

Holland+Knight

Tel 202 955 3000
Fax 202 955 5564

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006-6801
www.hklaw.com

Jeffrey T. Johnson
202 457 7137
jeffrey.johnson@hklaw.com

January 16, 2009

VIA HAND DELIVERY

Sharon Schellin
D.C. Zoning Commission
441 4th Street, N.W.
Suite 210-S
Washington, DC 20001

2009 JAN 16 AM 11:27
D.C. OFFICE OF ZONING

Re: Proposed Order in Zoning Commission Case No. 03-10A
Technical Correction of 11 DCMR § 2104.1

Dear Ms. Schellin:

Enclosed please find a proposed order adopting the text amendments currently under consideration by the Zoning Commission in the above-referenced rulemaking case. If you have any questions, please do not hesitate to contact us.

Sincerely,

HOLLAND & KNIGHT LLP



Jeffrey T. Johnson

Enclosure.

ZONING COMMISSION
District of Columbia

CASE NO. 03-10A
EXHIBIT NO. 14

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

and

ORDER NO. 03-10A

(Text Amendment – 11 DCMR)

(Technical Correction to Zoning Commission Order No. 03-10)

January 26, 2009

2009 JAN 16 AM 11:27
DISTRICT OF COLUMBIA

The Zoning Commission for the District of Columbia (the "Commission"), 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 (2001 ed.)), and 11 DCMR § 3030 (Consent Calendar), hereby gives notice of the adoption of the following text amendments to Chapter 21 (Off-Street Parking Requirements), § 2104.1 (Exceptions to the Schedule of Requirements: Nonresidential Structures near Metrorail Stations).

Because this action is technical in nature, no public hearing is required, pursuant to the consent calendar provisions set forth in 11 DCMR § 3030. No changes were made to the text amendments as published together with a notice of proposed rulemaking in the *D.C. Register* on December 26, 2008, at 55 DCR 12964. No comments were received in response to the notice of proposed rulemaking. The Commission took final action to adopt the amendments at a public meeting on January 26, 2009. The final rulemaking is effective upon publication of this notice in the *D.C. Register*.

Background and Existing Regulations

This case was initiated by a letter filed by Holland & Knight LLP on October 10, 2008, proposing a technical correction to amendments to the Zoning Regulations adopted by Zoning Commission Order No. 03-10 (the "Original Order"). In Zoning Commission Case No. 03-10, the District of Columbia Public Library filed a petition with the Commission requesting the adoption of a number of text amendments that would have permitted the construction of public libraries as a matter of right within any underlying zoning district. The text amendments also proposed to establish off-street parking requirements for public libraries, but were not intended to amend the requirements of Chapter 21 for any other use.

Prior to the effective date of the Original Order, § 2104.1 of the Zoning Regulations read as follows:

The number of parking spaces required under § 2101.1 for a nonresidential building or structure located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance may be reduced by up to twenty-five percent (25%); provided:

- (a) The building or structure is located in a nonresidential district and is at least eight hundred feet (800 ft.) from any R-1, R-2, R-3, or R-4 District; and
- (b) The Metrorail station is currently in operation or is one for which a construction contract has been awarded.

11 DCMR § 2104.1 (February 2003 ed.). That language permitted a twenty-five percent reduction in the number of required off-street parking spaces for nonresidential buildings located within 800 feet of a Metrorail station entrance *as a matter of right*.

The proposed text amendments in Zoning Commission Case No. 03-10 included no references to § 2104.1 of the Zoning Regulations, nor did any of the Office of Planning's reports on the amendments mention that section. As noted in the Office of Planning's initial report on the proposed text amendments, the sole purpose of Zoning Commission Case No. 03-10 was to provide standards for the construction of public libraries, including off-street parking requirements, in all zones. Although the Commission did not intend to expand the scope of Zoning Commission Case No. 03-10 beyond the regulation of public libraries, the text amendments that were ultimately adopted in the Original Order revised § 2104.1 of the Zoning Regulations as follows:

2104.1 **Except as provided in § 2104.2, the Board of Zoning Adjustment is authorized to reduce** the number of parking spaces required under § 2101.1 for a nonresidential building or structure located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance by up to twenty-five percent (25%) in accordance with the requirements of § 3104 for special exceptions; provided:

- (a) The building or structure is located in a nonresidential district and is at least eight hundred feet (800 ft.) from any R-1, R-2, R-3, or R-4 District; and
- (b) The Metrorail station is currently in operation or is one for which a construction contract has been awarded.

