

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 08-29

MAR 17 2010

As Secretary to the Commission, I hereby certify that on copies of this Notice of Final Rulemaking and Z.C. Order No. 08-29 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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|---|---|
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ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 |
| 2. Brianne Nadeau, Chair
ANC 1B
P.O. Box 73710
Washington, DC 20056 | 8. Councilmember Jack Evans |
| 3. Mike Silverstein, Chair
ANC 2B
9 Dupont Circle NW
Washington, DC 20036 | 9. Councilmember Jim Graham |
| 4. Commissioner Peter John Raia Sr.
ANC/SMD 1B02
1348 Wallace Place, NW
Washington, DC 20009 | 10. DDOT (Karina Ricks) |
| 5. Commissioner Deborah R. Thomas
ANC/SMD 1B04
1440 W Street NW, #B1
Washington, DC 20009 | 11. Melinda Bolling, Acting General Counsel
DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| 6. Commissioner Ramon Estrada
ANC/SMD 2B09
1417 T Street NW
Washington, DC 20009 | 12. Office of the Attorney General (Alan Bergstein) |

ATTESTED BY:


Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND**

Z.C. ORDER NO. 08-29

Z.C. Case No. 08-29

(Text Amendment - 11 DCMR)

**(Text Amendment to Create an Additional Exception to the Residential Requirement of the
Uptown Arts Overlay/Commercial Residential (Arts/CR) Zone)**

July 13, 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; D.C. Official Code § 6-641.01); and having held a public hearing and thereafter 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 an amendment to § 1902.3 of the Zoning Regulations (Title 11 DCMR). The amendment exempts historic buildings located in the CR zoned portion of the Uptown Arts-Mixed Use (ARTS) Overlay District from the minimum residential or hotel use requirement of that provision. An existing building becomes subject to the ARTS Overlay if any addition, alteration, or repair within any 24-month period exceeds 75% of the building's assessed value. (11 DCMR § 1900.4.)

A Notice of Proposed Rulemaking was published in the *D.C. Register* ("DCR") on June 12, 2009, at 56 DCR 4514. The Commission took final action to adopt the amendments at a public meeting on July 13, 2009. This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

In Order No. 632, dated November 13, 1989, the Commission created and mapped the Uptown Arts Overlay. The overlay supplements the regulations of four underlying zoning districts – C-2-A, C-2-B, C-3-A, and CR – in the vicinity of 14th, U, and 7th Streets and Florida and Georgia Avenues. The purposes of the overlay are to encourage a mix of uses, a high level of pedestrian activity, a safe environment for pedestrian and vehicular movement, and an increased presence of arts, cultural, and related support uses (11 DCMR § 1900.2). Much of the overlay is encompassed by the Greater 14th Street and Greater U Street Historic Districts.

Subsection 1902.3 presently requires that each lot or combined lot in the CR portion of the overlay devote not less than 2.5 of its floor area ratio ("FAR") to residential or hotel

development, but exempts any lot or combined lot with less than 7,500 square feet of land area and any building constructed before 1958 that becomes subject to the overlay, if the building is being converted to nonresidential uses.

Description of Text Amendment

The text amendment adds a third exemption to the residential use requirement for existing buildings that become subject to the overlay's provisions. This exemption applies to any such building that contributes to the historic district or is a designated landmark. In addition, at least 0.5 FAR of the building's density must be occupied by or reserved for one or more of the preferred uses set forth in 1908.1 (except 1908.1(m) and (u)). In addition, at least 0.25 FAR of the space occupied or reserved for such uses must have a minimum floor-to-ceiling clear height of at least 20 feet.

Relationship to the Comprehensive Plan

The text amendment is not inconsistent with Comprehensive Plan, and is fully consistent with policies suggesting the reuse and restoration of historic arts facilities, or the reuse of other historic structures such as arts venues. The Arts and Culture Element of the Plan seeks to enhance existing arts facilities for the benefit of nearby neighborhoods: "Preserve and enhance existing District-owned neighborhood arts and cultural spaces. Assist in the improvement of arts organizations' facilities in order to enhance the quality and quantity of arts offerings" (Policy AC-1.1.1.) Policy AC-4.3.3 is even more direct in its call to revitalize historic structures: "Encourage non-profit and private arts organizations to work closely with historic preservation organizations to reuse historical buildings, including historic theaters, as cultural centers."

