Government of the District of Columbia
Office of Zoning

MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Alberto P. Bastida, AICP
Secretary to the Zoning Commission

DATE: October 6, 2003

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on October 17, 2003:

1. Z.C. Notice of Final Rulemaking & Order No. 02-33 (Case No. 02-33);
2. Z.C. Notice of Final Rulemaking & Order No. 02-34 (Case No. 02-34);
3. Z.C. Notice of Final Rulemaking & Order No. 03-01 (Case No. 03-01); and
4. Z.C. Notice of Final Rulemaking & Order No. 03-14 (Case No. 03-14).

I am also providing the above rulemakings on a 3.5" diskette.

Received By

10/8/03
Date

Attachments

441 4th Street, N.W., Suite 210-S, Washington, D.C. 20001
Tel: (202) 727-6311 • Fax: (202) 727-6072
E-Mail: zoning info@dcoz.dcgov.org • Web Site: http://dcoz.dcgov.org/

ZONING COMMISSION
District of Columbia
Case 02-34
ZONING COMMISSION
District of Columbia
CASE NO.02-34
EXHIBIT NO.13
Exhibit 13

RULEMAKING TRANSMITTAL FORM

DATE AND TIME RECEIVED
Office of Documents use only

TYPE OF RULEMAKING ACTION: [ ] EMERGENCY RULES [X] FINAL RULES [ ] PROPOSED RULES [ ] COMBINED

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: MR. ALBERTO BASTIDA

ADDRESS: 441 4th Street, N.W., Suite 210 South TELEPHONE: (202) 727-0330

TITLE AND DESCRIPTION OF RULES:
ZC Case No. 02-34TA, Text Amendment – 11 DCMR, Optical Transmission Nodes

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) Sections 199, 509, 608, 701, 907, 2101

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: at 49 DCR 4584 DATE: MAY 30, 2003

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code § 6-641.01).

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.
DATE: Sept 9, 2003 SIGNED: for PHONE: (202) 442-9777

✓	FINAL		CONDITIONAL	NAME:	ROBERT J. SPAGNOLETTI	TITLE: CORPORATION COUNSEL

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)
Zoning Commission For The District Of Columbia Title:

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules. Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code § 6-641.01).

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL OF VOTE: 9/8/03

APPROVAL OF ATTEST: Alberto P. Bastida

TITLE: Secretary to the Zoning Commission PHONE: (202) 727-0330

Office of Documents use only: THIS NOTICE PUBLISHED AT: VOL: DCR: DATE:

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 02-34
Z.C. Case No. 02-34
(Text Amendments – 11 DCMR)
(Optical Transmission Nodes)
September 8, 2003

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to 11 DCMR §§ 3025.3 and 3028.1; hereby gives notice of the adoption of the following amendments to § 199 (Definitions), § 509 (Utilities (SP)), § 608 (Utilities (CR)) § 701 (Uses as a Matter of Right (C-1)), § 907 (Utilities (W)), and Chapter 21 (Off-Street Parking Requirements) of the Zoning Regulations (Title 11 DCMR). The amendments permit Optical Transmission Nodes (OTNs) as a matter of right within the Commercial and Industrial Districts and subject them to special exception review within the Special Purpose, Waterfront, and Mixed Use Zone Districts. The Commission took final action to adopt the amendments at a public meeting held on September 8, 2003.

This final rulemaking is effective upon publication in the *D.C. Register*.

The Commission initiated this rulemaking in response to a petition from the Office of Planning (OP). The proposed text amendments will implement § 200.10 of the Economic Development Element of the Comprehensive Plan, Title 10 DCMR, which calls for the attraction of new industries representative of advanced technologies.

Existing Regulations

As the proposed definition indicates, an OTN is an "interior or exterior facility that is utilized as remote terminal units for the operation of such things as cable television systems, high-speed internet access, and interactive video, not including any broadcast antenna or related towers for the transmission of radio waves". In the absence of specific regulations, OTNs are currently regulated as if they were commercial broadcast antennas, which is not an accurate representation of their operations and function. Their function and building requirements are significantly different from broadcast antennas. OTNs transmit, or relay, pulses along fiber optic lines and do not transmit radio waves through the air. This text amendment will provide specific language to permit OTNs as a distinct use, separate from antennas.

