

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 09-11
Z.C. Case No. 09-11
(Text Amendment – 11 DCMR)
(Text amendments to permit retail and service uses by special exception in
Special Purpose-2 (SP-2) Districts)
January 11, 2010**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under §§ 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code §§ 6-641.01 and 641.03); hereby gives notice of adoption of the following text amendments to the Zoning Regulations of the District of Columbia, DCMR Title 11. A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on November 20, 2009, at 56 DCR 8990. The amendments shall become effective upon the publication of this notice in the *D.C. Register*.

Description of Amendments

The text amendments permit by special exception certain retail and service uses of SP-2 zoned properties located south of M Street N.W. and N.E. The retail and service uses permitted are the same as those permitted as a matter of right in the C-1 Zone District by §§ 701.1 through 701.5 of the Zoning Regulations. The use must be located on or below the ground floor of the building, and must be located and designed so it is not likely to become objectionable to neighboring properties because of noise, traffic, or other objectionable conditions. The use may not include a drive-through. In approving the use, the Board of Zoning Adjustment may impose requirements pertaining to screening, signage, or other requirements it deems necessary to protect adjacent or nearby property.

Procedures Leading to Adoption of Amendments

The Office of Planning (“OP”), in a report dated July 17, 2009, petitioned the Commission for a text amendment to permit by special exception certain retail or service uses on or below the ground floors of SP-2 Zone District properties located south of M Street N.W. and N.E. The Zoning Commission voted to set down the proposal for hearing at its July 27, 2009 public meeting.

In response to notice given pursuant to § 13 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Official

Code § 1-309.10), Advisory Neighborhood Commission (“ANC”) 2A, one of the ANCs with property currently zoned SP-2 that would be affected by the proposed amendments, filed a report with the Commission stating that at a regularly-scheduled, properly-noticed meeting with a quorum present, held on October 5, 2009, ANC 2A had voted unanimously to support the petition. The report stated that ANC 2A supported the proposed amendment because it was consistent with its goal to make the existing SP-2 zoned property more vibrant and pedestrian friendly. As indicated by its adoption of these amendments, the Zoning Commission found this advice to be persuasive.

A public hearing was scheduled for and held on October 29, 2009, after which the Commission authorized the referral of the proposed text to the National Capital Planning Commission and the publication of a notice of proposed rulemaking in the *D.C. Register*.

NCPC, through a delegated action dated November 24, 2009, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit No. 13.)

The Notice of Proposed Rulemaking was published in the *D.C. Register* on November 20, 2009, 56 DCR 8990, for a 30-day notice and comment period. No comments were received.

At a properly noticed January 11, 2010 public meeting, the Commission took final action to adopt the text amendments as follows:

The proposed amendments to the Zoning Regulations (Title 11, DCMR) are as follows:

1. CHAPTER 5, SPECIAL PURPOSE DISTRICTS is amended by adding a new § 518 that reads as follows:

518 RETAIL AND SERVICE USES (SP-2)

518.1 The uses identified in § 518.4 shall be permitted in certain properties in an SP-2 District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

518.2 The properties are those located south of M Street, N.W. and N.E.

518.3 The uses shall be located on or below the ground floor of the building.

518.4 The uses shall be those permitted in §§ 701.1 through 701.5 of this Title;

518.5 The uses shall not include a drive-through.

518.6 The uses shall be located and designed such that they are not likely to become objectionable to neighboring properties because of noise, traffic, or other objectionable conditions.

518.7 The Board of Zoning Adjustment may impose requirements pertaining to screening, signage, or other requirements it deems necessary to protect adjacent or nearby property.

2. CHAPTER 21, OFF-STREET PARKING REQUIREMENTS, § 2101.1 (Table) is amended by adding minimum parking space requirement for the SP-2 Zone District to those appearing under the use “retail or service establishment except gasoline service station and repair garage.” That portion of the schedule will read as follows:

<u>USES</u>	<u>NUMBER OF PARKING SPACES REQUIRED</u>
<u>Retail or service establishment except gasoline service station and repair garage:</u>	
C-1, C-2-A, C-3-A, C-M-1, M	In excess of 3,000 ft. ² , 1 for each additional 300 ft. ² of gross floor area and cellar floor area
W, CR, C-2-B, C-2-C, C-3-B, C-3-C, C-M-2, C-M-3	In excess of 3,000 ft. ² , 1 for each additional 750 ft. ² of gross floor area
C-4	In excess of 30,000 ft. ² , 1 for each additional 3,000 ft. ² of gross floor area
C-5 (PAD)	No requirement
SP-2 (If property is located south of M Street N.W. and N.E.)	In excess of 2,000 ft. ² , 1 for each additional 1,800 ft. ² of gross floor area

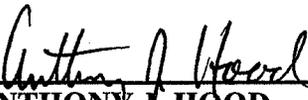
3. Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended by adding the following to the chart appended to § 3104.1:

<u>TYPE OF SPECIAL EXCEPTION</u>	<u>ZONE DISTRICT</u>	<u>SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED</u>
Retail and Service Uses on or below the ground floor of properties located south of M Street N.W. and N.E.	SP-2 District	§§ 518.2 - 518.7

On October 29, 2009, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** the petition at the end of the hearing on this case by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; William W. Keating, III not present, not voting).

On January 11, 2010, upon motion of Chairman Hood, as seconded by Commissioner Schlater, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt; William W. Keating, III, not present, 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 February 5, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

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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

Zoning Commission



FEB 03 2010

Z.C. CASE NO.: 09-11

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 09-11 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Armando Irizarry, Chair
ANC 2A
West End Branch Library
1101 24th Street, NW
Washington, DC 20037
3. Mike Silverstein, Chair
ANC 2B
9 Dupont Circle, NW
Washington, DC 20036
4. Charles Reed, Chair
ANC 2F
5 Thomas Circle, NW
Washington, DC 20005
5. David Garrison, Chair
ANC 6B
921 Pennsylvania Avenue, SE
Washington, DC 20003
6. Karen Wirt, Chair
ANC 6C
P.O. Box 77876
Washington, DC 20013
7. Commissioner David M. Lehrman
ANC/SMD 2A01
2020 F Street NW #431
Washington, DC 20006
8. Commissioner Armando Irizarry
ANC/SMD 2A04
2475 Virginia Ave NW #911
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ANC/SMD 2A05
2440 Virginia Avenue NW #D-1207
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10. Commissioner Florence Harmon
ANC/SMD 2A06
1099 22nd Street NW #1011
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11. Commissioner Victor G. Wexler
ANC/SMD 2B05
1520 16th Street NW #504
Washington, DC 20036
12. Commissioner Brian C Vargas
ANC/SMD 2F03
1224 13th Street NW #001
Washington, DC 20005
13. Commissioner David Garrison
ANC/SMD 6B01
8 4th Street SE
Washington, DC 20003
14. Commissioner Keith Silver
ANC/SMD 6C01
901 New Jersey Avenue NW #410
Washington, DC 20001
15. Commissioner Ryan Velasco
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308 East Capitol Street NE
Washington, DC 20003
16. Commissioner Charley Docter
ANC/SMD 6C09
801 Pennsylvania Ave. NW #1101
Washington, DC 20004
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ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
18. Councilmember Jack Evans
19. Councilmember Tommy Wells
20. Councilmember Michael Brown
21. Councilmember David Catania
22. Councilmember Phil Mendelson
23. Councilmember Kwame Brown
24. DDOT (Karina Ricks)
25. Melinda Bolling, DCRA Acting
General Counsel
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002
26. Office of the Attorney General (Alan
Bergstein)

ATTESTED BY:

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