email: at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.