

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

and

ORDER NO. 959

Z.C. CASE NO. 00-04TA

(Text Amendment – 11 DCMR)

(Miscellaneous Technical Corrections)

March 11, 2002

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.)), and 11 DCMR § 3030 (Consent Calendar), hereby gives notice of the adoption of miscellaneous, minor amendments to 11 DCMR §§ 201.1(h), 214.1, 901.4, 2115.11, 2405.2, 2500.5, 3003.3(e), 3004.10, 3125.5, and 3134.16(a) and (b). The Commission took final action to adopt the amendments on March 11, 2002. This rulemaking will become effective upon publication in the *D.C. Register*.

The Commission initiated this rulemaking to make minor, technical, or corrective amendments to miscellaneous provisions of the Zoning Regulations. The amendments conform to published court opinions and/or long-standing administrative practices and are consistent with existing regulations.

The Commission took proposed action pursuant to 11 DCMR § 3027.2 at its regular monthly meeting on February 11, 2002, to approve the proposed amendments. A Notice of Proposed Rulemaking was published in the *D.C. Register* on February 22, 2002, at 49 DCR 1700, for a ten-day notice and comment period. The shortened notice period is permitted under § 2-505(a) of the District of Columbia Administrative Procedure Act, D.C. Code, 2001 Ed. (formerly codified at D.C. Code § 1-1506(a) (1999 Repl.)), upon good cause shown and published in the notice of proposed rulemaking. As stated in the February 22, 2002, Notice of Proposed Rulemaking, a shortened notice period is necessary in this case to permit the proposed amendments to be published in the forthcoming edition of Title 11, which is soon to be published, rather than await the next addition. Also, because this rulemaking was undertaken pursuant to the Commission's Consent Calendar procedures in 11 DCMR § 3030, no hearing was held. The Office of the Corporation Counsel has determined that this rulemaking meets its standards of legal sufficiency.

The Commission received comments on the proposed rulemaking from the law firm of Holland and Knight. These comments are addressed more fully below, in connection with each amendment. In general, the Commission agrees with Holland and Knight that the amendments identified as paragraphs C, D, E, and G(2) should be adopted as proposed, and that H(1) and H(2) should be adopted as slightly modified. The Commission does not agree that the amendments identified as paragraphs A and B should be deferred; however, the Commission has modified the text that was proposed in paragraph B in response to the Holland and Knight comments. With respect to the comments on paragraphs F and G(1), the Commission believes that while these provisions may benefit from additional study and amendment in the future, the amendments as proposed should be adopted at this time.

The amendments adopted in this rulemaking consist of the following minor clarifications and corrections:

A. 11 DCMR § 201.1(h). Paragraph (h) in subsection 201.1, relating to use as a private garage designed to house no more than two motor vehicles and not exceeding 450 square feet in size as a matter of right in an R-1 District, will be clarified by adding the phrase “as a principal use.” In contrast, a private garage that is an accessory building in an R-1 District is regulated under § 204 and, in accordance with the definition of “private garage” in § 199.1, may house one or more motor vehicles and may not exceed 900 square feet in size.

Holland and Knight is concerned that the insertion of the phrase “as a principal use” may introduce ambiguity into § 201, and specifically § 201.1, by implying that all the other uses listed in §§ 201 and 201.1 are something other than principal uses. While the original intent with respect to the organization of chapter 2 may have been to list only principal uses in § 201, the existing text does include certain accessory or incidental uses. For example, paragraph (q) in § 201.1 permits use as a child development center located in a District of Columbia public school or in a public recreation center; paragraphs (e) and (g) in § 201.1 list temporary uses; and the antenna provisions in §§ 201.2 through 201.6 include antennas that are accessory to principal uses or principal buildings.

But more importantly, while a private garage designed to house no more than two motor vehicles and not exceeding 450 square feet in area, a principal use, is listed in § 201.1, a private garage is not listed as an “accessory use” in § 202. Private garages are listed as “accessory buildings” in § 204, but no dimensional limitations are specified. The amendment adopted by the Commission will help clarify that a private garage in the R-1 District that is limited to 450 square feet in area is a private garage that is a principal use, while a private garage that is limited to 900 square feet in area is an accessory private garage.

