

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

OFFICE OF THE SECRETARY
DDA/

2008 DEC 16 P 2:33

To: Office of Documents and Administrative Issuance
From: Sharon S. Schellin³
Secretary to the Zoning Commission
Date: December 16, 2008
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on December 26, 2008:

1. Z.C. Notice of Final Rulemaking & Order No. 07-34 (Case No. 07-34).

Attachment

ZONING COMMISSION
District of Columbia

CASE NO.

EXHIBIT NO.

07-34
43

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

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

ZONING COMMISSION
District of Columbia
CASE NO. 07-34
EXHIBIT NO. 43

OFFICE OF THE SECRETARY
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2008 DEC 16 P 2:33

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. 07-34 (Text and Map Amendment - 11 DCMR)(Rezoning portions of Squares 176, 177, 177N, 178, 190, 191, 206, and 207)

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) Zoning Map and §§ 1501.2, 1501.3

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 55 DCR 5792 DATE: May 16, 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: DECEMBER 9, 2008

SIGNED:

Alan Bergstein

PHONE: (202) 442-9777

☒ FINAL	☐ CONDITIONAL
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NAME: ALAN BERGSTEIN

TITLE: SECTION CHIEF,
LAND USE AND PUBLIC
WORKS

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:

11-14-08

APPROVAL
OF ATTEST:

Sharon D. Schellin

Secretary to the Zoning

TITLE: Commission

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 FINAL RULEMAKING
AND
Z.C. ORDER NO. 07-34
Z.C. Case No. 07-34
(Text and Map Amendments - 11 DCMR)
(Rezoning Portions of Squares 176, 177, 177N, 178, 190, 191, 206, and 207)
July 14, 2008**

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 ("NCPC") 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 the Zoning Map and §§ 1501.2 and 1501.3 of the Zoning Regulations (Title 11 DCMR).

The map amendment rezones the area generally bounded by S, T, U, 15th, and 16th Streets and New Hampshire Ave., N.W by rezoning those properties currently zoned in the R-5-D Zone District to the R-5-B Zone District, and those properties located in the R-5-B Zone District to the R-4 Zone District; and by also mapping all the affected properties within the Dupont Circle Overlay District ("DC"). The text amendments are necessary to accurately reflect the new boundaries of the DC Overlay.

Relationship to the Comprehensive Plan

The amendments would not be 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 Comprehensive Plan's Future Land Use Map recommends most of the subject area for moderate-density residential uses. Small sections of low-density residential, medium-density residential and moderate-density are also shown within the area. The moderate-density residential designation on the Future Land Use Map is described as being appropriate for:

... the District's row house neighborhoods as well as its low rise garden apartment complexes. Also applies to areas characterized by a mix of single family homes, 2-4 unit buildings, row houses, and low rise apartment buildings. In some of the older inner city neighborhoods with this designation there may also be existing multi-family apartments.

The Comprehensive Plan further explains that:

The R-3, R-4, R-5-A Zone districts are generally consistent with the Moderate Density Residential category; the R-5-B District and other zones may also apply in some locations. (10 DCMR § 225.4.)

The proposal would further the following Guiding Principles of the Comprehensive Plan, as outlined and detailed in Chapter 2, the Framework Element:

- (8) The residential character of neighborhoods must be protected, maintained and improved. Many District neighborhoods possess social, economic, historic, and physical qualities that make them unique and desirable places in which to live. These qualities can lead to development and redevelopment pressures that threaten the very qualities that make the neighborhoods attractive. These pressures must be controlled through zoning and other means to ensure that neighborhood character is preserved and enhanced. (10 DCMR § 218.1.)
- (11) The District of Columbia contains many buildings and sites that contribute to its identity. Protecting historic resources through preservation laws and other programs is essential to retain the heritage that defines and distinguishes the city. Special efforts should be made to conserve row houses as the defining element of many District neighborhoods, and to restore neighborhood “main streets” through sensitive renovation and updating. (10 DCMR § 218.4.)

Setdown

Ms. Anne Sellin and Mr. Richard Busch initiated this rulemaking case by filing a petition requesting the rezoning on December 10, 2007. The Commission set down the case for a public hearing at its February 11, 2008 public meeting.

Public Hearing

The Commission held a public hearing on April 28, 2008.

Great Weight Given to ANC Issues and Concerns

The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to the written recommendation of the affected ANC. By letter dated April 22, 2008,

ANC 2B indicated that it supported the petition, and agreed to act as a “co-sponsor” of the case before the Commission.

The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.

Proposed Action

The Commission took proposed action at the conclusion of the April 28, 2008 public hearing by a vote of 4-0-1. The Notice of Proposed Rulemaking was published in the *D.C. Register* on May 16, 2008, at 55 DCR 5792, for a 30-day notice and comment period.

Peter Knapp submitted a written comment that was received by the Commission on June 6, 2008. Mr. Knapp's comment reiterated the request he made at the hearing for the Commission to address the extent to which the proposed map amendment would create non-conforming uses and structures, particularly whether he would be required to obtain a Certificate of Occupancy for the basement apartment in his row dwelling. Mr. Knapp also stated that he believed the lot description of his property in the public hearing notice and notice of proposed rulemaking was inaccurate.

