GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: Zoning Commission

FROM: Andrew Altman, Director
Office of Planning

DATE: November 19, 2001

SUBJECT: Waiver of Rules for Late Submittal of a Preliminary Report on Zoning Commission Case No. 96-3/89-1

The attached report concerning this case is submitted less than 10 days prior to the Zoning Commission Public Hearing. The Office of Planning respectfully requests that the Board waive its rule and accept the report into the record.

ZONING COMMISSION
District of Columbia
Case 96-3/89-1
Exhibit 125

ZONING REPORT

TO: **A. Bastida, Office of Zoning**

FROM: **Andrew Altman, Director**

DATE: **November 16, 2001**

SUBJECT: **Zoning Commission Case No. 96-3/89-1**

This report has been prepared per Zoning Commission request at the September 21, 2001 public hearing. Issues raised at public hearing are identified and changes to the draft text are discussed.

This Report also includes the following attachment:

I. Revision of draft BP-CR text.

Issue #1: Waterfront Setback. Key Issues:

- Whether the depth of the required setback should be 50 feet or 75 feet
- Whether to measure from the shoreline or the bulkhead line
- Whether smaller properties might be adversely affected as to development rights
- Proposed text modification (in bold face type and strike-through):

1603.3 With respect to a building or structure to be constructed on a lot that faces or abuts the Anacostia River:

(a) The building or structure shall be set back by no less than **seventy-five (75) feet, unless the Commission finds that such setback renders development infeasible and in no case less than fifty (50) feet,** from the bulkhead line or the shoreline, whichever provides a larger setback;

Comment: *The bulkhead line and shoreline are not necessarily synonymous. Setback is intended to achieve a designated area of upland; measuring setback from bulkhead line alone could in certain instances yield a combination of upland and water. Given the special exception review of waterfront developments, the specifics of each case can be examined in the public hearing, i.e., as to whether development is rendered infeasible and what the preferred setback should be, if less than 75 feet is justified.*

Issue #2: **M Street Design Standards.** Key Issues:

- Is actual occupancy of the ground floor retail space required, or may the space simply be reserved for future occupancy?
- Concerns that retail demand is not yet present.
- Importance of building the ground floor space so that retail or entertainment use is feasible; retrofits of inappropriately designed spaces are not desirable.
- Testimony requested flexibility for flagpoles, canopies, etc. to extend into setback area along M Street. Testimony implied a request for actual building overhangs into the setback area.
- Let the ground floor design standards be matter-of-right standards, so that special exception focuses on design review.
- Proposed text modification:

1604 ZONING COMMISSION APPROVAL FOR BUILDINGS AND STRUCTURES ON M STREET, S.E.

1604.1 Any proposed building on a lot that abuts M Street, S.E., between South Capitol Street and 4th Street, S.E. shall be subject to approval by the Zoning Commission as a special exception.

1604.2 An applicant requesting special exception approval under this section must prove that the proposed building's architectural design, site plan, landscaping and sidewalk treatment are of a superior quality, pursuant to the design and use requirements set forth in §§ 1604.3 through 1604.7.

1604.3 The streetwall of each new building shall be set back for its entire height and frontage along M Street not less than fifteen feet (15') measured from the face of the curb along M Street, S.E.;

1604.4 Each new building shall devote not less than fifty percent (50%) of the gross floor area of the ground floor to retail, service, entertainment or arts uses ("preferred uses") as permitted in §§701.1 through 701.5 and §§721.1 through 721.6 of this title; Provided, that the following uses shall not be permitted: automobile laundry, drive through accessory to any use, gasoline service stations, and office uses (other than those

accessory to the administration, maintenance, or leasing of the building).

1604.5 **For good cause shown, the Commission may authorize interim occupancy of the preferred use space required by § 1604.4 by nonpreferred uses for up to a five (5) year period; Provided that the ground floor space is suitably designed for future occupancy by the preferred uses;**

1604.6 **Not less than fifty percent (50%) of the surface area of the streetwall of any new building along M Street shall be devoted to display windows having clear or low-emissivity glass except for decorative accent, and to entrances to commercial uses or the building;**

1604.7 **Notwithstanding §2117.8(c)(1), no driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building;**

1604.8 **A building that qualifies as a Capitol South Receiving Zone site under § 1601.3(b) and for which a building permit has been applied for prior to August 31, 2001 shall not be subject to the requirements of this Section.**

Comment: Although some of the street level design standards could be administered by the Zoning Administrator as matter-of-right standards, OP believes it will be more efficient and comprehensive to include them in the special exception review. There will be a public hearing in any case, and the street level design standards are part of the superior design review.