B. 11 DCMR § 214.1. The amendment to § 214.1, relating to special exception approval for accessory parking spaces in an R-1 District, will clarify that such parking spaces must be accessory to a principal use permitted in the R-1 District. In contrast, parking spaces that are not accessory to a principal residential use may be permitted as a special exception as a “parking lot” pursuant to the conditions specified in § 213, or as a special exception pursuant to § 2116.5, which permits the location of accessory parking spaces elsewhere than on the lot upon which the

building or structure they are intended to serve is located. Sections 213 and 214 establish different conditions for the approval of parking lots and accessory parking spaces in the R-1 Districts. The amendment will assist the public in identifying the appropriate type of special exception required for these uses. The amendment is consistent with the Board of Zoning Adjustment's interpretation of this regulation, which was upheld by the D.C. Court of Appeals in *Friendship Neighborhood Coalition v. District of Columbia Board of Zoning Adjustment*, 403 A.2d 291, 293 (D.C. 1979); with numerous Board of Zoning Adjustment decisions and orders; and with recent interpretations of §§ 213 and 214 by the District of Columbia Office of Planning (see, for example, BZA Application Nos. 16802 and 16820). It is also consistent with the wording of the existing text in §§ 510, 708, 730, 743.2(d), and 753.1(c), relating to special exception approval for the location of parking spaces that are accessory to a principal Special Purpose or Commercial District use elsewhere than on the lot upon which the principal use is permitted.

Holland and Knight is concerned that the amendment as proposed may have precluded various institutions permitted in the Residence Districts, such as churches, schools, and chanceries, from obtaining special exception relief under § 214 for accessory parking spaces. The Commission agrees that this is a valid concern, and has revised the wording in § 214 to clarify that the parking spaces must be accessory to a principal R-1 District use. This wording is consistent with existing text relating to accessory parking spaces in the Special Purpose and Commercial Districts under §§ 510.1, 708.1, 730.1, 743.2(d), and 753.1(c).

C. 11 DCMR § 901.4. The amendment to § 901.4, relating to "child development homes" and "elderly day care homes," is necessary to correct an inadvertent error in the Commission's Notice of Final Rulemaking regarding "child/elderly development centers," published at 46 DCR 8284 (1999). A "child development home" is defined in § 199.1 as a dwelling unit used for the licensed care, education, and training of no more than five individuals, 15 years of age or less. An "elderly day care home" is defined as a dwelling unit used in part for the care, education, recreation, or training of no more than five elderly individuals. In contrast, a "child/elderly development center" is defined as a building, other than a child development home or an elderly day care home, used for the licensed care, education, counseling, or training of six or more individuals. The 1999 rulemaking that amended § 901.4 inadvertently changed the wording of the existing text, relating to a "child development home" as an accessory use in a dwelling, to "child/elderly development home," a phrase that is not defined in the Zoning Regulations nor recognized as a use. The amendment to § 901.4 will correct this error by replacing the phrase "child/elderly development home" with the phrase "child development home and elderly day care home."

D. 11 DCMR § 2115.11. The amendment to § 2115.11 will replace the phrase "parking garage" with the phrase "parking facility." This amendment is necessary since § 2115.11, relating to the waiver of parking space dimensional, size, design, and striping requirements for attended parking, applies to both accessory parking garages and accessory parking areas.

E. 11 DCMR § 2405.2. The amendment to § 2405.2 will correct the table in that section relating to maximum permitted floor area ratio (FAR) for a planned unit development. For the

C-2-B District, the table indicates that the maximum permitted residential FAR is 4.5; the maximum permitted commercial FAR is 2.5; and the maximum permitted total FAR is 6.0. However, for all other zone districts that are listed in the table in which residential development is permitted, the maximum total FAR may consist entirely of residential development. Consistent with the treatment of all the other FAR values in the table, the amendment will correct the maximum residential FAR value for the C-2-B District by changing it from 4.5 to 6.0.

