

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of Zoning**



**MEMORANDUM**

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**To:** Office of Documents and Administrative Issuance (via-email)  
**From:** Sharon S. Schellin <sup>S3</sup>  
Secretary to the Zoning Commission  
**Date:** July 27, 2009  
**Re:** Publication for the Office of Zoning

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Please publish the following in the *D.C. Register* on July 31, 2009:

1. Z.C. Notice of Public Hearing (Case No. 08-09-10).

Attachment

ZONING COMMISSION  
District of Columbia  
CASE NO. 08-09-10  
EXHIBIT NO. 1

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF PUBLIC HEARING**

**TIME AND PLACE:**            **Thursday, September 17, 2009, @ 6:30 p.m.**  
                                 **Office of Zoning Hearing Room**  
                                 **441 4<sup>th</sup> Street, N.W., Suite 220**  
                                 **Washington, D.C. 20001**

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**CASE NO. 08-06-10 (Comprehensive Zoning Regulations Rewrite: Downtown)**

**THIS CASE IS OF INTEREST TO ALL ANCs**

This Notice of Public Hearing announces the tenth of several proposed subject areas the Zoning Commission for the District of Columbia (the "Commission") will consider under this docket. All recommendations offered by the Office of Planning ("OP") under this docket have been reviewed by a working group and a subject matter task force as part of a process designed to ensure full public participation. Nevertheless, this process cannot replace or limit the public hearing process required in the Zoning Act or the Commission's responsibility to consider the merits of each proposal submitted.

This hearing will consider general recommendations for conceptual changes to the zoning regulations to update downtown zoning. The recommendations seek to address the complexity of the DD overlay and other issues with zoning in Central Washington (the study area". The overall goal of the Zoning Review process is to improve the relevance, clarity and ease of use of the zoning code. The recommendations focus on simplifying existing regulations that promote housing, arts, and retail in the Downtown Development District (DD); and expanding the lessons learned to a broader area of Central Washington designated in the Comprehensive Plan as High Density Commercial and Mixed Use. Specific recommendations include simplified zone districts and replacing the current mechanisms for incentivizing housing (combined lot developments and transferable development right) within a single system of "Housing Credits" that would be generated by certain residential developments and then transferred to other lots in the same zone for commercial development in excess of matter of right limits.

This hearing, like all others under this case number, is being scheduled without adherence to the set-down requirements stated at 11 DCMR § 3011 because the Commission waived the requirement at its public meeting held April 14, 2008. The Commission also waived the requirement that a pre-hearing statement be submitted before hearing notices can be published.

It is not expected that the Commission will take proposed action with respect to these recommendations, but that it will make determinations at a public meeting that will serve as guidance for drafting revisions to the zoning regulations pertaining to downtown zoning and other relevant subject matters. More detailed information on the recommendations can also be found in the OP report document at [www.dczoningupdate.org/downtown.asp](http://www.dczoningupdate.org/downtown.asp).

Title 11 DCMR (Zoning) is proposed to be amended as follows:

**Recommendations**

The rationales that follow each recommendation reflect the views of the Office of Planning. The Zoning Commission has not reviewed either these recommendations or their rationale and therefore has not reached a conclusion as to the merits of either.

**1. Replace complicated overlay structure with six stand-alone downtown zoning districts in order to establish a simplified zoning structure for height, bulk, and use permission.**

With nearly 30 zoning combinations, including 12 underlying zones, five overlays, three housing priority areas, and five TDR receiving zones, the existing zoning structure creates unnecessary variety and complexity of zone regulations when there is actually much general consistency in use requirements and many similarities in the form requirements.

The complexity complicates the understanding of zoning regulations across the downtown area as a whole, as well as the ability to understand zoning regulations governing individual lots. For example, many lots within the study areas have bulk and height requirements listed in three separate chapters of the regulations. The standards are often conflicting and, counter to usual procedures, the more restrictive standard does not always apply.

