Government of the District of Columbia
OFFICE OF ZONING

MEMORANDUM

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

FROM: Sharon S Schellin
Acting Secretary to the Zoning Commission

DATE: October 13, 2005

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D C Register* on October 21, 2005

1 Z C Notice of Filing (Case No 05-33),
2 Z.C Order No 05-16 (Case No 05-16),
3 Z C Order No 04-37 (Case No 04-37); and
4 Z C Notice of Final Rulemaking & Z C Order No 04-16 (Case No 04-16)

The Final Rulemaking is also included on the enclosed diskette

Attachments

2005 OCT 13 PM 12:09

Office of Documents and Administrative Issuances

BZA
Case No. 04-16
Exhibit No. 65

441 4th St , N W , Suite 210-S, Washington, D C 20001
Telephone (202) 727-6311 E-Mail Address zoning.info@dcoz.dc.gov Web Site www.dcoz.dc.gov

ZONING COMMISSION
District of Columbia
CASE NO.04-16
EXHIBIT NO.65

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: MS SHARON SCHELLIN

ADDRESS: 441 4th Street, N W , Suite 210 South TELEPHONE (202) 727-0340

TITLE AND DESCRIPTION OF RULES Takoma Neighborhood Commercial Overlay District

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed Title 11 (Zoning), Chapter 13 – a new § 1310 added

FINAL RULES ONLY: Give the D C REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules 52 DCR 3430 DATE. APRIL 1, 2005

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 OCTOBER 3, 2005 SIGNED Alan Beyle for PHONE: (202) 442-9777

✓	FINAL		CONDITIONAL	NAME: ROBERT J. SPAGNOLETTI TITLE ATTORNEY GENERAL

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 07-11-05

APPROVAL OF ATTEST Sharon Schellin
TITLE Secretary to the Zoning Commission PHONE: (202) 727-0340

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. 04-16
Z.C. Case No. 04-16
(Text Amendment –Takoma Neighborhood Commercial Overlay Zone -- 11 DCMR)
(Map Amendment – Squares 3187, 3188, 3275, 3276, 3278, 3280, 3352, 3353, 3354, 3356 and 3357)
July 11, 2005

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat 797, 799, 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 (2001 Ed)), and having referred the proposed amendment to the National Capital Planning Commission for a 30-day period of review pursuant to Section 492 of the Home Rule Act, hereby gives notice of the adoption of an amendment to Chapter 13 of the Zoning Regulations (11 DCMR) establishing a new Takoma Neighborhood Commercial (TK) Overlay District, and an amendment to the Zoning Map of the District of Columbia that rezones from Community Business Center (C-2-A) to C-2-A/TK certain lots and portions of lots on Squares 3187, 3188, 3275, 3276, 3278, 3280, 3352, 3353, 3354, 3356 and 3357 within 100 feet of the abutting Blair Road, N W , 4th Street, N W , Butternut Street, N W., Cedar Street, N W and Carroll Street, N W , rights-of-way

Text of the proposed rules and a description of the proposed map amendment, together with a notice of proposed rulemaking, were published in the *D C Register* on April 1, 2005 at 52 DCR 3430 The Commission did not make any changes in response to comments received pursuant to this notice although the final text was changed to reflect prior adoption of a definition for clear floor-to-ceiling height. Final action to adopt the amendments was taken at a public meeting held on July 11, 2005 The final rules reflecting the Zoning Regulation and Zoning Map changes shall be effective upon publication in the *D C Register*

Setdown Proceedings

The Commission initiated this rulemaking in response to a petition from the District of Columbia Office of Planning (OP) based on the Takoma Central District Plan, which was approved by the Council of the District of Columbia on June 14, 2002 (Resolution No 14-460)

After approving the petition for public hearing, the Zoning Commission allowed OP to work with the Office of the Attorney General to further refine the proposed text amendment. Results were provided to the Office of Zoning by OP in a memorandum dated July 23, 2004, along with a request to accept the set down report and pre-hearing statement, and to advertise the modified text and map amendments for a public hearing

The proposed text and a description of the proposed map amendment, together with a notice of the public hearing scheduled for October 28, 2004, were published in the *D C Register* on September 10, 2004 at 51 DCR 8844

Description of Text and Map Amendments

The text amendment will add a new § 1310 Takoma Neighborhood Commercial (TK) Overlay District The Overlay will make current limitations and requirements under § 1300 applicable to certain Central District properties zoned C-2-A zone district, and will also impose a number of provisions unique to the Takoma Central District

