

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
CORRECTED* NOTICE OF FINAL RULEMAKING

and

ORDER NO. 966-A

Z.C. Case No. 00-41P

(Text and Map Amendments – 11 DCMR)

(Capitol Hill Commercial Overlay District)

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); having held a public hearing as required by § 3 of the Act (D.C. Code, 2001 Ed. § 6-641.03); 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 amendments to § 105 (Zone Districts) and chapter 15 (Miscellaneous Overlay Districts) of the Zoning Regulations, Title 11 DCMR, and to the Zoning Map, to establish the Capitol Hill Commercial (CHC) Overlay District. The Commission took final action to adopt the amendments at a public meeting held on September 9, 2002.

This final rulemaking is effective upon publication in the *D.C. Register*.

The Commission initiated this rulemaking in response to a petition from the Capitol Hill Restoration Society (CHRS) and the Capitol Hill Association of Merchants and Professionals (CHAMPS). The proposed text and map amendments will implement § 1735.1(w) of the Ward 6 Plan of the District Elements of the Comprehensive Plan, Title 10 DCMR, which calls for the establishment of an overlay district along the principal commercial corridors in the Capitol Hill Historic District to provide incentives for small office and retail development by increasing the maximum permitted floor area ratio (FAR) to 3.0 FAR for all permitted uses.

The areas to which the CHC Overlay will apply are in the C-2-A Zone District, the medium-density Community Business Center District. In addition, the Capitol Interest (CAP) Overlay District covers two of the areas: (1) the Massachusetts Avenue, N.E./Stanton Park corridor, between 2nd and 6th Street; and (2) the Pennsylvania Avenue, S.E. corridor, between 2nd and 4th Streets. Also, all the areas to which the CHC Overlay will apply are within the Capitol Hill Historic District. The areas covered by the CHC Overlay are:

- Pennsylvania Avenue, between 2nd Street and 13th Street, S.E.;

* Correction(s) shown in **bold and underlined**

- 8th Street, S.E., between Pennsylvania Avenue, S.E., and the Southeast Freeway;
- 7th Street, S.E., between North Carolina, S.E., and Pennsylvania Avenue, S.E.; and
- Massachusetts Avenue, N.E./Stanton Park corridor, between 2nd Street, N.E., and 6th Street, N.E.

Existing Zoning

The C-2-A District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core. It permits matter-of-right low- and medium-density development, including office, retail, and residential uses to a maximum lot occupancy of 60 percent (60%); a maximum 2.5 FAR, all of which may consist of residential use and up to 1.5 FAR of which may consist of other permitted uses; and a maximum height of 50 feet. *See* 11 DCMR §§ 720.2, 770.1, 771.2, 772.1. The areas to which the CHC Overlay will apply are developed predominantly with three- and four-story buildings, with a variety of commercial restaurants, small businesses serving the surrounding community, and some commercial buildings serving as offices for national associations and other groups. There are not many vacant properties available for infill development.

The CAP Overlay District was established to protect and promote the public health, safety, and welfare of the United States Capitol precinct and the adjacent area. 11 DCMR § 1200. The CAP Overlay District provides greater control of height and bulk than allowed in the underlying C-2-A District, permitting in § 1203.1, a maximum height of 40 feet and three stories; and in § 1203.3, a maximum 1.8 FAR.

Description of Text Amendment

Except in the CAP Overlay District, the CHC Overlay will increase the maximum permitted FAR to a maximum of 3.0 FAR for all permitted uses, allowing 100 percent (100%) commercial occupancy as a matter-of-right. In the CAP Overlay District, the CHC Overlay will increase the maximum permitted FAR to 2.5 FAR for all permitted uses. A planned unit development in the CHC Overlay District may not exceed the maximum FAR permitted in the CHC Overlay District. The CHC Overlay does not affect the underlying C-A-2 or CAP Overlay height limitations or any other applicable area or use restriction.

Relationship to the Comprehensive Plan

While the CHC Overlay District does not include all of the areas identified in the Comprehensive Plan, 10 DCMR § 1735.1(w), the overlay meets the Comprehensive Plan's intent. First, the CHC Overlay does not include H Street, N.E., from North Capitol Street to Bladensburg Road,

as recommended in § 1735.1(w)(1). Because this area is undergoing additional neighborhood revitalization studies and planning, the District of Columbia Office of Planning (OP) advises that it is not appropriate for inclusion at this time.

