

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

Office of
Documents and
Administrative
Issuances
2007 OCT -4 AM 11:34

To: Office of Documents and Administrative Issuance
From: Sharon S. Schellin³
Secretary to the Zoning Commission
Date: October 4, 2007
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on October 12, 2007:

1. Z.C. Notice of Final Rulemaking & Order No. 07-09.

This Final Rulemaking and Order is also provided on the attached diskette. Thank you in advance for your assistance in this matter.

Attachment

ZONING COMMISSION
District of Columbia

CASE NO. 07-09
EXHIBIT NO. 12

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

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ZONING COMMISSION
District of Columbia
CASE NO. 07-09
EXHIBIT NO. 12

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RULEMAKING TRANSMITTAL FORM

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

DATE AND TIME RECEIVED

Office of Documents use only

ADDRESS: 441 4th Street, N.W., Suite 210 South

TELEPHONE: 727-0340

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: SHARON SCHELLIN

TITLE AND DESCRIPTION OF RULES: ZC Case No. 07-09: Text amendment to change administrative procedures for the residential use and affordable housing requirements of the Downtown Development (DD) 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If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) Sub-sections 1706.13 and 1706.23(g)

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 54 DCR 7769 DATE: August 10, 2007

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 4, 2007

SIGNED: *Alma Reyes*

PHONE: (202) 442-9777

☒ FINAL

☐ CONDITIONAL

NAME: LINDA SINGER

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:

9-10-07

APPROVAL
OF ATTEST:

Sharon J. Schellin
Secretary to the Zoning

TITLE: 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. 07-09
Z.C. Case No. 07-09
(Text Amendments – 11 DCMR)
(Exemption from Certificate of Occupancy Timing Requirements)
September 10, 2007

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, and having held a public hearing and referred the proposed amendments to the National Capital Planning Commission (“NCPC”) for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of adoption of the following amendments to §§ 1706.13 and 1706.23(g) of the Zoning Regulations (Title 11 DCMR).

Subsection 1706.13 governs the issuance of certificates of occupancy for projects within a Downtown Development Overlay District Housing Priority Area that either contain non-residential and required residential uses or have allocated their residential requirement through a combined lot development. The provision disallows the issuance of a certificate of occupancy for the non-residential use until a certificate of occupancy has been issued for the required residential use or an escrow is funded. Similarly, § 1706.23(g) provides that a certificate of occupancy may not be issued to a development that has reduced its residential requirement through constructing affordable housing offsite until a certificate of occupancy is issued for the affordable housing created. The text amendments permit an exception to both provisions when the required residential use is being allocated to or the affordable housing is being constructed on District-owned property.

A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on August 10, 2007, at 54 DCR 7769. The Commission took final action to adopt the amendments at a public meeting on September 10, 2007. This final rulemaking is effective upon publication in the *D.C. Register*.

Setdown, Public Hearing Notice, Comment, and Public Hearing

The Office of Planning (“OP”) initiated this rulemaking by filing a report dated March 29, 2007. At its April 9, 2007 public meeting, the Commission set down the case for a public hearing, and

authorized publication of the text suggested by the OP in its report. The text proposed by OP would have limited the exception to District property located in the Old Convention Center Site.

The Commission held a public hearing on the proposed text amendments on July 16, 2007. At that hearing, the Office of Planning recommended that the proposed amendments apply to all District property that has accepted a residential requirement or upon which affordable housing is being or will be constructed. The Commission agrees and took proposed action to approve the broader text amendment recommended OP.

Relationship to the Comprehensive Plan

The amendments are not inconsistent with the Comprehensive Plan, and are fully consistent with the following elements of the Comprehensive Plan:

- § 1708.12, Leveraging Public Development Sites, which recommends using the “former Washington Convention Center site to implement key objectives and policies of the Central Washington Area Element, especially with respect to land use and urban design;” and
- § 1711.4, Metro Center/Retail Core, which provides “the old Convention Center site offers an opportunity to improve the connection between the two areas and create an expanded Central Washington shopping district for the region.”

Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking was published in the *D.C. Register* on August 10, 2007, at 54 DCR 7769, for a 30-day notice and comment period. No comments were received.

The proposed rulemaking was also referred to NCPC pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated August 3, 2007, found that the proposed text amendment would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan.

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

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on September 10, 2007. No changes were made to the text published in the notice of proposed rulemaking.

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, 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 to Chapter 17 of the Zoning Regulations, Title 11 DCMR:

Subsections 1706.13 and 1706.23 of § 1706 RESIDENTIAL AND MIXED USE DEVELOPMENT are amended to read as follows (added wording is in **bold and underlined**):

1. Subsection 1706.13 is amended to read as follows:

If a development project includes both nonresidential uses and required residential uses, whether on the same lot or in a combined lot development, no certificate of occupancy shall be issued for the nonresidential space until either:

- (a) A certificate of occupancy has been issued for the residential space; or
- (b) An escrow account has been established and funded in a combined lot development pursuant to § 1708.2.

This provision shall not apply to nonresidential gross floor area resulting from a combined lot development that allocated an equivalent amount of the property's required residential uses to one or more lots then owned by the District government.

2. Subparagraph (g) of subsection 1706.23 is amended to read as follows:

- (g) No certificate of occupancy shall be issued for the nonresidential development within the DD Overlay District until a certificate of occupancy has been issued for the affordable dwelling units, **unless the affordable dwelling units are being constructed on property owned by the District of Columbia.**

Vote of the Zoning Commission taken at its public hearing on July 16, 2007, to **APPROVE** the proposed rulemaking: **3-0-2** (Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to approve; Carol J. Mitten and Gregory N. Jefferies not present, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on September 10, 2007, by a vote of **4-0-1** (John G. Parsons, Michael G. Turnbull, Anthony J. Hood and Gregory N. Jeffries (by absentee ballot) to adopt; Carol J. Mitten, having not participated, not voting).

Z.C. NOTICE OF FINAL RULEMAKING AND ORDER NO. 07-09
Z.C. CASE NO. 07-09
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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 **OCT 12 2007**.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 07-09
Z.C. Case No. 07-09
(Text Amendments – 11 DCMR)
(Exemption from Certificate of Occupancy Timing Requirements)
September 10, 2007**

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