All of the areas in the downtown area have similar Comprehensive Plan and zoning goals for overall height and bulk. In general, these areas allow heights from 90' up to the levels allowed by the Height Act, but differ in both the total FAR allowed and the percentage of commercial FAR allowed.

The seemingly wide variety of FAR and height allowances in Central Washington can actually be consolidated into regular groupings of total and commercial FAR allowed. These have been tentatively labeled DD-1 through DD-6. (For an explanation of "housing credits" and the method for achieving the maximum FAR, see Recommendation Two.)

| Zone | Max Commercial FAR | Max FAR | Max FAR Method             | Max Height |
|------|--------------------|---------|----------------------------|------------|
| DD-1 | 0                  | 6       | Housing                    | 90         |
| DD-2 | 3.5                | 8       | Housing or Housing Credits | 110        |
| DD-3 | 3.5                | None    | Housing or Housing Credits | Height Act |
| DD-4 | 6.5                | None    | Housing or Housing Credits | Height Act |
| DD-5 | 8.5                | None    | Housing or Housing Credits | Height Act |
| DD-6 | 10                 | None    | Housing or Housing Credits | Height Act |

Every existing combination of zone regulations can be fit into one of these categories with no loss of total FAR or height allowed on any lot (many would have slight increases). While the DD-3 through DD-6 would have no maximum FAR limit for housing, in practice height limitations prevent more than 10.5 to 11 FAR on most lots.

- 2. Replacing the current mechanisms for incentivizing housing (combined lot developments and transferable development right) within a single system of Housing Credits. Ensure that vested TDR and CLD allocation rights not yet allocated will retain existing rights and value, including converting unallocated rights to Housing Credits.**

Existing housing incentives and requirements have had great success in implementing the housing goals of the DD overlay. Indeed, OP does not recommend removing requirements where they currently exist. However, the existing system does not provide a mechanism to establish and meet housing goals on a larger scale throughout the entire study area or even in the non-HPA sections of the existing DD. Comprehensive Plan Policy CW-1.1.4, among others in the Central Washington chapter, clearly lays out the city's policy to encourage new high-density housing throughout Central Washington. The necessary solution would maintain housing levels achieved in the HPAs and add zoning incentive to provide housing in the larger study area while not removing any existing development rights.

Each existing non-residential zone in Central Washington has an allowed FAR for commercial uses and a maximum FAR that is achievable through a variety of other methods linked to zone classification.

#### *Existing Combined Lot Process*

In the CG District and in the Upton Arts Overlay Zone, a combined lot development may be used to permit one lot to achieve more non-residential GFA if another lot forgoes that same amount of nonresidential development. In DD District, some lots have a minimum residential requirement by virtue of their being in the Housing Priority Area, which is divided into three sub-areas. As a trade-off, the FAR of those same properties is greater than of those not subject to the requirement. Within each of these sub-areas, two or more lots may combine in order to allocate their required uses among them. In both types of combined lots, the participating lots may also reallocate commercial density, which means that the building on one lot may exceed the matter of right FAR provided that the aggregate FAR with the combined lot stays within matter of right limits.

The combined lot process works to incentivize housing because a residential development can be paid to forgo non-residential development or to take on another lot's legal obligation to provide a minimum amount of housing. However, there have been instances when a single developer owned both the residential and non-residential development and so no money exchanged hands.

### *Transferable Development Rights*

TDRs are not about use, but about density. All properties in the DD can generate TDRs for any housing constructed, but only properties in the housing priority area or in one of five TDR Receiving Zones located outside the DD may use TDRs to increase their matter of right density and height. Properties in the Housing priority area are limited to an additional 0.5 FAR, while properties in a receiving zone can utilize considerably more.

### *The TDR and CLD Covenant*

Before a residential development may allocate its CLDs or transfer its TDRs the owner of the site must sign a covenant promising to maintain the residential use that generated the gross floor area being collocated or transferred. TDRs can thereafter be transferred through the use of certificates of transfer that require four District signatures. CLDs require separate covenants for each allocation. The process is lengthy, cumbersome, and expensive.

