

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



MEMORANDUM

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**To:** Office of Documents and Administrative Issuance

**From:** Sharon S. Schellin<sup>3</sup>  
Secretary to the Zoning Commission

**Date:** November 2, 2006

**Re:** Publication for the Office of Zoning

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

- 1 Z C Notice of Public Hearing (Case No. 04-24A),
- 2 Z.C. Notice of Public Hearing (Case No. 06-32),
- 3 Z C Notice of Public Hearing (Case No. 06-43),
- 4 Z C Notice of Proposed Rulemaking (Case No. 05-10), and
- 5 Z C Notice of Final Rulemaking & Order No. 05-43 (Case No. 05-43)

Item number 5 above is also included on the enclosed diskette in MS Word format

Attachment

ZONING COMMISSION  
District of Columbia

CASE NO. 05-10

EXHIBIT NO. 22

2:15 PM  
11/11/06

11/11/06

Office of  
Documents and  
Administrative  
Issuance

# RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION: ☐ EMERGENCY RULES  
☐ FINAL RULES ☒ PROPOSED RULES ☐ COMBINED

## DATE AND TIME RECEIVED

Office of Documents use only

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: SHARON SCHELLIN

ADDRESS 441 4<sup>th</sup> Street, N W , Suite 210 South

TELEPHONE 727-0340

TITLE AND DESCRIPTION OF RULES ZC CASE NO 05-10 (Text Amendment - Capitol Gateway 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If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed Title 11 (Zoning) Sections 1600, 1602, 1603 and 3012

FINAL RULES ONLY Give the D C REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules DCR \_\_\_\_\_ DATE \_\_\_\_\_

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 NOVEMBER 2, 2006

SIGNED

*Al Byrke*

PHONE (202) 442-9777

☒ FINAL

☐ CONDITIONAL

NAME: EUGENE ADAMS

TITLE INTERIM 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

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

DATE OF APPROVAL  
OF VOTE

5-22-06

APPROVAL  
OF ATTEST

*Sharon J. Schellin*

Secretary to the Zoning  
Commission

TITLE

PHONE (202) 727-0340

Office of Documents  
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THIS NOTICE  
PUBLISHED AT

VOL

DCR

DATE

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**NOTICE OF PROPOSED RULEMAKING**  
**ZC CASE NO. 05-10**  
**(Text Amendment - Capitol Gateway Overlay District)**

The Zoning Commission for the District of Columbia, pursuant to its authority under §§ 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended, D.C. Official Code §§ 6-641.01 and 6-641.07 (2001)), hereby gives notice of its intent to amend Chapters 16 and 30 of the Zoning Regulations (Title 11 DCMR). The proposed amendments place limits on density transferred through combined deployments, extend the Zoning Commission review and approval process and design guidelines to additional properties within the boundaries of the CG Overlay, and establish preferred retail and entertainment use requirements and regulations along First and Half Streets SE within the area. In addition, the proposed rules would impose, within the Overlay, a 15 foot setback and a 1:1 upper story step-back above a height of 110 feet for buildings fronting South Capitol Street, an upper stories step-back for building fronting Half Street SE, and a 1:1 upper story step-back above a height of 110 feet for buildings fronting Potomac Avenue SE and SW. The proposed rules also provide for referral of all applications for the review of buildings and uses on lots that abut South Capitol Street. A technical amendment was made to section 1603 to substitute the date "January 7, 2004" in place of the references to "the effective date of this section."

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D C Register*.

The following rulemaking action is proposed.

Title 11 DCMR (Zoning) is amended as follows

A. Chapter 16, CAPITOL GATEWAY OVERLAY DISTRICT, is amended as follows

1 Section 1600, PREAMBLE, subsection 1600.2 is amended to add the following new purposes

- (g) Provide for the establishment of South Capitol Street as a monumental civic boulevard,
- (h) Provide for the development of Half Street SE as an active pedestrian oriented street with active ground floor uses and appropriate setbacks from the street façade to ensure adequate light and air, and a pedestrian scale, and
- (i) Provide for the development of First Street SE as an active pedestrian oriented street with active ground floor uses, connecting M Street, the Metro Station and existing residential neighborhoods to the Ballpark site and the Anacostia Waterfront

2 Subsection 1602 1 is amended to read as follows

1602 1 Two (2) or more lots within the Overlay District may be combined for the purpose of allocating residential and nonresidential uses regardless of the normal limitation on floor area by uses on each lot, provided, that the aggregate residential and nonresidential floor area shall not exceed the matter-of-right maximum height or density of the underlying zone district(s), except when bonus density is being constructed, subject to the following

