

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via-email)
From: Sharon S Schellin^{S³}
Secretary to the Zoning Commission
Date: June 22, 2009
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on June 26, 2009

- 1 Z C Notice of Final Rulemaking & Order No 06-32 (Case No 06-32)

Attachment

ZONING COMMISSION
District of Columbia

CASE NO. 06-32

EXHIBIT NO. 35

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ZONING COMMISSION
District of Columbia
CASE NO.06-32
EXHIBIT NO.35

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 4th Street, N W., Suite 210 South

TELEPHONE 727-0340

TITLE AND DESCRIPTION OF RULES Z.C. Case No. 06-32 (Text Amendment – 11 DCMR)

(Text amendments to include Square 766 in the Capitol South TDR receiving zone)

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: §§ 1709 18, 1709 21, 3010 2, 3022 1, and 3027 4 of the Zoning Regulations (Title 11 DCMR)

FINAL RULES ONLY Give the D C REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules 55 DCR 12162 DATE November 28, 2008

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 MAY 29, 2009

SIGNED

☐ FINAL

☐ CONDITIONAL

NAME:

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

1-12-09

APPROVAL OF ATTEST

Secretary to the Zoning Commission

TITLE

PHONE. (202) 727-0340

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THIS NOTICE PUBLISHED AT

VOL

DCR

DATE

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 06-32
Z.C. Case No. 06-32
(Text Amendment – 11 DCMR)
(Text amendments to include Square 766 in the Capitol South TDR receiving zone)
January 12, 2009

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 of Columbia Charter, hereby gives notice of the adoption of the following amendments to §§ 1709.18, 1709.21, 3010.2, 3022.1, and 3027.4 of the Zoning Regulations (Title 11 DCMR).

The text amendments add Square 766 to the Downtown Development Overlay District’s Capitol South receiving zone, but require Zoning Commission review and approval of the portion of any building in Square 766 that exceeds 90 feet

A Notice of Proposed Rulemaking was published in the *D C Register* (“DCR”) on November 28, 2008, at 55 DCR 12162. The Commission took final action to adopt the amendments at a public meeting on January 12, 2009 without making changes to the proposed text. This final rulemaking is effective upon publication in the *D.C Register*.

Existing Regulations

The Downtown Development (“DD”) Overlay District allows certain types of projects to generate additional development rights, which in some cases may be used on site, and in all instances may be transferred to lots located within the Housing Priority Area of the Overlay or to C-3-C properties located in one of the five receiving zones identified in §§ 1709.15 through 1709.19. These transferrable development rights (“TDRs”) can be used to increase the height of receiving zone properties above the 90 foot maximum

Square 766 is zoned C-3-C, but not included in any receiving zone

Description of Text Amendment

This rulemaking amends § 1709.18 to add Square 766 to the Capitol South receiving zone. Ordinarily, this would increase the potential height of buildings within the square to that permitted under the Height Act. However, this rulemaking also amends § 1709.21 to allow such additional height only if sufficiently setback from the eastern building face to avoid shadowing the lower buildings in Square 797 to the east and if the added height will provide a suitable northern focal point for the Canal Blocks Park.

The Commission is to make these determinations after a hearing, but these rules allow for the hearing to be scheduled without a setdown meeting

Relationship to the Comprehensive Plan

The requested text amendment is not inconsistent with the District Elements of the Comprehensive Plan for the National Capital ("Comprehensive Plan"), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D C Law 16-300). The Future Land Use Map of the Comprehensive Plan labels Square 766 suitable for high density commercial, which permits mixed-uses.

Set Down and Re-advertisement

This case was initiated when the Office of Zoning received a petition from Washington Telecom Associates, LLC, the lessee of the building that occupies the square. The Office of Property Management ("OPM") of the District of Columbia Government subleases the space. At the time the petition was filed, the parties were negotiating Washington Telecom's possible purchase of the sublease.

The petition proposed no constraint on building height. The Office of Planning's ("OP") initial report expressed concern over the impact of such unconstrained height, but indicated it would not object to the matter being set down for hearing, which the Commission did at its September 11, 2006 public meeting. At the Petitioner's request the hearing scheduled for March 5, 2007 was postponed until June 14, 2007, and then indefinitely postponed while it continued to negotiate with OPM.

