

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



November 8, 2007

Via E-Mail & U.S. Mail:

Marcel Acosta
Acting Executive Director
National Capital Planning Commission
401 9th Street, N.W., Suite 500
Washington, D.C. 20004

Re: Notice of Proposed Rulemaking: Z.C. Case No. 07-24 (Text Amendment – CBRFs)

Dear Mr. Acosta:

At the conclusion of the hearing this evening, the Zoning Commission took proposed action to approve the above-referenced case. At the time of setdown, the Commission took emergency action and authorized the publication of the proposed rulemaking at the same time. The Notice of Emergency & Proposed Rulemaking was published in the *D.C. Register* on September 28, 2007, a copy of which is attached for your review. This case will be considered for final action at our December 10, 2007 public meeting.

The proposed decision of the Commission to approve the above-mentioned case is referred to the National Capital Planning Commission (NCPC) for review and comment, pursuant to the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Section 1-201 et seq.

If you have any questions, contact me at the Office of Zoning on (202) 727-0340.

Sincerely,

A handwritten signature in cursive script that reads "Sharon S. Schellin".

Sharon S. Schellin
Secretary to the Zoning Commission

cc: David W. Levy (via e-mail)
Marjorie Marcus (via e-mail)

ZONING COMMISSION
District of Columbia
CASE NO. 07-24
EXHIBIT NO. 9

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF EMERGENCY AND PROPOSED RULEMAKING
Case No. 07-24**

**(Text Amendment – DCMR Title 11 - Text Amendment to Eliminate the Certificate of
Occupancy Requirement for CBRFs Housing Six or Less Persons with Disabilities)**

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 (2001)), and the authority set forth in D.C. Official Code § 2-505(c) (2001), hereby gives notice of the adoption, on an emergency basis, of an amendment to Title 11 of the District of Columbia Municipal Regulations (“DCMR”) to eliminate the requirement that a certificate of occupancy (“C of O”) be obtained for community based residential facilities (“CBRF”) intended to house six or fewer unrelated persons with disabilities.

The circumstances justifying emergency action are as follows: The United States Department of Justice filed a law suit in the United States District Court for the District of Columbia alleging that the District of Columbia has violated the Fair Housing Act by imposing a precondition to the occupancy of a residential dwelling that only applies to persons with disabilities. On June 29, 2007, the United States filed a motion for declaratory judgment and injunctive relief against the District of Columbia, which seeks to enjoin enforcement of the C of O requirement in the circumstances discussed above and to have the court maintain jurisdiction over this aspect of the Zoning Regulation for five years.

The Office of the Attorney General for the District of Columbia (“OAG”) believes that it would be in the best interest of the District of Columbia to avoid the issuance of such an injunction. At this juncture, the Zoning Commission has the ability to amend its regulations in a narrow fashion to address the illegality alleged. There is no guarantee that a court order would be similarly circumscribed. OAG believes that the adoption of this amendment on an emergency basis might dissuade the judge from issuing an injunction, but that setting down the application for hearing would not suffice.

The emergency rulemaking took effect immediately upon its adoption on September 10, 2007¹ and will expire 120 days thereafter, *i.e.*, on January 8, 2008, or upon the publication of a notice of the final adoption of this rule in the *D.C. Register*, whichever occurs first.

The Commission also gives notice of its intent to take final rulemaking action to adopt the following amendments to the Zoning Regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* or thirty days following referral of this amendment to the National Capital Planning Commission, whichever occurs last.

Title 11 (DCMR) is amended as follows:

Title 11 of the District of Columbia Municipal Regulations, ZONING, Chapter 32, ADMINISTRATION AND ENFORCEMENT, § 3203.1, is amended to read as follows (new language is shown in bolded text, deleted language is shown in strikethrough):

¹ A Notice of Public Hearing for this amendment is published elsewhere in this edition of the *D.C. Register*.

3203.1 Except as provided in §§ 3203.7, 3203.8, 3203.9, or the second sentence of this subsection, no person shall use any structure, land, or part of any structure or land for any purpose ~~other than a one-family dwelling~~ until a certificate of occupancy has been issued to that person stating that the use complies with the provisions of this title and the D.C. Construction Code, Title 12 DCMR. **The requirements of this subsection shall not apply to:**

- (a) **A one-family dwelling; or**
- (b) **A community based residential facility to be occupied by six or fewer persons with a handicap plus resident supervisors, as permitted by right in residence and commercial districts pursuant 11 DCMR §§ 201.1 (o) and 330.5 (i).**

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Sharon Schellin, Office of Zoning, 441 4th Street, N.W., Suite 200-S, 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 or by the close of the record for the hearing on this matter, whichever is later. A copy of this proposal may be obtained, at cost, by writing to the above address.