- (a) Within the CG/CR District, the residential and nonresidential floor area on each individual parcel shall not exceed a maximum floor area ratio of 8.0 on parcels for which a height of 110 feet is permitted under the Height Act of 1910, or 8.5 on parcels for which a height of 130 feet is permitted under by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, D.C. Official Code §§ 6-601.01 to 6-601.09) as amended ("the Height Act"), including any bonus density,
- (b) Within the CG/CR District, the amount of commercial density transferred from one parcel to another may not exceed the lesser of an FAR of 3.0 or the amount of residential density being transferred;
- (c) Maximum permitted height shall be that permitted for any site receiving combined lot density within the CG/CR District, but only to the extent necessary to accommodate any additional density received from another parcel,
- (d) The combined lot provisions may not be used to transfer density to or from any property within the CG/C-3-C, CG/W-1, CG/W-2, or CG/W-3 Districts, and
- (e) In addition to the amount of density that may be transferred in accordance with §1602.1 (a), the Zoning Commission may, at its discretion, grant an additional transfer of density of 1.0 FAR maximum to or within Squares 700 and 701 and 702, subject to the applicant addressing to the satisfaction of the Zoning Commission the objectives and guidelines of §§1601 and 1604-1607, as applicable

3 Sections 1603 is amended to read as follows

**1603 BUILDINGS, STRUCTURES, AND USES IN THE CG/W-2 DISTRICT**

1603.1 The following provisions apply to new buildings, structures, or uses within the G/W-2 District

1603 2 No private driveway to any parking or loading berth areas in or adjacent to a building or structure constructed after January 7, 2004 shall directly face the waterfront.

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1603.3 All buildings or structures constructed after January 7, 2004 on a lot that faces or abuts the Anacostia River shall be set back by no less than seventy-five (75) feet from the bulkhead, unless the Commission finds that such setback creates an undue economic hardship for the owner of the lot and in no case less than fifty (50) feet from the bulkhead

1603.4 In the CG/W-2 District, the Zoning Commission, at its discretion, may grant bonus density for residential development in a building or a combined lot development, using a guideline of 1.0 FAR in excess of the normally allowed maximum of 4.0 FAR and an additional ten (10) feet in excess of the normally allowed maximum height of sixty (60) feet, provided that:

- (a) The building or combined lot development shall include at least 2.0 FAR of residential development;
- (b) The Zoning Commission, at its discretion, may allow construction of such bonus density on the property zoned CG/W-2 or may allow only for the bonus density to be transferred off-site to a lot or lots zoned CG/CR, and
- (c) The provisions of §§ 1709.6 through 1709.12 and § 1709.14 shall govern the procedures for transferring bonus density off-site if permitted by the Commission

1603.5 The Zoning Commission, at its discretion, may also provide for additional on-site or off-site bonus density to be earned for setbacks required under this section, based on the land area of the setback and the proposed features for public open space uses, provided, that 2.0 FAR based on the land area of the open space setback shall be used as a general guideline

4. Section 1604 is amended to read as follows

**1604 BUILDINGS AND STRUCTURES ON M STREET, S.E.**

1604.1 The following provisions apply to new buildings, structures, or uses with frontage on M Street S.E. within the CG Overlay

1604.2 No driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building

1604.3 The streetwall of each new building shall be set back for its entire height and frontage along M Street not less than fifteen (15) feet measured from the face of the adjacent curb along M Street, S.E.

1604.4 Each new building shall devote not less than thirty-five percent (35%) of the gross floor area of the ground floor to retail, service, entertainment, or arts uses ("preferred uses") as permitted in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of this Title, provided, that the following uses shall not be permitted: automobile, laundry, drive-

through accessory to any use, gasoline service stations, and office uses (other than those accessory to the administration, maintenance, or leasing of the building). Such preferred uses shall occupy 100% of the building's street frontage along M Street, except for space devoted to building entrances or required to be devoted to fire control

- 1604.5 For good cause shown, the Commission may authorize interim occupancy of the preferred use space required by § 1604 4 by non-preferred uses for up to a five (5) year period, provided, that the ground floor space is suitably designed for future occupancy by the preferred uses
- 1604 6 Not less than fifty percent (50%) of the surface area of the streetwall of any new building along M Street shall be devoted to display windows having clear or low-emissivity glass except for decorative accent, and to entrances to commercial uses or the building
- 1604 7 The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be fourteen (14) feet
- 1604.8 A building that qualifies as a Capitol South Recerving Zone site under § 1709.18 and for which a building permit has been applied for prior to August 31, 2001, shall not be subject to the requirements of this section
- 1604 9 Where preferred use retail space is required under this section and provided, the requirement of 11 DCMR § 633 to provide public space at ground level shall not apply.
- 5 The existing text of §§ 1605 and 1606 is redesignated as §§ 1611 and 1612
- 6 New §§ 1605 through 1610 are added to read as follows

