

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
ORDER NO. 946
Z.C. Case No. 01-10TA
(Text Amendment – 11 DCMR)
(Additions to One-Family Dwellings and Flats)
September 17, 2001

The Zoning Commission for the District of Columbia, pursuant to its authority under §§ 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code, 2001 Ed. §§ 6-641.01 and 6-641.07(d) (formerly codified at D.C. Code §§ 5-413 and 5-424(d) (1994 Repl.))); having held a public hearing as required by § 3 of the Act (D.C. Code, 2001 Ed. § 6-641.03 (formerly codified at D.C. Code § 5-415 (1994 Repl. & 1999 Supp.))); and having referred the proposed amendment to the National Capital Planning Commission for a 30-day period of review pursuant to 11 DCMR §§ 3025.3 and 3028.1; hereby gives notice of the adoption of the following amendment to § 223 of the Zoning Regulations, Title 11 DCMR, pertaining to additions to one-family dwellings and flats. The Commission took final action to adopt the amendment at a public meeting held on September 17, 2001.

The Commission initiated this case in response to Office of Zoning recommendations to correct a technical inconsistency between §§ 223 and 2001.3, which will allow nonconforming and conforming one-family dwellings and flats to be treated the same with respect to the criteria and burden of proof that must be met for relief from the area restrictions of the Zoning Regulations.

The Board of Zoning Adjustment may, pursuant to the existing text in 11 DCMR § 223, grant special exception relief to permit an addition to a one-family dwelling or flat that does not meet the requirements of §§ 401 (minimum lot dimensions), 403 (maximum percentage of lot occupancy), 404 (minimum rear yard requirements), 405 (minimum side yard requirements), and 406 (minimum court dimensions), provided the lot occupancy of the dwelling or flat does not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts.

The purpose of § 223, adopted by the Zoning Commission on February 23, 1998, in Z.C. Order No. 840 (Z.C. Case No. 97-2/94-6), was to provide a remedy for applicants who wished to make reasonable additions to their homes but who could not meet the strict requirements for an area variance. Section 223 incorporated the general special exception requirements of § 3104.1 and

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specified additional zoning controls to protect neighboring properties and neighborhood character.

This proposed rulemaking would extend special exception relief to homeowners with nonconforming structures, who otherwise must seek a variance from the provisions of § 2001.3 for their proposed additions. The Zoning Regulations define the term “nonconforming structure” in § 199.1 as

a structure, lawfully existing at the time this title or any amendment to this title became effective, that does not conform to all provisions of this title or the amendment, other than use, parking, loading and roof structure requirements. Regulatory standards that create nonconformity of structures include, but are not limited to, height of building, lot area, width of lot, floor area ratio, lot occupancy, yard, court, and residential recreation space requirements.

Under § 2001.3, an enlargement or addition may be made to a nonconforming structure devoted to a conforming use provided:

- (a) The structure shall conform to percentage of lot occupancy requirements;
- (b) The addition or enlargement itself shall conform to use and structure requirements; and
- (c) The addition or enlargement itself shall not increase or extend any existing, nonconforming aspect of the structure, and shall not create any new nonconformity of structure and addition combined.

Thus, many homeowners who would otherwise be eligible to seek special exception relief under § 223, but who have a nonconforming dwelling or flat, must also seek variance relief from § 2001.3. A significant number of homes in the District of Columbia were built prior to the adoption of the Zoning Regulations and are nonconforming. The necessity of a variance from § 2001.3 for nonconforming one-family dwellings and flats undermines the Zoning Commission’s intent in adopting § 223, which was to relieve homeowners of the difficult burden imposed by the variance test and to make Board of Zoning Adjustment proceedings more efficient.

The proposed amendment also clarifies that § 223 only applies to relief from specified area restrictions applicable to an addition to a building that is a one-family dwelling or flat. Section 223 may not be used to permit the introduction or expansion of a nonconforming use as a special exception. It would not, therefore, authorize the Board of Zoning Adjustment to grant special exception relief from the use restriction in § 2001.3(b), which requires that an addition or

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enlargement of a nonconforming structure conform to the use requirements of the Zoning Regulations.

The Commission set this case down for public hearing at its regularly scheduled meeting on May 14, 2001. A Notice of Public Hearing containing the proposed amendment and setting a hearing date for July 12, 2001, was published in the *D.C. Register* on June 1, 2001, at 48 DCR 4914.

The D.C. Office of Planning (OP), in its report dated June 29, 2001 (Ex. 9), recommended adoption of the proposed text amendment, with added language that would prevent the expansion or introduction of nonconforming uses under § 2001.3(b) as a special exception. The restriction proposed by OP is included in this final rulemaking.

In response to the Notice of Public Hearing, the Commission received written comments in support of the proposed rulemaking from architect Andre F. Houston and architect and former Zoning Commissioner Angel F. Clarens. Both observed that the same principles supporting the adoption of § 223 support the adoption of the proposed amendment to § 223.

The Commission received letters opposing the proposed rulemaking from Advisory Neighborhood Commission (ANC) 3G, which expressed concerns about the existing text in § 223.3, which provides that as a condition of special exception relief, the lot occupancy of the dwelling and the addition combined may not exceed 50 percent in the R-1 and R-2 Districts. Under § 403, the maximum percentage of lot occupancy in R-1 and R-2 Districts is 40 percent. ANC 3G is concerned that increased lot occupancy may result in substantial adverse effects on adjacent properties, including impacts on light and air and intrusion on the character, scale, and pattern of housing along the building's street frontage. ANC 3G requested that the provisions in § 223 that allow an increase in lot occupancy to 50 percent by special exception in the R-1 District be repealed. ANC 3F submitted a resolution requesting that the Zoning Commission not approve the proposed text amendment, but instead issue an expanded public notice that addresses and offers as an alternative repeal or restriction of the existing text. Ward 3 Councilmember Kathy Patterson likewise opposed the increased lot occupancy allowed by special exception in the R-1 and R-2 Districts.

