

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

and

Z.C. ORDER NO. 07-24

Z.C. Case No. 07-24

(Text Amendments – 11 DCMR)

**Elimination of the Certificate of Occupancy Requirement for Community Based
Residential Facilities Housing Six or Less Persons with Disabilities**

December 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); 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 adoption of the following amendments to § 3203.1 of the Zoning Regulations (11 DCMR) to eliminate the requirement that a certificate of occupancy be obtained for community based residential facilities (“CBRF”) intended to house six or fewer unrelated persons with disabilities. Notice of the public hearing was published in the *D.C. Register* (54 DCR 9363) on September 28, 2007, together with a Notice of Emergency and Proposed Rulemaking (54 DCR 9445). The Commission took final action to adopt the amendments at a public meeting held on December 10, 2007 making no substantive changes to the proposed text.

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

Existing Regulations

Provisions within the Zoning Regulations require that a certificate of occupancy (“C of O”) be obtained for all uses except one-family dwellings. A “one-family dwelling” is defined as “a dwelling used exclusively as a residence for one (1) family”, 11 DCMR 199.1. A family is defined to include six or fewer unrelated persons. *Id.* Thus, six unrelated persons (whether disabled or not) constitute a “family” and may occupy a dwelling without first obtaining a C of O. However, if such individuals require one or more persons to live with them to provide “treatment, rehabilitation, assistance, or supervision in their daily living,” their dwelling would meet the definition of a community based residential facility and a C of O must be obtained. Thus, whether or not six unrelated persons must obtain a C of O for a dwelling depends solely upon whether the group needs an additional resident to provide the assistance needed for them to live in a non-institutional setting. The Commission finds this distinction unnecessary.

Description of Text Amendments

The text amendments eliminate the requirement that a certificate of occupancy be obtained for community based residential facilities (“CBRF”) intended to house six or fewer unrelated persons with disabilities.

Relationship to the Comprehensive Plan

The text amendments are not inconsistent with the city-wide element, **Health Facilities and Services** theme of the Comprehensive Plan, which calls for “[C]oordination to Better Serve Special Needs Residents. Design and coordinate health and human services to ensure the maximum degree of independence for senior citizens, the disabled, and the physically and mentally handicapped.” (CSF-2.1.3), as well as the specific Rock Creek West element which reads: “Encourage the development of small-scale community-based residential facilities on scattered sites within the Planning Area, and social service counseling and referral facilities on the commercial corridors. Additional group homes and community based residential facilities should be accommodated, provided that such facilities are consistent with the area’s low-density character. Local religious institutions should be encouraged to host small shelters to provide for the homeless, taking into consideration issues of liability, security, and adequacy of facilities.” (RCW-1.2.10)

Public Hearing and Comment

The Commission held a public hearing on the proposed text amendments on November 8, 2007. There was public testimony expressing concerns that removal of the C of O requirement could expose a possibly vulnerable population to potentially inhabitable or dangerous residences. Concerns were also expressed about facilities that accept federal funds. ANC 6C submitted a letter questioning proper notice.

The Commission believes that any specific vulnerability of this population group is best protected by licensing requirements, which can be tailored to the specific type of disability involved. The Commission also believes that proper notice had been given, particularly in view of the fact that the record stayed open for thirty days prior to final action.

National Capital Planning Commission

The proposed rulemaking was also referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated November 29, 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 December 10, 2007. No substantive changes were made to the advertised prepared text.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and 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 § 3203.1 of Chapter 32, ADMINISTRATION AND ENFORCEMENT, of the Zoning Regulations, Title 11 DCMR. Added wording is in **bold** and underlined, and deleted wording is shown in ~~striketrough~~ lettering:

1. Subsection 3203.1 is amended to read as follows:

3203.1 Except as provided in §§ 3203.7, 3203.8, 3203.9, **or the second sentence of this subsection**, no person shall use any structure, land, or part of any structure or land for any purpose ~~other than a one family dwelling~~ until a certificate of occupancy has been issued to that person stating that the use complies with the provisions of this title and the D.C. Construction Code, Title 12 DCMR. **The requirements of this subsection shall not apply to:**

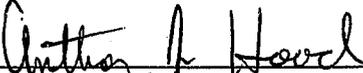
(a) A one-family dwelling; or

(b) A community based residential facility to be occupied by six or fewer persons with a handicap plus resident supervisors, as permitted by right in residence and commercial districts pursuant 11 DCMR §§ 201.1 (o) and 330/5 (i).

Vote of the Zoning Commission taken at its public meeting on November 8, 2007, to **APPROVE** the proposed rulemaking (for NCPC referral purposes): **4-0-1** (Anthony J. Hood, Gregory N. Jefferies, John G. Parsons, and Michael G. Turnbull to approve; Curtis Etherly, not present, not voting).

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

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on ~~_____~~ **JAN 25 2008**.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

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

and

Z.C. ORDER NO. 07-24

Z.C. Case No. 07-24

(Text Amendments – 11 DCMR)

**Elimination of the Certificate of Occupancy Requirement for Community Based
Residential Facilities Housing Six or Less Persons with Disabilities**

December 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*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 07-24

JAN 23 2008

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Notice of Final Rulemaking & Order No. 07-24 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "Sharon S. Schellin", is written over a horizontal line.

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