Regarding the market for ground floor preferred uses, OP notes that the area along M Street near the Metrorail station will in a few years be a high activity area as office development especially continues at a steady to fast pace. The ground floor space in these buildings needs to be initially designed with high ceilings, display windows and other attributes for occupancy by retail, service or entertainment uses. It is common for the ground floor retail space in an office building to lease up much more slowly than the office building above. OP also believes that the office workers in each building, reinforced by others in nearby buildings, will provide sufficient demand to support 0.5 FAR of space on the ground floor.

In the interest of allowing some flexibility on timing while the critical mass of office space and employees is being built up in this area, OP proposes § 1604.5 above. This will allow interim use of the required retail space by office or other use for a maximum of five years for good cause shown.

To resolve the Zoning Commission's expressed concern about a requirement to "occupy" the preferred use space, § 1604.4 utilizes the term "devote," as used in other

overlay zones in Washington. A dictionary definition of devote is, "to set apart or dedicate by a solemn or formal act."

As to extensions of features such as canopies and flag poles into the required setback area (public space), OP notes that such features are generally allowed and in some cases require approval by the Public Space Committee. In the interest of the design objectives of the setback along M Street, OP opposes any allowance for upper-floor building overhangs into public space.

Issue #3: Florida Rock Amenity Site. Key Issues:

- Florida Rock owns the property in Square 664E, which is the off-site amenity property in Zoning Commission Orders numbered 850 and 910, the Florida Rock PUD.

- The PUD requires this property to be developed with no less than 253,502 s.f. of residential development on the western part of the property, a small building for the Earth Conservation Corps (ECC) on the eastern, waterfront part of the property, separated by a terminus park at the base of South Capitol Street.

    (a) Florida Rock requested that the Commission zone the western part of the square BP/CR rather than BP/W-2, thereby placing the residential development site in a higher density zone to allow the required 253,502 s.f. of residential development as of right. The new zone boundary would be the southward extension of the center of the South Capitol Street right-of-way. Florida Rock also requested that development on the amenity site be exempt from the special exception process for waterfront properties.

Comment: OP does not recommend mapping the BP/CR zone, which conveys a potential 7.0 FAR and building height of up to 130 feet (abutting street width permitting) quite close to the waterfront and close to adjacent structures that will generally be much lower in height and bulk. At 91,853 s.f., the land area of Square 664E is ample to accommodate the required residential floor area. The 4.0 FAR permitted for residential development as of right in the W-2 zone allows up to 367,412 s.f. of residential gross floor area ("g.f.a."). This is 113,910 g.f.a. in excess of the required amount of residential development in the PUD order of 253,502 g.f.a. The 113,910 g.f.a., which may be devoted to nonresidential uses in W-2 (up to a maximum of 2.0 FAR), is far more than needed to accommodate the proposed EEC building on the waterfront. Because the advertised W-2 zoning accommodates the necessary building bulk, only a height allowance is needed for the residential building.

Since the Florida Rock PUD will be considered for extension by the Commission, OP recommends that the mapping of the amenity site be addressed in the context of that process. If the Commission chooses to revised the BP-Overlay text to address the issues, OP proposes a text amendment as follows to authorize additional building height:

1603.7 **If the lots in Square 664E identified as Parcel 3 of the "Amenity Site" in Zoning Commission Order No. 910 (Florida Rock PUD) are developed with residential buildings in accordance with that Order, a maximum height of 90 feet shall be allowed.**

This proposed text amendment will eliminate the need for the covenant that Florida Rock offers, under which the BP/CR zoning would be undone if the PUD is never built. The covenant would represent an unusual and convoluted zoning remedy, the need for which is avoided by the proposed text amendment.

OP believes that this property should undergo the normal special exception process for waterfront development. Such review is desirable from the public interest standpoint, especially in regard to the design and use of the public open space along the waterfront and the connections between that space and the open space of adjoining properties. The public interest in achieving an attractive and continuous riverfront park and walk-way/bike path system is substantial. By the time actual development occurs on Square 664E, there may be an adopted riverwalk plan that sets certain standards for all properties, so that amendments to the concept plan adopted in the PUD order may well be desirable.

Issue #4: **Squares 700 and 701.** Key Issue:

- The property owners request BP/C-3-C zoning rather than the advertised BP/CR zoning, on the rationale that office use, being more intensive than residential or mixed use, should be located near Metrorail stations so as to maximize development as well as Metrorail ridership.

- *OP continues to recommend BP/CR zoning for these reasons:*

- *Residential development is also a good use near Metrorail stations, for the convenience of the residents and to support additional residential development and population growth in the city.*

- *This area is designated for mixed-use development in the Comprehensive Plan, and properties should be treated uniformly and fairly in zoning in carrying out the Comprehensive Plan.*

- *Squares 700 and 701 are quite large, thereby lending themselves under the provisions of the BP/CR zone to development that is approximately one-half office and one-half residential, with substantial quantities of each use.*

- *Mixed use development including residential will tend to balance inbound and outbound vehicular and rapid transit trips in the a.m. and p.m. peak hours, thereby alleviating traffic congestion and supporting Metrorail ridership.*

- *One of the objectives of the proposed zoning is to leverage the economic strength of the office market to help secure residential development. The requested BP/C-3-C zoning would remove such leverage.*

Issue #5: Existing High-Density Office Buildings on Waterfront. Key Issue:

- Property owner requests that his two, existing 90-foot office buildings constructed in the 1970s be exempt from special exception review in the case of renovation and reoccupancy.

