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MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: JLS
Jennifer Steingasser, Deputy Director Development Review & Historic Preservation
DATE: June 1, 2015
SUBJECT: ZC 14-11: Supplemental Report 2 (Post Proposed Action): Chapter 1, Definitions and Chapter 4, R-4 Zones

I. BRIEF BACKGROUND

The Zoning Commission set the case down for public hearing on July 17, 2014
The Zoning Commission held a public hearing on January 15, 2015.
OP submitted a supplemental report in response to request from the Commission on March 28, 2015.
The Zoning Commission took proposed action on March 30, 2015

II. CORRECTION:

In the Notice of Proposed Rulemaking there was a typographical error in section 400.23 that essentially repeated the special exception language. The below language is the proposed correct language.

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, as a special exception 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:....

III. SUMMARY RECOMMENDATION

The Office of Planning reviewed the public comments submitted as of Sunday May 31 in response to the notice of proposed rulemaking. In a very general summarization, regarding Conversion to more than two units, the comments fell generally into three categories.

- Opposes any conversion of any single family house or rowhouse to more than two units
- Any conversions of residential buildings to more than two units should only be by special exception
- Opposes any change to the current regulations

Zoning Administrator's Comments

OP met with the Zoning Administrator's Office after their review of the Proposed Rulemaking. They have requested the following clarifications be added:

- § 407 – Clarify that the 2% minor flexibility established in § 407 will not be applicable in the determination of §§ 330.7 or 330.8 for the purpose of conversion or to allow more than two

units in the R-4 District by adding a new section 407.1(c). OP agrees with this request.

407.1 (c) The flexibility or deviation shall not be applicable for any calculation or for determining compliance with to §§ 330.7 or 330.8.

- **Roof top Architectural Elements:** Add the phrase “**changing its shape**” to §§ 330.7 (i) and 330.8 (e) as follows:

330.7 (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 **changing its shape** and increasing its height, elevation or size;

330.8 (e) 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 **changing its shape** and increasing its height, elevation or size;

- **Location of a dwelling unit in an Accessory Building:** Amend § 330.7 (b) to clarify that a unit within an accessory building shall be one of the four permitted units and is not in addition to the units within the principal building, as follows:

330.7 (i) No more than one (1) **of the permitted** dwelling units for the property may be located in ~~any~~ **an** accessory building or structure on the same lot as the existing **principal building**.

- **Gross Floor Area:** Clarify the gross floor area shall not include cellar space by amending § 330.7 (g) as follows:

330.7 (g) No more than thirty percent (30%) of the gross floor area, **as defined in this title**, of the residential building shall be demolished as part of the conversion.

- **Adjacency relative to the rear addition:** Amend § 330.7 (h) to clarify that the ten feet of any rear addition is determined by the principal building on the *adjoining* property, as follows:

330.7 (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~~ **adjoining** property.

- **Solar Energy System:** Amend § 330.7 (k) to 1) clarify that the solar energy system is “existing” and 2) establish that a shadow or shade study should be provided for the ZA to use in determining if an addition is blocking or impeding the operation of a solar energy system, as follows:

330.7 (k) Any addition, including a roof structure or penthouse, shall not interfere with the operation of an **existing or permitted** solar energy system on an adjacent property, **as evidenced through a shadow, shade or other reputable study acceptable to the Zoning Administrator; and**

OP added the phrase “or permitted to account for those systems that may be fully permitted but not yet installed.

Design-Related Conditions

OP heard from community representatives that the design-related conditions should be applicable to all R-4 buildings, and not be applicable only when a flat or single family house converts to three units or more, because the purpose is to protect neighborhood and architectural character which applies regardless of ownership or unit count.

OP agrees with this request and recommends the following additional language be added to a new Section 400.24

400.24 In an R-4 District, the following provisions shall apply:

- (a) **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 changing its shape and increasing its height, elevation or size;**
- (b) **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; and**
- (c) **Any addition, including a roof structure or penthouse, shall not interfere with the operation of a solar energy system on an adjacent property.**

400.25 In an R-4 District, the provisions of § 400.24 may be modified if approved by the Board of Zoning Adjustment, as a special exception under § 3104 subject to the conditions of § 400.23 (a), (b) and (c) .

Vesting (§ 3202)

The public comments range from no vesting to an extended vesting date of eighteen months after final action. The first set down report was filed on June 24, 2014. On July 17, 2014 the Commission set the case down for a public hearing. The public hearing was held in January 2015. There has been extensive public notice of the case including several articles in the Washington Post, other local newspapers, on the radio and television stations, city websites, local list serves, and of course, through the official Zoning Commission notice.

OP recommends that those permits applications for residential buildings in the R-4 District that were accepted as complete and legally filed by the Department of Consumer and Regulatory Affairs as of date of setdown (July 17, 2014), be deemed vested under the R-4 regulations prior to case 14-11.

OP requests that the Office of Attorney General be authorized to finalize the language.