

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via-email)

From: Sharon S. Schellin 
Secretary to the Zoning Commission

Date: April 14, 2009

Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on April 24, 2009:

1. Z.C. Notice of Final Rulemaking & Order No. 08-05 (Case No. 08-05);
2. Z.C. Notice of Final Rulemaking & Order No. 08-16/08-16A (Case Nos. 08-16 & 08-16A); and
3. Z.C. Notice of Final Rulemaking & Order No. 08-23 (Case No. 08-23).

Attachment

ZONING COMMISSION
District of Columbia

CASE NO. 08-05

EXHIBIT NO. 7

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. 08-05 (Text Amendment - 11 DCMR) (Amendments to DD Zoning Regulations to facilitate construction of the convention center hotel)

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) §§ 1700.7, 1706.11, and 2405.3.

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 55 DCR 9871 DATE: September 19, 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: MARCH 3, 2009

SIGNED:

Alan Bergstein

PHONE: (202) 442-9777

☒ FINAL ☐ CONDITIONAL

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:

10-20-08

APPROVAL
OF ATTEST:

Sharon S. 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. 08-05
Z.C. Case No. 08-05
(Text Amendment - 11 DCMR)
(Amendments to DD Zoning Regulations to Facilitate Construction
of the Convention Center Hotel)
October 20, 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 §§ 1700.7, 1706.11, and 2405.3 of the Zoning Regulations (Title 11 DCMR).

The text amendments will facilitate construction of the planned convention center headquarters hotel at Square 370 by removing the residential use requirement of the DD Regulations, and allowing additional density above the Planned Unit Development standard for that use of this property without the applicant having to meet the otherwise applicable standard or to purchase transferrable development rights.

A Notice of Proposed Rulemaking was published in the *D.C. Register* ("DCR") on September 19, 2008, at 55 DCR 9871. The Commission took final action to adopt the amendments at a public meeting on October 30, 2008, without making changes to the proposed text. This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

The site for the proposed convention center hotel is split-zoned DD/C-2-C and DD/C-3-C and is located in the Housing Priority Area of the Downtown Development ("DD") overlay. The DD overlay establishes minimum residential use requirements for properties located in a housing priority area of at least 4.5 floor area ratio ("FAR") in the DD/C-2-C, and 3.5 FAR in the DD/C-3-C Zone District. Such properties are also granted a matter-of-right density of 8.0 FAR and 9.5 FAR, respectively. A hotel is considered a non-residential use in the DD, so in order for this project to be a completely non-residential building, it would have to engage in a combined lot development pursuant to § 1708. It could also obtain an addition .5 FAR of non-residential density through buying transferrable development rights.

Subparagraphs (b) and (c) of § 1700.7 disallow the use of the Planned Unit Development process to reduce the housing requirement, and requires a PUD applicant to demonstrate that it purchased transferable development rights to the maximum feasible extent prior to obtaining additional FAR through a PUD. Although § 2405.3 of the PUD regulation permit the Commission to grant an addition 5% FAR above the PUD standard, an applicant must show the additional density is

“essential to the successful functioning of the project.”

Description of Text Amendment

The amendments remove the residential use requirement from any portion of Square 370 improved with a convention center headquarters hotel. Because the property remains in the Housing Priority Area, it will continue to be able to achieve the full matter-of-right FAR allowed, all of which may be used for a convention center headquarters hotel use. This will avoid the need for the developer to engage in a costly combined lot development transaction. Should this amount of non-residential FAR prove insufficient, the proposed rules would allow the Commission, as part of a PUD proceeding, to increase the maximum FAR by up to 5% without the Applicant having to meet the otherwise applicable standard or purchasing transferrable development rights

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), and are specifically consistent with the following policies and recommended action of the Comprehensive Plan:

- **Policy CW-1.1.10: Central Washington Hotels and Hospitality Services**
Encourage the development of additional hotels in Central Washington, especially in the areas around the new Convention Center and Gallery Place, along Pennsylvania Avenue NW and Massachusetts Avenue NW, in the Thomas Circle area, and in the area east of Third Street NW. A range of hotel types, including moderately priced hotels, and hotels oriented to family travelers as well as business travelers, should be encouraged. Hotels generate jobs for District residents and revenues for the general fund and should be granted incentives when necessary. Retain existing hotel uses by allowing and encouraging the expansion of those uses, including the addition of one floor, approximately 16 feet in height subject to coordination with federal security needs, to the Hay-Adams Hotel. (10 DCMR § 1708.11.) (emphasis added).
- **Policy CW-2.4 Mount Vernon District**
Mount Vernon Square itself was designed to be a focal point in Washington’s ensemble of great civic landmarks. Its focus is the 1902 former Carnegie Library building, an elegant historic structure that is now in use by the Washington Historical Society. Facing the north edge of the Square is the 2.3 million square foot Washington Convention Center, completed in 2003. To the southwest, the now vacant site of the former Convention Center is awaiting redevelopment. Immediately northwest of the Square, a major convention hotel is planned. Large-scale office buildings occupy other sides of the Square, framing it as a potentially great public space. (10 DCMR § 1714.2.) (emphasis added).