Comment. OP believes that the normal special exception review should apply. This is especially important because these existing buildings are sited quite close to the waterfront. Every effort should be made to remediate the existing condition regarding the planned public open space/walkway/bikeway along the waterfront.

Issue # 6: Bonus Density Formula. Key Issue:

- The outline of testimony by Steven E Sher requested confirmation that the following result of using residential bonus density in the BP/CR zone is allowable. The owner/developer builds 3.0 FAR matter-of-right commercial plus 2.0 matter-of-right residential, with the latter (at 1:1 bonus density) earning 2.0 FAR of bonus density. Because bonus density may be devoted to any use, the result is 5.0 FAR of commercial development and 2.0 FAR of residential development.

Comment. This is not the intent of the bonus density structure, which clearly needs to be clarified in the text. This problem occurs because, unlike the Downtown Development District, there is no minimum quantity of residential development required on each lot. OP considers the mandatory residential approach to be inappropriate in such a large, underutilized area where redevelopment will occur over a period of several decades. The bonus density interpretation cited above, which would allow a building with 5.0 FAR of commercial/office uses and only 2.0 FAR of residential uses. This result would tend to establish office as the preferred use in the area. This is contrary to all public plans and policies, which emphasize the importance of maximizing residential development within the permitted mixture of uses. OP's intent continues to be to reward residential development within a mixed-use formula in such a way that residential development will likely be more than one-half of total development. OP has accordingly restructured § 1601 (Bonus Density and Height) to be more similar to the FAR-swapping system in the base CR zone. This will make the system simpler to utilize, will provide residential density incentives similar to the advertised text, and will retain the flexibility and development benefits of combined lot development, or FAR swapping. Note that the result in the predominant BP/CR zone is a maximum zoning envelope of 7.0 FAR, with a maximum of 3.0 FAR for commercial uses and 4.0 FAR of residential uses. The proposed Section 1601 text, as well as a related provision in Section 1603, is as follows:

1601 BONUS DENSITY AND HEIGHT

1601.1 **In the BP/CR and BP/W-3 districts, a building or a combined lot development as authorized by § 1602 shall be allowed a maximum density of 7.0 FAR; Provided that the additional 1.0 FAR in excess of the matter-of-right maximum of 6.0 FAR shall be devoted solely to residential uses.**

1601.2 For the purpose of accommodating bonus density as authorized by § 1601.1, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Code §§ 5-401 to 5-409), as amended; Provided that in squares 601, 656 and 657 those lots abutting or separated only by a street or alley from residentially zoned property shall provide a 1:1 building setback for any part of a building that exceeds 90 feet in height on the side abutting the residential zone.

1601.3 **In the BP/W-1 District, a building or a combined lot development shall be allowed a maximum density of 3.5 FAR and a maximum height of 55 feet; Provided that the additional 1.0 FAR in excess of the matter-of-right maximum of 2.5 FAR shall be devoted solely to residential uses.**

1601.4 **The Zoning Commission may grant additional density to lots in the BP/W-2 District, as part of the special exception process applicable to that area, in the manner set forth in §§1603.5 and 1603.6.**

1601.5 **A building that qualifies as a Capitol South Receiving Zone site under § 1601.3(b) shall be subject to the maximum height and bulk limits of §1709.21 of this title.**

* * *

1603.6 **In the BP/W-2 District, the Zoning Commission, at its discretion, may grant bonus density for residential development in a building or a combined lot development, using a guideline of 1.0 FAR in excess of the normally allowed maximum of 4.0 FAR and an additional ten (10) feet in excess of the normally allowed maximum height of sixty (60) feet; Provided that:**

(a) The building or combined lot development shall include at least 2.0 FAR of residential development; and

(b) The Zoning Commission, at its discretion, may allow construction of such bonus density on the property zoned BP/W-2 or may require the bonus density to be transferred to a lot or lots zoned BP/CR by means of a combined lot development.

Issue #7: Conforming Status of Various Pepco Facilities. Key Issue:

- Pepco requested that the Zoning Commission delay a decision by 45-60 days so that it may secure Certificates of Occupancy for various of its specific facilities. The requested time period was allowed.

Issue #8: Zone Boundary in Square 665. Key Issue:

- The advertised zoning map shows approximately the southern one-third of this square as the boundary line between BP/W-2 and BP/CR, however, the written advertisement indicates the boundary as being at the midpoint of Square 665.

