

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 07-09
Z.C. Case No. 07-09
(Text Amendments – 11 DCMR)
(Exemption from Certificate of Occupancy Timing Requirements)
September 10, 2007**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01, and having held a public hearing and referred the proposed amendments to the National Capital Planning Commission (“NCPC”) for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of adoption of the following amendments to §§ 1706.13 and 1706.23(g) of the Zoning Regulations (Title 11 DCMR).

Subsection 1706.13 governs the issuance of certificates of occupancy for projects within a Downtown Development Overlay District Housing Priority Area that either contain non-residential and required residential uses or have allocated their residential requirement through a combined lot development. The provision disallows the issuance of a certificate of occupancy for the non-residential use until a certificate of occupancy has been issued for the required residential use or an escrow is funded. Similarly, § 1706.23(g) provides that a certificate of occupancy may not be issued to a development that has reduced its residential requirement through constructing affordable housing offsite until a certificate of occupancy is issued for the affordable housing created. The text amendments permit an exception to both provisions when the required residential use is being allocated to or the affordable housing is being constructed on District-owned property.

A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on August 10, 2007, at 54 *DCR* 7769. The Commission took final action to adopt the amendments at a public meeting on September 10, 2007. This final rulemaking is effective upon publication in the *D.C. Register*.

Setdown, Public Hearing Notice, Comment, and Public Hearing

The Office of Planning (“OP”) initiated this rulemaking by filing a report dated March 29, 2007. At its April 9, 2007 public meeting, the Commission set down the case for a public hearing, and

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authorized publication of the text suggested by the OP in its report. The text proposed by OP would have limited the exception to District property located in the Old Convention Center Site.

The Commission held a public hearing on the proposed text amendments on July 16, 2007. At that hearing, the Office of Planning recommended that the proposed amendments apply to all District property that has accepted a residential requirement or upon which affordable housing is being or will be constructed. The Commission agrees and took proposed action to approve the broader text amendment recommended OP.

Relationship to the Comprehensive Plan

The amendments are not inconsistent with the Comprehensive Plan, and are fully consistent with the following elements of the Comprehensive Plan:

- § 1708.12, Leveraging Public Development Sites, which recommends using the “former Washington Convention Center site to implement key objectives and policies of the Central Washington Area Element, especially with respect to land use and urban design;” and
- § 1711.4, Metro Center/Retail Core, which provides “the old Convention Center site offers an opportunity to improve the connection between the two areas and create an expanded Central Washington shopping district for the region.”

Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking was published in the *D.C. Register* on August 10, 2007, at 54 DCR 7769, for a 30-day notice and comment period. No comments were received.

The proposed rulemaking was also referred to NCPC pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated August 3, 2007, found that the proposed text amendment would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan.

The Office of the Attorney General determined that this rulemaking meets its standards of legal sufficiency.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on September 10, 2007. No changes were made to the text published in the notice of proposed rulemaking.

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Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and 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 Chapter 17 of the Zoning Regulations, Title 11 DCMR:

Subsections 1706.13 and 1706.23 of § 1706 RESIDENTIAL AND MIXED USE DEVELOPMENT are amended to read as follows (added wording is in **bold and underlined**):

1. Subsection 1706.13 is amended to read as follows:

If a development project includes both nonresidential uses and required residential uses, whether on the same lot or in a combined lot development, no certificate of occupancy shall be issued for the nonresidential space until either:

- (a) A certificate of occupancy has been issued for the residential space; or
- (b) An escrow account has been established and funded in a combined lot development pursuant to § 1708.2.

This provision shall not apply to nonresidential gross floor area resulting from a combined lot development that allocated an equivalent amount of the property's required residential uses to one or more lots then owned by the District government.

2. Subparagraph (g) of subsection 1706.23 is amended to read as follows:

- (g) No certificate of occupancy shall be issued for the nonresidential development within the DD Overlay District until a certificate of occupancy has been issued for the affordable dwelling units, **unless the affordable dwelling units are being constructed on property owned by the District of Columbia.**

Vote of the Zoning Commission taken at its public hearing on July 16, 2007, to **APPROVE** the proposed rulemaking: **3-0-2** (Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to approve; Carol J. Mitten and Gregory N. Jefferies not present, not voting).

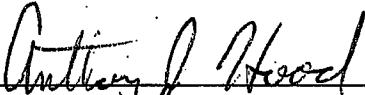
This Order was **ADOPTED** by the Zoning Commission at its public meeting on September 10, 2007, by a vote of **4-0-1** (John G. Parsons, Michael G. Turnbull, Anthony J. Hood and Gregory N. Jeffries (by absentee ballot) to adopt; Carol J. Mitten, having not participated, not voting).

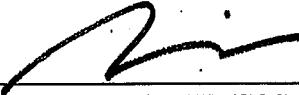
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In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on OCT 12 2007.


ANTHONY J. HOOD
VICE CHAIRMAN
ZONING COMMISSION


JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

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September 10, 2007

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

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Zoning Commission



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OCT 22 2007

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Notice of Final Rulemaking & Order No. 07-09 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. <i>D.C. Register</i>	7. Acting Zoning Administrator (Matt LeGrant)
2. All ANC Chairs	8. Office of the Attorney General (Alan Bergstein)
3. Gottlieb Simon ANC 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004	9. Jill Stern, Esq. General Counsel - DCRA 941 North Capitol Street, N.E. Suite 9400 Washington, D.C. 20002
4. All Councilmembers	
5. Office of Planning (Harriet Tregoning)	
6. Ken Laden, DDOT	

ATTESTED BY:


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