

**MEMORANDUM**

**TO:** District of Columbia Zoning Commission  
**FROM:** JLS  
Jennifer Steingasser, Deputy Director  
**DATE:** July 8, 2016  
**SUBJECT:** ZC #16-08 – Public Hearing Report for a Proposed Text Amendment to Make Existing Apartment Buildings in Lanier Heights Conforming Uses

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**I. BACKGROUND AND RECOMMENDATION**

On June 27, 2016 the Commission took final action to approve a map amendment (#15-09) rezoning much of the Lanier Heights neighborhood from R-5-B to R-4. During the proceedings of that case, the Commission discussed ways to protect the existing apartment buildings within the rezoning area, apartments that would become nonconforming uses in the R-4 zone. On April 11, the Commission set down a proposed text amendment that would make existing apartments conforming uses.

After discussions with the Zoning Administrator and staff at the Department of Consumer and Regulatory Affairs, the Office of Planning (OP) recommends approval of a modified version of the setdown text which focuses on Lanier Heights and the apartments in that neighborhood. OP further recommends that the Commission not approve at this time text amendments that would alter interpretations of vesting rules, but rather consider those changes as a separate, stand-alone text amendment that OP will bring forward later in 2016.

**II. PROPOSED TEXT AMENDMENT**

At the April 11 meeting the Commission set down the following text, which was found in Exhibit 129 of case #15-09:

§ 330.5 The following uses shall be permitted as a matter of right in an R-4 District:

[...]

- (j) A multiple dwelling in Squares 2580, 2581, 2582, 2583, 2584, 2586W, 2587 or 2589, in existence as of December 14, 2015 with a valid Certificate of Occupancy, or under review for a building permit as of December 14, 2015, provided that the multiple dwelling shall not be expanded in floor area or in number of units. Said multiple dwellings, however, may be repaired, renovated, remodeled, or structurally altered.

Notwithstanding § 3202.5(a), said building permit applications may be revised to address structural, mechanical, building code, or other similar issues raised during review, or to bring the building into greater compliance with zoning, so long as the proposed building does not expand in volume, number of stories or number of units, all as stated in the initial building permit application and plans.

The first part of that paragraph would make existing apartment buildings matter-of-right, conforming uses in the squares subject to the Lanier Heights map amendment, despite being in the R-4 zone. The second part of that paragraph, beginning with “Notwithstanding”, was intended to clarify the interpretation of § 3202.5(a) which deals with building permits submitted prior to setdown of a map amendment. Such a clause, however, could set up two distinct interpretations for § 3202.5(a) – one for the subject squares, as described by the above text, and a different interpretation for the rest of the city, without the further explanatory text. It would be illogical to have differing interpretations of the same section of text, and the Zoning Administrator has shared concerns with OP that a “dual-interpretation” scenario would be impractical to administer.

OP, therefore, recommends approval of the following text amendment, which is a slightly more detailed version of the first part of the setdown text:

§ 330.5 The following uses shall be permitted as a matter of right in an R-4 District:

[...]

- (j) A multiple dwelling in Squares 2580, 2581, 2582, 2583, 2584, 2586W, 2587 or 2589, in existence as of December 14, 2015 with a valid Certificate of Occupancy, or a building permit application for a multiple dwelling that is officially accepted by DCRA as being complete prior to December 14, 2015, provided that the multiple dwelling shall not be expanded in gross floor area, lot occupancy, number of stories, building height, penthouse height, or number of units. Said multiple dwellings, however, may be repaired, renovated, remodeled, or structurally altered.

The proposed text would be similar to other existing text in the Regulations, which addresses industrial uses in the Capitol Gateway Overlay (§ 1611) and hotels in R-5 zones (§ 350.4(e)). It would recognize the unique nature of the Lanier Heights rezoning area that, while primarily rowhouses, does include some existing apartment buildings. A redline comparison of the setdown text and the proposed text is included in Attachment 1.

OP proposes to bring forward at a later date a text amendment that would address the vesting provisions of § 3202.5(a) and all similar sections of the Regulations. The goal of that amendment would be to both clarify the intent of sections like § 3202.5(a) and to make the language uniform throughout the Regulations. This proposed text amendment would only be to the ZR16 Regulations. For reference the full text of § 3202.5 is included as Attachment 2.

### **III. PROPOSED TEXT AMENDMENT UNDER ZR16**

OP also recommends approval of a corresponding text amendment to the ZR16 Regulations. The same language as above would be included in a new subsection of Subtitle U Chapter 3, § 301.1(1). Chapter 3 regulates uses in RF zones, and the portion of Lanier Heights in question will be zoned RF-1. Section 301 lists the matter-of-right uses for that zone.

### **IV. ATTACHMENTS**

1. Redline Comparison of Setdown Text and Proposed Text
2. Text of § 3202.5

JS/mrj

**Attachment 1**  
**Redline Comparison of Setdown Text and Proposed Text**

§ 330.5 The following uses shall be permitted as a matter of right in an R-4 District:

[...]

- (j) A multiple dwelling in Squares 2580, 2581, 2582, 2583, 2584, 2586W, 2587 or 2589, in existence as of December 14, 2015 with a valid Certificate of Occupancy, or ~~under review for~~ a building permit application for a multiple dwelling that is officially accepted by DCRA as ~~being complete prior to~~ December 14, 2015, provided that the multiple dwelling shall not be expanded in gross floor area, lot occupancy, number of stories, building height, penthouse height, or ~~in~~ number of units. Said multiple dwellings, however, may be repaired, renovated, remodeled, or structurally altered. ~~Notwithstanding § 3202.5(a), said building permit applications may be revised to address structural, mechanical, building code, or other similar issues raised during review, or to bring the building into greater compliance with zoning, so long as the proposed building does not expand in volume, number of stories or number of units, all as stated in the initial building permit application and plans.~~

**Attachment 2**  
**Text of § 3202.5**

- 3202.5      If an application for a building permit is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed construction, the processing of the application and the completion of work pursuant to the permit shall be governed as follows:
- (a)      If the application is filed on or before the date on which the Zoning Commission makes a decision to hold a hearing on the amendment, the processing of the application and completion of the work shall be governed by § 3202.4. The application shall be accompanied by any fee that is required, and by the plans and other information required by § 3202.2, which shall be sufficiently complete to permit processing without substantial change or deviation, and by any other plans and information that are required to permit complete review of the entire application under any applicable District of Columbia regulations;
  - (b)      If the application is filed after the date on which the Zoning Commission has made a decision to hold a hearing on the amendment, the application may be processed, and any work authorized by the permit may be carried to completion, only in accordance with the zone district classification of the site pursuant to the final decision of the Zoning Commission in the proceeding, or in accordance with the most restrictive zone district classification being considered for the site;
  - (c)      For purposes of paragraph (b) of this section, the phrase "zone district classification being considered for the site" shall include any zone district classification that the Zoning Commission has decided to notice for adoption and the zone district classification that is in effect on the date the application is filed;
  - (d)      The limitation in paragraph (b) of this subsection shall not prevent the issuance of a building permit that is necessary in an emergency to protect the public health or safety; and
  - (e)      The limitation in paragraph (b) of this subsection shall not apply to a decision to hold a hearing on an application that is filed by an owner of property, pursuant to §102.2(a).