- Steven E. Sher of Holland & Knight recommended that the boundary be set at 400 feet north of the right-of-way line of V Street, SE, which approximates the location indicated on the advertised map.

- OP concurs with this recommendation, as the intent was to include the existing building within the BP/W-2 classification and the remainder of the square in the BP/CR classification.

- **Thus, referring to the Notice of Public Hearing on p. 2, Item 5 (Rezone from M to BP/W-2), the last item in the list of squares, should read "and the southern part of Square 665, for a distance of 400 feet north of the right-of-way line of V Street, SE."**

Issue #9: Zoning of Square 602 (Riverside Associates PUD). Key Issues:

- The property owner argues that the base zoning of W-1 and W-3 is inappropriate because the property is not located on a waterfront. This property, which immediately abuts Fort McNair, also has an approved PUD for mixed residential-commercial development. The adopted provisions include height restrictions in stages – a maximum 40-foot height within 115 feet of Fort McNair, 60 feet within 165 feet and 90 feet within 224 feet, together with a setback of 50 feet from the Fort.

- The owner requests BP/CR zoning base zoning in place of W-1 and W-3, together with height and setback restrictions to be added to the BP overlay to accomplish the same objectives and standards as the existing PUD order. Owner states that the mixture of residential and commercial development under this approach would be very similar to that allowed by the existing W-1/W-3 base zoning and that development would still be subject to Large Tract Review and Fine Arts Commission approval.

- OP recommends against changing the base zoning. A rezoning to BP/CR was not advertised in this case and thus would require a further public hearing at this late stage in the area rezoning case. If the use mixture and density are similar under

the existing W-1 and W-3 and the suggested BP/CR, there is little advantage to having a separate zoning case. As to this property not being on the waterfront, OP notes that the W zones are currently mapped in two locations – the Georgetown waterfront, which obviously is a waterfront location, and the area surrounding the Anacostia Metrorail station, where the affected properties are some distance from the waterfront.

Issue #10: Relocation Options for Concrete Companies. Key Issues:

- Representatives of several concrete production companies stated that they appreciate the conforming status of their uses, allowing them to remain in operation in Buzzard Point for an extended period of time if they so desire.

- They nonetheless asked the Zoning Commission's and the city's guidance as to what areas of the city are zoned so as to allow this use, so as to inform their long-term decision making.

- The Zoning Commission requested that the Office of Planning report back on this issue, although not necessarily in the time frame of this case. OP will review this issue and report back to the Commission at a future time.

Issue #11: More Accurate Title for Section 1603. Key Issue:

- As indicated in §1603.1, the scope of public review includes buildings and structures as well as uses.

1603 ZONING COMMISSION APPROVAL FOR BUILDINGS, STRUCTURES AND USES IN THE BP/W-2 DISTRICT

Issue #12: Revision

Notice of Public Hearing on p. 2, Item 5 (Rezone from M to BP/W-2), the last item in the list of squares, should read **"and the southern part of Square 665, for a distance of 400 feet north of the right-of-way line of V Street, SE."**

DRAFT PROPOSED RULES – BUZZARD POINT OVERLAY
November 16, 2001 Office of Planning Revision

Bolded language differs from advertised text, except for titles.

Office of Planning edits indicated with underline.

CHAPTER 16 BUZZARD POINT-CAPITOL GATEWAY OVERLAY DISTRICT

1600 PREAMBLE

1600.1 The Buzzard Point-Capitol Gateway (BP) Overlay District is applied to the Buzzard Point and Capitol Gateway areas, which are designated for mixed use development in the Comprehensive Plan for the National Capital. The following squares and portions of squares in the Southwest and Southeast quadrants of the District of Columbia are included in the BP Overlay District: 601, 602, 603, 605, 607, 609, 611, 612, 613, 656, 657, 658, 660, 661, 662, E662, 664, E664, 665, 666, E667, S667, 700 through 708, E708, S708, S744, 771, 698, 699, N743, 742 and 769.

1600.2 The purposes of the BP Overlay District are to:

(a) Assure development of the area with a mixture of residential and commercial uses, and a suitable height, bulk and design of buildings, as generally required by the Comprehensive Plan and planning studies of the area;

(b) Encourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural and hotel or inn uses;

(c) Allow for continuation of existing industrial uses, which are important economic assets to the city, during the extended period projected for redevelopment;

(d) Provide for a reduced height and bulk of buildings along the Anacostia riverfront in the interest of ensuring views over and around waterfront buildings, and provide for continuous public open space along the waterfront with frequent public access points; and

(e) Require suitable ground-level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Yard Metrorail station.

1600.3 The BP Overlay District and the underlying CR, W-1, W-2, W-3, and C-3-C Districts shall constitute the Zoning Regulations for the geographic area referred to in §1600.1. Where there are conflicts between this chapter and the underlying zoning, the provisions of the BP Overlay District shall govern.

