

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF PROPOSED RULEMAKING**

**Z.C. Case No. 18-18**

**(Text Amendment – 11 K DCMR)**

**(To Establish a Northern Howard Road (NHR) zone as a new Chapter 10 in Subtitle K)**

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Rep1.)), hereby gives notice of its intent to amend Subtitle K (Special Purpose Zones) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR).

Substantively, the Commission proposes to create a new Special Purpose Zone in Subtitle K, known as the Northern Howard Road (NHR) zone, intended for properties along the northernmost stretch of Howard Road, S.E., within the area between Poplar Point, the Suitland Parkway, and the Anacostia Freeway/I-295. The NHR zone would apply to a single large area that would benefit from a cohesive, self-contained set of regulations to guide site design, building height and bulk, land uses, and other aspects of development. The NHR zone would encourage high density development in conformance with the Comprehensive Plan and ensure a mix of uses with a substantial affordable housing component and a high degree of sustainability and pedestrian and bicycle mobility. At present, only one zone, the NHR zone, would be available but other zones could, if necessary, be created in the future to apply to other Comprehensive Plan land use designations in the vicinity.

To ensure mixed-use development in the NHR zone, the Commission proposes a minimum 2.5 residential floor area ratio (FAR) within an overall maximum 9.0 FAR, with flexibility allowed to satisfy this minimum residential FAR across a combination of lots subject to specific conditions. The NHR zone would also allow building heights up to 130 feet and a maximum lot occupancy of one hundred percent (100%). These height and density limits are higher than those of the current MU-14 zoning governing all lots fronting on Howard Road, S.E. that would be eligible for the NHR zone. This increased height and density is more consistent with that allowed in most areas in downtown Washington and in the Central Employment Area (CEA) that have similar Comprehensive Plan designations to the proposed area of the NHR zone.

The Commission proposes a minimum of fifteen percent (15%) Inclusionary Zoning (IZ) for all residential development in the NHR zone, a significant increase over the eight percent (8%) minimum standard for buildings at this height and FAR that utilize steel and concrete construction. These IZ units would be set-aside for households earning equal to or less than fifty percent (50%) and sixty percent (60%) of the Median Family Income (MFI), with at least twenty-five percent (25%) of the IZ units being three- (3)-bedroom units. Any affordable housing generated in excess of that IZ set-aside would be required to be reserved for households earning equal to or less than sixty percent (60%) of MFI.

All buildings in the NHR zone would require Commission design review approval to promote the goals of the NHR zone, including providing a mix of uses that activate the streetscape, encouraging superior architecture and open space design, and promoting a pedestrian and bike-friendly

streetscape. The mandatory design review process provides for an expanded involvement by the public, Advisory Neighborhood Commissions (ANCs), and District agencies in the initial design planning for buildings in the NHR zone.

On October 5, 2018, the Office of Planning (OP) filed a report with the Office of Zoning that served as a petition proposing text amendments to Subtitle K. On October 22, 2018, the Commission voted to set down the petition for a public hearing, which was scheduled for March 14, 2019. OP filed its Hearing Report on March 4, 2019 as required by Subtitle Z § 400.6. After hearing testimony at the March 14, 2019 public hearing from OP and the public, including ANCs 8A and 8C, the Commission asked OP to revise the proposed text amendment to address the issues raised by the public and members of the Commission at the hearing, specifically the possibilities of requiring setbacks on upper floors and of an alternative review procedure to the design review.

OP submitted a Supplemental Report on April 25, 2019, that recommended no text changes because OP believed the design review procedure was appropriately robust as it was based on the Capitol Gateway (CG) zone's design review which the Commission had used successfully. OP did not recommend upper setbacks because of the lack of a view needing to be specifically protected and so the Commission's design review authority was sufficient to ensure a particular project met the design goals of the NHR zone. At the continued hearing held on May 2, 2019, the Commission requested supplemental filings by OP, ANCs 8A and 8C, and the owner of some of the property in the area identified for the NHR zone, to address further issues raised at the continued hearing.

OP proposed revisions to the text amendment in its Second Supplemental Report submitted on May 24, 2019, including requiring additional supporting information on community outreach for each design review application and establishing that any affordable units proposed in excess of those required amount be reserved at a maximum sixty percent (60%) MFI level. OP's Second Supplemental Report also noted that ANCs 8A and 8C had proposed increasing the mandatory IZ set-aside from ten percent (10%) to fifteen percent (15%). At a June 6, 2019 special public meeting, the Commission took proposed action to adopt OP's revised text, with two (2) changes: i) incorporating the ANCs' proposed increase in IZ and OP's suggested changes to the IZ language; and ii) incorporate the text proposed by OP in the related NHR map amendment case (Z.C. Case No. 18-19) that imposed additional requirements specific to the properties proposed to be rezoned into the NHR zone.