**1605 BUILDINGS, STRUCTURES, AND USES ON SOUTH CAPITOL STREET**

- 1605 1 The following provisions apply to new buildings, structures, or uses with frontage on South Capitol Street within the CG Overlay
- 1605 2 Each new building or structure located on South Capitol Street shall be set back for its entire height and frontage not less than 15 feet, provided that a minimum of 60% of the street-wall shall be constructed on the setback line
- 1605.3 Any portion of a building or structure that exceeds 110 feet in height shall provide an additional one-to-one (1.1) step back from the building line along South Capitol Street
- 1605.4 No private driveway may be constructed or used from South Capitol Street to any parking or loading berth areas in or adjacent to a building or structure constructed after [effective date of this section]

**1606 BUILDINGS, STRUCTURES, AND USES ON FIRST STREET S.E, SOUTH OF M STREET SE**

- 1606 1 The following provisions apply to new buildings, structures, or uses with frontage on First Street S E south of M Street SE, within the CG Overlay
- 1606.2 Each new building shall devote not less than seventy percent (75%) of the gross floor area of the ground floor to retail, service, entertainment, or arts uses ("preferred uses") as permitted in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of this Title, provided, that the following uses shall not be permitted. automobile, laundry, drive-through accessory to any use, gasoline service stations, and office uses (other than those accessory to the administration, maintenance, or leasing of the building)
- 1606 3 Preferred uses shall occupy 100% of the building's street frontage along First Street SE, except for space devoted to building entrances or required to be devoted to fire control
- 1606.4 The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be fourteen (14) feet
- 1606 5 For good cause shown, the Commission may authorize interim occupancy of the preferred use space required by § 1606 2 by non-preferred uses for up to a five (5) year period; provided, that the ground floor space is suitably designed for future occupancy by the preferred uses "
- 1606.6 Where preferred use retail space is required under this section and provided, the requirement of 11 DCMR § 633 to provide public space at ground level shall not apply

**1607 BUILDINGS, STRUCTURES, AND USES ON HALF STREET S.E., SOUTH OF M STREET SE**

- 1607.1 The following provisions apply to new buildings, structures, or uses with frontage on Half S E south of M Street SE, within the CG Overlay
- 1607 2 Any portion of a building or structure that exceeds 65 feet in height shall provide a minimum step back of 20 feet in depth from the building line along Half Street SE Pursuant to §3104, the Zoning Commission may grant relief from this requirement, to a maximum of 15 feet in height and 8 feet in depth, for the provision of reasonable development footprints.
- 1607 3 Each new building shall devote not less than seventy percent (75%) of the gross floor area of the ground floor to retail, service, entertainment, or arts uses ("preferred uses") as permitted in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of this Title, provided, that the following uses shall not be permitted automobile, laundry, drive-through accessory to any use, gasoline service stations, and office uses (other than those accessory to the administration, maintenance, or leasing of the building)

- 1607.4 Preferred uses shall occupy 100% of the building's street frontage along Half Street SE, except for space devoted to building entrances or required to be devoted to fire control
- 1607.5 The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be fourteen (14) feet
- 1607.6 For good cause shown, the Commission may authorize interim occupancy of the preferred use space required by § 1607.2 by non-preferred uses for up to a five (5) year period, provided, that the ground floor space is suitably designed for future occupancy by the preferred uses.
- 1607.7 No private driveway may be constructed or used from Half Street SE to any parking or loading berth areas in or adjacent to a building or structure constructed after *{effective date of this section}*
- 1607.8 Where preferred use retail space is required under this section and provided, the provisions of DCMR 11 §633 shall not apply

**1608 STEP BACK FOR CERTAIN BUILDINGS AND STRUCTURES ON POTOMAC AVENUE**

- 1608.1 The following provisions apply to new buildings, structures, or uses with frontage on Potomac Avenue within the CG Overlay
- 1608.2 Any portion of a building or structure that exceeds 110 feet in height shall provide an additional one-to-one (1:1) step back from the building line along Potomac Avenue.

**1609 PRIVATE DRIVEWAYS ON P STREET SW**

- 1609.1 No private driveway may be constructed or used from P Street SW to any parking or loading berth areas in or adjacent to a building or structure subject to the provisions of this chapter that is constructed after *{the effective date of this section}*.