2104.2 The Board of Zoning Adjustment is authorized to reduce the number of parking spaces for a public library located within one-half mile of a Metrorail station by fifty percent (50%) if the Metrorail station is currently in operation or is one for which a construction contract has been awarded.

Notice of Public Hearing, Zoning Commission Case No. 03-10, at 3-4. As revised by the Original Order, § 2104.1 requires special exception approval from the Board of Zoning Adjustment ("BZA") for a twenty-five percent reduction in the number of required off-street parking spaces for all nonresidential uses located in close proximity to Metrorail stations.

In addition to establishing minimum off-street parking requirements for public libraries, the proposed text amendments also provided that the number of parking spaces required for a public library within one-half mile of a Metrorail station entrance could be reduced by up to fifty percent with special exception approval from the BZA. The fifty-percent parking reduction for public libraries near Metrorail station entrances was adopted as a new § 2104.2. The adopted amendments to § 2104.1, on the other hand, were not part of the scope of the Zoning Commission Case No. 03-10 and were inadvertently made as part of a conforming amendment to § 2104.

Description of Proposed Text Amendment and Proposed Rulemaking

The proposed text amendment, as set forth below, is a technical correction that would reword § 2104 to provide that a twenty-five percent reduction in the number of parking spaces required for nonresidential structures within 800 feet of a Metrorail station entrance, other than libraries, is permitted as a matter of right, the regulation that prevailed prior to the Original Order. Rather than simply reinstating the prior language of that section, however, the proposed amendments achieve the same effect by providing that the number of required parking spaces for a nonresidential building located within 800 feet of a Metrorail station entrance shall be seventy-five percent of what would otherwise be required under § 2101.1, subject to the requirements set forth in §§ 2104.1(a) and 2104.1(b).

At its special public meeting on November 20, 2008, the Commission took proposed action to approve the proposed text amendments, which were published in the *D.C. Register* on December 26, 2008, at 55 DCR 012964.

Relationship to the Comprehensive Plan

The Commission finds that the text amendments will not be inconsistent with the Comprehensive Plan for the National Capital.

Final Rulemaking

The Commission took final action to adopt the rulemaking at its special public meeting on January 26, 2009. No comments were received in response to the notice of proposed rulemaking, and the Commission therefore adopted the text amendments without changes.

The Office of Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

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, are consistent with the purposes of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Commission hereby **APPROVES** the following amendments to Chapter 21 of the Zoning Regulations, Title 11 DCMR:

Title 11 DCMR (Zoning), Chapter 21, OFF-STREET PARKING REQUIREMENTS, Section 2104, EXCEPTIONS TO THE SCHEDULE OF REQUIREMENTS: NONRESIDENTIAL STRUCTURES NEAR METRORAIL STATIONS, Subsection 2104.1, is hereby amended to read as follows (new language shown in **bold underlined** text and deleted wording is shown in ~~strikethrough~~ lettering):

2104.1 Except as ~~otherwise~~ provided in § 2104.2, ~~the Board of Zoning Adjustment is authorized to reduce~~ the number of parking spaces required ~~under § 2101.1~~ for a nonresidential building or structure ~~located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance may be reduced by up to twenty five percent (25%)~~ **shall be seventy-five percent (75%) of the amount otherwise ordinarily required under § 2101.1 if the building is located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance and** ~~provided:~~

- (a) The building or structure is located in a nonresidential district and is at least eight hundred feet (800 ft.) from any R-1, R-2, R-3, or R-4 District; and
- (b) The Metrorail station is currently in operation or is one for which a construction contract has been awarded.

At its public meeting of January 26, 2009, the Zoning Commission **APPROVED** the proposed rulemaking by a vote of __-__-__ (_____ to approve; ____ not present, not voting).

This order was **ADOPTED** by the Zoning Commission at its public meeting on January 26, 2009, by a vote of __-__-__ (_____ to approve; ____ not present, not voting).

In accordance with the provisions of 11 DCMR § 3028, this order shall become effective upon its publication in the *D.C. Register*, that is, on _____.

ANTHONY J. HOOD
Chairman
Zoning Commission

RICHARD S. NERO, JR.
Acting Director
Office of Zoning

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 03-10A
Z.C. CASE NO. 03-10A
(Text Amendment – 11 DCMR)
(Technical Correction to Zoning Commission Order No. 03-10)
January 26, 2009

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