F. 11 DCMR § 2500.5. The amendment to § 2500.5 will clarify that the second story of an accessory private garage may be used for domestic employee living quarters in the R-1-A and R-1-B Districts only. This clarification is necessary because § 2500.5 applies only in the two residential zone districts with the largest minimum lot sizes and does not carry through to the less restrictive districts. Further analysis of this regulation may be found in the Board of Zoning Adjustment's Decision and Order in BZA Application No. 16696, Application of Craig and Ann Goodman.

Holland and Knight recommends that the Commission expand the use of such accessory private garages to other zone districts where the lot has a minimum lot area of 5,000 square feet or more. Such an amendment would constitute a substantive amendment to the existing rule, however, and require a public hearing. Since the Commission's intent in this rulemaking is simply to clarify the existing rule, the Commission has adopted the amendment as proposed.

G. (1) 11 DCMR § 3003.3(e). The amendment to § 3003.3(e) is necessary to correct the Commission's rule relating to service by e-mail. The existing text inadvertently refers to e-mail as being sent to a telecopier or FAX machine. The rule is corrected to require that service by e-mail must be transmitted electronically to the recipient, using the recipient's correct e-mail address.

Holland and Knight has proposed alternative language to clarify this rule, based upon concerns relating to the use of the word "proper" in both the existing and proposed text. While the alternative language warrants further consideration, the Commission has declined to use it at this time. First, the amendment to the Commission's service rule in § 3003.3(e) is identical to the Board of Zoning Adjustment's existing service rule in § 3111.3(e). Moreover, both the Commission and Board rules use similar terminology relating to "proper" addressing of papers to be served, regardless of whether they are to be served by mail, fax, or telegram. Any change in this wording should be deferred to a later rulemaking when the service rules can be updated and clarified in their entirety.

(2) 11 DCMR § 3004.10. The amendment to § 3004.10 will require that a motion to correct a Commission transcript be served on all parties to the pertinent proceeding, not just opposing parties.

H. (1) 11 DCMR §§ 3125.5 and 3134.16(b). The amendments to §§ 3125.5 and 3134.16(b) will bring these rules into conformity with § 3(a) of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135; D.C. Code, 2001 Ed. § 1-309(d)(3)(C)), which requires service of government entity decisions on the

affected ward Councilmembers as well as the affected Advisory Neighborhood Commissions. Holland and Knight has raised concerns that the use of the word “affected” with respect to the ward Councilmembers could introduce ambiguity into the rule. The Commission agrees, and has modified the amendment to require service upon the Councilmember for the ward within which the property that is the subject of the proceeding is located.

(2) 11 DCMR § 3134.16(a). The amendment to § 3134.16(a) will allow the Office of Zoning to mail copies of Board of Zoning Adjustment decisions and orders in chancery application cases to the applicant by first class mail, postage prepaid, rather than by registered or certified mail, return receipt requested. This amendment is consistent with § 3125.4, published at 47 DCR 9347, 9352 (2000), relating to service of Board decisions and orders in other types of cases by first class mail.

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

Title 11 is amended as follows. Deleted wording is shown in strike-through lettering and added wording is shown bolded and underlined:

A. Amend chapter 2, the R-1 Residence District Use Regulations, section 201, Uses as a Matter of Right (R-1), subsection 201.1, paragraph (h), to read as follows:

201.1 The following uses shall be permitted as a matter of right in R-1 Districts:

....

(h) Private garage, **as a principal use**, designed to house no more than two (2) motor vehicles and not exceeding four hundred fifty square feet (450 sq. ft.) in area, subject to the special provisions of chapter 23 of this title.

B. Amend chapter 2, section 214, Accessory Parking Spaces (R-1), subsection 214.1, to read as follows:

214.1 Accessory passenger automobile parking spaces elsewhere than on the same lot or part of a lot on which ~~the main~~ **any principal R-1** use is permitted, except for a one-family dwelling, shall be permitted as a special exception in an R-1 District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

- C. Amend chapter 9, section 901, Uses as a Matter of Right in a Waterfront District, subsection 901.4, relating to child development homes and elderly day care homes, to read as follows:

901.4 A ~~child/elderly development home~~ **child development home and an elderly day care home** shall be permitted in a Waterfront District as a matter of right, as an accessory use; provided, that the dwelling unit in which the use is located shall be the principal residence of the caregiver and that the use shall otherwise meet the definition of a home occupation.