The Historic Preservation Element also seeks to create special incentives to help preserve buildings like theaters. Policy HP-3.1.2 states, "Develop specialized incentives to support preservation of historic properties like schools, places of worship, theaters, and other prominent historic structures of exceptional communal value. Use a variety of tools to reduce development pressure on these resources and to help with unusually high costs of maintenance." That element also specifically refers to cultural resources and the potential for improving business districts: "Utilize historic preservation programs and incentives to encourage historic preservation as a revitalization strategy for neighborhoods and neighborhood business districts." (Policy HP-3.2.3.)

The DUKE Plan (Development Framework for a Cultural Destination District Within Washington, DC's Greater Shaw/U Street), whose boundaries partially overlap the Arts/ CR Zone District, also generally encourages the re-use of historic structures and the establishment of major arts venues to attract a critical mass of residents and visitors.

Set Down Proceeding

The Office of Planning initiated this rulemaking by filing a report. The Commission set down the case for a public hearing at its November 10, 2008 public meeting.

Public Hearing

The Commission held a public hearing on April 30, 2009. No members of the public testified at the hearing, but the Commission acknowledged the receipt of a letter from the Cardozo Shaw Neighborhood Association (the "Association"). The letter stated that the Association voted to support the text amendment and the flexibility it would provide to property owners. The letter also stated that the Association has noted an imbalance towards residential development at the expense of office and commercial development.

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 issues and concerns raised in the affected ANC's written recommendation. No ANC comments were received.

Proposed Action

The Commission took proposed action at the conclusion of the hearing held on April 30, 2009.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on June 12, 2009, at 56 DCR 4514.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC, through a delegated action dated June 8, 2009, 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.

Final Action

At its properly noticed July 13, 2009 public meeting, the Commission took final action to approve the proposed text amendment without making any change to the proposed text.

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** an amendment to § 1902.3 to make a technical change to how paragraph (a) is codified and to add a new paragraph (b), so that the provision will read as follows:

1902.3 In the underlying CR District, development of a lot or lots in a combined lot development pursuant to § 1905 shall provide not less than 2.5 Floor Area Ratio (FAR) of residential or hotel development subject to the spacing requirement of § 1901.2, concurrent with any commercial development on the lot or combined lots; provided:

(a) This requirement shall not apply to:

- (1) A lot or a combined lot having less than seven thousand five hundred square feet (7,500 ft.²) of land area;
- (2) A conversion of a building constructed before 1958 to nonresidential uses; or
- (3) A building that contributes to a historic district or is designated a landmark, and that has at least 0.5 FAR occupied by or reserved for one or more of the uses set forth in § 1908.1, other than 1908.1(m) and 1908.1(u), and at least 0.25 FAR of the space so occupied or reserved has a minimum floor-to-ceiling clear height of twenty (20) feet; or

(b) In developments in which residential development is required by this subsection, a certificate of occupancy for commercial or nonresidential uses shall not be issued prior to the issuance of a certificate of occupancy for a residential or hotel component.

On April 30, 2009, upon the motion of Vice Chairman Jeffries, as seconded by Commissioner Keating, the Zoning Commission **APPROVED** the proposed rulemaking at the conclusion of its public hearing by a vote of **3-0-2** (Gregory N. Jeffries, William W. Keating, III, and Peter G. May to approve; Anthony J. Hood and Michael G. Turnbull, not present, not voting).

On July 13, 2009, upon the motion of Chairman Hood, as seconded by Vice Chairman Keating, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood and William W. Keating, III to approve; Peter G. May and Michael G. Turnbull to approve by absentee ballot; Konrad W. Schlater, 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 March 19, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

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July 13, 2009

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