At the public hearing on July 12, 2001, the Commission received oral comments from ANC 3G and ANC 3F relating to the increased lot occupancy allowed by special exception in the R-1 and R-2 Districts and whether the increase promotes "McMansions," large buildings out-of-character with the neighborhood. Architect Andre F. Houston, speaking in support of the proposed amendment, illustrated several anomalies in requiring a different burden of proof for additions to nonconforming dwellings as compared to additions to conforming dwellings. *See* Ex. 12.

At the conclusion of the public hearing, the Commission took proposed action pursuant to 11 DCMR § 3027.2 to approve the rulemaking. In response to the ANCs' comments, the Commission also requested OP to undertake a study of § 223 and recommend any changes found

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necessary or desirable to address the ANCs' concerns relating to increased lot occupancy. On July 27, 2001, a Notice of Proposed Rulemaking was published 48 DCR 6898 for a 30-day notice and comment period.

The Commission received written comments from ANC 3F in response to the Notice of Proposed Rulemaking, requesting the Commission to defer action or to significantly narrow the scope of the rulemaking. ANC 3F is concerned that the increased lot occupancy allowed under the existing regulation by special exception could result in increased stormwater runoff. ANC 3F urged the Zoning Commission not to adopt the proposed rulemaking in its present form; or, alternatively, to require stormwater runoff mitigation as a condition of special exception relief, to limit the amendment to owner-occupied dwellings, and to exclude from the benefit of the amendment structures that are already nonconforming because they exceed the maximum percentage of lot occupancy. ANC 3G submitted a letter in supporting ANC 3F's recommendations, and encouraged the Zoning Commission to issue an expanded public notice that proposed as an alternative repeal or restriction of the existing text. The Natural Resources Defense Council also submitted a letter supporting ANC 3F's comments, and requested that any increased lot coverage be conditioned on stormwater runoff mitigation.

The notice of proposed rulemaking was referred to the National Capital Planning Commission (NCPD) under the terms of § 492 of the District of Columbia Charter. NCPD, by delegated action of its Executive Director dated August 31, 2001, indicated that the proposed text amendment would not adversely affect the federal establishment or other federal interests, nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital, including Special Streets and Special Places, as well as adjacent federal lands and buildings.

The Commission reviewed this case at its public meeting on September 17, 2001. With respect to the comments received in response to the Notice of Public Hearing and the Notice of Proposed Rulemaking, the Commission notes that the existing text already requires the Board of Zoning Adjustment to determine whether the proposed addition would first, adversely affect adjacent properties with respect to light, air, and privacy, § 223.2(a) and (b); second, "substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage," § 223.2(c); third, be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps," § 3104.1; and fourth, "tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." § 3104.1. Pursuant to § 223.4, "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 and nearby properties" as a condition of granting the requested special exception. The regulations thus already address the concerns raised in the comments in opposition to the proposed rulemaking, including concerns relating to light and air, impacts from increased lot occupancy, and stormwater runoff onto adjacent and nearby properties. Concerns relating to the control of stormwater runoff in general are more appropriately directed to the District of Columbia Department of Health and Department of Consumer and Regulatory Affairs, which

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regulate water quality and construction practices respectively. The Commission can discern no reason to limit the availability of special exception relief under § 223 to owner-occupied dwellings.

The Commission determined to adopt the rulemaking as proposed as a final rulemaking. No changes have been made to the language proposed in the Notice of Proposed Rulemaking. The Office of the Corporation Counsel has determined that this rulemaking meets its standards of legal sufficiency.

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

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendment to § 223 of the Zoning Regulations, Title 11 DCMR. Deleted wording is shown in strike-through lettering and added wording is shown bolded and underlined.

Chapter 2, R-1 Residence District Use Regulations, § 223, is amended to read as follows:

223 ADDITIONS TO ONE-FAMILY DWELLINGS OR FLATS (R-1)

223.1 An addition to a one-family dwelling or flat, in those Residence Districts where a flat is permitted, that does not comply with all of the **applicable area** requirements of §§ 401, 403, 404, 405, ~~or 406~~, **and 2001.3** shall be permitted if approved by the Board of Zoning Adjustment in accordance with § 3104.1, subject to the provisions of this section.

223.2 The 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;
- (c) The addition, together with the original building, 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; and

(d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways.

223.3 The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts.

223.4 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 and nearby properties.

223.5 This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.

Vote of the Zoning Commission taken at its public hearing on July 12, 2001, to **approve** the proposed rulemaking: **4 - 1 - 0** (Carol J. Mitten, John G. Parsons, James H. Hannaham, Peter G. May, to approve; Anthony J. Hood, opposed on grounds that additional time was needed for community outreach).

This order was **adopted** by the Zoning Commission at its public meeting on September 17, 2001, by a vote of **5 - 0 - 0** (Anthony J. Hood, Carol J. Mitten, John G. Parsons, James H. Hannaham, and Peter G. May).

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 SEP 28 2001.


CAROL J. MITTEN
Chairman
Zoning Commission


JERRILY R. KRESS, FAIA
Director
Office of Zoning