The map amendment will establish the TK Overlay on lots and portions of lots within the Central District on Squares 3187, 3188, 3275, 3276, 3278, 3280, 3352, 3353, 3354, 3356 and 3357, near the "designated" roadways of 4th Street, N.W., Blair Road, N W , Carroll Street, N W , and Cedar Street, N W to the intersection with Carroll Street, N.W

Existing Zoning

Properties in the Central District are mapped in either Residence (R-1-B and R-5-A) or Commercial (C-2-A) zone districts. The C-2-A zone district encompasses the heart of the Takoma Central District east and west of the C&O Railroad right-of-way The Takoma Plan recommended guidelines, goals and standards in the areas of historic preservation, market economics, land use, urban design and transportation These standards need to be achieved in order to revitalize this neighborhood commercial district This document concludes with an Implementation Summary that links selected implementation strategies with the necessary actions, and identifies responsible revitalization partners The proposed TK Overlay text amendment is the first Action Item listed in the Land Use Section, and reflects Action Items listed under the Market Economics, and Transportation and Urban Design Sections of the Summary.

Impact of Proposed Amendment Text

The TK Overlay will subject properties located in the Central District limits to those restrictions applicable to all neighborhood commercial overlay districts that

- Reserve at least 50% of the ground floor area within the overlay boundaries for "designated" neighborhood-serving uses listed under Section 1302 2;
- Limit office-type uses such as financial institutions and travel agencies to 20% of the ground floor area per Section 1302 4,
- Limit the overall quantity of restaurant-type uses along designated roadways

bordering the underlying C-2-A zone district per Section 1302 5,

- Disallow additional driveway access to required on-site parking or loading spaces along designated roadways per Section 1303 9; and
- Limit height and floor area ratios in Planned Unit Developments to the maximum allowed as a matter-of-right in the underlying zone district per Section 1305 1

The TK Overlay would also add unique provisions that

- Establish a minimum clear floor-to-ceiling height on the ground floor level of 14 feet for new buildings and ground-floor additions[1] to accommodate the designated uses,
- Permit an increase of five (5) additional feet to the total allowable height of buildings and additions to accommodate the required 14 feet clear floor-to-ceiling height on the ground floor, and
- Establish a front yard setback of 13 feet on properties along "designated" roadways

Designated roadways per Section 1302 5 (b) are portions of 4th Street, N W , Blair Road, N W , Cedar Street, N W , and Carroll Street, N W that abut the C-2-A zone district The required setback would be measured from the curbline to account for the public right-of-way currently reserved for sidewalk construction, and other streetscape improvements Although this would increase the potential space available for sidewalks within the Central District, there is no requirement for private property owners to construct public sidewalk or to permit the District to do so.

The Zoning Commission took final action to add a definition of "Clear Height, Floor to Ceiling" to § 199 of the Zoning Regulations at the same public meeting as this petition was approved The new definition reads

> **Clear Height, Floor to Ceiling** – floor to ceiling height is a vertical distance measured from the finished floor to the finished ceiling that is unobstructed by any of the following·
>
> (a) elements of the building structure, other than columns and walls,
> (b) components of mechanical, plumbing, or fire suppression systems; or
> (c) components of electrical systems, except lighting fixtures
>
> If the ceiling is not finished, the distance shall be measured to the lowest point of any of the structural elements of systems referenced in (a), (b), or (c), above

Relationship to Comprehensive Plan

[1] Adding a floor level above an existing ground floor would not trigger this requirement

The Office of Planning submitted a report recommending approval of the proposed map amendment because the Comprehensive Plan Generalized Land Use Map designates this area for a mixture of low density residential development characterized by single-family detached and semi-detached housing, and low density commercial development which is characterized by shopping and service areas of a generally low scale, character, and activity, and providing a limited range of retail goods and services OP stated, and the Commission agrees, that the proposed map amendment would not be inconsistent with Ward 4 objectives regarding expansion and enhancement of retail activity in areas around Metrorail stations (§§ 1505, 1506 1 and 1529 1), would encourage the multi-use character and vitality of residential and commercial uses in Takoma (§§1530 and 1604 1), and would also encourage development of adequate neighborhood shopping and support services and other compatible land uses around the rail station (§§ 1506 and 1529)