1601 BONUS DENSITY AND HEIGHT

1601.1 In the BP/CR and BP/W-3 districts, a building shall be allowed a maximum density of 7.0 FAR; Provided that the additional 1.0 FAR in excess of the matter-of-right maximum of 6.0 FAR shall be devoted solely to residential uses.

1601.2 For the purpose of accommodating bonus density as authorized by § 1601.1, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Code §§ 5-401 to 5-409), as amended; Provided that in squares 601, 656 and 657 those lots abutting or separated only by a street or alley from residentially zoned property shall provide a 1:1 building setback for any part of a building that exceeds 90 feet in height on the side abutting the residential zone.

1601.3 In the BP/W-1 District, a building or a combined lot development shall be allowed a maximum density of 3.5 FAR and a maximum height of 55 feet; Provided that the additional 1.0 FAR in excess of the matter-of-right maximum of 2.5 FAR shall be devoted solely to residential uses.

1601.4 The Zoning Commission may grant additional density to lots in the BP/W-2 District, as part of the special exception process applicable to that area, in the manner set forth in §§ 1603.5 and 1603.6.

1601.5 A building that qualifies as a Capitol South Receiving Zone site under § 1601.3(b) shall be subject to the maximum height and bulk limits of §1709.21 of this title.

1602 COMBINED LOT DEVELOPMENT

1602.1 Two or more lots within the Overlay District may be combined for the purpose of allocating residential and non-residential uses regardless of the normal limitation on floor area by uses on each lot; Provided, that the aggregate residential and non-residential floor area shall not exceed the matter-of-right maximum height or FAR of the underlying zone district(s), except when bonus density is being constructed.

1602.2 **The provisions of § 1709 shall govern the prerequisites and procedures for transferring bonus density off site if permitted by § 1603.6.**

1602.3 **For combined lot developments that involve the allocation of residential and non residential FAR, no allocation of gross floor area shall be effective unless an instrument, legally sufficient to effect such a transfer, is filed with the Zoning Administrator and recorded by the Recorder of Deeds in the land records against all lots included in the combined lot development;**

1602.4 **The instrument shall be in the form of a declaration of covenants that:**

(a) **Is signed by the owners of all affected lots;**

(b) **Runs with the land in perpetuity;**

(c) **Burdens all lots involved in the allocation of gross floor area;**

(d) **Binds the present and future owners of the lot receiving FAR to reserve, design, construct, cause to be occupied, and maintain in perpetuity an area on-site equal to the gross floor area of residential uses received;**

(e) **States the maximum permitted gross floor areas for all uses in all lots, the maximum allowed gross floor area for nonresidential uses in all lots, and the gross floor area of residential uses allocated. The covenant shall further state that, after the transfer, the combined lots conform with the maximum gross floor area limitations for nonresidential on the lots before the transfer.**

1602.5 **The declaration of covenants shall require the owner of the receiving lot to reimburse the Government of the District of Columbia such reasonable expenses as the District incurred to successfully enforce its rights under the declaration;**

1602.6 **The declaration of covenants shall expressly state that it may be amended or terminated only with the approval of the Zoning Commission, after public hearing and only upon a finding that the proposed modification or termination is fully justified and consistent with the purposes of this chapter**

1602.7 **The declaration of covenants shall be approved in content by the Zoning Administrator and certified for legal sufficiency by the Office of the Corporation Counsel. The declaration shall also contain a**

written statement by the Director of the D.C. Office of Planning attesting to:

(a) The lots' eligibility to ~~r~~eallocate residential and nonresidential uses;

(b) The accuracy of the computations with respect to the amount of residential and nonresidential uses ~~r~~eallocated; and

(c) Whether, after the transfer, the combined lots will conform with the maximum gross floor area limitations on residential uses for the lots before any such transfer.

1603 ZONING COMMISSION APPROVAL FOR BUILDINGS, STRUCTURES AND USES IN THE BP/W-2 DISTRICT

1603.1 All proposed uses, buildings and structures in the BP/W-2 District shall be subject to approval by the Zoning Commission as a special exception.

1603.2 In addition to proving that the proposed use, building or structure meets the standards set forth in § 3104, the applicant shall further demonstrate that the use, building or structure:

(a) Will help achieve the desired mixture of uses in the BP Overlay District as set forth in §§ 1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail or service uses; and

(b) In the case of waterfront lots, provides suitably designed public open space along the waterfront, as specified in § 1603.3.

1603.3 With respect to a building or structure to be constructed on a lot that faces or abuts the Anacostia River:

(a) The building or structure shall be set back by no less than seventy-five (75) feet, unless the Commission finds that such setback renders development infeasible and in no case less than fifty (50) feet, from the bulkhead line <u>or shoreline, whichever provides the larger setback;</u>

(b) The application shall include a plan for suitable open space treatment of the setback area for such uses as walkway and bikeway, passive or active recreational use, and including provisions assuring private maintenance of the space, convenient and permanent public access to the

space, and suitable connections to adjacent public space along the waterfront.

1603.4 With respect to all applications, the proposed building or structure shall be designed with a height, bulk and siting so as to provide for openness of views and vistas to and from the waterfront and, where practical, maintain views of federal monumental buildings.

1603.5 The Zoning Commission, at its discretion, may also provide for additional on-site or off-site bonus density to be earned for setbacks required under this section, based on the land area of the setback and the proposed features for public open space uses; Provided, that 2.0 FAR based on the land area of the open space setback shall be used as a general guideline.

1603.6 **In the BP/W-2 District, the Zoning Commission, at its discretion, may grant bonus density for residential development in a building or a combined lot development, using a guideline of 1.0 FAR in excess of the normally allowed maximum of 4.0 FAR and an additional ten (10) feet in excess of the normally allowed maximum height of sixty (60) feet; Provided that:**

(a) The building or combined lot development shall include at least 2.0 FAR of residential development; and

(b) The Zoning Commission, at its discretion, may allow construction of such bonus density on the property zoned BP/W-2 or may allow only for the bonus density to be transferred off-site to a lot or lots zoned BP/CR by means of a combined lot development.

1604 ZONING COMMISSION APPROVAL FOR BUILDINGS AND STRUCTURES ON M STREET, S.E.

1604.1 Any proposed building on a lot that abuts M Street, S.E., between South Capitol Street and 4th Street, S.E. shall be subject to approval by the Zoning Commission as a special exception.

1604.2 An applicant requesting special exception approval under this section must prove that the proposed building's architectural design, site plan, landscaping and sidewalk treatment are of a superior quality, pursuant to the design and use requirements set forth in §§ 1604.3 through 1604.7.

1604.3 The streetwall of each new building shall be set back for its entire height and frontage along M Street not less than fifteen feet (15') measured from the **face of the adjacent curb** along M Street, S.E.;

1604.4 Each new building shall devote not less than fifty percent (50%) of the gross floor area of the ground floor to retail, service, entertainment or arts uses ("preferred uses") as permitted in §§701.1 through 701.5 and §§721.1 through 721.6 of this title; Provided, that the following uses shall not be permitted: automobile laundry, drive through accessory to any use, gasoline service stations, and office uses **(other than those accessory to the administration, maintenance, or leasing of the building)**.

1604.5 For good cause shown, the Commission may authorize interim occupancy of the preferred use space required by § 1604.4 by non-preferred uses for up to a five(5) year period; Provided that the ground floor space is suitably designed for future occupancy by the preferred uses.

1604.6 Not less than fifty percent (50%) of the surface area of the streetwall of any new building along M Street shall be devoted to display windows having clear or low-emissivity glass except for decorative accent, and to entrances to commercial uses or the building;

1604.7 Notwithstanding §2117.8(c)(1), no driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building;

1604.8 A building that qualifies as a Capitol South Receiving Zone site under § 1601.3(b) and for which a building permit has been applied for prior to August 31, 2001 shall not be subject to the requirements of this Section.

1605 EXISTING INDUSTRIAL USES

1605.1 A commercial or industrial use that is first permitted in the CM or M districts and that is in existence with a valid Certificate of Occupancy as of (date), shall be deemed a conforming use and shall be entitled to expand on its current lot or lots as a matter of right up to the permitted commercial FAR and height limits of the underlying zone district; Provided, that the performance standards of §§804, 805, 825 and 826 applicable to the use shall apply to any expansion.

1699 DEFINITIONS

1699.1 When used in this chapter, the term residential uses shall have the following meaning:

Residential uses – residential uses include dwellings, flats, multiple dwellings, guest room areas of hotels or inns, and community based residential facilities (CBRFs), subject to the size or other limitations normally applicable to the specific type of CBRF in the underlying zone.

* * *

Notice of Public Hearing on p. 2, Item 5 (Rezone from M to BP/W-2), the last item in the list of squares, should read "and the southern part of Square 665, for a distance of 400 feet north of the right-of-way line of V Street, SE."

CHAPTER 16 BUZZARD POINT-CAPITOL GATEWAY OVERLAY DISTRICT

1600 PREAMBLE

1600.1 The Buzzard Point-Capitol Gateway (BP) Overlay District is applied to the Buzzard Point and Capitol Gateway areas, which are designated for mixed use development in the Comprehensive Plan for the National Capital. The following squares and portions of squares in the Southwest and Southeast quadrants of the District of Columbia are included in the BP Overlay District: 601, 602, 603, 605, 607, 609, 611, 612, 613, 656, 657, 658, 660, 661, 662, E662, 664, E664, 665, 666, E667, S667, 700 through 708, E708, S708, S744, 771, 698, 699, N743, 742 and 769.

1600.2 The purposes of the BP Overlay District are to:

(a) Assure development of the area with a mixture of residential and commercial uses, and a suitable height, bulk and design of buildings, as generally required by the Comprehensive Plan and planning studies of the area;

(b) Encourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural and hotel or inn uses;

(c) Allow for continuation of existing industrial uses, which are important economic assets to the city, during the extended period projected for redevelopment;

(d) Provide for a reduced height and bulk of buildings along the Anacostia riverfront in the interest of ensuring views over and around waterfront buildings, and provide for continuous public open space along the waterfront with frequent public access points; and

(e) Require suitable ground-level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Yard Metrorail station.

1600.3 The BP Overlay District and the underlying CR, W-1, W-2, W-3, and C-3-C Districts shall constitute the Zoning Regulations for the geographic area referred to in §1600.1. Where there are conflicts between this chapter and the underlying zoning, the provisions of the BP Overlay District shall govern.

1601 BONUS DENSITY AND HEIGHT

1601.1 In the BP/CR and BP/W-3 districts, a building shall be allowed a maximum density of 7.0 FAR; Provided that the additional 1.0 FAR in excess of the matter-of-right maximum of 6.0 FAR shall be devoted solely to residential uses.

1601.2 For the purpose of accommodating bonus density as authorized by § 1601.1, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Code §§ 5-401 to 5-409), as amended; Provided that in squares 601, 656 and 657 those lots abutting or separated only by a street or alley from residentially zoned property shall provide a 1:1 building setback for any part of a building that exceeds 90 feet in height on the side abutting the residential zone.

1601.3 In the BP/W-1 District, a building or a combined lot development shall be allowed a maximum density of 3.5 FAR and a maximum height of 55 feet; Provided that the additional 1.0 FAR in excess of the matter-of-right maximum of 2.5 FAR shall be devoted solely to residential uses.

1601.4 The Zoning Commission may grant additional density to lots in the BP/W-2 District, as part of the special exception process applicable to that area, in the manner set forth in §§ 1603.5 and 1603.6.

1601.5 A building that qualifies as a Capitol South Receiving Zone site under § 1601.3(b) shall be subject to the maximum height and bulk limits of §1709.21 of this title.

1602 COMBINED LOT DEVELOPMENT

1602.1 Two or more lots within the Overlay District may be combined for the purpose of allocating residential and non-residential uses regardless of the normal limitation on floor area by uses on each lot; Provided, that the aggregate residential and non-residential floor area shall not exceed the matter-of-right maximum height or FAR of the underlying zone district(s), except when bonus density is being constructed.

1602.2 The provisions of § 1709 shall govern the prerequisites and procedures for transferring bonus density off site if permitted by § 1603.6.

1602.3 For combined lot developments that involve the allocation of residential and non residential FAR, no allocation of gross floor area shall be effective unless an instrument, legally sufficient to effect such a transfer,

is filed with the Zoning Administrator and recorded by the Recorder of Deeds in the land records against all lots included in the combined lot development;

1602.4 The instrument shall be in the form of a declaration of covenants that:

(a) Is signed by the owners of all affected lots;

(b) Runs with the land in perpetuity;

(c) Burdens all lots involved in the allocation of gross floor area;

(d) Binds the present and future owners of the lot receiving FAR to reserve, design, construct, cause to be occupied, and maintain in perpetuity an area on-site equal to the gross floor area of residential uses received;

(e) States the maximum permitted gross floor areas for all uses in all lots, the maximum allowed gross floor area for nonresidential uses in all lots, and the gross floor area of residential uses allocated. The covenant shall further state that, after the transfer, the combined lots conform with the maximum gross floor area limitations for nonresidential on the lots before the transfer.

1602.5 The declaration of covenants shall require the owner of the receiving lot to reimburse the Government of the District of Columbia such reasonable expenses as the District incurred to successfully enforce its rights under the declaration;

1602.6 The declaration of covenants shall expressly state that it may be amended or terminated only with the approval of the Zoning Commission, after public hearing and only upon a finding that the proposed modification or termination is fully justified and consistent with the purposes of this chapter

1602.7 The declaration of covenants shall be approved in content by the Zoning Administrator and certified for legal sufficiency by the Office of the Corporation Counsel. The declaration shall also contain a written statement by the Director of the D.C. Office of Planning attesting to:

(a) The lots' eligibility to ~~re~~allocate residential and nonresidential uses;

(b) The accuracy of the computations with respect to the amount of residential and nonresidential uses ~~re~~allocated; and

(c) Whether, after the transfer, the combined lots will conform with the maximum gross floor area limitations on residential uses for the lots before any such transfer.

