Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 558
Case No. 86-8
January 11, 1988
(Artist Studios and Art Galleries)

The Zoning Commission initiated this case in order to consider the adoption of regulations which would expand the opportunities for artists to establish studios in suitable locations, and to re-examine the zone districts where art galleries should be allowed to locate, as well as the definition of "art gallery". One objective of the land use element of the Comprehensive Plan is "to encourage the development of an ample and varied supply of spaces for artists including living, studio, performance and gallery spaces."

As framed by the public hearing notice, the scope of this case is limited to the following:

1. allowing new dwellings for artists in industrial districts, as accessory uses to studio space;

2. allowing studios in private garages, and in buildings on alley lots; and

3. deleting art galleries as permitted uses in R-4, R-5, and SP districts, and define "art gallery."

Pursuant to notice, public hearings were held on March 19, and 23, and May 14, 1987. The over-all thrust of the written and oral statements and material persuasively supports the benefit to the District of providing the maximum reasonable number and kinds of locations for the creation, display, and sale of art. At the same time, it is necessary to protect residential communities from the impact of business traffic, whether pedestrian or vehicular, and to discourage the diversion of housing stock to other uses.

The Commission has determined to expand the opportunities to locate artist studios in several ways that are in harmony with the various zone districts, and thereby promote arts as a vocation.

Artists will be allowed to establish an apartment as an accessory use to a studio in an industrial zone. The requirement that the residential use be accessory should prevent the diversion of industrial-zoned land and structures to residential purposes. Such diversion should be limited, because the entry of residential uses into industrial zones creates pressures to protect the residential uses from the impact of the industrial ones which are intended to be the favored uses in those zones.

Artists will be allowed to establish studios in garages, and in buildings located on alley lots, under conditions that will preserve required parking, limit the scope and impact of the studio use, and not otherwise tend to divert the use of housing stock.

Some concern was expressed during the hearings about the principle of protecting residential zones from the intrusion of non-residential uses. This concern is reasonable, but taken too far would deprive the District of the diversity which inheres in and enriches the life of the city. Art is one element of this diversity that should be encouraged, with reasonable controls.

Concern was also expressed about the hazardous properties of certain of the materials which may be used by some artists. The Commission concludes that the District's fire and safety codes are the more practical and effective regulatory vehicles for dealing with these issues.

Similar concerns relate to noise which may accompany work in some media. Again, the District has a separate noise control ordinance. In addition, as one artist observed, to the extent that neither zoning nor other regulations can absolutely prevent all unreasonable impact of regulated activity, such is simply an element of the compromise of urban life. There will be a degree of noise, traffic, parking congestion, and general clamor as part of life in the city. Indeed, a certain level of these effects are at times generated to an unwelcome extent by the very use which is the most liberally permitted under the Zoning Regulations, that is, the single family dwelling.

Conversely, not every artist may reasonably expect to be accommodated by regulations which allow all flexibility which the muse would dictate. The regulations must work generally, not on the assumption or hope that, with no stated limit, "not too many" artists would use an excessive amount of floor area or garage space, or bring on an excessive number of apprentices.

The Commission notes that in Z.C. Case 86-29 it is amending the regulations to provide additional expanded opportunities for the location of artist studios.

The adopted rules and the above discussion respond to the concerns of Advisory Neighborhood Commission ("ANC") 2C, which expressed general support for the proposed amendments to encourage artists to remain in the District, and the support of ANC 1C for the artist "loft" concept in the industrial zones. The Commission believes that paragraph 2300.3(e) will protect against the diversion of off-street parking, and accordingly responds to the concern of ANC 1C about the use of garage space for studios.

The amended rules define the term "art gallery"; delete art galleries as permitted uses in the R-4 district; allow them by special exception in the R-5 district; and allow them as a matter of right in the SP zone.

The Commission believes that the amendments respond reasonably to the impact of art galleries in the R-4 and R-5 zones. The Commission is not persuaded that an art gallery is a hostile element in residential zones, simply because it is not classed as a residential use. An art gallery provides a benefit to city life that is not incompatible with the variety of residential structures that are allowed in the R-5 zone. The special exception process and standards will provide ample protection to adjacent and neighboring uses, and allow the retention of established galleries.

The definition of art gallery will clarify that the use is one that displays and sells objects of art. As defined in Webster's Unabridged Dictionary, an object of art is an "article of artistic worth". In spite of the element of subjectivity in this latter definition, it nonetheless serves to direct and limit the class of uses which can be established. The retention of art gallery as a matter of right use in an SP District is entirely consistent with the allowed and intended mix of uses in the SP zones. The Commission believes that the character of the R-5 and SP zones where galleries are now located will be preserved by continuing to allow galleries as uses which are permitted either as a special exception or as a matter-of-right.

The final rules, and the above discussion address the concerns of ANCs 1C and 2B that art galleries be deleted as matter of right uses in residential areas or R-4 and R-5 districts, and that the term art gallery be defined. In the notice of proposed rulemaking, the Commission proposed two alternative definitions of "art gallery". The Commission has determined to adopt the second proposed alternative, with one clarifying and non-substantive change. The alternative proposals had been that an art gallery's income must be either entirely or substantially derived from the sale and display of objects of art. The thrust of the latter proposal is more reasonable, but, in light of a comment of ANC 2B, the Commission has clarified the provision by substituting "more than fifty percent (50 %)" for "substantially".

The proposed action of the Zoning Commission to amend the Zoning Regulations was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. By report dated December 21, 1987, NCPC found that the proposed amendment would not adversely affect the Federal Establishment or other Federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of amendments to the Zoning Regulations regarding artist studios and art galleries. The specific amendments to DCMR Title 11 (the Zoning Regulations) are as follows:

1. Permit sales and teaching in an artist studio in the SP district, by deleting paragraph 501.1(f), and adding the following new sub-section 501.2:

   501.2 An artist studio shall be permitted as a matter of right in an SP district, subject to the following criteria:

   (a) All operations and storage of materials shall occur inside the building;

   (b) Sales of art work produced by the occupants of the studio shall be permitted within the studio; and

   (c) The artist may teach the art to one or more persons.