In response to a request from OP for clarification on how to apply the increased fifteen percent (15%) IZ set-aside, specifically the interaction with the original maximum MFI thresholds that were deeper than the standard IZ requirements and so potentially could limit development in the NHR zone, the Commission further deliberated at a July 8, 2019 public meeting and took revised proposed action to retain the originally proposed MFI thresholds, but reduce the amount of the increased IZ set-aside from fifteen percent (15%) to twelve percent (12%).

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following amendments to Title 11 DCMR are proposed (additions are shown in **bold and underlined** text and deletions are shown in ~~strikethrough~~ text):

Subtitle K, SPECIAL PURPOSE ZONES, is amended by adding a new Chapter 10, NORTHERN HOWARD ROAD (NHR) ZONE, as follows:

**CHAPTER 10 NORTHERN HOWARD ROAD (NHR) ZONE**

**1000 GENERAL PROVISIONS (NHR)**

**1000.1 The Northern Howard Road (NHR) zone is intended to be applied to a defined geographic area including the portions of Squares 5860 and 5861 north of Interstate 295.**

**1000.2 The purposes of the Northern Howard Road (NHR) zone 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;**
- (b) Encourage a variety of visitor-related uses, such as retail, service, and entertainment;**
- (c) Provide for increased height and density associated with increased affordable housing;**
- (d) Encourage superior architecture and design in all buildings and publicly accessible outdoor spaces;**
- (e) Require preferred ground-level retail and service uses along Howard Road, S.E.;**
- (f) Provide for the development of Howard Road, S.E. as a pedestrian- and bicycle-friendly street, with street-activating uses, and connections to metro and the broader neighborhood; and**
- (g) Encourage the inclusion of a bicycle track along Howard Road.**

**1000.3 Where there are conflicts between this chapter and other chapters or subtitles of this title, the provisions of the NHR zone shall govern.**

**1000.4 Development in the NHR zone shall be in accordance with the development standards of this chapter.**

**1000.5 Penthouses shall be subject to the regulations of Subtitle C, Chapter 15 and the height and story limitations specified in this chapter.**

**1001**            **DEVELOPMENT STANDARDS (NHR)**

**1001.1**            **The NHR zone is intended to permit high-density mixed-use development generally in the vicinity of the Anacostia Metrorail Station along Howard Road, S.E.; encourage a variety of support and visitor-related uses, such as retail, service, and entertainment uses; provide for increased height and bulk of buildings with increased affordable housing; and provide for development of Howard Road, S.E. as an active, pedestrian-oriented street with active ground floor uses.**

**1001.2**            **The maximum permitted density in the NHR zone is 9.0 FAR, except as provided in Subtitle K § 1009.**

**1001.3**            **A building on a lot in the NHR zone shall provide a minimum residential FAR of 2.5 on the lot unless modified through the provisions of Subtitle K § 1009 below. Residential FAR consists exclusively of uses that fall within the “Residential” Use Category defined in Subtitle B § 200.2.**

**1001.4**            **The maximum permitted building height, not including the penthouse, in the NHR zone shall be:**

<b><u>Street Right of Way Width</u></b>	<b><u>Maximum Permitted Building Height, Not Including Penthouse</u></b>
<b><u>Greater than or equal to 110 ft.</u></b>	<b><u>130 feet</u></b>
<b><u>Less than 110 ft. but greater than or equal to one 100 ft.</u></b>	<b><u>120 feet</u></b>
<b><u>Less than 100 ft. but greater than or equal to 90 ft.</u></b>	<b><u>110 feet</u></b>
<b><u>Less than 90 ft.</u></b>	<b><u>No taller than the width of the street right of way, plus 20 feet</u></b>

**1001.5**            **The maximum permitted height of a penthouse in the NHR zone shall be twenty feet (20 ft.); and the maximum number of stories within the penthouse shall be one (1), plus a mezzanine, except that a second story for penthouse mechanical space shall be permitted.**

**1001.6**            **The height and density limits of Subtitle K § 1001 shall serve as the maximum permitted under a planned unit development.**