### *Maximizing Density Through Housing*

The proposed system would capitalize on the difference between the allowable matter of right commercial FAR and the allowable maximum FAR in each area. Within the proposed DD-2 through DD-6 zones, there are between 2 and 7 FAR that would not (and cannot currently) be used for matter-of-right commercial development, but would be accessible as a matter-of-right by providing housing either on-site or off-site.

A residential or mixed-use project could build to the maximum FAR simply by providing housing on-site above the base commercial FAR. Commercial projects could gain the same additional density by paying for housing to be built elsewhere, similar to the existing CLD program. Of course, if the same person owns both properties, no payment would be necessary. For this report, the method of trading housing between sites will be called Housing Credits (HC).

On any property, residential use built within the commercial FAR limits would generate HC. Commercial use built above commercial FAR limits would require the receipt of HC from a residential property. These trades would happen on the open market the same way the existing TDR system works.

The proposed system offers more choice to potential developments, removes the uncertainty of the PUD process, and incentivizes housing throughout the Central Washington area, all without reducing any existing development rights. As shown in recommendation one, each property retains or expands existing rights to both commercial and total FAR.

### *Receiving Zone Capacity*

This recommendation would fill a looming gap in the potential supply of TDRs for use in TDR receiving zones. There is zoning capacity to accept approximately 30 million square feet of TDR density in the receiving zones. The total potential TDR supply from the DD is less than 13 million, of which nearly 10 million has already been generated. Once the remaining 3 million TDRs have been generated in the DD, there will be no other matter-of-right options for development in the TDR receiving zones to access the bonus density. The proposed system would solve this problem by providing a new system to generate density in existing receiving zones.

### *Transfer of New HCs*

The question that arises from a proposal to broaden the applicability of the TDR program to promote housing is how and where housing credits could be transferred. The original HPA boundaries were drawn to ensure that even though housing could be transferred off-site it would still be built in the general HPA area, thereby fostering the creation of a neighborhood. In order to expand this objective to a larger area, it would be necessary to create neighborhood-sized housing areas within the broader study area. A preliminary examination of this issue shows that the identification of six to eight housing trading areas would be sufficient to ensure that "transferred" housing stays in the local area similar to the existing Housing Priority Areas and in support of existing plans and policy. Potential trade area boundaries are still being considered and will be presented to the Commission prior to the public hearing.

### *Simplification*

A further benefit of the proposal is that the existing TDR and CLD programs would be combined and greatly simplified. While there was working group concern about avoiding unintended consequences to any changes, major problems raised by the group included the complication of the programs, the lack of fluidity of CLDs, and the transparency of programs.

Currently, the TDR program is used to increase matter of right density while the CLD program is mostly used to transfer requirements for housing from one lot to others. Under the proposal, the new system would meet both needs. The Office of Planning believes that properties mapped in the Housing Priority Area should continue to have a residential requirement. The only implication for this in the proposed system would be that buildings could not avoid providing housing altogether by building only up to the commercial FAR.

Two important working group concerns that would be solved by this system include the flexibility and transparency of the system. Unlike the current CLD system, housing credits would be completely bankable so they could be open market commodities.

Secondly, the single transfer system that does not tie multiple lots together through covenants would allow the generation and supply of housing credits to be monitored and tracked for the public. Open knowledge of availability of housing credits would improve the market and open the process to a wider set of buyers and sellers.

Currently CLDs and TDRs are recognized as being generated when the project architect certifies the 50% of the residential uses have been constructed. If a project has not progressed to that level, an escrow must be funded, which is released to the District if the residential project does not exceed 50% completion in five years. The Office of Planning recommends doing away with the escrow alternative and only permit vesting at the 50% level. No covenant would be required and each transfer or re-transfer would only require a single District sign off.

