

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF EMERGENCY RULEMAKING**

Case No. 06-05

**(Text Amendment – Removing the reference to R-4 Districts from Section 410, Special
Exceptions for Groups of Residential Buildings)**

June 12, 2006

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2001)) and section 6 (c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code §2-505 (c) (2001)) hereby gives notice of the re-adoption, on an emergency basis, of amendments to § 410 of the Zoning Regulations (11 DCMR) to strike the reference to the R-4 Zone District from subsection 410.12.¹ Section 410 permits an exception to the rule that no more than one principal structure may be built on a single record lot in residence zones, by authorizing the Board of Zoning Adjustment (“BZA”) to deem such multiple structures to be a single building in R-4 and R-5 Districts

These amendments were first adopted on an emergency basis on February 13, 2006, and became effective on that date. This emergency action was taken because of 1) the influx of recent, and the anticipation of future, special exception requests under § 410 to allow development projects of multiple units in the R-4 Zone District; and 2) the adverse land use and character implications for the R-4 Zone if multiple units can continue to be deemed a single building in that district. The current rule promotes the transformation of the R-4 District into an apartment house district, contrary to the intent and purposes of the R-4 Zone District prescribed in 11 DCMR § 330. In light of the growing number of requests for relief under § 410 for properties located in the R-4 District, this emergency action is necessary for the immediate preservation of the public welfare by addressing a pressing land use issue that threatens the continued existence of the R-4 Zone District.

A Notice of Emergency and Proposed Rulemaking and a Notice of a Public Hearing on the proposed rule were published in the *D. C. Register* on March 10, 2006. The notices included an alternative proposal to repeal § 410 in its entirety. At the conclusion of the public hearing held on May 4, 2005, the Commission voted to forward the repeal alternative to the National Capital Planning Commission. The Zoning Commission took final rulemaking action to repeal the provision at its public meeting on June 12, 2006. The existing emergency rulemaking shall expire on June 13, 2006. The final rule will not be effective until published in the *Register*. To maintain the *status quo*, the Commission adopted this emergency rule on June 12, 2006, and it became effective immediately.

¹ The version of § 410.12 that appears in the current edition of the Zoning Regulations does not contain this reference, but the prior edition of Title 11 did. A review of all amendments made to § 410.12 between the publications dates of the two editions reflects no amendment to § 410.12. However, the Commission has been advised by the Office of the Attorney General that all of § 410.12 may have been repealed in 1970. For the purposes of this rulemaking only, the Commission will assume that, prior to the first emergency rulemaking, § 410.12 was in effect and that it included a reference to the R-4 Zone District.

The emergency rule will expire on September 9, 2006, which is the 120th day after the adoption of the rule, or upon the publication of a Notice of Final Rulemaking in the *Register*, whichever occurs first.

Section 410 in Chapter 4 RESIDENCE DISTRICTS: HEIGHT, AREA AND DENSITY REGULATIONS of Title 11 (DCMR) is amended as follows:

1. The heading is amended to read as follows:

410 SPECIAL EXCEPTIONS FOR GROUPS OF RESIDENTIAL BUILDINGS IN
R-5 DISTRICTS

2. Section 410.12 is amended by striking the phrase "In the R-5-A and R-4 Districts," and inserting the phrase "In an R-5-A District," in its place.