

# Government of the District of Columbia

## ZONING COMMISSION



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

and

**ORDER NO. 943-A**

**Z.C. Case No. 00-30TA (Part I - FAR)**

**(Text Amendment – 11 DCMR § 1706.7)**

**(Downtown Development Overlay District – Residential and Mixed Use Development,  
Housing Amendments)**

**December 10, 2001**

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code, 2001 Ed. § 6-641.01 (formerly codified at D.C. Code § 5-413 (1994 Repl.))), having held a public hearing as required by § 5 of the Act (D.C. Code, 2001 Ed. § 6-641.05 (formerly codified at D.C. Code § 5-417 (1994 Repl. & Supp. 1999))), and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to 11 DCMR §§ 3025.3 and 3028.1, hereby gives notice of the adoption of the following amendment to § 1706.7 of the Zoning Regulations, Title 11 DCMR, pertaining to relief from the maximum floor area ratio (FAR) limitations in the DD/C-2-C, DD/C-3-C and DD/C-4 Overlay Districts for purposes of providing a new housing development incentive. The Commission took final action to adopt the amendment at a public meeting held on December 10, 2001.

The Commission also gives notice of technical corrections to the existing text in 11 DCMR §§ 1706.4(a) and (e), 1706.5(a) and (e), and 1706.6(a) and (d) as published in 11 DCMR (1995 & 1996 Supp.) and in the Commission's Notice of Final Rulemaking and Order No. 943, dated July 26, 2001, published in 48 DCR 7225 (2001). Each of the referenced paragraphs contains the phrase "commercial or residential." The correct text, as adopted by the Commission in its Notice of Final Rulemaking published in 38 DCR 612, 627 (1991), reads "commercial or nonresidential." There have been no amendments to this phrase in the referenced paragraphs, and the substitution of the word "residential" in place of the word "nonresidential" in the phrase "commercial or residential" is a publishing error. Each of the referenced paragraphs is corrected to read "commercial or nonresidential."

On July 26, 2001, the Commission adopted Z.C. Order No. 943 approving a Notice of Final Rulemaking that amended 11 DCMR § 1706.7 by relieving properties zoned DD/C-2-C, DD/C-3-C, and DD/C-4 and that are devoted entirely to residential use or to a combination of

residential and preferred retail, service, arts, or arts-related uses of the maximum floor area ratio (FAR) limitations in §§ 1706.4, 1706.5, and 1706.6, provided that the increase in gross floor area is devoted entirely to residential use and the property otherwise meets the requirements of the new rule, § 1706.7(b).

At the same time, the Commission found that the focus of the new rule should be on the use of the increase in gross floor area for housing. The Commission thus determined that properties devoted to a combination of residential and commercial uses should also be eligible for relief from the applicable maximum FAR limitations, provided that the increase in gross floor area is devoted entirely to residential uses and the project otherwise complies with § 1706.7(b). In order to allow residential projects that would meet the more restrictive requirements of § 1706.7(b) as originally proposed to proceed, the Commission adopted the introductory language in § 1706.7(b) that restricts FAR relief to properties devoted entirely to residential or a combination of residential and preferred uses as an interim final rule. This amendment deletes that introductory language. It also deletes subparagraph (2) in paragraph (a) in § 1707.7 as unnecessary in light of the amendments in paragraph (b) that allow an increase in gross floor area in excess of the maximum FAR limitations, provided the increase in gross floor area is devoted to on-site residential use.

The procedural history of this rulemaking is outlined in the Commission's Notice of Final Rulemaking and Order No. 923, published on July 26, 2001, in 48 DCR 7225 (2001),<sup>1</sup> in which the Commission adopted an amendment to § 1706.7 as an interim final rule. Subsequently, the Commission published a Notice of Proposed Rulemaking containing the proposed amendment to § 1706.7 in the *D.C. Register* on September 21, 2001, at 48 DCR 8745, for a 30-day notice and comment period. No comments have been received.

The notice of proposed rulemaking was referred to the National Capital Planning Commission (NCPC) on November 6, 2001, under the terms of § 492 of the District of Columbia Charter. NCPC, by delegated action of the Executive Director dated November 29, 2001, found that the proposed text amendment would not adversely affect federal interests, nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

The Office of the Corporation Counsel has determined that this rulemaking meets its standards of legal sufficiency.

Based on the above, the Commission finds that the proposed amendment to the Zoning Regulations is in the best interests of the District of Columbia, consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

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<sup>1</sup> A document entitled " Notice of Final Rulemaking and Order No. 943 (REVISED)" was published in error in 48 DCR 7741 (2001), and should be disregarded. There have been no revisions to Notice of Final Rulemaking and Order No. 943 published in 48 DCR 7225 (2001).

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendment to § 1706.7(b) of the Zoning Regulations, Title 11 DCMR. Deleted wording is shown in strike-through lettering and added wording is shown bolded and underlined. No substantive amendments to the Notice of Proposed Rulemaking have been made. This rulemaking will become effective upon publication in the *D.C. Register*.

Chapter 17, Downtown Development Overlay District, Subsection 1706.7 is amended to read as follows:

1706.7 To assist the development of residential and preferred uses, the following density bonuses may be used:

(a) The maximum gross floor area permitted under §§ 1706.4, 1706.5, and 1706.6 may be increased by 0.5 FAR up to a maximum of 8.5 FAR in the DD/C-2-C Overlay District, 10.0 FAR in the DD/C-3-C Overlay District, and 10.5 FAR in the DD/C-4 Overlay District; provided the increase in gross floor area is achieved by:

(1) Receiving transferable development rights as provided in § 1709, which gross floor area may be devoted to any permitted use on the receiving lot;

~~(2) Devoting the increased gross floor area entirely to residential use;~~

~~(3)~~ **(2)** Constructing or assisting affordable housing as defined in this chapter and as further governed by this section; or

~~(4)~~ **(3)** Earning **Generating** retail bonus density as provided in § 1706.16.

(b) Except for historic landmarks and properties listed in § 1707.4 in the Downtown Historic District, the maximum FAR limitations in §§ 1706.4, 1706.5, and 1706.6 shall not apply to any lot ~~that is devoted entirely to residential use or to a combination of residential use and the retail, service, arts, and arts-related uses listed in §§ 1710.1 and 1711.1~~ **that devotes the increase in gross floor area entirely to residential use on-site;** provided:

~~(1) The increase in gross floor area shall be devoted entirely to residential use on-site;~~

~~(2) The increase in gross floor area shall not be used to meet the minimum residential requirements of §§ 1706.4, 1706.5, or 1706.6;~~  
**and**

(3)(2) The maximum residential FAR that may be accepted through combined lot development is listed in the following table:

Zone of the Lot Receiving Housing	<u>Maximum</u> Allowable Combined Lot Transfer
DD/C-2-C	3.5 FAR
DD/C-3-C	6.0 FAR
DD/C-4	8.0 FAR

(4)(3) The relief from maximum FAR limitations provided by this paragraph does not alter or modify the obligation to comply with all applicable Zoning Regulations affecting the lot, nor does it alter or modify an applicant's burden of proof when seeking zoning relief.

Vote of the Zoning Commission taken at its public meeting on July 26, 2001, to **APPROVE** the proposed rulemaking: Carol J. Mitten, Anthony J. Hood, John G. Parsons, to approve; Herbert M. Franklin, not present, not voting; Kwasi Holman, not present, not voting, and no longer a member of the Commission).

This order was adopted by the Zoning Commission at its public meeting on December 10, 2001, by a vote of **4-0-1** (Anthony J. Hood, John G. Parsons, Carol J. Mitten, and Peter G. May to **ADOPT** Z.C. Order No. 943-A; James H. Hannaham, not present, not voting).

In accordance with § 3028.9, this order shall become effective upon publication in the *D.C. Register*; that is, on **DEC 21 2001**.

  
**CAROL J. MITTEN**  
Chairman  
Zoning Commission

  
**JERRILY R. KRESS, FAIA**  
Director  
Office of Zoning