Currently, commercial broadcast antennas are permitted only as special exceptions in all Zone Districts. The Commission's proposed revisions to the antenna regulations would not regulate broadcast antennas as such. Instead, antennas and antenna towers are addressed separately, with the latter first permitted as special exceptions beginning in the C-2 Zone District. Since OTNs do not involve antennas or towers, neither the current nor proposed rules adequately regulate their use.

Description of Text Amendment

The text amendment defines OTNs in the manner noted above and provides specific language to permit OTNs as a distinct use, separate from antennas. Generally, OTNs will be permitted as a matter of right in Commercial and Industrial Zone Districts and as a special exception in the Special Purpose (SP), Mixed Use (CR), and Waterfront (W) Zone Districts.

The OP recommended OTNs as a matter of right use within all Commercial (C), and Industrial Zone Districts (CM and M) because the use is believed to be compatible with the commercial and industrial nature of these districts. OP further recommended that the use be permitted only by special exception within the Special Purpose (SP), Mixed Use (CR), and Waterfront (W) Zone Districts under the same provisions as apply to a Utility, pursuant to §§ 509, 608, and 907, respectively. The consideration as a special exception use in these zone districts is based on the utility nature of an OTN. OTNs provide for the extension of interactive video and high speed internet service that would be desirable to commercial and residential areas. The use may be appropriate in these areas, because the location may accommodate service delivery to both commercial and residential areas from one location.

Relationship to the Comprehensive Plan

The Comprehensive Plan, under § 200.10, recommends the "*attraction of new industries representative of advanced technologies*". OTNs are representative of advanced technologies. In addition, § 1109.1 of the Comprehensive Plan expresses the intent to "encourage the growth of center of high technology, research and development and to provide for essential support services and nonpolluting production activities."

Public Hearing

The Commission held a public hearing on this case on March 24, 2003. During the hearing, members of the Commission expressed concern over the impact of OTNs on adjacent residential zone districts. Following the public hearing, the record was held open until April 4, 2003, to allow Comcast Cable to submit their comments in writing and to allow the Office of Planning to submit a supplemental report in response to questions from the Commission.

Proposed Action

At the April 14, 2003 public meeting of the Zoning Commission, the Commission reviewed the letter submitted by Comcast Cable of the District of Columbia and the supplemental report of the Office of Planning.

The letter from Comcast Cable stated that the proposed rule was to control the housing of OTNs and not the facilities. Comcast Cable suggested that the proposed text be revised to indicate that it is the facility that will require special exception approval so as to avoid an interpretation that interior construction within an existing building requires a special exception. The Commission agreed to this change.

The supplemental report from the Office of Planning addressed the Commission's concerns that OTNs within commercial or industrial zoning districts could adversely affect residential uses within residential zoning districts located across a street from an OTN. The Office of Planning concluded OTNs are quiet uses that do not generate noise or traffic, and they were more likely to act as a buffer between the residential uses and other more potentially intrusive commercial or industrial uses. The Commission agreed with the Office of Planning and made no additional requirements for the use.

Following discussion, the Commission took proposed action pursuant to 11 DCMR § 3027.2 to approve the advertised text, with the modification discussed above. A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 30, 2003 at 49 DCR 4584, for a 30-day notice and comment period.

The proposed rulemaking was referred to the National Capital Planning Commission (NCPC) under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated July 1, 2003, found that the proposed text amendments, which provide a definition and regulations for Optical Transmission Nodes, would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

No other comments were received.

The Office of the Corporation Counsel has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on September 8, 2003. No substantive changes were made to the advertised prepared text.

