

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 681-C
Case No. 91-15/89-25
(Transferable Development Rights)
September 14, 1992

The Zoning Commission for the District of Columbia initiated this case to consider and adopt appropriate amendments to the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The proposed amendments are to regulate the provision of Transferable Development Rights (TDRs) opportunities for developers in the downtown area. This initiative was formerly a component of Zoning Commission Case Number 89-25 (Downtown Development District). By Zoning Commission Order Number 681 dated December 17, 1990, the Zoning Commission created and mapped the Downtown Development District Overlay zone. These amendments will amend and further refine the Historic Preservation Component of the Downtown Development District Overlay and further the implementation of the Comprehensive Plan for the National Capital, as amended.

Amendments to the text of the Zoning Regulations of the District of Columbia are authorized, pursuant to the Zoning Act (Act of June 20, 1938, 52 Stat 797, as amended, Section 5-413 et seq., D.C. Code, 1981 Ed). The public hearing was conducted in accordance with the provisions of 11 DCMR 3021.

On April 18, 1991, the Office of Planning briefed the Zoning Commission on transferable development rights as related to downtown. The briefing provided the Commission with the issues for resolution during the hearing process and guided the Office of Planning in proposing the text amendments for regulation of transferable development rights opportunities in the downtown area. As a result of the briefing, comments were submitted by one law firm making suggestions, and commenting on the areas that should be covered by proposed regulations.

The Office of Planning submitted its proposal for additional regulations pertaining to transferable development rights (TDRs) in the Downtown Development (DD) District on August 30, 1991. The Commission determined that the Office of Planning proposal presented a sound basis for consideration, and on September 10, 1991 decided to set the proposal for hearing.

ZONING COMMISSION ORDER NO. 681-C
CASE NO. 91-15/89-25
PAGE NO. 2

On December 16, 1991, the Commission conducted a public hearing in this proceeding. At the close of the hearing, the Commission invited additional written public comments on the proposal and requested the Office of Planning to take another look at the proposal in light of the testimony presented during the public hearing. The comment period ended on January 17, 1992.

The Zoning Commission's task in this case is to promulgate regulations that clarify the administration and processing of instruments of transfer for TDRs and to address the issues related to the marketability of TDRs.

All Advisory Neighborhood Commissions (ANCs) were notified of the public hearing in this case. The Zoning Commission did not receive any written comments from any of the ANCs nor did any ANC representatives appear to testify at the public hearing.

The Pennsylvania Avenue Development Corporation, the District of Columbia Building Industry Association, the Downtown Cluster of Congregations, the Citizens Planning Coalition, Calvary Baptist Church, several law firms and attorneys testified or submitted letters and documents in general support of the proposed regulations.

The Office of Planning (OP), by memorandum dated December 12, 1991, by testimony presented at the public hearing and by its review of the record after the comment period, identified the following issues for the Zoning Commission's consideration during these proceedings:

- Severability of receiving site from sending site;
- Retransfer and banking of TDRs;
- Deletion of the 25-year vesting rule for TDRs;
- Processing and recording instruments of transfer for TDRs;
- Amendments of instruments of transfer; and
- Corrections to historic lots in the Pennsylvania Avenue Development Corporation (PADC) area.

Severability of Receiving Site and Sending Site

This issue concerns the irrevocable vesting of TDRs on a receiving site, independent of the status of the bonus use or of historic preservation on the sending site that generated the TDRs.

The Office of Planning, in its December 12, 1991 memorandum and by testimony presented at the public hearing, and by its posthearing submission dated March 27, 1992, stated that the regulations "must balance the public sector interest in establishing and maintaining the bonus rise (or historic preservation) and the general interest (private and public) in having a workable, practical system."

The Office of Planning analogized the recommended approach to a housing linkage planned unit development (PUD), indicating that completion of the bonus use (off-site housing) is a precondition for receiving a certificate of occupancy (C of O) for the bonus space in the receiving (PUD) building.