A final question regards how the existing TDR and CLD programs would transfer into the new system. While the data is unobtainable on exactly how many TDRs currently exist in the market, it is known that there will be some number of unused TDRs and untransferred CLDs when the ordinance is updated. OP has been working steadily with developers to design a system for the grandfathering and continued use of these TDRs and CLDs with the goal of maintaining or increasing their existing value. At a minimum, existing TDRs and CLDs will be broadly tradable under the new system. Until the generation of new TDRs under the proposed system, existing TDRs and CLDs would continue to be the only housing credits and would serve to "prime the pump" by providing a starting market for the new system. OP is also examining the current value difference between TDRs and CLDs and working with developers to recognize this difference in the new system.

**3. Continue existing street-based retail requirements from the DD and CG zones. Standardize requirements and combine them into a single list or map of retail streets. Add streets where approved policy guidance calls for support of retail.**

While the overall DD goal for retail may have been set unrealistically high, the requirement for retail along designated streets and in the retail core area has resulted in retail uses in every new development in those areas since it was enacted. Keeping this program in place will ensure that existing retail stays and will provide new retail as new buildings are redeveloped. As with form and use regulations, retail requirements should be standardized across the downtown zones to simplify the code.

The main recommendation is simply to standardize the system for requiring retail. As discussed earlier, the DD currently has two systems for requiring retail; identification by street frontage (DCMR 11 §§1701.4 & 1701.5c) and identification by square (DCMR 11 §§1703, 1704, 1705 & 1722). Without affecting the required areas at all, the retail requirements could be mapped to show what street frontages in the downtown have retail requirements.

In addition to current retail requirements from the DD, it would be important to identify retail streets from the remainder of the study area. Policy CW-1.1.8 of the Comprehensive Plan calls out the old convention center site for retail promotion. The CG overlay currently requires retail on three streets; M Street SE, ½ Street SE, and 1<sup>st</sup> Street SE. Finally, Connecticut Avenue NW and parts of K Street NW are identified by the Retail Action Strategy as major commercial corridors appropriate for ground floor retail requirements.

The list below contains the streets to have retail requirements based on the above sources:

- |                                                           |                                                          |
|-----------------------------------------------------------|----------------------------------------------------------|
| i. F Street NW (7 <sup>th</sup> to 15 <sup>th</sup> )     | xiii. 9 <sup>th</sup> Street NW (E to NY)                |
| ii. G Street NW (7 <sup>th</sup> to 15 <sup>th</sup> )    | xiv. 14 <sup>th</sup> Street NW (Penn to NY)             |
| iii. 7 <sup>th</sup> Street NW (Penn to K)                | xv. 15 <sup>th</sup> Street NW (Penn to NY)              |
| iv. 10 <sup>th</sup> Street NW (E to F)                   | xvi. I Street NW (5 <sup>th</sup> to 7 <sup>th</sup> )   |
| v. H Street NW (5 <sup>th</sup> to 11 <sup>th</sup> )     | xvii. 8 <sup>th</sup> Street NW (Penn to K)              |
| vi. Penn Ave NW (6 <sup>th</sup> to 15 <sup>th</sup> )    | xviii. K Street NE (4 <sup>th</sup> to 6 <sup>th</sup> ) |
| vii. Indiana Ave NW (6 <sup>th</sup> to 7 <sup>th</sup> ) | xix. 5 <sup>th</sup> Street NE (I to L)                  |
| viii. E Street NW (6 <sup>th</sup> to 14 <sup>th</sup> )  | xx. Connecticut Ave NW (K to N)                          |
| ix. 10 <sup>th</sup> Street NW (E to H)                   | xxi. M Street SE (S Capitol to New Jersey)               |
| x. 11 <sup>th</sup> Street NW (E to NY)                   | xxii. Half Street SE (M to O)                            |
| xi. 12 <sup>th</sup> Street NW (E to H)                   | xxiii. 1 <sup>st</sup> Street SE (M to O)                |
| xii. 13 <sup>th</sup> Street NW (E to H)                  |                                                          |

Existing retail design requirements, including 14' ceiling heights, are generally consistent between the existing zones and should be standardized into a single set of requirements. In light of potential unique situations and the complexity of development downtown, OP recommends that a special exception be available to alter retail design requirements where necessary.