**1001.7**            **The maximum permitted lot occupancy in the NHR zone shall be one hundred percent (100%).**

**1001.8**            **No side yard is required for the principal building; however, any side yard provided on any portion of the principal building shall be at least two inches (2 in.) per one foot (1 ft.) of height, and no less than five feet (5 ft.).**

**1001.9** **A minimum rear yard of two and one-half inches (2.5 in.) per one foot (1 ft.) of vertical distance measured from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than twelve feet (12 ft.) shall be provided, subject to the following conditions:**

- (a)** **A horizontal plane may be established at twenty feet (20 ft.) above the mean finished grade at the middle of the rear of the structure for the purpose of measuring rear yards;**
- (b)** **A rear yard is not required to be provided below a horizontal plane as described in Subtitle K §1001.9(a) above;**
- (c)** **Where a lot abuts an alley, the rear yard may be measured from the center line of the alley to the rear wall of the building or other structure; and**
- (d)** **Where a lot does not abut an alley, the rear yard shall be measured from the rear lot line to the rear wall of the building or other structure.**

**1001.10** **In the case of a corner lot, a court complying with the width requirements for a closed court may be provided in lieu of a required rear yard. For the purposes of this section, the required court shall be provided above a horizontal plane beginning not more than twenty feet (20 ft.) above the curb grade opposite the center of the front of the building and the width of the court shall be computed for the entire height of court.**

**1001.11** **A court is not required in the NHR zone, but where it is provided, it shall have the following minimum dimensions:**

<b><u>Type of Structure</u></b>	<b><u>Minimum Width Open Court</u></b>	<b><u>Minimum Width Closed Court</u></b>	<b><u>Minimum Area Closed Court</u></b>
<b><u>Residential, more than 3 units</u></b>	<b><u>4 in./ft. of height of court; 10 ft. minimum</u></b>	<b><u>4 in./ft. of height of court; 15 ft. minimum</u></b>	<b><u>Twice the square of the required width of court dimension; 350 sq. ft. minimum</u></b>
<b><u>Non-Residential and Lodging</u></b>	<b><u>2.5 in./ft. of height of court; 6 ft. minimum</u></b>	<b><u>2.5 in./ft. of height of court; 12 ft. minimum</u></b>	<b><u>Twice the square of the required width of court dimension; 250 sq. ft. minimum</u></b>

**1001.12** **The minimum required Green Area Ratio for the NHR zone shall be 0.2.**

**1002** **INCLUSIONARY ZONING (NHR)**

**1002.1** **The Inclusionary Zoning (IZ) requirements, and the available IZ modifications to certain development standards, shall apply to the NHR zone**

as specified in Subtitle C, Chapter 10, and as modified by this chapter, which shall govern in any conflict with the provisions of Subtitle C, Chapter 10.

1002.2 No bonus density, as made available in Subtitle C § 1002, shall be available in the NHR zone.

1002.3 Residential development in the NHR zone shall set-aside for IZ the following square footage:

(a) Twelve percent (12%) of the gross floor area dedicated to residential use, excluding penthouse habitable space; and

(b) The equivalent of eight percent (8%) of the gross floor area of any residential penthouse habitable space.

1002.4 Inclusionary units resulting from the set-aside required by Subtitle K § 1002.3 shall be reserved as follows:

(a) At least twenty-five percent (25%) of the set-aside required by Subtitle K § 1002.3(a) shall be reserved for households earning equal to or less than fifty percent (50%) of the Median Family Income (MFI), with the remainder reserved for households earning equal to or less than sixty percent (60%) of the MFI; and

(b) One hundred percent (100%) of the set-aside required by Subtitle A § 1002.3(b) shall be reserved for households earning equal to or less than fifty percent (50%) of the MFI.

1002.5 A minimum of twenty-five percent (25%) of the total IZ set-aside requirement shall be three-bedroom units.

1002.6 Any non-residential penthouse habitable space shall be subject to the affordable housing production requirements of Subtitle C § 1505.

1002.7 Any affordable housing generated in excess of that required by Subtitle K § 1002.3(a) shall be reserved for households earning equal to or less than sixty percent (60%) of the MFI.

1003 USE PERMISSIONS (NHR)

1003.1 The use permissions for the NHR zone are those specified for MU-Use Group F; provided that buildings, structures, and uses with frontage on a Designated Street of Subtitle K § 1004 shall provide the ground floor uses specified in Subtitle K § 1004.

**1004**            **DESIGNATED STREETS (NHR)**

**1004.1**            **For the purpose of this chapter any portion of Howard Road, S.E. (both sides of the street) in the NHR zone shall be a Designated Street.**

**1004.2**            **A building, structure, or use with frontage on a Designated Street shall devote one hundred percent (100%) of its ground floor street frontage along the Designated Street, except for space devoted to building entrances or required for fire control, to the following preferred use categories:**

- (a)    Arts, design, and creation;**
- (b)    Daytime care;**
- (c)    Eating and drinking establishments;**
- (d)    Education, public or private;**
- (e)    Entertainment, assembly, and performing arts;**
- (f)    Medical Care;**
- (g)    Retail; and**
- (h)    Service, general or financial.**

**1004.3**            **Buildings and structures with frontage on a Designated Street must comply with the following design requirements:**

- (a)    The ground floor shall have a minimum clear height of fourteen feet (14 ft.), for a continuous depth of at least thirty-six feet (36 ft.) from the building line on the Designated Street;**
- (b)    The ground story shall devote at least fifty percent (50%) of the surface area facing a designated street to display windows or pedestrian entrances having clear low-emissivity glass, and ensure that the view through the display windows and pedestrian entrances is not blocked for at least ten feet (10 ft.) in from the building face;**
- (c)    Ground floor pedestrian entrances, or areas where a future ground floor entrance could be installed without structural changes, shall be located no more than an average distance of forty feet (40 ft.) apart on the façade facing the designated primary or secondary street segment; and**

- (d) No direct vehicular garage or loading entrance or exit shall be permitted to a new building or structure.

**1005**      **ZONING COMMISSION REVIEW OF BUILDINGS, STRUCTURES, AND USES (NHR)**

**1005.1**      **For all properties within the NHR zone, all proposed buildings and structures, or any proposed exterior renovation to any existing buildings or structures that would result in a substantial alteration of the exterior design, shall be subject to review and approval by the Zoning Commission in accordance with the following provisions.**

**1005.2**      **In addition to proving that the proposed use, building, or structure meets the standards set forth in Subtitle X, Chapter 6, and the relevant provisions of this chapter, an applicant requesting approval under this section shall prove that the proposed building or structure, including the architectural design, site plan, landscaping, sidewalk treatment, and operation, will:**

- (a) Help achieve the objectives of the NHR zone defined in Subtitle K § 1000.1;
- (b) Help achieve the desired use mix, with the identified preferred uses specifically being residential, office, entertainment, retail, or service uses;
- (c) Provide streetscape connections for future development on adjacent lots and parcels, and be in context with an urban street grid;
- (d) Minimize conflict between vehicles, bicycles, and pedestrians;
- (e) Minimize unarticulated blank walls adjacent to public spaces through facade articulation;
- (f) Minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards; and
- (g) Promote safe and active streetscapes through building articulation, landscaping, and the provision of active ground level uses.

**1005.3**      **Each application for review under this section shall provide a report on the following items as part of the initial submission:**

- (a) Coordination by the applicant with the Department of Employment Services (DOES) regarding apprenticeship and training opportunities during construction and operation at the subject site, and the provision



of any internship or training opportunities during construction and operation at the subject site, either with the applicant or with contractors working on the project independent of DOES;

- (b) Efforts by the applicant to include local businesses, especially Wards 7 and 8 businesses, in contracts for the construction or operation of the proposed project;
- (c) Efforts by the applicant to provide retail or commercial leasing opportunities to small and local businesses, especially Ward 8 businesses, and efforts to otherwise encourage local entrepreneurship and innovation; and
- (d) Coordination by the applicant with the State Archaeologist and any plans to study potential archeological resources at the subject site, and otherwise recognize local Anacostia history.

1005.4 The applicant shall also provide evidence that the information required by Subtitle K § 1005.3 has been served on any ANC on or adjacent to the NHR zone.

1006 RELIEF FROM DEVELOPMENT STANDARDS AND USE AND DESIGN REQUIREMENTS (NHR)

1006.1 The Zoning Commission may grant special exception relief from the development standards of this chapter and from the Designated Street use and design standards of this chapter, subject to the standards of Subtitle X, Chapter 9 and to the applicable conditions of this chapter and provided that the applicant demonstrates the special exception relief would result in a design that still complies with the purposes of this chapter.

1006.2 Requested relief that does not comply with the applicable conditions or limitations for a special exception as set out in this chapter shall be processed as a variance.