- D. Amend chapter 21, Off-Street Parking Requirements, section 2115, Size of Parking Spaces, subsection 2115.11, to read as follows:

2115.11 Parking space dimensional, size, design, and striping requirements stipulated under §§ 2115.1 through 2115.4, 2117.3, 2117.5, and 2117.6 may be waived; provided, that the parking is managed during a specified twelve (12) hour peak period to be determined by the D.C. Department of Public Works by employed attendants who park the vehicles using the parking ~~garage~~ **facility**.

- E. Amend chapter 24, Planned Unit Development Procedures, section 2405, PUD Development Standards, subsection 2405.2, the permitted aggregate floor area ratio table, to read as follows:

2405.2 The floor area ratio of all buildings shall not exceed the aggregate of the floor area ratios as permitted in the several zone districts included within the project area; provided, that the Commission may authorize minor deviations for good cause pursuant to § 2405.3:

FLOOR AREA RATIO

Zone District	Residential	Commercial, Including Hotels and Motels	Total
....			
C-2-B	4.5 6.0	2.0	6.0

- F. Amend chapter 25, Miscellaneous Zoning Requirements, section 2500, Accessory Uses and Buildings, subsection 2500.5, to read as follows:

2500.5 In an R-1-A or R-1-B District **only**, an accessory private garage may have a second story used for sleeping or living quarters of domestic employees of the family occupying the main building.

G. Amend chapter 30, Zoning Commission Rules of Practice and Procedure, as follows:

1. Amend section 3003, Service of Papers, subsection 3003.3(e), to read as follows:

3003.3 Service may be made and shall be considered complete as indicated in paragraphs (a) through (f) of this subsection, or as otherwise authorized by law:

....

(e) By e-mail, when transmitted electronically, properly addressed to the attention of the intended ~~recipient's telecopier~~ **recipient, with the proper e-mail address**; or

2. Amend section 3004, Minutes and Transcripts, subsection 3004.10, to read as follows:

3004.10 Copies of the motion to correct a transcript shall be served simultaneously on all opposing parties or their authorized representatives.

H. Amend chapter 31, Board of Zoning Adjustment Rules of Practice and Procedure, as follows:

1. Amend section 3125, Final Decision and Effective Dates of Decisions and Orders, subsection 3125.5, to read as follows:

3125.5 A copy of the decision or order and the accompanying findings of fact and conclusions of law shall be served on **the councilmember representing the ward within which the property is located and** any ANC that submitted a written report in accordance with § 3115.

2. Amend section 3134, Chancery Applications, subsection 3134.16(a) and (b), to read as follows:

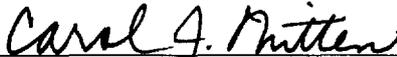
3134.16 Each notice of a decision or order shall be made as follows:

- (a) Formal notice of a decision or order shall be given to the applicant by ~~registered or certified mail, return receipt requested~~ **first class mail, postage prepaid**;
- (b) A copy of the decision or order shall be served on **the councilmember representing the ward within which the property is located and any an ANC which that** submitted a written report in accordance with § 3115; and
- (c) A copy of the decision shall be published in the *D.C. Register* as a notice of final rulemaking.

Vote of the Zoning Commission taken at its regularly scheduled meeting on February 11, 2002, to **APPROVE** the proposed rulemaking: **5 - 0 - 0** (John G. Parsons, Anthony J. Hood, Carol J. Mitten (by absentee vote), James H. Hannaham, and Peter G. May, to approve).

This order was **ADOPTED** by the Zoning Commission at its public meeting on March 11, 2002, by a vote of **5 - 0 - 0** (Carol J. Mitten, Peter G. May, Anthony J. Hood, James H. Hannaham, and John G. Parsons (by absentee vote), to adopt).

In accordance with 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register* MAR 22 2002.



CAROL J. MITTEN
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning