Government of the District of Columbia
Office of Zoning

Z.C. CASE NO.: 96-03/89-01

As Secretary to the Zoning Commission, I herby certify that on JAN 04 2005 copies of Notice of Final Rulemaking and Order No. 971 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. All Advisory Neighborhood Commissions (see attached list)
3. Gottlieb Simon
   ANC
   1350 Pennsylvania Avenue, N.W.
   Washington, D.C. 20004
4. All Councilmembers (see attached list)
5. Office of Planning (Ellen McCarthy)
6. Ken Laden, DOT
7. Zoning Administrator
8. 30 copies to MLK Library (Sheryl D. Thorpe)
9. Office of the Attorney General (Alan Bergstein)

ATTESTED BY: Jerrily Kress
JERRILY R. KRESS, FAIA
DIRECTOR

ZONING COMMISSION
District of Columbia
CASE NO. 96-03
EXHIBIT NO. 142

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

★ ★ ★

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING
and
ORDER NO. 971
Z.C. Case No. 96-3/89-1
(Text and Map Amendments – 11 DCMR)
(Map Amendment & Overlay District @ Buzzard Point – Capitol Gateway)
November 18, 2002

The Zoning Commission for the District of Columbia, pursuant to its authority under §§ 1 and 8 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 for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of a new Chapter 16 to the Zoning Regulations (Title 11 DCMR) and amendments to the Zoning Map of the District of Columbia that together establish the Capital Gateway Overlay District ("CG Overlay District" or the "Overlay"). A notice of Proposed Rulemaking was published in the August 2, 2002, edition of the *D.C. Register at* 49 DCR 7538. The Commission took final action to adopt the amendments within minor changes at public meetings on October 28, 2002 and November 18, 2002. The current membership of the Commission reviewed the order and authorized its issuance during in an executive meeting held on December 13, 2004.

This final rulemaking is effective upon publication in the *D.C. Register*.

Set Down Proceeding and Public Hearings

This case was originally advertised in 1996. Public hearings were held on November 21 and 26, 1996. Although the case was placed on the agenda for two decision meetings in 1997, no proposed action was taken. After consideration of the record, and after hearing from the Office of Planning, the Commission believed that further refinement of the previously advertised text was desirable. The Commission re-advertised the case on June 15, 2001, and an additional public hearing was held on September 20, 2001.

Description of Text Amendment

Uses

In general, the CG Overlay District allows the same range of uses anticipated by the underlying zones.

FAR and Height

The Overlay does not increase floor area ratio ("FAR") and height limitations as a matter of right in the underlying zones, but provides circumstances in which bonus density may be earned.

In the CG/CR and CG/W-3 Districts, the Overlay permits a building or combined lot to earn a density bonus of 1.0 FAR that may be used only on-site for residential uses. Additional height is provided to accommodate this bonus density subject to setbacks for certain properties. The added height is thus only available if the additional density is earned.

Similarly, the Overlay also allows a building or combined lot in the CG/W-1 District to earn a density bonus of 1.0 FAR that may only be used onsite for residential uses. However, if at least 2.0 FAR of the matter of right density is already devoted to residential development, the additional 1.0 FAR may be used for any use permitted within the underlying W-1 Zone District. If the bonus density is earned, a height of up to fifty-five (55) feet is permitted.

Lastly, with respect to properties located in the CG/W-2 District, the amount of bonus density that may be earned is left to the discretion of the Zoning Commission, to be exercised as part of its review and approval process for that area to be discussed below.

Combined Lot

The rulemaking allows two (2) or more lots within the Overlay to allocate residential and non-residential uses, similar to the combined lot process that exists for CR properties at 11 DCMR § 631.3.

Zoning Commission Approval

The Commission concluded that the development of the few remaining waterfront parcels in the CG/W-2 District is of such importance to the District that mandatory development review is in the public interest. The Commission also concluded that matter of right development in the CG Overlay District along M Street, S.E., may not be appropriate to the creation of an active pedestrian streetscape for mixed use development. As a result, the Zoning Commission will review and approve all projects within either area. The review and approval provision allows the Zoning Commission to exercise additional oversight in the expectation of ensuring higher quality development on the Anacostia Waterfront and along the M Street corridor. The Zoning Commission may also hear and decide any related variances or special exceptions for the properties simultaneously with the required project review and approval.

The new rules provide the Zoning Commission with a specific set of policies and standards tailored to each of the two (2) areas, to be used as guidelines in reviewing a proposed project. For CG/W-2 properties, the Zoning Commission will review a project for impact on the waterfront, open space treatment, setback measurements from the bulkhead, and eligibility for any density or height bonus within the perimeters of the CG/W-2 District. For properties along M Street, S.E., the Zoning Commission will review a project based on the mix of uses, architectural design, and the quality of the landscaping and sidewalk treatments.

As noted, the Zoning Commission review of CG/W-2 projects offers a flexible mechanism for granting bonus density in recognition of the setback required of those properties that face or abut the Anacostia River and for projects providing at least 2.0 FAR of residential uses. In the case of the latter type of bonus density, the Commission will also determine, in each instance, whether bonus density may be constructed on-site or sent off-site through the transfer of development rights process.

The Commission determined that it would use its own rules of procedure for these reviews. These amendments, therefore, include the conforming changes to Title 11 needed to process and hear such requests. Unlike most zoning proceedings (but similar to the campus plan further processing procedures), such requests will not go through the "set down" process and the Commission will only take a single vote to approve or deny each request.

Description of Map Amendment

This rulemaking establishes the Capital Gateway Overlay District and amends the zoning map for all or parts of Squares 601, 602, 603, 605, 607, 609, 611, 612, 613, 656, 657, 658, 660, 661, 662, E662, 664, E664, 665, 666, E667, S667, ES667, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, E708, S708, 742, N743, S744, 769, 771, and 800.

Heretofore, the squares were fully or partially mapped in the General Industry (M), Commercial-Light Manufacturing (C-M-2 and C-M-1), Commercial- Major Business and Employment (C-3-C), and Waterfront (W-1 and W-3) Zone Districts.

The rulemaking also includes a map amendment for Squares 651 and 653 from Commercial-Light Manufacturing, C-M-1, to Commercial, C-2-C, without the overlay.

Relationship to the Comprehensive Plan

The CG Overlay will create an opportunity for an active mixed-use community in the Buzzard Point-South Capitol Street area of the District. The text and map amendments are not inconsistent with the Comprehensive Plan. The Comprehensive Plan Generalized Land Use Map identifies the area as a mixed-use area with the land use categories of high-density residential, medium-high density commercial, and production and technical employment. A combination of land use categories is depicted in areas where a variety of uses are to be encouraged. Mixed-use areas include existing commercial areas and areas proposed for significant land use changes.

The high-density residential category anticipates high-rise apartment buildings and may also include low-, moderate-, and medium-density housing. The medium–high density commercial category anticipates a service area that most customers may reach by car, bus or subway, and that generally offers the largest concentration and variety of goods and services outside the Central Employment Area.

The production and technical employment category anticipates restructured industrial land intended to encourage growth industries and industries with a high ratio of employees to land area occupied, such as office support systems, communications, printing and publishing, wholesaling, transportation services, food services, tourism support services, warehousing, and other commercial activities that generally do not occur to a substantial degree in other commercial areas.

The Comprehensive Plan Generalized Land Use Policies Map also identifies much of the area as being a "metrorail station development opportunity area." Chapter 11, Land Use, of the Comprehensive Plan (the Plan) describes development opportunity areas as "areas that offer opportunities to accommodate new growth and development." (§ 1118.3) The Plan further states that development opportunity areas usually are areas with a significant amount of vacant or poorly used land, areas that exhibit potential for successful joint public and private initiatives, represent unrealized employment and economic development potential, and areas where development can be used to improve neighborhood quality and stability. (§ 1118.4)

Proposed Rulemaking

The Commission took proposed action on April 19, 2002. Several changes were made to the advertised text at that time.

1. Hotel Uses

The Commission decided that hotel uses should not be considered residential uses, both for the purpose of calculating the maximum amount of non-residential FAR or for earning bonus residential density in the CG\CR Districts. In the CG/W Zone Districts, the Zoning Commission voted to allow hotel use to be considered a residential use, but not to generate bonus density. The Commission considered it appropriate to hold a hearing on the issue, which was held on September 26, 2002.

Written and oral testimony was presented by Allison Prince of the law firm Shaw Pitman, LLP, on behalf of Riverside Associates Limited Partnership, then a property owner within the proposed CG/CR district, in opposition to the prohibition. Ms. Prince contended that restricting hotel use to commercial FAR could prevent "the economic conditions necessary to sustain a comprehensive urban renewal."

2. Existing Industrial Uses

The advertised text would have recognized existing industrial uses as conforming. The Zoning Commission concluded that the existing commercial or industrial uses that are first permitted in a

CM or M industrial zone should not be permitted to expand, because the uses are inconsistent with the intent of these map and text amendments, and the Commission's vision for the Overlay area. The Commission recognized the importance of the uses to the District, but concluded that allowing the expansion of such uses would be contrary to the efforts to change the character of the area and stimulate redevelopment of the Overlay area as a residential and commercial mixed-use community. Therefore, the Zoning Commission modified the advertised language to deem existing industrial uses conforming, but to prohibit their expansion.

3. Consolidated Proceedings

Where it took a proposed action, the Commission also voted to include text that would permit applicants seeking Zoning Commission approval of properties located along M Street or within the CG/W-2 zone district to also request any additional special exception or variance relief necessary in order for the project to be constructed and used. The Commission included this proposal within the advertised scope of the additional hearing discussed above, but no written or oral comments were received.

4. Overlay Name Change

The case was originally advertised and considered as the Buzzard Point Overlay. The Zoning Commission determined that the name Buzzard Point was not a conducive moniker to creating the sense of a special place as anticipated by the Overlay and map amendments. The Commission, therefore, changed the Overlay's name to Capitol Gateway Overlay because it represents the larger Overlay area.

Additional Map Amendments

Prior to voting to take proposed action, the Zoning Commission also considered requests from the property owners of Squares 700 and 701 to map the Squares CG/C-3-C, high-density commercial, instead of the CG/CR, mixed use zone, as advertised. The Commission decided against the requested change. Establishing C-3-C zoning on the south side of M Street, S.E. would create an undesirable precedent that could easily result in an office enclave along M Street instead of the desired mixed-use community envisioned by the rulemaking. The Commission is aware of the increased presence of the Navy at the Navy Yard and earlier this year approved a nearby planned unit development ("PUD") for the proposed U.S. Department of Transportation Headquarters (ZC Case No. 03-05). Taken together, this increase in federal activity could result in increased demand for ancillary office space that would preclude the desired residential development necessary to the mixed-use community the Overlay area is trying to create.

The Zoning Commission considered a request from the property owners of the Capital Point PUD (Zoning Commission Case No. 90-20F/87-04, also known as the Riverside PUD) to map the base zone of their site CG/CR (which is the zone designation made by the PUD-related map amendment). The site was advertised to be rezoned CG/W-1 and CG/W-3. Since that time, the site was taken by United States Army through the filing of an eminent domain proceeding, so that the issue raised is now moot.

Referral to National Capital Planning Commission

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") as required by § 492 of the District of Columbia Charter. NCPC, by report dated October 3, 2002, found that the proposed text and map amendments will neither adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

NCPC, however, expressed concern that it would not be referred applications that sought Zoning Commission approval of uses and structures within the CG/W-2 zone district, as provided for in § 1603. NCPC felt such referrals would be appropriate given the federal interest in the Anacostia Waterfront Initiative and in South Capitol Street and Potomac Avenue, which are designated Special Streets in the Preservation and Historic Features Element of the Comprehensive Plan, and also due to the proximity of the Southeast Federal Center and Fort Lesley J. McNair, which are federal facilities directly adjacent to the rezoning area.

Final Rulemaking

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on October 28, 2002. A supplemental vote was taken on November 18, 2002, to add a provision including the NCPC in the agency referral process prior to the Zoning Commission's consideration of projects within the CG/W-2 district. The Commission recognized that, unlike a typical special exception application, the approval process for these properties will not be reviewed by NCPC through its representative on the Board of Zoning Adjustment. The Commission agreed with NCPC that there are significant areas of federal interest adjacent to this portion of the Overlay.

The Commission also decided to retain the provisions of the Overlay that pertained to hotel use, which was the subject of the hearing held after proposed action was taken. The Commission continues to believe that a concentration of hotel uses would not create the permanent residential community that was intended by the Overlay and that a critical mass of housing is necessary to create new neighborhoods. Therefore, hotel uses should not be considered residential for the purposes of calculating the maximum amount of non-residential uses permitted or for earning bonus density.

Events Occurring After Final Action

As a result of the set down rule, 11 DCMR § 3202.5, the rezoning made permanent by the publication of this Order has actually been in place since August 15, 2001, the date on which the advertisement of these revised rules was published in the *D.C. Register*.

Since the Commission took final action in November of 2002, properties both within and adjacent to the Overlay have been the subject of several Zoning Commission actions and proposed development initiatives. As noted, the Commission approved the planned unit development for the U.S. Department of Transportation Headquarters and the proposed Riverside PUD has been withdrawn as a result of the condemnation of the property by the Army.

In addition, the Commission approved map and text amendments to establish the Southeast Federal Center Overlay, which includes the new W-0 Zone District. The Commission also denied a request to extend the Florida Rock PUD, but granted an extension to the first stage approval. A second stage application has since been filed and set down for hearing. In February 2004, the Commission granted first stage and consolidated PUD approvals of a mixed-use project that will replace and redevelop the Arthur Capper/Carrollsburg complex. Lastly, the Commission is aware that the Mayor has identified a portion of the Overlay as the site for a proposed stadium to house the Washington Nationals major league baseball team and that the District Department of Transportation is studying the South Capitol Street corridor and the replacement of the Frederick Douglass Bridge.

In recognition of these intervening events, the current membership of the Commission has taken the opportunity to review this order. It is the consensus of the Commission that no change to the rezoning actions or text is necessary at this time. As development within the Overlay proceeds, the Commission would anticipate that the Office of Planning would suggest any needed revisions.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations and Zoning Map are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Title 11 of the Zoning Regulations, 11 DCMR, and the following amendments to the Zoning Map of the District of Columbia:

A. Amend the Zoning Map of the District of Columbia as follows:

1. Rezone from C-M-1 to C-2-C:

Those lots now zoned C-M-1 in Squares 651 and 653.

2. Rezone from C-3-C to CG/C-3-C:

Square 698, Lots 1, 20, 23, 801, 805, 807, and 813.

Square 699, Lots 816 and the southern part of Lot 28, to a depth of 145 feet from M Street, S.E.

Square N743, Lots 44 through 53, 58, 59, 63 through 66, 800, 816, and 817.

Square 742, Lots 27 through 29, 36, 37, and the southern part of Lot 826, to a depth of 145 feet from M Street, S.E.

Square 769, the southern parts of Lots 18, 20, 21, and 821, to a depth of 145 feet from M Street, S.E.

Square 800, Lot 22.

3. Rezone from C-M-2 to CG/CR:

All of Squares 603, 657, 658, 700, 701, 702, 704, and those lots now zoned C-M-2 in Squares 601 and 656.

4. Rezone from M to CG/CR:

All of Squares 605, 607, 609, 611, 660, 661, 662, E662, 664, 703, 705, 706, and the Square 665 except that portion within 400 feet of the V Street, SW right-of-way line.

5. Rezone from M to CG/W-2:

Squares 612, 613, E664, 666, E667, S667, ES667, 707, 708, S708, E708, S744, Lot 800 in Square 771, and the southern part of Square 665, for a distance of 400 feet north of the right-of-way line of V Street, SW.

6. Rezone from W-1 and W-3 TO CG/W-1 and CG/W-3:

Square 602.

B. Title 11 DCMR, ZONING, is amended as follows. Deleted wording is shown in ~~strike-through~~ lettering and added wording is shown **bolded** and underlined:

1. Amend Chapter 1, § 105.1, to add a new subparagraph (p) to read as follows:

(p) CAPITOL GATEWAY (CG) OVERLAY DISTRICT.

2. Amend Chapter 6, Mixed use (commercial Residential) Districts, § 631.2 to read as follows:

631.2 For the purposes of this section, the term "residential purposes" shall include dwellings, flats, multiple dwellings, rooming and boarding houses, community-based residential facilities, inns, and guest room areas and service areas within hotels, except that this term shall not include guest room areas and service areas within hotels located or proposed to be located on CR zoned property **in the Capital Gateway Overlay District as established by Chapter 16 of this Title** or the Southeast Federal Center Overlay District established by chapter 18 of this Title.

3. Amend Chapter 30, Zoning Commission Rules of Practice and Procedure, as follows:

a. Section 3010.2 is amended to read as follows:

3010.2 Contested cases are adjudicatory in nature; present issues for resolution at a public hearing that potentially will affect a relatively small number of persons or properties; and involve primarily questions of fact applicable to a small number of persons or properties, while broader issues of public policy are secondary concerns. Contested cases include, without limitation, the following:

(a) Planned unit developments filed according to chapter 24 of this title;

(b) Requests for zoning map amendments filed by the property owner or owners for a single property or for multiple properties that are contiguous or are only separated by a street or alley;

(c) Applications for air space development; and

(d) Applications for Zoning Commission review and approval pursuant to Chapters **16 and** 18 of this Title.

b. Section 3011.1 is amended to read as follows:

3011.1 As soon as an application or petition is accepted for filing by the Director of the Office of Zoning, the Director shall place a copy of the application or petition in the public record of the Commission and refer a copy to the D.C. Office of Planning for review and recommendation on whether the matter should be processed further, except that applications for Zoning Commission review and approval filed pursuant to Chapters **16 and** 18 of this Title, which are deemed complete by the Director, shall be immediately scheduled for hearing consistent with the notice provisions of this chapter.

c. The second sentence of § 3012.1 is amended to read as follows:

As soon as an application requesting Zoning Commission review and approval pursuant to Chapter **16 or** 18 of this Title is accepted for filing by the Director of the Office of Zoning, a copy of the application shall be referred to the D.C. Office of Planning and other appropriate agencies **for review and comment.** ~~, as well as~~ **A copy shall also be sent** to the National Capital Planning Commission, for review and comment**, of all Chapter 16 applications and those applications for approval pursuant to 11 DCMR § 1603**.

d. Section 3015.4 is amended to read as follows:

3015.4 When a Zoning Map amendment, planned unit development, ~~or~~ air space development, or Zoning Commission review and approval pursuant to Chapter**s 16 and** 18 is requested by a property owner for the property owned, the applicant shall give additional notice of the public hearing by posting the property with notice of hearing at least forty (40) days in advance of the hearing.

e. Section 3022.1 is amended to read as follows:

3022.1 The contested case procedures in § 10 of the D.C. Administrative Procedure Act, D.C. Official Code § 2-509, and this section shall apply to applications for a change in the Zoning Map pursuant to § 102 and to applications for planned unit developments, air space developments, and similar plan review activities of the Commission, including those required by Chapter**s 16 and** 18 of this Title, except as otherwise provided in § 3010.7.

f. Section 3027 is amended by adding a new subsection 3027.4 to read as follows:

3027.4 The Commission need not take proposed action with respect to an application for Zoning Commission review and approval pursuant to Chapter**s 16 and** 18, but may take final action in accordance with § 3028, either at the close of the hearing or at a subsequent public meeting.

4. Add a new Chapter 16, to read as follows:

CHAPTER 16 CAPITOL GATEWAY OVERLAY DISTRICT

1600 PREAMBLE

1600.1 The Capitol Gateway (CG) 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 CG Overlay District: 601, 602, 603, 605, 607, 609, 611, 612, 613, 656, 657, 658, 660, 661, 662, E662, 664, E664, 665, 666, E667, S667, ES667, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, E708, S708, 742, N743, S744, 769, 771, and 800.

1600.2 The purposes of the CG 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 indicated in the Comprehensive Plan and recommended by 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 CG 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 CG Overlay District shall govern.

1601 BONUS DENSITY AND HEIGHT

1601.1 In the CG/CR and CG/W-3 Districts, a building or combined lot development 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, which, for the purposes of this subsection, does not include hotel 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. Official Code §§ 6-601.01 to 6-601.09), 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 one-to-one (1:1) building setback for any part of a building that exceeds ninety (90) feet in height on the side abutting the residential zone.

1601.3 In the CG/W-1 District, a building or combined lot development shall be allowed a maximum density of 3.5 FAR and a maximum height of fifty-five (55) feet to accommodate the additional density. The additional 1.0 FAR in excess of the matter-of-right maximum of 2.5 FAR shall be devoted solely to residential uses unless the building or the combined lot development includes at least 2.0 FAR of residential uses, in which case the additional 1.0 FAR may be devoted to any

permitted use in the W-1 zone. For the purposes of this subsection, the term "residential uses" does not include hotel uses.

1601.4 In the CG/W-2 District, the Zoning Commission may grant additional density to lots as part of the review and approval 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 § 1709.18 shall be subject to the maximum height and bulk limits of § 1709.21 of this Title.

1602 COMBINED LOT DEVELOPMENT

1602.1 Two (2) or more lots within the Overlay District may be combined for the purpose of allocating residential and nonresidential uses regardless of the normal limitation on floor area by uses on each lot; provided, that the aggregate residential and nonresidential floor area shall not exceed the matter-of-right maximum height or density of the underlying zone district(s), except when bonus density is being constructed.

1602.2 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.

1602.3 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 sending nonresidential gross floor area to forgo the nonresidential development and occupation of an on-site area equal to the amount of gross floor area of nonresidential uses transferred; and

(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 nonresidential uses allocated. The covenant shall further state that, after the transfer, the combined lots conform with the maximum gross floor area limitations for nonresidential uses on the lots before the transfer.

1602.4 The declaration of covenants shall expressly state that it may be substantively amended or terminated only with the approval of the Zoning Commission, after

public hearing, and only upon a finding that the proposed amendment or termination is fully justified and consistent with the purposes of this chapter.

1602.5 The declaration of covenants shall be approved in content by the Zoning Administrator and certified for legal sufficiency by the Office of the Attorney General. 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 allocate residential and nonresidential uses;

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

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

1603 ZONING COMMISSION REVIEW OF BUILDINGS, STRUCTURES, AND USES IN THE CG/W-2 DISTRICT

1603.1 All proposed uses, buildings, and structures in the CG/W-2 District, or any proposed exterior renovation to any existing buildings or structures in the CG/W-2 District that would result in an alteration of the exterior design, shall be subject to review and approval by the Zoning Commission.

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 CG 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 from the bulkhead, unless the Commission finds that such setback creates an undue economic hardship for the owner of the lot and in no case less than fifty (50) feet from the bulkhead; and

(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, to 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 CG/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;

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

(c) The provisions of §§ 1709.6 through 1709.12 and § 1709.14 shall govern the procedures for transferring bonus density off-site if permitted by the Commission.

1603.7 The Commission may hear and decide any additional requests for special exception or variance relief needed for the subject property. Such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval.

1603.8 At the time of filing an application with the Commission, the applicant shall pay the filing fee specified in § 3180.1(b)(16), plus such fees as apply to any additional zoning relief requested. The provisions of § 3181 relating to the administration of fees shall apply, except that the applicant may appeal any decision of the Director regarding the fee schedule to the Commission, which shall decide the appeal as a preliminary matter to hearing the application.

1604 ZONING COMMISSION REVIEW OF 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 review and approval by the Zoning Commission.

1604.2 An applicant requesting 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 (15) feet measured from the face of the adjacent curb along M Street, S.E.

1604.4 Each new building shall devote not less than thirty-five percent (35%) 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). Such preferred uses shall occupy 100% of the building's street frontage along M Street, except for space devoted to building entrances or required to be devoted to fire control.

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 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 § 1709.18 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.

1604.9 The Commission may hear and decide any additional requests for special exception or variance relief needed for the subject property. Such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval.

1604.10 At the time of filing an application with the Commission, the applicant shall pay the filing fee specified in § 3180.1(b)(16), plus such fees as apply to any additional zoning relief requested. The provisions of § 3181 relating to the administration of fees shall apply, except that the applicant may appeal any decision of the Director regarding the fee schedule to the Commission, which shall decide the appeal as a preliminary matter to hearing the application.

1605 EXISTING INDUSTRIAL USES

1605.1 A commercial or industrial use that is first permitted in the CM or M Zone Districts and that is in existence with a valid Certificate of Occupancy *as of the date the provisions of this Chapter first became effective* shall be deemed a conforming use, but shall not be entitled to expand.

1699 DEFINITIONS

1699.1 When used in this chapter, the term "residential uses" shall have the same meaning as the term "residential purposes" as set forth in § 631.2, except as otherwise qualified. See § 1601.3 for example.

Vote of the Zoning Commission taken at its public hearing on April 19, 2002, to approve the proposed rulemaking 5-0-0 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, James H. Hannaham, and Herbert Franklin to approve).

Final rulemaking action taken by the Zoning Commission at its meeting on October 28, 2002, by a vote of 4-0-1 (Carol J. Mitten, John G. Parsons, Herbert Franklin, Anthony J. Hood to approve; James H. Hannaham, not present, not voting).

Supplemental vote to add the NCRC provision taken by the Zoning Commission at its meeting on November 18, 2002, by a vote of 5-0-0 (John G. Parsons, Anthony J. Hood, Carol J. Mitten, and James H. Hannaham to approve; Herbert Franklin to approve by absentee ballot).

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 JAN - 7 2005.

Carol J. Mitten
CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION

Jerrily R. Kress
JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING
and
ORDER NO.
Z.C. Case No. Case No. 96-3/89-1
(Text and Map Amendments – 11 DCMR)

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

Government of the District of Columbia
Office of Zoning

Z.C. CASE NO.: 96-03/89-01

As Secretary to the Zoning Commission, I herby certify that on JAN 0 3 2005 copies of Notice of Final Rulemaking and Order No. 971 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. All Advisory Neighborhood Commissions (see attached list)
3. Gottlieb Simon
   ANC
   1350 Pennsylvania Avenue, N.W.
   Washington, D.C. 20004
4. All Councilmembers (see attached list)
5. Office of Planning (Ellen McCarthy)
6. Ken Laden, DOT
7. Zoning Administrator
8. 30 copies to MLK Library (Sheryl D. Thorpe)
9. Office of the Attorney General (Alan Bergstein)

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
DIRECTOR