

# Government of the District of Columbia

## ZONING COMMISSION



### ZONING COMMISSION ORDER NO. 794

Case No. 95-6

(Text Amendment - FAR for Preferred  
Uses in the Downtown Shopping District,  
Downtown Development District, 11 DCMR 1703.3)  
January 18, 1996

The Zoning Commission for the District of Columbia initiated this case in response to an application filed by Hines Interests Limited Partnership, requesting the Commission to amend the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. Amendments to the text of the Zoning Regulations are authorized pursuant to the Zoning Act [Act of June 20, 1938, 52 Stat. 797, as amended, D.C. Code Ann. Section 5-413 (1994 Repl. Vol.)].

The application was filed on May 24, 1995 and requested the Zoning Commission to delete existing Subsection 1703.3 and replace it with a new subsection. The existing Subsection 1703.3 required that each new or altered building devote not less than 1.5 or 2.0 FAR to certain preferred uses, namely retail and service uses listed in Section 1711. This Subsection also identified the squares to which the 1.5 and 2.0 FAR requirements apply.

Subsection 1703.3, as proposed by the applicant, would require each new or altered building that faces or abuts a public street to devote not less than 0.5 FAR on the ground floor to preferred uses. The proposal also would require that no more than 20 percent of the required ground floor area could be occupied by banks, loan offices, other financial institutions, travel agencies or other transportation ticket offices. The proposed new Subsection 1703.3 would exempt any building that is entirely devoted to hotel or apartment house use or to a church or other place of worship from the preferred use requirement.

The Office of Planning (OP), by memorandum dated June 2, 1995, recommended that a public hearing be scheduled on the proposed text version.

Pursuant to notice, a public hearing was held by the Zoning Commission on September 18, 1995 to consider the proposal submitted by the petitioner and other alternative proposals reasonably related to the scope of the proposed amendments contained in the notice. At the hearing, the Commission heard the testimony of the

petitioner (Hines Interests Limited Partnership), the Office of Planning, and four witnesses who appeared in opposition to the proposed text amendment. No Advisory Neighborhood Commission testified at the public hearing.

At the public hearing, the petitioner offered testimony from its representative and two architects in support of the proposed text amendment. Petitioner's witnesses stated that the proposed 0.5 FAR was consistent with the District of Columbia Comprehensive Plan, as amended by D.C. Law 10-193, and that the current regulations were inconsistent with the Comprehensive Plan. One of Petitioner's architects presented testimony and exhibits which demonstrated that many recent buildings constructed in the downtown area contained less than 0.5 FAR devoted to retail and service uses. This witness testified that the requirements for loading, a parking ramp, elevators, stair towers, a lobby and building code-mandated facilities result in buildings which cannot physically accommodate greater than 0.5 FAR for retail and service uses. He also stated that smaller sites and interior sites would have difficulty satisfying even a 0.5 FAR requirement.

The Office of Planning by memorandum dated August 25, 1995 and by testimony presented at the public hearing quoted a passage from the 1994 Comprehensive Plan Amendment Act which states, "with regard to the Downtown Development District Regulations, (a) restructure the floor area ratio requirements for preferred retail uses in the DDD to limit the minimum requirement to street-oriented ground floor frontages but maintain and enhance incentives for the maintenance and development of preferred retail uses on more than one floor particularly for department and specialty stores."

OP further believes the requirement for 0.5 FAR of retail and related uses on the ground floor is a straightforward continuation of the principle, used elsewhere in DDD and in some other overlay zones, that an office building or other multi-level building can meet the lobby, elevator core and other financial requirements for the entire building while still providing one-half or more of the ground level floor area for active uses.

Representatives of several organizations, the Downtown Cluster of Congregations and The Residents at Market Square, and two individuals testified at the public hearing in opposition to the proposed text amendment. The testimony in opposition is summarized as follows:

1. The proposed amendments are far too important to be handled in an expedited or piecemeal fashion. The case has broad, substantial and lasting impacts on the community, and community interests have not had time to be fully aware of and informed about the proposed zoning amendments.

2. The advertised requirement of 0.5 FAR retail on the ground floor of new or altered buildings may not be sufficient to carry out the Council's intent of mandating "street-oriented ground floor frontages." More analysis is needed of the retail potential of buildings. Studies need to be made of mechanical space requirements, size of atria, and recent innovations in building design, to determine whether more retail than 0.5 FAR is achievable on the ground floor.
3. The petitioner-developer in this case should have applied to the BZA for a variance from the current regulations rather than causing the Zoning Commission to consider a piecemeal amendment.
4. These regulations should not be promulgated until they can be coupled with new provisions for the establishment of incentives for the development of retail uses.