**1610 ZONING COMMISSION REVIEW OF BUILDINGS, STRUCTURES AND USES**

- 1610.1 The following provisions apply to properties located
- (a) Within the CG/W-2 District,
  - (b) On a lot that abuts M Street SE;
  - (c) On a lot located within Squares 700 or 701, north of the Ballpark site,
  - (d) On a lot that abuts South Capitol Street,
  - (e) On a lot within Square 601, 656, or 657, or

- (f) Any lot that is the recipient of density through the combined lot provisions of §1602
- 1610 2 With respect to those properties described in § 1610.1, all proposed uses, buildings, and structures, or any proposed exterior renovation to any existing buildings or structures that would result in an alteration of the exterior design, shall be subject to review and approval by the Zoning Commission in accordance with the following provisions.
- 1610 3 In addition to proving that the proposed use, building, or structure meets the standards set forth in § 3104, an applicant requesting approval under this section must prove that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will
- (a) Help achieve the objectives of the CG Overlay District as set forth in §1600 2,
  - (b) Help achieve the desired mixture of uses in the CG Overlay District as set forth in §§ 1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail or service uses,
  - (c) Be in context with the surrounding neighborhood and street patterns,
  - (d) Minimize conflict between vehicles and pedestrians;
  - (e) Minimize unarticulated blank walls adjacent to public spaces through facade articulation, and
  - (f) Minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards.
- 1610.4 With respect to a building or structure to be constructed on a lot within the CG/W-2 District
- (a) The building or structure shall provides suitably designed public open space along the waterfront;
  - (b) A plan shall be included in the application for suitable open space treatment of the setback area for such uses as walkway and bikeway, passive or active recreational use, and including provisions assuring private maintenance of the space, convenient and permanent public access to the space, and suitable connections to adjacent public space along the waterfront, and
  - (c) The application shall include view analysis that assesses openness of waterfront views and vistas, and views and vistas toward the Capitol Dome, other federal monumental buildings, existing neighborhoods, South Capitol Street, and the Frederick Douglas Bridge

- 1610.5 With respect to a building or structure which has frontage on Half Street SE south of M Street SE or Front Street SE south of M Street SE:
- (a) The building or structure shall provide for safe and active streetscapes through building articulation, landscaping, and the provision of active ground level uses including retail, entertainment, cultural, and pedestrian concourse space;
  - (b) The building or structure shall provide for safe and convenient movement to and through the site, including to public transit, the Ballpark, and to the Anacostia River, and
  - (c) The application shall include view analysis that assesses openness of views and vistas around, including views toward the Capitol Dome, other federal monumental buildings, the Ballpark, and the waterfront
- 1610.6 With respect to a building or structure which has frontage on South Capitol Street SE.
- (a) The building or structure shall incorporate massing, materials, and buildings and streetscape landscaping to further the design and development of properties in a manner that is sensitive to the establishment of South Capitol Street as a monumental civic boulevard;
  - (b) The building or structure shall incorporate massing, location of access to parking and loading, and location of service areas to recognize the proximate residential neighborhood use and context, as applicable; and
  - (c) The application shall include view analysis that assesses openness of views and vistas around, including views toward the Capitol Dome, other federal monumental buildings, the Ballpark, and the waterfront
- 1610 7 The Commission may hear and decide any additional requests for special exception or variance relief needed for the subject property. Such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval.
- 1610 8 At the time of filing an application with the Commission, the applicant shall pay the filing fee specified in § 3180 1(b)(16), plus such fees as apply to any additional zoning relief requested. The provisions of § 3181 relating to the administration of fees shall apply, except that the applicant may appeal any decision of the Director regarding the fee schedule to the Commission, which shall decide the appeal as a preliminary matter to hearing the application.
- 1610 9 A building that qualifies as a Capitol South Receiving Zone site under § 1709.18 and for which a building permit has been applied for prior to August 31, 2001, shall not be subject to the requirements of this section.

B. Chapter 30, ZONING COMMISSION PROCEDURES, § 3012.1 (a) is amended to read as follows (new text is shown in bold and underlined and deleted text is shown with strikethrough):

- (a) The National Capital Planning Commission of all Chapter 18 applications and those applications for approval pursuant to 11 DCMR § ~~1603~~ **1610 (a) and (d)**;

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4<sup>th</sup> Street, N W , Washington D C 20001. Comments must be received not later than thirty (30) days after the publication of this notice in the *D C Register*. A copy of this proposal may be obtained, at cost, by writing to the above address.