1006.3 The Zoning Commission may grant special exception relief, pursuant to Subtitle X, Chapter 9, from the rear yard requirements of this chapter, provided:

- (a) No apartment window shall be located within forty feet (40 ft.) directly in front of another building;
- (b) No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall;

- (c) In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be considered in determining distances between windows and appropriate yards; and
- (d) Provision shall be included for service functions, including parking and loading access and adequate loading areas.

1006.4 The Zoning Commission may grant special exception relief, pursuant to Subtitle X, Chapter 9, from the driveway prohibition of Subtitle K § 1006.1(d), subject to the following criteria:

- (a) The applicant shall demonstrate that there is no practical alternative means of serving the parking, loading, or drop-off needs of the building to be served by the proposed driveway, such as signage approved by DDOT that would direct vehicles to an alternative entrance point within the same square;
- (b) The vehicular entrance will not impede the flow of pedestrian traffic on designated primary street frontage; and
- (c) The driveway that would access the proposed parking or loading entrance or exit is not inconsistent with DDOT landscape plans for the public rights of way on the designated street frontage, to the extent that such plans exist at the time of the special exception application.

1007 PARKING AND LOADING REGULATIONS (NHR)

1007.1 This section provides conditions and requirements related to parking spaces and loading, including location and access.

1007.2 Vehicle parking shall be provided in accordance with the requirements of Subtitle C, Chapter 7.

1007.3 Bicycle parking shall be provided in accordance with the requirements of Subtitle C, Chapter 8.

1007.4 Loading shall be provided in accordance with the requirements of Subtitle C, Chapter 9.

1008 SUSTAINABILITY (NHR)

1008.1 Each building constructed or substantially improved shall earn certification at the LEED v4.1 for New Construction Gold level, provided that prior to receipt of the first certificate of occupancy for the new construction or substantial improvement, the applicant shall submit to the Department of

**Consumer and Regulatory Affairs a financial security that is compliant with the provisions of § 6 of the Green Building Act of 2006, as amended (D.C. Official Code § 6-1451.05).**

**1008.2** **Each building constructed or substantially improved shall have an on-site renewable energy system installed and operating prior to receipt of the first certificate of occupancy for the new construction or substantial improvement, which renewable energy system shall generate at least one percent (1%) of the total energy estimated to be needed to operate the building as calculated in the energy model submitted with the building permit application to the Department of Consumer and Regulatory Affairs.**

**1009** **COMBINED LOT (NHR)**

**1009.1** **Two (2) or more lots in the NHR zone may be combined for the purpose of achieving the minimum residential FAR required for all of the lots, provided that the total density limits of the zone shall not be exceeded, except that the maximum floor area on any one (1) lot in the combined lot shall not exceed 10.0 FAR.**

**1009.2** **No allocation of gross floor area shall be effective unless an instrument 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.**

**1009.3** **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; and**
- (d) 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.**

**1009.4** **The declaration of covenants shall also contain a written statement by the Director of the Office of Planning attesting to:**

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

**(b) Whether, after the transfer, the combined lots will conform with the maximum gross floor area limitations for the lots before any such transfer.**

**1009.5 The declaration of covenants shall expressly state that it may be amended or terminated only with the prior approval of the Zoning Administrator.**

**1009.6 The declaration of covenants shall be approved in content by the Zoning Administrator, who may, in his or her discretion, request the Office of the Attorney General to undertake a legal sufficiency review.**

**1010 DEVELOPMENT ON LOTS 97, 1025-1031, 1036-1037 IN SQUARE 5860 AND ON LOT 991 IN SQUARE 5861**

**1010.1 Any new building constructed on Lots 97, 1025-1031, or 1036-1037 in Square 5860 or on Lot 991 in Square 5861, shall comply with the following provisions, which shall govern in the event of conflict with other provisions of this chapter:**

**(a) Rooftop solar panels shall be constructed on each building to generate one hundred seventy-eight kilowatt hours (178 kWh) per 1,000 gross square feet of building area;**

**(b) All inclusionary units set-aside at fifty percent (50%) of the Median Family Income (MFI) shall be three- (3)-bedroom units;**

**(c) One-third (1/3) of all inclusionary units set-aside at sixty percent (60%) of the MFI shall be three-bedroom units;**

**(d) Each building shall provide a stormwater capacity to withstand a one and seven-tenths inch (1.7") stormwater event; and**

**(e) No building shall be constructed within the five hundred- (500)-year flood plain.**

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to [zcsubmissions@dc.gov](mailto:zcsubmissions@dc.gov); or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at [Sharon.Schellin@dc.gov](mailto:Sharon.Schellin@dc.gov). Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.