1603 ZONING COMMISSION APPROVAL FOR BUILDINGS, STRUCTURES AND USES IN THE BP/W-2 DISTRICT

1603.1 All proposed uses, buildings and structures in the BP/W-2 District shall be subject to approval by the Zoning Commission as a special exception.

1603.2 In addition to proving that the proposed use, building or structure meets the standards set forth in § 3104, the applicant shall further demonstrate that the use, building or structure:

(a) Will help achieve the desired mixture of uses in the BP Overlay District as set forth in §§ 1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail or service uses; and

(b) In the case of waterfront lots, provides suitably designed public open space along the waterfront, as specified in § 1603.3.

1603.3 With respect to a building or structure to be constructed on a lot that faces or abuts the Anacostia River:

(a) The building or structure shall be set back by no less than seventy-five (75) feet, unless the Commission finds that such setback renders development infeasible and in no case less than fifty (50) feet, from the bulkhead line or shoreline, whichever provides the larger setback;

(b) The application shall include a plan for suitable open space treatment of the setback area for such uses as walkway and bikeway, passive or active recreational use, and including provisions assuring private maintenance of the space, convenient and permanent public access to the space, and suitable connections to adjacent public space along the waterfront.

1603.4 With respect to all applications, the proposed building or structure shall be designed with a height, bulk and siting so as to provide for openness of views and vistas to and from the waterfront and, where practical, maintain views of federal monumental buildings.

1603.5 The Zoning Commission, at its discretion, may also provide for additional on-site or off-site bonus density to be earned for setbacks required under

this section, based on the land area of the setback and the proposed features for public open space uses; Provided, that 2.0 FAR based on the land area of the open space setback shall be used as a general guideline.

1603.6 In the BP/W-2 District, the Zoning Commission, at its discretion, may grant bonus density for residential development in a building or a combined lot development, using a guideline of 1.0 FAR in excess of the normally allowed maximum of 4.0 FAR and an additional ten (10) feet in excess of the normally allowed maximum height of sixty (60) feet; Provided that:

(a) The building or combined lot development shall include at least 2.0 FAR of residential development; and

(b) The Zoning Commission, at its discretion, may allow construction of such bonus density on the property zoned BP/W-2 or may allow only for the bonus density to be transferred off-site to a lot or lots zoned BP/CR by means of a combined lot development.

1604 ZONING COMMISSION APPROVAL FOR BUILDINGS AND STRUCTURES ON M STREET, S.E.

1604.1 Any proposed building on a lot that abuts M Street, S.E., between South Capitol Street and 4th Street, S.E. shall be subject to approval by the Zoning Commission as a special exception.

1604.2 An applicant requesting special exception approval under this section must prove that the proposed building's architectural design, site plan, landscaping and sidewalk treatment are of a superior quality, pursuant to the design and use requirements set forth in §§ 1604.3 through 1604.7.

1604.3 The streetwall of each new building shall be set back for its entire height and frontage along M Street not less than fifteen feet (15') measured from the face of the adjacent curb along M Street, S.E.;

1604.4 Each new building shall devote not less than fifty percent (50%) of the gross floor area of the ground floor to retail, service, entertainment or arts uses ("preferred uses") as permitted in §§701.1 through 701.5 and §§721.1 through 721.6 of this title; Provided, that the following uses shall not be permitted: automobile laundry, drive through accessory to any use, gasoline service stations, and office uses (other than those accessory to the administration, maintenance, or leasing of the building).

1604.5 For good cause shown, the Commission may authorize interim occupancy of the preferred use space required by § 1604.4 by non-preferred uses for up to a five(5) year period; Provided that the ground floor space is suitably designed for future occupancy by the preferred uses.

1604.6 Not less than fifty percent (50%) of the surface area of the streetwall of any new building along M Street shall be devoted to display windows having clear or low-emissivity glass except for decorative accent, and to entrances to commercial uses or the building;

1604.7 Notwithstanding §2117.8(c)(1), no driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building;

1604.8 A building that qualifies as a Capitol South Receiving Zone site under § 1601.3(b) and for which a building permit has been applied for prior to August 31, 2001 shall not be subject to the requirements of this Section.

1605 EXISTING INDUSTRIAL USES

1605.1 A commercial or industrial use that is first permitted in the CM or M districts and that is in existence with a valid Certificate of Occupancy as of __(date)_____, shall be deemed a conforming use and shall be entitled to expand on its current lot or lots as a matter of right up to the permitted commercial FAR and height limits of the underlying zone district; Provided, that the performance standards of §§804, 805, 825 and 826 applicable to the use shall apply to any expansion.

1699 DEFINITIONS

1699.1 When used in this chapter, the term residential uses shall have the following meaning:

Residential uses – residential uses include dwellings, flats, multiple dwellings, guest room areas of hotels or inns, and community based residential facilities (CBRFs), subject to the size or other limitations normally applicable to the specific type of CBRF in the underlying zone.

* * *