

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

AND

Z.C. ORDER NO. 08-18

Z.C. Case No. 08-18

(Text Amendment -- 11 DCMR)

(Text Amendments – Use of former public school buildings)

January 26, 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 and thereafter 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 the adoption of the following amendments to Chapter 1, § 199, Chapter 2, §§ 201 and 222, Chapter 21, § 2101, and Chapter 31, § 3104, of the Zoning Regulations (Title 11 DCMR).

The text amendments will allow re-use of former public school buildings located in residential zone districts for various uses deemed appropriate by the Commission.

A hearing on the proposed text amendments was held and concluded on July 28, 2008. The record was held open until September 2, 2008 to allow the receipt of further information requested by the Commission.

A Revised Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on December 12, 2008, at 55 DCR 12501.¹ The Revised Notice was referred to the National Capital Planning Commission (“NCPC”) under the terms of § 492 of the District of Columbia Charter. NCPC, through a delegated action dated October 7, 2008, found that the proposed text amendments would not adversely affect any identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Commission took final action to adopt the amendments at a public meeting on January 26, 2009 without making changes to the revised proposed text. This final rulemaking is effective upon publication in the *D.C. Register*.

¹An earlier Notice of Emergency and Proposed Rulemaking had been published in the June 27, 2008 edition of the *D.C. Register* at 55 DCR 7159. In that Notice, the Commission proposed to amend §§ 199, 201, 222, and 2101 of the Zoning Regulations (Title 11 DCMR). The Revised Notice of Proposed Rulemaking proposed amending these same provisions, but in somewhat different ways, and also proposed a conforming amendment to § 3104.

Existing Regulations

The existing regulations (11 DCMR) make all re-use of former public school buildings in residential zones subject to the granting of a special exception by the Board of Zoning Adjustment (“BZA”) and limit such re-use only to historic buildings listed in the District’s Inventory of Historic Sites or located within a district, site, area, or place listed in this inventory.

Description of Text Amendments

The text amendments set forth herein will broaden the possibilities for re-use of former public school buildings, benefitting both the District as a whole and the neighborhoods within which such school buildings are located. The following five uses, some with conditions, will be allowed as a matter-of-right in such buildings: an administrative office of a District government agency, a medical clinic, a community service use, a child/elderly development center, and a community college. A definition of “community service use” is also provided in the text amendments. Uses falling within three categories will be allowed as special exceptions, if permitted by the BZA. These categories are: a District government use not allowed as a matter-of-right, a use which is permitted as a matter-of-right but which cannot meet a required condition, and a not-for-profit use. The text amendments prohibit the expansion of former public school buildings containing these uses unless permitted by the BZA and also permit the BZA to impose conditions deemed necessary to protect the neighborhood within which the former school buildings are located. Lastly, the text amendments establish parking requirements for the new uses permitted in former school buildings and include a conforming amendment to § 3104.

Relationship to Comprehensive Plan

The text amendments would not be inconsistent with the Comprehensive Plan for the National Capital (“Plan”). In fact, the amendments further several policies of the Plan, in both the Land Use and Education categories. The amendments create a broader spectrum of re-use possibilities for all former public school buildings, furthering Plan Policies LU-1.1.2 (Reuse of Large Publicly-Owned Sites) and LU-2.1.12 (Reuse of Public Buildings). Many of the uses permitted in the former school buildings by the text amendments would provide immediate, as well as long-term, public benefits, in keeping with Plan Policies LU-1.2.5 (Public Benefit Uses on Large Sites) and EDU-1.5.2 (Reuse of School Surplus Space). The conditions imposed on the matter-of-right uses and the necessity to obtain a special exception for other uses foster the stated policy requiring that the re-use of former school buildings be “sensitive to neighborhood context” and “mitigate impacts on parking, traffic, noise, and other quality of life factors.” Plan Policy EDU-1.5.5 (Adaptive Re-Use).

The text amendments also indirectly further other elements of the Plan, including Plan Policy EDU-1.5.3 (Long-Term Leases), which encourages long-term leases instead of sales of former school buildings in order to maintain District ownership of these buildings, and Plan Policy EDU

1.5.4 (Preserving Sites Near Transit), which recommends preserving school sites well-served by public transit for educational use.

Great Weight

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to issues and concerns raised in the affected Advisory Neighborhood Commission's ("ANC") written recommendation. Although the text amendments could affect all ANC's, only ANC 6B filed a written report with the Commission. ANC 6B voted to oppose the text amendments as originally drafted. The ANC's report was dated July 17, 2008, and it reflects ANC 6B's concern that, as the amendment was then drafted, all proposed uses in former public school buildings were to have been allowed as matter-of-right uses. The ANC recommended that the uses listed be allowed as special exceptions, which would permit community input during the special exception process. The Commission agrees with this recommendation as to some of the proposed uses and the text amendment language was changed to make certain of the listed uses subject to the special exception process.