Approximately a year later, OP, on behalf of OPM, requested that this matter be again scheduled for a public hearing; with the *caveat*, that OP, might request a more restrictive provision than being advertised. The Office of the Attorney General concluded that a new setdown was not required under these circumstances nor was it necessary to obtain the consent of the Petitioner to go forward.

Public Hearing

The Commission held a public hearing on October 27, 2008. Through its final report, OP recommended the height review process discussed above, and indicated its support for the proposal if its recommendation was accepted. No other testimony was presented and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which Square 766 is located, did not submit a report.

Proposed Action

The Commission took proposed action to approve the text amendment, including the additional provisions recommended by OP, at a properly notice public meeting held on November 10, 2008

The Notice of Proposed Rulemaking was published in the *D C Register* on November 28, 2008, at 55 *DCR* 12162 for a 30-day notice and comment period. No comments were received.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCP") under the terms of § 492 of the District of Columbia Charter. NCP, through a delegated action dated November 25, 2008, found that the proposed text amendments would not adversely affect the identified federal interests, not be inconsistent with the Comprehensive Plan for the National Capital.

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

Final Action

At its properly noticed January 12, 2009 public meeting, the Commission took final action to approve the proposed text amendments.

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 purpose of the Zoning Regulations and the Zoning Act, and are not inconsistent with the Comprehensive Plan.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to §§ 1709.18, 1709.21, 3010.2, 3022.1, and 3027.4 of the Zoning Regulations, Title 11 DCMR (new language is shown in **bold and underlined** text and deletions to existing provisions shown in ~~strike through~~ text):

A. Chapter 17, DOWNTOWN DEVELOPMENT OVERLAY DISTRICT, is amended by:

1. Amending § 1709.18 to read as follows:

1709.18 The Capitol South receiving zone consists of those portions of Squares 695 through 697, N697, 698, 699, N699, 737 through 742, ~~and N743, and 766,~~ each zoned C-3-C.

- 2 Amending subsection 1709.21 to read as follows

1709.21 **Except as provided in the second sentence,** the maximum permitted building height in the New Downtown, North Capitol, Capitol South, and Southwest receiving zones, shall be that permitted 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 ~~(formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & 1999 Supp.))~~), and the maximum permitted FAR shall be 10.0 for buildings permitted a height of one hundred thirty feet (130 ft.), and 9.0 for buildings permitted a lesser height. **A building on Square 766 may exceed a height of ninety (90) feet if the Zoning Commission, after hearing, finds that the additional height:**

- (a) **Will be sufficiently setback from the eastern building face to avoid shadowing the lower buildings in Square 797 to the east; and**
- (b) **Will provide a suitable northern focal point for the Canal Blocks Park.**

- B. Chapter 30, ZONING COMMISSION PROCEDURES, is amended as follows.

- 1 Subparagraph 3010.2 (d) is amended to read as follows

(d) Applications for Zoning Commission review / and approval pursuant to Chapters 16 and 18 of this Title, **as well as § 1709.21.**

2. Subsection 3022.1 is amended to read as follows:

3022.1 The procedures set forth in D.C. Official Code § 2-509 (2001), and this section shall apply to applications for a change in the Zoning Map pursuant to § 102 and to applications for planned unit developments, air space developments, and similar plan review activities of the Commission, including those required by Chapters 16 and 18 of this Title, **as well as § 1709.21,** except as otherwise provided in § 3010.7.

3. Subsection 3027.4 is amended to read as follows.

3027 4 The Commission need not take proposed action with respect to an application for Zoning Commission review and approval pursuant to Chapters 16 and 18 of this Title, as well as § 1709.21, but may take final action in accordance with § 3028, either at the close of the hearing or at a subsequent public meeting

On November 10, 2008, upon the motion of Chairman Hood, as seconded by Commissioner May, the Commission **APPROVED** the proposed rulemaking at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve, Gregory N. Jeffries, not present, not voting, third Mayoral appointee position vacant, not voting)

On January 12, 2009, upon the motion of Chairman Hood, as seconded by Commissioner May, the Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Gregory N. Jeffries to approve by absentee ballot; William W. Keating, 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 June 26, 2009.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 06-32
Z.C. Case No. 06-32
(Text Amendment – 11 DCMR)
(Text amendments to include Square 766 in the Capitol South TDR receiving zone)
January 12, 2009**

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