#### **4. Remove the provision of TDRs for historic preservation or retail uses within the DD.**

According to Historic Preservation staff, the only historic landmarks in the DD overlay that have not already taken advantage of this provision are too small to benefit from it. No historic buildings have generated TDRs since 2003.

Since historic preservation goals have been met and all existing landmarks have taken advantage of TDR generation, there is no need to maintain the TDR credit for historic preservation. The new TDR program can focus specifically on housing.

As to retail, the existing regulations allow generation of TDRs for retail above the requirement (0.5 FAR). While retail development in the DD may or may not be the result of retail requirements, the TDR program has played virtually no role in downtown retail development. In nearly 20 years of TDR availability, only two projects have generated

retail TDRs and it could be argued that the TDR program played little to no role in the decision to create that retail. As such, there appears to be no need to maintain TDR development potential for retail uses, but simply to continue to require them where they are desired.

**5. Maintain designation of existing arts area within the DD. Guidelines will be changed according to Arts & Culture recommendations and do not require continued TDR production for arts uses.**

Based on previously approved recommendations on Arts districts which call for continued Arts requirements, there is no need to continue the generation of additional TDRs for particular arts uses.

The earlier report on the Arts subject area laid out recommendations for cleaning up and standardizing arts requirements. The downtown recommendations would not remove or change arts requirements other than what has already been approved as part of the previous subject area. Highlights of those recommendations include a general 0.5 FAR Arts requirement that is transferrable between properties, a revised list of arts uses, and standardization of design and ceiling height standards. The full report on Arts & Culture recommendations is available at <http://www.dczoningupdate.org/artsculture.asp>.

**6. Establish parking maximums for residential uses downtown. Maximums should be geared toward ensuring unbundling of residential parking and maximum efficiency of residential parking lots.**

The Zoning Commission has offered affirmative guidance to remove parking minimums in the downtown and requested an examination of the parking maximums. The issues of residential parking are different from those of commercial parking. Convertibility to residential is impracticable so a correct ratio is more important. In addition, unbundling the sale of parking spaces from units is important to avoid subsidizing the price of car ownership and skewing travel choice toward driving.

The arguments for residential parking maximums are slightly different from commercial. For residential buildings there is not the same opportunity for conversion of space to residential use and there is the additional issue of encouraging unbundling of parking spaces from the sale of units.

Based on analysis of residential parking ratios in Central Washington, it appears that parking for residential uses drops below 85% occupancy at around 0.8 spaces per apartment unit and 0.9 spaces per condo unit. Setting a total maximum for residential spaces at a level under one space per unit would accomplish two goals while allowing construction of the current industry average space ratio for downtown. It would ensure that parking was not built that was likely to go unused and it would require the

unbundling of parking spaces from unit sales by ensuring a ratio below one space per unit.

**7. Require a special exception with time limitations for surface parking lots in the proposed downtown area.**

The use of empty lots for surface parking goes against the general land use and transportation goals for the downtown even though it can be an economical temporary use. Policy T-1.2.3 in the Comprehensive Plan discourages surface parking lots and other automobile-oriented uses.

This recommendation would require a special exception for new surface parking lots. Based on the land use and urban design goals of the Central Washington element of the Comprehensive Plan, surface parking limitations within the DD should be expanded to the wider study area. This would limit the creation of new surface parking lots and ensure review of those instances where surface parking might be necessary for conformance with Comprehensive Plan goals.

**PROCEDURES**

The public hearing on this part of Case No. 08-06 will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning. The Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, Suite 210, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001. Please include the number of the particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

**ANTHONY J. HOOD, WILLIAM W. KEATING, III, KONRAD SCHLATER, PETER G. MAY, AND MICHAEL G. TURNBULL ——— ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY RICHARD S. NERO, JR., ACTING DIRECTOR, AND BY SHARON SCHELLIN, SECRETARY TO THE ZONING COMMISSION.**