The proposed rulemaking was referred to NCPC, under the terms of § 492 of the District of Columbia Charter. NCPC, through a delegated action dated May 30, 2008, found that the proposed text amendments would not adversely affect the identified federal interests, nor 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 July 14, 2008 public meeting, the Commission took final action to approve the proposed text amendments.

Before taking final action, the Commission considered the comments of Mr. Knapp, and received input from the Office of Planning clarifying that a Certificate of Occupancy would be required for Mr. Knapp's basement apartment. The Commission would also like to clarify that the Certificate of Occupancy requirement also applied before the map amendment was setdown. The lot description of his property is accurate.

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 the Zoning Act.

In consideration of the reasons set forth herein, the Zoning Commission hereby APPROVES the following amendments to the Zoning Map and §§ 1501.2 and 1501.3 of the Zoning Regulations, Title 11 DCMR.

A. The Zoning Map is amended in accordance with the following table:

Square	Lots	Change in Zone
Square 176	Lots 43-45, 64-73, 2076-2128	R-5-D to DC/R-5-B
Square 177	Lots 2, 36-40, 87-92, 104, 108, 126, 127, 801, 802, 2009-2019, 2020-2025	R-5-D to DC/R-5-B
	Lots 118-123	R-5-B to DC/R-4
Square N177	Lots 4-9, 17, 23-25, 26, 27, 87-92, 801-804, 807, 810-811, 2001-2009, 2010-2012, 2013, 2022	R-5-D to DC/R-5-B
Square 190	Lots 22-42, 51-62, 88-99, 101-116, 2019-2028	R-5-B to DC/R-4
	Lots 119-120, 123, 129, 809, 2001-2018, 2029-2049, 2050-2056	R-5-D to DC/R-5-B
Square 191	Lots 93-95, 100, 803-804, 2001-2012, 2014-2027, 2059-2067	R-5-D to DC/R-5-B
	Lots 3-6, 8-16, 40-49, 51-59, 63-65, 66-69, 71-76, 79-87, 90-92, 96-98, 99, 104, 107-108, 800, 801, 812, 814, 816, 817, 2028-2031, 2032, 2034-2058, 2068-2077	R-5-B to DC/R-4
Square 206	Lots 17-25, 62-65, 113-122, 128-133, 138-162, 166-176, 177-198, 219, 220, 800-805, 807, 809, 811, 812, 813, 814, 2001-2013	R-5-B to DC/R-4
Square 207	Lots 48-65, 94-95, 810	R-5-B to DC/R-4

B. Chapter 15, MISCELLANEOUS OVERLAY DISTRICTS, is amended as follows:

1. By repealing § 1501.2.

2. Subparagraph 1501.3 is amended to read as follows (added text is shown in **bold** and underlined):

1501.3 The DC Overlay District includes the following squares: 23, 35, 48, 49, 65, 66, 67, 68, 69, 70, 90, 91, 92, 93, 94, 95, 96, 97, 98, N99, 109, 110, 111, 112, 113, 114, 115, 116, 131, 132, 133, 134, 135, 136, 137, N137, 138, 139, 153, S153, 154, 155, 156, 157, 158, 159, 160, 178, 179, 180, 181, S181, 182, N182, 192, 193, 194, 195, S195, 196, and N196. **The DC Overlay District also includes the following lots: Square 176, Lots 43-45, 64-73, 2076-2128; Square 177, Lots 2, 36-40, 87-92, 104, 108, 118-123, 126, 127, 801, 802, 2009-2019, 2020-2025, Square N177, Lots 4-9, 17, 23-25, 26, 27, 87-92, 801-804, 807, 810-811, 2001-2009, 2010-2012, 2013, 2022; Square 190, Lots 22-42, 51-62, 88-99, 101-116, 119-120, 123, 129, 809, 2001-2018, 2019-2028, 2029-2049, 2050-2056; Square 191, Lots 3-6, 8-16, 40-49, 51-59, 63-65, 66-69, 71-76, 79-87, 90-92, 93-95, 96-98, 99, 100, 104, 107-108, 800, 801, 803-804, 812, 814, 816, 817, 2001-2012, 2014-2027, 2028-2031, 2032, 2034-2058, 2059-2067, 2068-2077, Square 206, Lots 17-25, 62-65, 113-122, 128-133, 138-162, 166-176, 177-198, 219, 220, 800-805, 807, 809, 811, 812, 813, 814, 2001-2013; and Square 207, Lots 48-65, 94-95, 810.**

At the conclusion of its April 28, 2008 hearing, the Zoning Commission voted to **APPROVE** the proposed rulemaking by a vote of 4-0-1 (Gregory N. Jeffries, Curtis L. Etherly, Jr., Michael G. Turnbull, and Peter G. May to approve; Anthony J. Hood, not present, not voting).

Vote of the Zoning Commission taken at its public meeting on July 14, 2008, to **ADOPT** the proposed rulemaking by a vote of 3-0-2 (Gregory N. Jeffries, Curtis L. Etherly, Jr. and Michael G. Turnbull in favor; Anthony J. Hood, having not participated, not voting; Peter G. May abstained).

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 _____.

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July 14, 2008**

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