2. Permit an artist studio as a matter of right in residential districts, by adding a new sub-section 2300.3, to read as follows:

   2300.3 An artist studio shall be a permitted use in either a private garage that is an accessory building located in a Residence District, or in a building located on an alley lot, subject to the provisions of this section and the following criteria:

(a) Occupancy of the private garage shall be limited to one artist and one apprentice for each 450 square feet of gross floor area;

(b) All operations and storage of materials shall occur inside the building;

(c) Incidental sales of art work produced by the occupants of the studio shall be permitted within the studio;

(d) The artist may teach the art to one or more apprentices; and

(e) In addition to any parking spaces which may be required by section 2101 or any other provision of this title, parking for the studio use shall be provided at the rate of one parking space for each three occupants of the studio.

3. Renumber existing sub-sections 2300.3 through 2300.7 consistently, as sub-sections 2300.4 through 2300.8.

4. Permit an artist studio as a matter-of-right in a building located on an alley lot, by adding a new sub-section 2507.5 to read as follows:

2507.5 An artist studio shall be a permitted use in a building located on an alley lot, subject to the following criteria:

(a) Occupancy of the building shall be limited to one artist and one apprentice for each 450 square feet of gross floor area;

(b) All operations and storage of materials shall occur inside the building;

(c) Incidental sales of art of the work produced by the occupants of the studio shall be permitted within the studio;

(d) The artist may teach the art to one or more apprentices; and

(e) In addition to any parking spaces which are required by section 2101 or any other provision of this title, parking for the studio use shall be provided at the rate of one parking space for each three occupants of the studio.

5. Renumber existing sub-section 2507.5 as 2507.6.

6. Permit the dwelling of an artist as an apartment which is accessory to an artist studio in a C-M zone, by adding a new sub-section 801.5, to read as follows:

   801.5 An apartment integrated with and accessory to an artist studio shall be permitted as a matter-of-right in a C-M District, provided that occupancy of the apartment shall be limited to the artist using the studio portion of the premises, and the family of the artist.

7. Renumber existing sub-section 801.5 through 801.9 consistently, as sub-sections 801.6 through 801.10.

8. Amend existing sub-section 800.4 to read as follows:

   800.4 Except as is explicitly provided in section 801 of this title, no new dwelling shall be permitted in a C-M District.

9. Permit the dwelling of an artist as an apartment which is accessory to an artist studio in an M zone, by amending sub-section 821.2 to read as follows:

   821.2 Any uses permitted in a C-M district under sub-section 801.2 and sub-sections 801.4 through 801.10.

10. Amend sub-section 820.2 consistently to read as follows:

    820.2 Except as provided in sub-section 821.2 of this title, no new residential building shall be permitted in M Districts.

11. Define the term "Artist studio", by adding the following definition to sub-section 199.1:

    Artist studio - a place of work of one or more persons who are engaged actively, and either gainfully or as a vocation, in: the fine arts, including but not limited to painting, printmaking, or sculpturing; the performing and visual arts, including but not limited to dance, choreography, photography or filmmaking; ceramics; or the composition of music.

12. Delete an art gallery as a permitted use in an R-4 District, by amending paragraph 330.5(i) to read as follows:

    330.5(i) Museum.

13. Change an art gallery from a use permitted as a matter-of-right in an R-5 zone, to a use which is permitted by a special exception, by adding the following as a new section 361:

361 Art Galleries

361.1 An art gallery shall be permitted in an R-5 District if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of Chapter 31 of this title, and subject to the provisions of this section.

361.2 The art gallery shall be located and operated so that it is not likely to become objectionable to adjoining and nearby property because of noise, pedestrian and vehicular traffic, hours of operation, or other objectionable conditions.

361.3 The Board shall consider, and regulate if necessary, the anticipated frequency, number of attendees, and other characteristics of show openings, or other group gatherings.

361.4 Adequate off-street parking, but not less than that required by Chapter 21 of this title, shall be provided to accommodate occupants, employees, and visitors likely to come to the gallery by automobile.

361.5 The proposed use will not adversely affect the present character or future development of the surrounding area.

361.6 The Board may require special treatment in the way of design, screening of buildings and parking, signs, exterior and interior lighting, or other requirements it shall deem necessary to protect adjacent and nearby properties.

14. Retain an art gallery as a permitted use in SP Districts, by adding the following Paragraph (i) to sub-section 501.1:

501.1(i) Art gallery.

15. Define the term "art gallery", by adding the following definition to sub-section 199.1:

Art gallery - an establishment that derives more than fifty percent (50 %) of its income from the display and sale of objects of art.

16. Establish a parking requirement for art galleries in SP districts, by adding an art gallery requirement to the schedule of parking requirements for commercial buildings under sub-section 2101.1, as follows:

Art gallery:

All districts for	-	In excess of 3,000 ft.^{2}, 1 each 300 ft.^{2} of gross floor area and cellar floor area.

This order was adopted by the Commission at the public meeting on January 11, 1988, by a vote of 5-0 (Patricia N. Mathews, Maybelle T. Bennett, Lindsley Williams, John G.Parsons, and George M. White, to approve).

In accordance with 11 DCMR section 3028, this order is final and will take effect upon publication in the D.C. Register, that is, on 22 JAN 1988.

LINDSLEY WILLIAMS
Chairman
Zoning Commission

EDWARD L. CURRY
Executive Director
Zoning Secretariat

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