Construction of the receiving building may proceed anytime after the PUD is approved and a building permit is issued. However, the bonus office space may not be occupied until the off-site amenity has been provided. Thus, completion of the off-site housing is assumed and still the developer can construct the building on the PUD site.

The key elements of the proposed system regarding legal ties between the sending and receiving site, as identified by OP, are as follows:

- TDR covenants may be executed and recorded anytime after issuance of a building permit on the sending site. However, the owner of the sending site may negotiate with potential purchasers, execute contingent contracts of sale, and receive confirmation of the quantity of TDRs generated by the proposed bonus uses or historic preservation even before the building permit is issued. The issuance of the building permit is the normal vesting provision for rights under zoning regulations existing at the time of the permit. In this case, the quantity of TDRs for which the project (sending site) is eligible is vested by the building permit.
- Instruments of transfer may be executed and recorded once processed by the government anytime after the issuance of a building permit on the

sending site. Bonus development rights are thereby transferred to one or more receiving sites. A building permit may be issued and the building constructed on the receiving site; however, the certificate of occupancy for the portion of the receiving building that received TDRs or bonus density may not be issued until compliance is achieved on the sending site. After compliance has been achieved, the TDRs vest on the receiving site and have no relationship to the sending site.

- Historic preservation compliance means permanently reducing the permitted density on the sending site and completing restoration of the historic building(s) or parts thereof as approved by the Historic Preservation Review Board or the Mayor's Agent for Historic Preservation.
- In the case of bonus uses on the sending site, compliance means that a C of O for the bonus use has been issued and a signed lease agreement has been executed. The bonus use is thus established, and the TDRs may vest in the receiving site without connection to the sending site. Any subsequent concerns or enforcement issues of government regarding the bonus use relate only to the sending site.

Organizations and persons providing oral and written testimony on this issue provided the following comments:

1. The advertised regulations provide a major step towards making TDRs viable by providing for complete, irrevocable vesting of TDRs in the receiving site, independent of the status of the sending site, once compliance on the sending site (historic restoration or bonus use) has been achieved. The combined lot development is severed after compliance.
2. The regulations should provide a bonding or escrow mechanism to permit full vesting of TDRs in a receiving site prior to compliance on the sending site. That is, in historic preservation cases, completing the restoration of the historic building equals compliance according to the advertised text. Until the restoration is complete, the TDR transfer to a receiving site may be executed and recorded, but the sending and

receiving lots are still tied together legally by a combined lot development covenant. Once the restoration on the sending site is certified as complete by the government, the TDRs vest irrevocably in the receiving site. The thrust of testimony from private sector development interests was that a performance bond or an escrow account should be permitted as evidence of compliance, thereby allowing TDRs to vest irrevocably in the receiving site without regard to the status of the sending site. The same principle would apply to bonus uses: a bond or escrow account would provide assurance that compliance would be achieved; therefore, it is proposed that the government should allow immediate vesting of TDRs in the receiving site.

The stated objective of the above-mentioned proposals is to enable funds generated by the sale of TDRs to help the receiving site provide historic restoration or special construction for bonus uses "up front." The rationale for historic preservation is that many of the owners of small historic buildings do not have the funds to pay for restoration without gaining access to the funds from sale of the TDRs.

It has been proposed that the District of Columbia be the beneficiary or executor of the performance bond.

3. Financial benefits and incentives in the TDR system are already significant and adequate. The private parties in a TDR transaction should work out escrow, performance bond, joint venture or other arrangements between themselves and leave the regulation as it is, governing actual compliance. Performance "in fact" (restoration of an historic building or establishment of the bonus use) is what the public deserves in exchange for the significant economic benefit of having granted transferable development rights. Projects on the sending site need to have a high degree of viability, without the TDRs, to succeed in any case. There are also practical problems with naming the District of Columbia government as beneficiary of a performance bond.
4. In the case of historic preservation TDRs, a percentage of the TDRs should vest in a receiving

ZONING COMMISSION ORDER NO. 681-C
CASE NO. 91-15/89-25
PAGE NO. 6

site at the time that the Historic Preservation Review Board gives final approval of the restoration plans on the historic, sending site.

Retransfers and Banking of TDRs

The proposed provisions regarding the retransfer and banking of TDRs allow a receiving site that has purchased TDRs, and either experiences a delay in developing them or decides not to develop them at all, to have the right to sell them to another receiving site. The proposed regulations require re-registration of TDRs so that further transfers can be easily tracked. The open-ended banking provision permits the purchase of TDRs without an immediate transfer of them to a receiving site.

Written and oral testimony presented for the record was supportive of the retransfer and banking provisions.

Deletion of 25-Year Vesting Rule for TDRs

The 25-year period as previously adopted does not relate to the much longer usable life of buildings on receiving sites. The time limit could restrict TDR purchases, financing and insurance. All testimony presented on this issue supported deletion of the provision.

Processing and Recording Instruments of Transfer for TDRs

The proposed regulations provide a step-by-step process on handling and recording instruments of transfer within the government. All testimony presented on this issue was generally in support.

Amendment of Instruments of Transfer

The proposed regulations provide that modifications to instruments of transfer require approval by the Zoning Commission, after public hearing with concurrence of the Office of Planning. This provision provides the Commission with control over compliance issues. The testimony presented on this issue was supportive of the provisions.

Corrections to Historic Lots in the Pennsylvania Avenue Development Corporation (PADC) Area

The Pennsylvania Avenue Development Corporation (PADC) proposed deletion of certain lots from the proposed regulations because they are either locations that have been redeveloped with mixed use and the historic buildings have

ZONING COMMISSION ORDER NO. 681-C
CASE NO. 91-15/89-25
PAGE NO. 7

been removed, or they are locations where historic buildings or facades have been preserved and made part of a new mixed use complex. There was no opposing testimony on this issue.

The Office of Planning recommended that the Zoning Commission adopt the proposed regulations, as advertised and incorporate modifications presented in its December 12, 1991 memorandum and those made as a result of testimony and questions presented at the public hearing.

On April 6, 1992 at its regular monthly meeting, the Zoning Commission considered several post-hearing submissions, including a letter dated January 9, 1992 from Arent Fox Kintner, Plotkin and Kahn; a statement dated January 17, 1992 from Wilkes, Artis, Hedrick and Lane; a letter dated January 17, 1992 from Hunton and Williams; and a summary abstract report dated March 27, 1992 from the Office of Planning.

The Zoning Commission concurs with the recommendations of the Office of Planning and with some of the comments raised by organizations and persons in written and oral testimony and post-hearing submissions.

The Commission believes that after considering all of the issues presented, its proposed TDR Regulations are an appropriate means to regulate the provision of TDR opportunities for the downtown area.

The Commission believes that the TDR Regulations will further refine the Historic Preservation Component of the Downtown Development District Overlay zone.

The Commission further believes that the TDR Regulations provide clarity for the administration and processing of instruments of transfer for TDRs and addresses the issues related to their marketability.

The Zoning Commission believes that its proposed decision to approve the TDR Regulations is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital, as amended.

The proposed decision to approve the TDR Regulations was referred to the National Capital Planning Commission (NCPC) on June 12, 1992, under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. By report dated July 22, 1992, NCPC found that in the absence of actual physical proposals, it is unable to assess the impact

ZONING COMMISSION ORDER NO. 681-C
CASE NO. 91-15/89-25
PAGE NO. 8

that the development requirements may have on the Federal Establishment or other Federal interests in the National Capital.

Notice of proposed rulemaking was published in the D.C. Register on June 12, 1992 (39 DCR 4188). As a result of the publication of that notice, the Zoning Commission received comments from the Pennsylvania Avenue Development Corporation (PADC) dated June 22, 1992; Linowes and Blocher dated July 24, 1992; Wilkes, Artis, Hedrick and Lane dated July 24, 1992; Hamilton and Hamilton on behalf of Asbury United Methodist Church dated July 24, 1992; the District of Columbia Building Industry Association; and the Office of Planning dated September 4, 1992.

The comments received are generally summarized as follows:

- That twenty-five percent (25%) of historic preservation TDRs should vest "up front".
- Further adjustments are needed in the lots indicated for historic preservation in squares 431 and 458.
- The specific effective date of the Downtown Development District, January 18, 1991, should appear in the amendments instead of the phrase "the effective date of this chapter."
- That historic buildings that have been restored within the past ten years should be eligible for TDRs.
- That combined lot development for preferred uses should be allowed across subarea boundaries.
- That modifications of instruments of transfer can only be approved by the Zoning Commission after public hearing is too rigid for minor modifications.
- That clarifying language should be added in several sections of the amendments.

On September 14, 1992 at its regular monthly meeting, the Zoning Commission considered draft Z.C. Order No. 681-C and the comments received before taking final action in this case.

ZONING COMMISSION ORDER NO. 681-C
CASE NO. 91-15/89-25
PAGE NO. 9

The Commission believes that 25 percent of historic preservation TDRs should vest up front to further the intent and purpose of these regulations.

The Commission believes that an adjustment of lots in squares 431 and 458 is appropriate because development in those squares involved redevelopment of some buildings that were previously part of the Pennsylvania Avenue historic site, and are now developed with housing.

The Commission believes that the use of the effective date of the Downtown Development District, January 18, 1991, in these amendments instead of the phrase "the effective date of this chapter" is appropriate and clarifies the language of the amendments.

The Commission further believes that the modification of the instrument of transfer only by the Zoning Commission after public hearing is too rigid for minor modifications, and believes that the requirement for Zoning Commission approval after public hearing is appropriate when the modification of the instrument of transfer involves the provisions that relate to the type, size or discontinuance of a bonus use in the sending site.

The Commission does not believe that historic buildings which have been restored within the last ten years should be eligible for TDRs, or that combined lot development for preferred uses should be allowed across subarea boundaries. The Commission has been very clear about its intent regarding both of these areas throughout these proceedings and is convinced that the amendments, as proposed, are appropriate.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of amendments to the Zoning Regulations to regulate the provision of Transferable Development Rights (TDR) opportunities for developers in the downtown area. The specific amendments to the Zoning Regulations are as follows:

These Amendments were adopted by the Zoning Commission as final action at a public meeting held on September 14, 1992. The specific amendments to the Zoning Regulations are as follows:

1. Amend subsection 1707.4 to read as follows:

1707.4 The permitted on-site floor area ratio (FAR) for any permitted use shall be 6.0 on each of the lots and squares listed below; provided

that in a multi-lot development or combined lot development within a single square, the permitted 6.0 FAR may be averaged with the permitted FARs of other lots that are part of the development, including any lots not subject to the 6.0 FAR maximum, so as to achieve a composite FAR for the entire development.

- (a) Square 320, lots 17, 800, 801, 808, 809, and 810;
- (b) Square 346;
- (c) Square 347, lots 18, 19, 800 through 803, and 818 through 826;
- (d) Square 376, lots 36 through 46, 48, 63, 64, 70, 801, 802, and 803;
- (e) Square 377, lots 35, 819 through 821, 823 through 829, 846, 847 and 848;
- (f) Square 406, lots 11, 15, 807, 808, 809, and 814;
- (g) Square 428, lots 16, 17, 801 through 804, and 808 through 815;
- (h) Square 429;
- (i) Square 452, lots 26 through 29, 800, 802 through 806, and 817 through 824;
- (j) Square 453, lots 24 through 31, 40, 48, 50, 811, 812, 813, 815 through 819, 821, 831 through 835, and 839;
- (k) Square 454, lots 827 through 835;
- (l) Square 518, lots 845 through 855;
- (m) Square 405, lot 839;
- (n) All of Square 429 1/2;
- (o) All of Square 430;
- (p) Square 431, lots 23, 815 and 816;
- (q) Square 458, lots 816, 818 and 823;
- (r) Square 459, Lot 809;
- (s) Square 460, lots 802 through 805, and 818;
- (t) All of Square 485;
- (u) Square 517, lots 20, 46, 834, and 835; and
- (v) Square 457, lots 36, 826 and 871.

2. Amend subsection 1707.5 to read as follows:

1707.5 A project in the Downtown Historic District or the Pennsylvania Avenue Historic Site, or an individual historic landmark is not eligible to construct bonus density or transferable development rights on-site, but

may transfer bonus density or unused development rights to other sites in the Downtown Development (DD) District, or to sites in a receiving zone as delineated in section 1709; Provided, that:

- (a) The historic building or part thereof shall be a historic landmark or shall be a building within the Downtown Historic District or the Pennsylvania Avenue Historic Site, which has been preserved in whole or in part pursuant to D.C. Law 2-144 and regulations pursuant thereto;
- (b) The property shall be one of those properties identified in subsection 1707.4 and accordingly restricted in on-site density to 6.0 FAR or shall be an historic landmark that has an FAR of 6.0 or less including any existing or proposed additions;
- (c) A historic building that has previously been restored pursuant to approval of the Historic Preservation Review Board within a 10-year period prior to January 18, 1991 shall not be eligible to earn transferable development rights;
- (d) Undeveloped gross floor area of up to 4.0 may be transferred from the historic sending lot to a lot or lots elsewhere in the DD District or in a receiving zone; Provided that:
 - (1) Each one (1) square-foot of unused density less than the matter-of-right commercial density of the underlying zone shall earn one (1) square-foot of transferable development rights; and
 - (2) The matter-of-right densities of the applicable underlying zones are deemed to be 10.0 or 8.5 FAR in the DD/C-4 District pursuant to subsections 771.2 and 771.5 of this

title, 6.5 FAR in the DD/C-3-C District and, for the purpose of this section only, 6.0 FAR in the DD/C-2-C District;

- (e) In order to qualify for the transfer of development rights provided in this section, the property owner shall execute an instrument of transfer as provided in section 1709 of this chapter that:
 - (1) Effects a binding reduction in the unused development rights under this zoning ordinance otherwise available to the sending lot, to the extent of the rights transferred; and
 - (2) Requires completion of restoration of the historic building, buildings or parts thereof pursuant to plans approved by the Historic Preservation Review Board and/or the Mayor's Agent for Historic Preservation as required by D.C. Law 2-144;
- (f) For the purposes of administering subparagraph (e)(2) of this subsection, the Historic Preservation Division, Department of Consumer and Regulatory Affairs, shall certify in writing to the Zoning Administrator that restoration has been completed pursuant to plans approved as consistent with D.C. Law 2-144;
- (g) Prior to the completion of restoration as certified in paragraph (f), one or more transfers of development rights as provided for in section 1709 of this chapter may be executed following issuance of a building permit for the sending site, but a certificate of occupancy for the transferred

development rights on the receiving site shall not be issued until the restoration on the sending site has been certified, as provided in paragraph (f);

- (h) After the completion of restoration has been certified as provided in paragraph (f), any transferred development rights shall vest in the receiving site without any relationship to the status of the historic sending site;
- (i) Notwithstanding the requirements of paragraphs (g) and (h), up to twenty-five percent (25%) of the transferable development rights that the sending site is eligible for may be transferred to and fully vest in a receiving site under the following conditions:
 - (1) The owner of the sending site shall receive final approval of restoration plans from the Historic Preservation Review Board pursuant to D.C. Law 2-144;
 - (2) The instrument of transfer as required by paragraph (e) shall include a requirement that the monetary proceeds of the transfer of development rights shall be utilized by the owner of the sending site exclusively for the cost of design and restoration, or restoration and new construction, of the historic building on the sending site;
 - (3) If the financial proceeds of the transfer exceed the total cost of design and construction on the sending site, the instrument of transfer shall provide that full funding of design and construction shall be reserved, together with a draw schedule and timetable for the construction work, prior to any other use of the funds in excess of that required for design and construction; and

(4) If subparagraph (3) is applicable to a project, the transferable development rights shall not vest in the receiving lot or lots until the Director, Office of Planning, has certified to the Zoning Administrator that the allocation of funds and draw schedule provided pursuant to subparagraph (3) are sufficient to allow the completion of the project; and

(j) Bonus density, if any, generated by bonus uses on the sending site may be transferred in addition to the transferable development rights provided in this subsection for restricted density on the historic site, as provided in section 1709.

3. Amend subsection 1708.1 to read as follows:

1708.1 Two or more lots may be combined for the purpose of achieving the required FAR equivalent for preferred uses or to transfer bonus density from one lot to one or more other lots; Provided, that:

(a) The lots may be located in the same square or in different squares;

(b) A combined lot development shall be eligible for the density and area allowances permitted in sections 1703, 1704, 1705 and 1706;

(c) When combined lot development involves only linkage, i.e., the allocation of gross floor area required by this chapter to be devoted to preferred uses (hereinafter "linkage project"), such combined lot developments shall be limited to lots located within the same subarea as defined in each of the following sections of this chapter: 1703, 1704, 1705, and 1706;

(d) In a linkage project, the required floor area to be devoted to preferred uses may be transferred from the sending lot to a

receiving lot, on which the required space for preferred uses shall be incorporated into the building design and occupied; Provided, that any applicable ground level uses required on any affected lot shall not be transferred, but shall be provided on each sending lot and receiving lot;

- (e) In a linkage project, the certificate of occupancy for the development sending FAR for preferred uses to another development may be revoked, if no building permit for the receiving site has been issued to the developer within three years after the issuance of the certificate of occupancy for the sending site, or if no certificate of occupancy for the receiving site has been issued within five years after the issuance of the certificate of occupancy for the sending site;
- (f) When combined lot development involves a transfer of bonus density to another lot or lots, by itself or in addition to a linkage project, such density transfer may occur to any lot or lots within the DD District or in a receiving zone as provided in section 1709 of this chapter, except as excluded by other provisions of this chapter and title;
- (g) The maximum permitted floor area for all uses, the minimum required floor area for preferred uses, and bonus density, if applicable, shall each be calculated as if the combined lots were one lot, and the total project shall conform with the maximum and minimum floor area requirements;
- (h) A building that has been constructed or that is under construction as of January 18, 1991 is not eligible to utilize the combined lot development provisions, nor to earn bonus density or transferable development rights pursuant to section 1709;

- (i) No transfer of required gross floor area for preferred uses shall be effective under this section unless an instrument, approved by the Corporation Counsel to be legally sufficient to effect such a transfer and approved in content by the Director, Office of Planning and the Zoning Administrator, has been entered into among all of the parties concerned, including the District of Columbia;
 - (j) A certified copy of the instrument of transfer shall be filed with the Zoning Administrator, Department of Consumer and Regulatory Affairs, prior to approval by said Department of any building permit application affected by such transfer;
 - (k) The document shall be recorded in the office of the Recorder of Deeds, serving as a notice both to the receiving lot and to the sending lot by virtue of this arrangement for transfer of required floor area or bonus area; and
 - (l) The notice of restrictions and transfer shall run with the title and deed to each affected lot.
4. Amend section 1709 by deleting subsections 1709.1 and 1709.2; renumbering subsections 1709.3 through 1709.9 to 1709.15 through 1709.21; and adding new subsections 1709.1 through 1709.14 as follows:

1709.1 This section authorizes the transfer of development rights from a project within the DD District to a receiving lot or lots located elsewhere in the DD District or in the Downtown East, New Downtown, or other receiving zones or sites pursuant to the provisions of this section.

1709.2 Transferable development rights shall be generated either by historic preservation as provided in section 1707 or by bonus uses pursuant to the subarea provisions of sections 1703 through 1705 of this chapter.

- 1709.3 No transfer of unused development rights from historic properties pursuant to Section 1707 nor of bonus density derived from bonus uses, shall be effective under this section unless an instrument, approved by the Corporation Counsel to be legally sufficient to effect such a transfer and approved in content by the Zoning Administrator and the Director, Office of Planning, has been entered into among all of the parties concerned, including the District of Columbia.
- 1709.4 In the case of transferable development rights derived from historic preservation pursuant to section 1707, the instrument shall effect the requirements found in subsection 1707.5 as well as the applicable requirements of this section.
- 1709.5 In the case of bonus density derived from a bonus use or uses, the following provisions shall apply:
- (a) The property owner shall obtain a building permit indicating in appropriate plans the floor area designed and reserved for the designated bonus use(s);
 - (b) The instrument of transfer shall indicate the size of the applicable bonus use or uses in square feet of floor area and the location of bonus uses by reference to the plans required by paragraph (a);
 - (c) The indicated floor area shall be occupied by the designated bonus use or uses, or held as vacant;
 - (d) Instruments of transfer may be executed to transfer bonus development rights to receiving sites after the building permit has been issued; Provided, however, that no certificate of occupancy for the transferred floor area shall be issued for the receiving site

until the conditions specified in paragraphs (e) or (f) of this subsection, as applicable, have been complied with;

- (e) If the project on the sending site generates transferable development rights from bonus uses of less than 15,000 square feet of gross floor area, any transferred development rights shall vest in the receiving site without regard for the status of the development on the sending site, after the certificate of occupancy for the bonus use(s) on the sending site has been issued;
- (f) If the project on the sending site generates transferable development rights from bonus uses of 15,000 square feet or more of gross floor area, any transferred development rights shall vest in the receiving site without regard for the status of development on the sending site, after applicant provides evidence of a lease agreement with a complying user/occupant of the bonus space; Provided, that:
 - (1) The applicant shall provide the Zoning Administrator and the Director, Office of Planning, with evidence of the lease agreement with the operator of the bonus use; and
 - (2) The Zoning Administrator, with the concurrence of the Director, Office of Planning, will certify in writing that the requirements of this paragraph have been satisfied;
- (g) Following the execution and recordation of an instrument transferring development rights to a receiving site, any modification of provisions of the instrument that relates to the type, size or discontinuance of a bonus use on the sending site shall require the approval of the Zoning Commission, after public hearing and with the concurrence

of the Office of Planning; Provided, that the Commission shall find that the proposed modification is fully justified and consistent with the purposes of this chapter.

- 1709.6 The instrument of transfer shall increase the development rights under the zoning ordinance otherwise available to the receiving lot, to the extent of the rights transferred.
- 1709.7 If more than one transfer of development rights is made from a sending lot, the second transfer and all subsequent transfers shall be numbered "two" and sequentially, and the instrument of transfer shall include the names of the transferors and transferees involved in all previous transfers, including the amount of gross floor area transferred and the dates of recordation of each transfer.
- 1709.8 Transferable development rights may be retransferred from the original receiving lot(s) to another eligible receiving lot or lots, provided that the procedures specified in subsection 1709.7 and other applicable provisions are complied with.
- 1709.9 Nothing in these regulations shall prohibit the purchase of transferable development rights by an entity or individual who intends to re-sell the TDRs at a future date for use on a receiving site, so long as the provisions of this section and chapter are complied with.
- 1709.10 A certified copy of the instrument of transfer shall be filed with the Zoning Administrator, Department of Consumer and Regulatory Affairs, prior to approval by said Department of any building permit application affected by such transfer.
- 1709.11 The instrument shall be recorded in the office of the Recorder of Deeds, serving as a notice both to the receiving lot and to the sending lot by virtue of this agreement for transfer of required floor area or bonus floor area.

1709.12 The notice of restrictions and transfer shall run with the title and deed to each affected lot.

1709.13 A building that has been constructed or that is under construction as of January 18, 1991 is not eligible to earn bonus density or transferable development rights, nor to utilize the combined lot development provisions.

1709.14 The instrument of transfer shall be processed in the government as follows:

(a) The instrument of transfer shall be submitted to the Zoning Administrator, with a copy provided to the Director, Office of Planning;

(b) The Zoning Administrator and the Office of Planning shall review the instrument to determine whether its contents are complete and accurate as to the applicable provisions of the Downtown Development District;

(c) If the Zoning Administrator and the Director, Office of Planning find that the instrument is complete and accurate in content, the Zoning Administrator shall transmit the instrument to the Office of Corporation Counsel, together with a written statement that the content complies with the provisions of the DD District;

(d) Corporation Counsel shall determine whether the instrument is legally sufficient to effect the transfer of development rights;

(e) If Corporation Counsel finds the instrument to be legally sufficient, he or she shall forward it to the Mayor after notifying the Zoning Administrator of the finding;

- (f) After signature by the Mayor or by the Secretary of the District of Columbia for the Mayor, the covenant or instrument of transfer shall be returned to the Zoning Administrator;
- (g) The applicant, upon notification by the Zoning Administrator that the instrument has been signed by the Mayor, takes the covenant to the Recorder of Deeds, who records the covenant with the applicable sending and receiving lots, and who provides the applicant with two certified copies of the covenant and of title certificates for all affected properties; and
- (h) The applicant provides one certified copy to the Zoning Administrator and one to the Office of Planning.

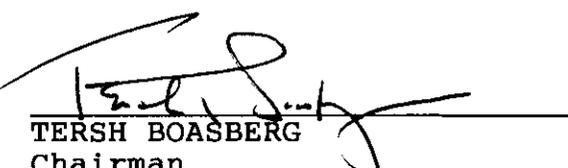
5. Delete section 3204 pertaining to vesting of transferable development rights.

Vote of the Zoning Commission on proposed action taken at its regular monthly meeting of April 6, 1992: 3-0 (Maybelle Taylor Bennett, Tersh Boasberg and William L. Ensign to approve proposed amendments, as amended, to the Zoning Regulations; John G. Parsons and Lloyd D. Smith - not voting, not having participated in the case).

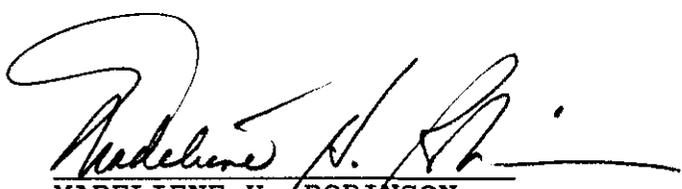
This order was adopted by the Zoning Commission at its monthly meeting on September 14, 1992 by a vote of 3-0: (Maybelle Taylor Bennett, Tersh Boasberg and William L. Ensign to adopt; John G. Parsons and Lloyd D. Smith not voting, not having participated in the case).

In accordance with 11 DCMR 3028.8, this order is final and effective upon publication in the D.C. Register; that is, on

NOV 13 1992



TERSHER BOASBERG
Chairman
Zoning Commission



MADELIENE H. ROBINSON
Acting Director
Office of Zoning

ZONING COMMISSION ORDER NO. 681-C
CASE NO. 91-15/89-25
PAGE NO. 22

A:\zcordtdr.681/bjw