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: February 2, 2006

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on February 10, 2006:

1. Z.C. Notice of Special Public Meeting for March 2, 2006;
2. Z.C. Order No. 04-35 (Case No. 04-35);
3. Z.C. Order No. 05-31 (Case No. 05-31); and
4. Z.C. Notice of Final Rulemaking & Order No. 04-34 (Case No. 04-34).

The rulemaking is also provided on the attached diskette.

Attachments

Office Of Documents And Administrative Issuance
2006 FEB 14 PM 2:11

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.04-34
EXHIBIT NO.32

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
Case No 04-34 (Text Amendments – Use of Pervious Parking and Driveway Surfaces)

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed Title 11 (Zoning) **§§ 2117, 2303, and 2403**

FINAL RULES ONLY Give the D C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules DCR **52 DCR 8643** DATE **September 23, 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 JANUARY 10, 2006 SIGNED [signature] PHONE (202) 442-9777

X	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 1-9-06

APPROVAL OF ATTEST [signature] Sharon S. Schellin
Acting Secretary to the Zoning Commission
TITLE 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. 04-34
Z.C. Case No. 04-34
(Text Amendments - 11 DCMR - Use of Pervious Parking and Driveway Surfaces)
January 9, 2006

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), 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 § 492 of the District Charter, hereby gives notice of adoption of the following amendments to §§ 2117, 2303 and 2403 of the Zoning Regulations (Title 11 DCMR) The amendments permit the use of any all-weather surface, regardless of whether the paving materials are pervious or impervious. The Commission took final action to adopt the amendments at a public meeting held on January 9, 2006

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

Exiting Regulations

The Commission initiated this rulemaking in response to a petition from the Zoning Advisory Committee

Pervious pavement is not currently permitted for either parking or and access to parking. All paving for open parking spaces, including accessory driveways and access lanes, and for private residential driveways is required to be "*paved and maintained with bituminous, concrete, or brick materials* "

Description of Text Amendment

This text amendment eliminates the requirement that open parking spaces and access to these spaces be paved and maintained with bituminous, concrete or brick materials and instead allows for the use of any materials, whether impervious or not, that form an all-weather surface The use of grass and gravel are expressly prohibited, but the use of mechanically-reinforced grass is allowed. The proposed text amendment also adds further specificity to the types of environmental benefits that could be offered by applicants for Planned Unit Developments.

Relationship to the Comprehensive Plan

The proposed text amendments would implement § 101 1 of the General Provisions Element of the Comprehensive Plan, which calls for improving the physical character of the District; §§ 402.2 and 405 5 of the Environmental Protection Element, which calls for minimized sewage overflows and protected natural feature, and § 703 2(b), which recommends a policy to encourage appropriate design solutions that contribute to the conservation of natural resources.

Public Hearing

The Commission held a public hearing on the proposed text amendment on June 16, 2005 The Commission discussed what would be considered pervious pavement and the properties of surfaces such as Grasscrete and gravel. Representatives of the Natural Resources Defense Council, the National Ready Mixed Concrete Association, the Federation of Citizen's Associations of the District of Columbia, the Zoning Advisory Committee and the Anacostia Watershed Society spoke in favor of the text amendment The Commission requested that the Office of Planning prepare a supplemental report addressing whether the proposed text amendment would result in an expanded ability for homeowners in tree and slope overlay districts to develop, whether impervious surfaces can be prohibited in the W-0 Zone District and the cost difference between pervious and impervious surfaces to the District

During the hearing, the Commission discussed using the word "paved" rather than "surfaced," and if "all-weather surface" includes surfaces such as porous or pervious concrete The Commission determined that all-weather surfaces included porous or pervious concrete, but not grass or gravel Mechanically-reinforced grass was determined to be acceptable The Commission suggested using the brand name Grasscrete to describe the mechanically-reinforced grass surface contemplated, with the expectation that a non-proprietary description would be formulated when the final rule was considered.

Proposed Action

At its July 28, 2005 meeting, the Commission took proposed action pursuant to 11 DCMR § 3027 2 to approve the advertised text A Notice of Proposed Rulemaking was published in the *D C. Register* on September 23, 2005, at 52 DCR 8643, for a 30-day notice and comment period

The proposed rulemaking was referred to the National Capital Planning Commission (NCPC) pursuant to § 492 of the District of Columbia Charter NCPC, by report dated July 28, 2005, found that the proposed text amendments would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

ACF Environmental, a distributor of environmental products, submitted a letter to the record dated September 27, 2005, stating that it supports the proposal to eliminate the prohibition of pervious surfaces for all parking spaces and access driveways However, it found the limited examples of porous or pervious concrete, porous asphalt, Grasscrete or a generic definition of

Grasscrete as "allowable all weather surfaces" to be too narrow because they omit competing products that may be of superior quality

The Natural Resources Defense Council submitted a letter to the record dated September 28, 2005 in support of the proposed text amendments

The Zoning Advisory Committee submitted a letter to the record dated October 17, 2005, recommending that the Commission permit mechanically-supported grass, gravel, crushed concrete, rock or stone, or a combination such materials, but not unsupported grass or gravel.

No other comments were received

Final Action

At its regularly scheduled public meeting held January 9, 2006, the Zoning Commission took final action to adopt the text. The Commission determined that the phrase "mechanically-reinforced grass" adequately describes the types of surfacing techniques that Grasscrete and other similar products use No other changes were made to the text as published in the Notice of Proposed Rulemaking

The Office of the 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 §§ 2117, 2303 and 2403 of 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

Title 11 DCMR (Zoning) is proposed to be amended as follows (new text is shown in **bold** and underline and deleted text is shown with ~~strikethrough~~)

A. Subsections 2117 3, 2117.4 and 2117.10 of § 2117 ACCESS, MAINTENANCE, AND OPERATION are amended to read as follows

2117.3 All required parking spaces shall be clearly striped and lined according to the dimensions specified in § 2115. Durable materials that are all-weather ~~impervious~~ shall be used Striping shall be maintained for as long as the parking spaces requiring the striping are in existence

2117 4 Except as provided in §§ 2117 5 and 2117 6, each required parking space shall be accessible at all times directly from improved alleys **with a minimum width of ten feet (10 ft.) or improved public streets** via graded and unobstructed private driveways that form an all-weather