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

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapters 1, 5, 6, 7, 9, and 21 of the Zoning Regulations, Title 11 DCMR. Added wording is in bold and underlined, and deleted wording is shown in strike-through lettering:

A. Chapter 1, THE ZONING REGULATIONS, § 199.1, Definitions, is amended by inserting the following definitions of "Optical Transmission Node" in alphabetical order:

Optical Transmission Node – an interior or exterior facility that is utilized as remote terminal units for the operation of such things as cable television systems, high-speed internet access and interactive video, not including any broadcast antenna or related towers for the transmission of radio waves

B. Chapter 5, SPECIAL PURPOSE DISTRICTS, is amended by adding a new § 509.2 and amending § 509.3, to read as follows:

509 UTILITIES (SP)

509.2 ~~**[DELETED]**~~

Use as an optical transmission node shall be permitted in an SP District if approved by the Board of Zoning Adjustment in accordance with the conditions specified in § 3104, subject to the following:

(a) Any new construction of a freestanding structure used primarily for the purpose of housing an optical transmission node shall be built to appear compatible with surrounding construction, including exterior building material, fenestration, and landscaping; and

(b) There shall be no advertisement on the structure.

509.3 The utilities allowed in § 509.1 **and optical transmission nodes in § 509.2** shall be subject to requirements for setbacks, screening, or other requirements, as the Board deems necessary for the protection of neighboring or adjacent property.

C. Chapter 6, MIXED USE (Commercial Residential) DISTRICTS, is amended by amending § 608.1, adding new § 608.2, and renumbering § 608.2, to read as follows:

608 UTILITIES (CR)

608.1 Use as an electric substation, natural gas regulator station, public utility pumping station, **optical transmission node,** or telephone exchange, shall be permitted in a CR District when authorized by the Board of Zoning Adjustment under § 3104, if the Board considers that this use is appropriate in furthering the objectives of the CR District, subject to the provisions of this section.

608.2 **Any new construction of a freestanding structure used primarily for the purpose of housing an optical transmission node shall be subject to the following:**

(a) **The structure shall be built to appear compatible with surrounding construction, including exterior building material, fenestration, and landscaping; and**

(b) **There shall be no advertisement on the structure.**

608.~~2~~ **3** The Board may impose any requirements for setbacks, screening, or other safeguards that it deems necessary for protection of the neighborhood.

D. Chapter 7, Commercial Districts, is amended to read as follows:

701 USES AS A MATTER OF RIGHT (C-1)

701.6 The following uses shall be permitted in a C-1 District as a matter of right:

(h) Hotel or inn; ~~and~~

* * *

(j) **Optical Transmission Node.**

E. Chapter 9, WATERFRONT DISTRICTS, is amended by amending § 907.1, adding a new § 907.2, and renumbering §§ 907.3 and 907.4 as follows:

907 UTILITIES (W)

907.1 If the Board of Zoning Adjustment considers that it is appropriate in furthering the objectives of the Waterfront District, an electric substation, natural gas regulator station, public utility pumping station, **optical transmission node,** or telephone exchange shall be permitted as a special exception in a Waterfront District when authorized by the Board under § 3104, subject to the provisions of this section.

907.2 **Any new construction of a freestanding structure used primarily for the purpose of housing an optical transmission node shall be subject to the following:**

(a) **The structure shall be built to appear compatible with surrounding construction, including exterior building material, fenestration, and landscaping; and**

(b) There shall be no advertisement on the structure.

907.~~2~~3 The Board shall establish requirements for setbacks and screening.

907.~~3~~4 The Board shall establish other safeguards as deemed necessary for protection of the neighborhood.

F. Chapter 21, OFF-STREET PARKING REQURIEMENTS, is amended by adding the following use:

2101.1 On and after May 12, 1958, all buildings or structures shall be provided with parking spaces as specified in the following table:

USES	NUMBER OF PARKING SPACES PROVIDED
Optical Transmission Nodes: All Districts	**1 for each 3,000 ft.^{2} of gross floor area**

Vote of the Zoning Commission taken at its public meeting on April 14, 2003, to **APPROVE** the proposed rulemaking: **4-0-1** (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and James H. Hannaham to approve; Peter G. May abstaining by absentee ballot).

This Order and Final Rulemaking were **ADOPTED** by the Zoning Commission at its public meeting on September 8, 2003, by a vote of **5-0-0** (Carol J. Mitten, Anthony J. Hood, John G. Parsons, Peter G. May and James H. Hannaham to adopt).

In accordance with the provisions of 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register*; that is, on _____.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 02-34
Z.C. Case No. 02-34TA
(Text Amendment – 11 DCMR)
(Optical Transmission Nodes)

The full text of this Zoning Commission order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.