The Takoma Central District Plan was not initiated by the Mayor and adopted by act, and is therefore not part of the Comprehensive Plan It does, however offer useful suggestions for the core area to become a mixture of land uses including single-family housing, garden apartments and townhouses, mixed-use retail, office, and residential, and office, institutional and open space Adoption of the proposed Takoma Overlay District reflects the Takoma District Plan Implementation Summary because the Overlay District would help ensure establishment and retention of small to moderate scale ground floor retail uses along Carroll Street (Action Item 2 2), help retain and strengthen the Overlay District as a mixed-use neighborhood concentrated along Carroll Street and 4th Street, with the establishment and retention of ground floor retail uses (Action Items 3 1 and 3 2), and improve built edges, public frontage, and pedestrian safety (Action Items 4 1, 4 3 , 5 3 and 5 4)

Overlay provisions would also allow retention of the current residential potential of the underlying C-2-A zone district by providing a minimal increase in building height in combination with the ground floor height requirement The Central District is anticipated to experience a gradual upgrade of its neighborhood commercial center without any loss of the current residential development potential

Based on this information, the Zoning Commission determined the proposed Takoma Neighborhood Commercial Overlay District is not inconsistent with the Comprehensive Plan

Other Agency Reports

The D C Department of Housing and Community Development expressed support for the proposed Overlay text and map amendments in a letter dated October 19, 2004

Public Hearing

Prior to the scheduled hearing, the Commission received a request from Advisory Neighborhood Commission ("ANC") 4B that the public hearing be rescheduled In light of this request, the public hearing was rescheduled for January 24, 2005

Keith Tunell, Manager, Centrex Homes, contract purchaser of property located at 7041 Blair Road, N W , expressed support of the proposed Overlay in a hearing statement dated January 24, 2005, including provisions that require the streetwall to be set back a minimum of thirteen (13) feet from the adjacent curbline, and that the ground floor level of each new building shall have a minimum clear floor-to-ceiling height of fourteen (14) feet During the public hearing, Faith Wheeler, Advisory Neighborhood Commission (ANC) 4B02 representative, expressed a number of concerns about this proposal, but she was not speaking on behalf of ANC 4B

During the public hearing, the Zoning Commission expressed concern about the lack of public comment and instructed that the public record be kept open to allow the ANC time to file a recommendation The Commission then directed OP to prepare a supplemental report contrasting the current proposal with issues raised, or requests made, by the community

In a final report supplement dated March 11, 2005, the Office of Planning outlined ANC and community comments on this proposal. Correspondence received after the public hearing and by the date of the Zoning Commission meeting on March 14, 2005 included letters in support of the proposed text and map amendments, letters suggesting that building heights be limited to four (4) stories or 50 feet, letters expressing concern about the impact on historic properties, results of a Takoma Overlay Zone Preference survey, and several letters raising other issues. These included a summary from Judy Jones, ANC 4B Chair, of a meeting held by ANC 4B on March 5, 2005. With a quorum present, the ANC commissioners voted 5-2 to accept the current proposal Based on this information, OP continued to recommend approval of the text and map amendments as presented.

Proposed Rulemaking

Following the public hearing and review of the public record, the Commission took proposed action pursuant to 11 DCMR § 3027 2, on March 14, 2005 to approve the current text and map amendment. A Notice of Proposed Rulemaking to create the Takoma Neighborhood Commercial Overlay zone district and establish this Overlay zone district on the referenced properties was published in the *D C Register* on April 1, 2005 at 52 DCR 3430

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") in accordance with § 492 of the District of Columbia Charter NCPC reviewed this proposal at its meeting on April 7, 2005, pursuant to the Commission's delegation of authority adopted on August 6, 1999 By report dated April 14, 2005, NCPC found that the proposed text and map amendments to establish the Takoma Neighborhood Commercial Overlay zone district would not adversely affect the identified federal interests, and are consistent with the Comprehensive Plan for the National Capital

Additional comments included a petition in favor of the proposed Overlay signed by 24 persons, a letter dated April 29, 2005 from the Takoma D C Neighborhood Association

(formerly Plan Takoma) supporting Zoning Commission adoption of the proposed rulemaking as advertised, and more copies of completed Takoma Overlay Zone Preference Surveys A number of letters also expressed support for retaining the maximum allowable building height in the C-2-A zone district of 50 feet, and increasing the proposed setback for new construction from 13 feet to 15 feet measured from the adjacent curb line

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

Final Rulemaking

The Commission took final rulemaking action on the proposed Overlay at its regularly-scheduled public meeting of July 11, 2005 At the meeting, the major issue was whether the Overlay should permit a height of 55 feet for certain buildings or portions thereof Opposition to this height had been expressed, with requests to retain the 50-foot height maximum permitted in the underlying zone