- **Policy CW-2.4.3: Convention Center Area Land Uses**
Encourage land uses around Mount Vernon Square which capitalize on the presence of the Washington Convention Center. Such uses include hotels, restaurants, retail, and entertainment uses. Convention related hotel construction should be focused on vacant or underutilized land immediately adjacent to the Convention Center to minimize impacts on the surrounding neighborhood. (10 DCMR § 1714.8.) (emphasis added).
- **Action CW-2.4-B: Convention Center Hotel**
Develop a major convention center hotel in close proximity to the Washington Convention Center. The hotel should be sited and designed to complement adjacent uses and add activity and aesthetic value to the Mount Vernon Square neighborhood. (10 DCMR §1714.14.)

The Comprehensive Plan Generalized Land Use Map identifies the site for a mix of high-density residential and commercial uses.

Setdown Proceeding

OP initiated this rulemaking proceeding by filing a report dated March 14, 2008. The Commission setdown the case at its April 14, 2008 regular public meeting.

Public hearing

The Commission held a properly noticed public hearing on July 14, 2008.

OP testified in support of the text amendments.

Great Weight Given to ANC Issues and Concerns

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the affected ANC's written recommendation. No written recommendation was submitted by an affected ANC in this case.

Proposed Action

The Commission took proposed action at the conclusion of the July 14, 2008 hearing.

The Notice of Proposed Rulemaking was published in the *D.C. Register* on September 19, 2008 at 55 DCR 9871, for a 30-day notice and comment period.

No comments were received.

The proposed rulemaking was referred to NCPC under the terms of § 492 of the District of Columbia Charter. NCPC, through a delegated action dated August 29, 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 October 20, 2008 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, 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 §§ 1700.7, 1706.11, and 2405.3 of the Zoning Regulations, Title 11 DCMR (new text is shown **bolded** and underlined, deleted text is shown in strike-through text):

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

1. By amending § 1700, General Provisions, § 1700.7, to read as follows:

1700.7 A Planned Unit Development (PUD) in the DD Overlay District shall be subject to the following provisions in addition to those of chapter 24 of this title:

...

(d) Notwithstanding paragraphs (b) and (c) of this subsection, if a PUD is proposed to govern the following, the PUD shall be guided by the applicable policies of the Comprehensive Plan pertaining to the development of: ~~development of the University of the District of Columbia campus and other uses in Squares 401, 402, 425, and 426, the PUD shall be guided by the applicable policies of the Comprehensive Plan.~~

- 1) The University of the District of Columbia campus and other uses in Squares 401, 402, 425, and 426, and
- 2) A convention center headquarters hotel on square 370.

2. By amending Section 1706, Residential and Mixed Use Development, § 1706.11 to read as follows:

1706.11 No minimum residential use requirement shall apply to the following: ~~in Square 485 nor to any lot or lots in Square 455 or the southern part of Square 454 improved with a sports arena.~~
(a) Square 485;
(b) Any lot or lots in Square 455 or the southern part of Square 454 improved with a sports arena; and
(c) Any portion of Square 370 improved with a convention center headquarters hotel.

- B. Chapter 24, PLANNED UNIT DEVELOPMENT PROCEDURES, Section 2405 PUD Standards, § 2405.3, is amended to read as follows:

2405.3 The Commission may authorize the following an increase increases; ~~provided, that the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of this chapter, or with respect to FAR, is for the purpose of a convention headquarters hotel on square 370; of not more than five percent (5%) in the maximum height or floor area ratio provided, that the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of this chapter.~~
(a) not more than five percent (5%) in the maximum height; or
(b) not more than five percent (5%) in the maximum floor area ratio.

On July 24, 2008, upon motion of Vice Chairman Jeffries, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the petition at the end of the hearing on this case by a vote of **5-0-0** (Anthony J. Hood, Gregory N. Jeffries, Curtis J. Etherly, Jr., Peter G. May, and Michael G. Turnbull).

On October 20, 2008, upon motion of Chairman Hood, as seconded by Vice Chairman Jeffries, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to approve; Curtis J. Etherly, Jr., not present, 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 APR 24 2009.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 08-05
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(Text Amendment - 11 DCMR)
(Amendments to DD Zoning Regulations to Facilitate Construction
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October 20, 2008**

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