The ANC report also expresses a concern that the District agency office uses and not-for-profit office uses permitted by the text amendments, either as a matter-of-right or a special exception, would have impacts similar to those of a commercial office use, which is prohibited in a residential zone. The Commission has considered the ANC's concern about the possible impacts of office uses, but concludes that under the final text amendment language, the concern is ameliorated. The final language makes not-for-profit office uses a special exception and imposes certain conditions on the offices of a District government agency in order to control and/or mitigate any impacts on the surrounding neighborhood.

Final Action

At its properly noticed January 26, 2009 public meeting, the Commission took final action to adopt the proposed text amendments. No substantive changes were made to the text amendments set forth in the Revised Notice of Proposed Rulemaking.

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 purposes of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission **APPROVES** the following amendments to the Zoning Regulations, Title 11 DCMR:

1. CHAPTER 1, THE ZONING REGULATIONS, §199 Definitions, is amended by adding the following definition and inserting it alphabetically:

Community service use - A not-for-profit use established primarily to benefit and serve the population of the community in which it is located.

2. CHAPTER 2, R-1 RESIDENCE DISTRICT USE REGULATIONS, § 201.1, is amended as follows:

A. By adding the following new paragraph:

(v) The following uses are permitted as a matter of right if located in a building owned by the District of Columbia that formerly served as the location of a public school:

(1) Administrative offices of District government agencies not part of the criminal justice system, provided:

(A) The use shall not extend outside the building unless accessory and incidental to the principal administrative use; and

(B) Any storage shall be fully enclosed.

(2) Clinic for humans, provided that the use shall not be a substance abuse treatment facility or a community-based residential facility;

(3) Community service use or uses, provided:

(A) The application for a certificate of occupancy include evidence demonstrating that the established mission of the use will serve the community, neighborhood, or District of Columbia population;

(B) There is no outdoor storage of materials; and

(C) The use shall not be a community- based residential facility, a part of the criminal justice system, or a substance abuse treatment facility;

(4) Child/Elderly development center; and

(5) Community college, up to 50,000 sq. ft. of building area, provided:

(A) There shall be no external activities after 9:00 PM; and

(B) There shall be no use of the college space after midnight.

B. By deleting current § 222 in its entirety and amending § 222 to read as follows:

222 USE AND EXPANSION OF FORMER PUBLIC SCHOOL BUILDINGS R-1).

222.1 The following uses, if located in a building owned by the District of Columbia that formerly served as the location of a public school (“former school building”), shall be permitted as a special exception in the R-1 District if approved by the Board of Zoning Adjustment under §3104:

- (a) A District government use disallowed or not listed in § 201.1(v);
- (b) A use permitted by § 201.1(v) that does not meet one or more conditions or provisions that apply to it; and
- (c) A not-for-profit use that is not permitted as a matter-of-right pursuant to §201.1(v)(3).

222.2 No former school building housing a use permitted by § 201.1(v) or by this section may be expanded without the approval of the Board of Zoning Adjustment under § 3104.1.

222.3 In addition to any other conditions of approval, the Board of Zoning Adjustment may impose setbacks, screening, lighting requirements, or other safeguards that the Board deems necessary for the protection of the neighborhood.

3. CHAPTER 21, OFF-STREET PARKING REQUIREMENTS, § 2101, Schedule of Requirements for Parking Spaces, § 2101.1, is amended by adding the following to the chart under the heading entitled “Schools”:

<p><u>Uses in former public school buildings authorized by 11 DCMR §§ 201.1 (v) or 222</u></p> <p>R Districts</p>	<p>Parking requirements will be those that apply in the most restrictive zone district in which the use is otherwise first permitted as a matter of right.</p>
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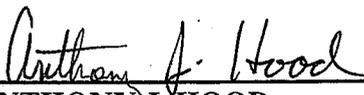
4. CHAPTER 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE: the table of special exceptions following § 3104.1 is amended by inserting the following special exceptions in alphabetical order:

Type of Special Exception	Zone District	Sections in which the Conditions are Specified
District government use in former public school buildings.	R-1 District	§ 222
Expansion of former public school buildings with District government uses, or other permitted uses.	R-1 District	§ 222
Not-for-profit use in former public school buildings.	R-1 District	§ 222

On September 8, 2008, upon the motion of Chairman Hood, as seconded Commissioner Etherly, the Zoning Commission **APPROVED** the proposed rulemaking at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Gregory N. Jeffries, Curtis L. Etherly, Jr., Peter G. May, and Michael G. Turnbull to approve).

On January 26, 2009, upon the motion of Chairman Hood, as seconded Commissioner May, the Zoning Commission **ADOPTED** the final rulemaking at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to adopt; Third Mayoral Appointee position vacant at the time of final action, not voting).

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 **MAR 27 2009** .



ANTHONY J. HOOD
 Chairman
 Zoning Commission



RICHARD S. NERO, JR.
 Acting Director
 Office of Zoning

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January 26, 2009

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.: 08-18

MAR 30 2009

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Notice of Final Rulemaking & Order No. 08-18 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|---|
| 1. D.C. Register | 6. DDOT (Karina Ricks) |
| 2. All ANC Chairs | 7. General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| 3. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 8. Office of the Attorney General
(Alan Bergstein) |
| 4. All Councilmembers | |
| 5. Office of Planning (Harriet Tregoning) | |

ATTESTED BY:

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