After a brief discussion concerning the proper building height and set-back within the Overlay, the Commission decided to approve the Overlay text in the proposed rulemaking, with a mandatory 13-foot setback for certain buildings and a 55-foot height permitted above those portions of buildings with a minimum clear floor-to-ceiling height of 14 feet

Based upon the above, the Commission finds that the proposed amendments to the Zoning Regulations and the Zoning Map are in the best interests of the District of Columbia, consistent with the purposes of the Zoning Regulations, and not inconsistent with the District of Columbia Comprehensive Plan.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendment to Chapter 13 of the Zoning Regulations, Title 11, DCMR

Chapter 13, NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT, is amended by adding a new Section 1310 to read as follows.

1310 TAKOMA NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

1310 1 The Takoma Neighborhood Commercial Overlay District (TK) applies to Squares 3188 and 3278 in their entirety, and certain lots and portions of lots zoned C-2-A on

(a) Square 3187 along the frontages of Blair Road and Cedar Street, N W ,

(b) Squares 3275 and 3276 along the frontage of 4th Street, N W ,

(c) Squares 3352, 3353, 3354, 3356, and 3357 along the frontages of Cedar Street and Carroll Street, N W , and

(d) Square 3280 along the frontages of Blair Road, Butternut Street, and 4th Street, N W

1310 2 The Overlay begins at the street right-of-way lines abutting the Squares named in § 1310 1, and extends to a depth of one hundred feet (100 ft)

1310 3 In addition to the purposes in § 1300, the purposes of the Takoma Overlay District are to

(a) Reserve sufficient open space to provide adequate light and air to encourage retail and service uses, and pedestrian circulation in the vicinity of the Takoma Metro station,

(b) Require a minimum clear floor-to-ceiling height on the ground floor sufficient to accommodate the needs of neighborhood-serving retail, service and office uses, and

(c) Allow and encourage residential development to help meet the need for housing, enhance safety, and provide sufficient resident population to support neighborhood-serving retail, service, and office uses

1310 4 For the purposes of § 1302, the designated use area within the Takoma Overlay District shall coincide with the boundaries of this District, as set forth in §§ 1310.1 and 1310 2

1310 5 For the purposes of §§ 1302.5 and 1303.2, the designated roadways within the Takoma Overlay District shall be portions of 4th Street, N W , Blair Road, N W , Carroll Street, N W , and Cedar Street, N W. to the intersection with Carroll Street, N W , that abut any property zoned C-2-A on the Squares named in § 1310 1

1310 6 The street wall of each new building fronting on Blair Road, N.W , Cedar Street, N W., and Carroll Street, N W , or any addition to an existing building frontage on any of these streets, shall set back for its entire height and frontage not less than thirteen feet (13 ft), measured from the adjacent curbline

1310 7 Except as provided in § 1310 9, the ground floor level of each new building or building addition shall have a minimum clear floor-to-ceiling height of fourteen feet (14 ft)

1310 8 Those portions of buildings with a minimum clear floor-to-ceiling height of fourteen feet (14 ft) on the ground floor level shall be permitted a total building height of fifty-five feet (55 ft)

1310 9 Buildings occupying or constructed on lots along the Blair Road frontage of Square 3187 and Cedar Street frontage of Squares 3352 and 3353 within the Takoma Overlay District, do not have to provide the designated retail and service establishments on the ground floor level required by § 1302 1, nor comply with the ground floor level floor-to-ceiling height requirement of § 1310 7, if the ground floor level is devoted exclusively to residential uses

1310 10 If ground floor residential uses are established pursuant to § 1310 9, no certificate of occupancy for a permitted non-residential use on the ground floor level may be issued, unless the ground floor level of the subject building complies with the floor-to-ceiling height requirement of § 1310.7

The vote of the Zoning Commission to approve the proposed rulemaking was taken during its public meeting on March 14, 2005 (Anthony J Hood, Gregory N. Jeffries, Kevin Hildebrand, and John G Parsons to approve, Carol J Mitten not having participated, not voting)

The Zoning Commission, at its public meeting of July 11, 2005, adopted the Order by a vote of 4-0-1 (John G Parsons, Gregory N. Jeffries, Kevin Hildebrand, and Anthony J Hood to adopt, Carol J. Mitten not having participated, not voting)

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
Order No. 04-16
Case No. 04-16
July 11, 2005

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