The Advisory Neighborhood Commissions did not participate in the hearing.

At the close of the hearing, the Commission left the record of the case open for participants to partially resolve the opponents' objections and to submit additional information on ways to maximize the effectiveness of the required 0.5 FAR of retail and related uses on the ground floor, in one or more of the following ways: increase the required amount to 0.6 or 0.7 FAR; specify additional uses that should be subject to the 20 percent limitation of 1703.3(a) as advertised; and explore other measures to ensure maximum feasible utilization of retail uses on the ground floor.

Subsequent to the public hearing, a number of studies, statements and letters were received by the Commissioners. The applicant submitted additional studies in support of the proposed 0.5 FAR requirement and responded to concerns expressed by opponents. Letters of support for the proposal were also received from the D.C. Building Industry Association and Robert O. Carr, President, Carr Real Estate Services. The Commission received a resolution adopted by the Foggy Bottom and West End Advisory Neighborhood Commission dated September 28, 1995 in opposition to the proposed amendment. The Commission also received letters or statements in opposition to the proposal from the Downtown Cluster of Congregations, the Committee of 100 on the Federal City and the Residences at Market Square.

The Office of Planning submitted a hearing summary and final comments by memorandum from the Interim Director dated October 11, 1995. In its final recommendations, the Office of Planning recommended that the Commission adopt the 0.5 FAR standard for preferred uses on the ground floor and revise the list of uses

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which are subject to the 20 percent ground floor limitation. OP recommended that further refinements to the text amendment suggested by the applicant not be adopted.

On October 23, 1995, at its regular monthly meeting, the Zoning Commission discussed the testimony, exhibits and post-hearing submissions which constitute the record in this proceeding, including the OP Summary Abstract, and took proposed action to approve the amendments, after first having adopted several revisions to the proposal. These revisions included the addition of a requirement that all ground floor leasable space be devoted to preferred uses and a revision to the list of preferred uses which are subject to a limitation of 20 percent of the ground floor area.

The Commission believes the requirement that all of the ground floor leasable space be devoted to preferred uses, when coupled with the 0.5 FAR minimum standard for ground floor preferred uses, effectively implements the Comprehensive Plan Amendments Act of 1994. This Act states, in relevant part, as follows: "With regard to the Downtown Development District ("DD") regulations adopted by the Zoning Commission:... (B)(i) Restructure the floor area ratio requirements for preferred retail uses in the DDD to limit the minimum requirement to street-oriented ground floor frontages..." The Commission is convinced that a FAR requirement greater than 0.5 would be difficult to achieve at a significant number of properties, particularly small and mid-sized sites or buildings, but believes that the addition of the requirement that all of the ground floor leasable space be devoted to preferred uses addresses legitimate concerns of several opponents of the original proposal with respect to the adequacy of the FAR standard.

The Commission believes that the addition of several uses to the list of preferred uses which are subject to the 20 percent limitation on the ground floor strikes a better balance of retail and other uses for the purpose of serving residents, shoppers and office tenants alike. Such revision also addresses specific concerns raised by several of the opponents of the text amendment.

As to the issues and concerns raised by the ANC, the Commission finds as follows:

1. The expedited consideration of this proceeding was warranted in order to implement the amendments to the Comprehensive Plan, which were adopted by the District of Columbia Council over one year ago and, secondly, to accommodate a major office tenant who needs to relocate but desires to remain in the District of Columbia.
2. The Zoning Commission does not believe that proceeding with Case No. 95-6 represents an inappropriate or "piecemeal"

approach to implementation of the amendments to the Comprehensive Plan Amendments Act of 1994. The Commission has initiated a separate proceeding, Case No. 95-13, to respond to the Council-imposed requirement that incentives for preferred uses be maintained and enhanced. The Commission has also scheduled and held other separate proceedings which pertain to DDD matters arising out of the Comprehensive Plan Amendments Act of 1994.

3. The Commission does not believe that the reduction of the preferred use FAR requirement from 2.0 or 1.5 to 0.5 is undocumented and unjustified. On the contrary, a reduction of this magnitude is required for the Zoning Regulations to be consistent with the Comprehensive Plan. Furthermore, the record of this proceeding has set forth a clear and convincing case for adoption of the 0.5 FAR, particularly when coupled with the requirement that all of the ground floor leasable space be devoted to preferred uses.

Having discussed, considered and resolved the issues and concerns of ANC-2A, the Commission determined that it has accorded ANC-2A the "great weight" to which it is entitled.

On October 23, 1995, at its regularly scheduled monthly meeting, the Zoning Commission discussed the case, the OP Summary Abstract dated October 11, 1995 and all of the post-hearing submissions and took proposed action to approve the proposed amendments.

A notice of proposed rulemaking was published in the D.C. Register dated November 10, 1995.

The notice of proposed rulemaking was referred to the Zoning Administrator (ZA) and the OP for comments, and to the National Capital Planning Commission (NCPC), pursuant to the D.C. Self-Government and Governmental Reorganization Act.

The NCPC, by delegated action of its Executive Director dated November 30, 1995, indicated that there was no Federal Interest in the text amendment and that the proposed text amendment would not adversely affect the Federal Establishment or other Federal interests in the National Capital or be inconsistent with the Comprehensive Plan for the National Capital.

The Commission received no comments as a result of the publication of the notice of proposed rulemaking.

On January 18, 1996, at a special public meeting, the Commission reviewed the draft order, the NCPC report and all pertinent information in the record of the case and took final action to adopt the text amendment as contained in the draft order.

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In consideration of the findings, conclusions and reasons set forth in this order, the Zoning Commission hereby orders **APPROVAL** of the amendment to the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning, to require that all ground floor leaseable space in the Downtown Shopping District is devoted to preferred retail, personal service and arts uses, to specify exemptions from the ground floor preferred use requirements and to acknowledge overlapping zoning provisions of the Downtown Shopping District and the Downtown Arts District where their boundaries overlap. The specific amendment is as follows:

**Amend Subsection 1703.3 to read as follows:**

1703.3 Each new or altered building that faces or abuts a public street shall devote all of the ground floor leaseable space to retail and personal service uses listed in Section 1710 or the arts uses listed in Section 1711; Provided, that:

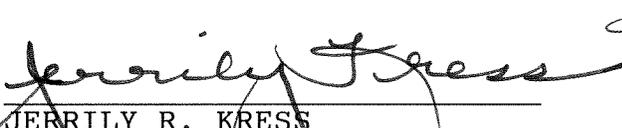
- (a) The gross floor area devoted to the retail and arts uses listed in Sections 1710 and 1711 shall be no less than 0.5 FAR on the ground floor;
- (b) Not more than twenty percent (20%) of such required ground floor area shall be occupied by banks, loan offices, other financial institutions, travel agencies, or other transportation ticket offices, delicatessens, fast food restaurants, printing or fast copy services, newsstands, dry cleaners, or any combination thereof;
- (c) This ground floor use requirement shall not apply to a building that is entirely devoted to hotel or apartment house use, or to a church or other place of worship; and
- (d) In the applicable sector of the Downtown Arts District, that is, Squares 254, 290, 321, 347, 377, 376, and 375 (South of G Place), uses which are set forth in Subsection 1711 shall comprise not less than fifty percent (50%) of the floor area required to be devoted to preferred uses.

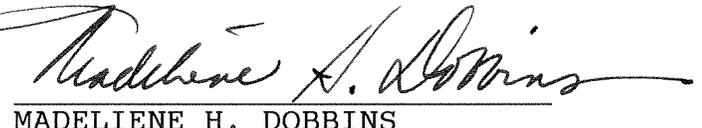
Vote of the Zoning Commission at the regular meeting on October 23, 1995: 3-0 (William L. Ensign, Maybelle Taylor Bennett and Jerrily R. Kress to approve; John G. Parsons, not voting, not having participated in the case).

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This order was adopted by the Zoning Commission at a special public meeting on January 18, 1996, by a vote of 3-0: (Maybelle Taylor Bennett, William L. Ensign and Jerrily R. Kress to adopt, as amended; John G. Parsons, 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 FEB 26 1996.

  
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JERRILY R. KRESS  
Chairperson  
Zoning Commission

  
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MADELIENE H. DOBBINS  
Director  
Office of Zoning

\*This order appears in the February 9, 1996 edition of the D.C. Register which was published on February 26, 1996.

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