

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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

ZONING COMMISSION ORDER NO. 10-01

Z.C. Case No. 10-01

(Text Amendment – 11 DCMR)

(Text Amendments to Allow Increased FAR and Height as a Matter of Right for Certain
Types of Projects on Properties Located in a TDR Receiving Zone)

April 12, 2010

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; D.C. Official Code § 6-641.01); 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 March 12, 2010, at 57 DCR 2112, Notice ID 188779. The amendments shall become effective upon the publication of this notice in the *D.C. Register*.

Description of Amendments

Properties included within a receiving zone established by 11 DCMR § 1709 have a base zoning of C-3-C, which caps matter of right floor area ratio (“FAR”) at 6.5 and height at 90 feet. Prior to the effective date of this amendment, these limits could only be increased through the purchase of transferable development rights (“TDR”) generated by eligible properties within the Downtown Development Overlay, with each TDR representing one square foot of gross floor area. Section 1709 also increased height to accommodate the additional density.

The text amendment allows for these same increases as a matter of right, *i.e.* without the need to purchase the additional density and height, for projects within a receiving zone either developed as part of a D.C. Council-approved New Community Plan; or that qualify as a “low or moderate income subsidized housing development” pursuant to § 3042.2 of the Zoning Regulations. That subsection defines a “subsidized housing development” as a housing development that receives funding from a recognized District of Columbia or federal government housing subsidy and that “low or moderate income projects shall be as defined by the U.S. Department of Housing and Urban Development.” The Council approves New Community plans through the adoption of a resolution.

Procedures Leading to Adoption of Amendments

The District of Columbia Office of Planning (“OP”) submitted a memorandum dated January 4, 2010 that served as a petition requesting the text amendment, which also served as OP’s

supplemental filing. The memorandum requested a waiver of the Commission's rules to: (1) accept the late-filed memorandum; (2) permit the immediate advertisement of the public hearing; and (3) hold the hearing in less than 40 days from its advertisement, provided that at least 30-days notice would be given as required by the District Charter. At the Commission's January 11, 2010 public meeting, OP presented a slight variation of the text stated in its January 4, 2010 memorandum. The Commission accepted the memorandum and voted to set down the revised text and grant the hearing-related waivers.

In addition to the notice of hearing required by the Zoning Act and Regulations, a notice of the petition was provided 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) to all Advisory Neighborhood Commissions ("ANCs"). No written ANC reports were received.

A public hearing was scheduled for and held on March 1, 2010. At the hearing, the Commission requested that the OP and the District of Columbia Office of the Attorney General ("OAG") revise the text to clarify what exactly was meant by the reference in the text to "affordable housing funded by the District of Columbia". The Commission further authorized the referral of the text, as clarified, to the National Capital Planning Commission ("NCPC") and the publication of a notice of proposed rulemaking in the *DC Register*.

NCPC, through a delegated action dated April 1, 2010, 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. 11.)

The Notice of Proposed Rulemaking was published in the *D.C. Register* on March 12, 2010, 57 DCR 2112, Notice ID 188779, for a 30-day notice and comment period. No comments were received.

After the publication of the notice of proposed rulemaking, OAG and OP recognized that § 770 also needed to be amended to authorize the additional matter of right height needed to accommodate the additional matter of right density being made available by new § 771.4. This is the same height limit as is available for receiving zone properties that purchase additional density. In addition, OAG and OP suggested a conforming amendment to § 770.1 to include a reference to Chapter 17 as being among the chapters in Title 11 where additional height is authorized.

At a properly noticed April 12, 2010 public meeting, the Commission took final action to adopt the text amendments, including the amendments as follows:

Title 11 of the District of Columbia Municipal Regulations (ZONING), CHAPTER 7, COMMERCIAL DISTRICTS, is amended as follows:

1. By amending § 770 Height of Buildings or Structures (C), is amended as follows:

- A. By amending § 770.1 by adding a cross-reference to the height provisions related to receiving zone properties contained in Chapter 17, so that the provision reads as follows:

770.1 Except as provided in this section and in chapters 17 and 20 through 25 of this title, the height of a building or structure in a Commercial District shall not exceed that set forth in the following table:

ZONE DISTRICT	MAXIMUM HEIGHT (Feet)	MAXIMUM HEIGHT (Stories)
C-1	40	3
C-2-A	50	No Limit
C-2-B,C-3-A	65	No Limit
C-3-B	70	6
C-2-C,C-3-C	90	No Limit
C-4	110	No Limit
C-5(PAD)	130	No Limit

- B. By amending § 770.2 to insert a reference to the new § 770.9 added through this rulemaking so that the provision reads as follows:

770.2 The height of buildings or structures specified in § 770.1 may be exceeded in the instances provided in §§ 770.3 through 770.9.

- C. By adding a new § 770.9 to read as follows:

770.9 The height permitted for a building eligible for the additional density permitted pursuant to § 771.4 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, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09).

2. Amending § 771 Floor Area Ratio by inserting a new paragraph § 771.4 to read as follows:

771.4 As an alternative to purchasing transferable development rights to achieve additional density as permitted in the receiving zones described in §§ 1709.15

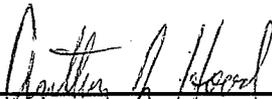
through 1709.19, a building or structure located in any such zones that is being developed as part of an approved New Community Plan approved by the Council of the District of Columbia or that qualify as a low or moderate income subsidized housing development as defined in § 3042.2 ("Eligible Projects") may utilize the following additional density as a matter of right, provided that the Zoning Administrator determines that the proposed building or structure is not inconsistent with the approved New Community Plan, if applicable, or the Comprehensive Plan:

- (a) Eligible Projects located in the New Downtown, North Capitol, Capitol South, and Southwest receiving zones may be constructed to a maximum FAR of 10.0 for buildings permitted a height of one hundred thirty feet (130 ft.) pursuant to § 770.9, and 9.0 for buildings permitted a lesser height; or
- (b) Eligible Projects located in the Downtown East receiving zone may be constructed to a maximum FAR of 9.0.

On March 1, 2010, upon motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the petition at the conclusion of its public hearing by a vote of **4-0-1** (Anthony J. Hood, William W. Keating, III, Peter G. May, and Michael G. Turnbull to approve; Konrad W. Schlater, not present, not voting).

On April 12, 2010, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May (by absentee ballot), and Michael G. Turnbull to adopt; Konrad W. Schlater, having not participated, not voting; and 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 April 23, 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*.