Second, § 1735.1(w)(2) recommends inclusion of Pennsylvania Avenue, S.E., from 8th Street to Barney Circle. The overlay covers additional areas between 2nd and 4th Streets and between 6th and 13th Streets. OP recommends inclusion of these areas because they are similar in character and have the same land use planning issues as the remainder of the Pennsylvania Avenue corridor identified in the Comprehensive Plan. The portion of the Pennsylvania Avenue corridor between 13th Street and Barney Circle is not included because its predominantly residential character differs from that of the overlay. Also, this area does not fall within the Capitol Hill Historic District. Developments in this area would not be subject to the architectural design controls and review applicable to properties within the overlay, all of which are included in the historic district. Further, OP indicates that more time is required to study the type and combination of uses that are appropriate for this area, which is considered a gateway into the District of Columbia.

Third, the Comprehensive Plan in § 1735.1(w)(3) recommends the inclusion of 8th Street, S.E., from Pennsylvania Avenue to the Anacostia River Waterfront. The CHC Overlay District will cover the area between Pennsylvania Avenue and the Southeast Freeway. The lower portion of 8th Street, between the Southeast Freeway and the Anacostia River Waterfront is not included, since the Eighth Street Southeast Neighborhood Commercial (ESS) Overlay District already permits commercial and residential uses up to 3.0 FAR in the area between the Freeway and M Street.

Finally, § 1735.1(w)(4)-(5) recommends inclusion of the Massachusetts Avenue/Stanton Park corridor between 2nd Street and 6th Street, N.E., and 7th Street, S.E., between North Carolina Avenue and Pennsylvania Avenue. The petition initially included the C-2-A zoned properties that front on 2nd Street, N.E. Residents of the Stanton Park neighborhood requested that this area not be included, and that the overlay be limited to properties that front on Massachusetts Avenue. Also, there are a number of nonconforming office buildings along 2nd Street in the CAP Overlay District that exceed 2.5 FAR, and therefore the additional FAR provided by the CHC Overlay would not be available to them. Additionally, the residents would not like to see the expansion of the few row-house type buildings in this area, many of which house offices. OP supports the deletion of these areas.

Public Hearing

The Commission held a public hearing on this case on March 21, 2002. In light of the purpose and intent of § 1735.1(w) of the Comprehensive Plan, petitioners CHRS and CHAMPS requested the deletion of certain squares and lots from the overlay as originally proposed. Exs. 33 and 34; Tr. at 12, 13-14, 24-25, 33, 37, 52 (Public Hearing; March 21, 2002).

CHRS supports the amendments, which it believes will relieve some of the pressure to convert residential properties to commercial uses by opening up additional commercial space along the

main thoroughfares of Capitol Hill. CHRS stated that it has consistently supported FAR variances to permit the extension of commercial use in existing buildings. CHRS also described the various measures that have been taken to provide for community participation in developing the proposal.

CHAMPS stated that the amendments would help create more viable commercial corridors. The residential component of the existing zoning, designed to encourage residential use over shops, has not worked along the Capitol Hill commercial corridors. By allowing an entire building to be used for commercial purposes, CHAMPS seeks to encourage retail use on the first floor, with office uses above. CHAMPS anticipates that by increasing the amount of office space, pedestrian traffic will increase, making ground level retail viable. CHAMPS also noted that the 0.5 increase in FAR provided by the amendment is consistent with the 3.0 FAR allowed in the immediately adjacent ESS Overlay District. The 0.5 FAR increase will also help offset the loss of usable space that typically results from bringing a building up to modern construction code requirements.

OP expressed concern that these amendments may be seen as a precedent for deleting residential use from the C-2-A District in other parts of the city. OP, however, states that the overlay is specific to this area of Capitol Hill due to a number of unique circumstances, including the size of the existing buildings and the proximity of an existing and thriving residential area. The objectives of the C-2-A District are to encourage commercial use on the ground floor and residential use on the upper floors. However, OP acknowledges that this mixture of uses has not proven viable in the CHC Overlay area, as there has not been a great demand for residential space above commercial uses. In some cases, the conversion of the upper floors to residential use has not proven physically or economically feasible. The overlay will encourage owners of un-renovated and vacant space to bring such space into compliance with the construction codes and to provide additional commercial space. Also, the overlay does not restrict residential development. Moreover, the overlay will relieve some of the pressure on the residential area, as it will open up additional commercial space along the main thoroughfares. OP concludes that by encouraging office and retail uses, the overlay will increase neighborhood vitality.

The CHC Overlay District is within the areas served by Advisory Neighborhood Commissions (ANCs) 6A and 6B. By letter dated March 15, 2002, ANC 6A indicates that at a regularly scheduled meeting, with a quorum present, the ANC voted to recommend approval of the amendments, with the exclusion of certain residential areas. At the public hearing, ANC 6A indicated that it was satisfied that the deletions proposed by the petitioners addressed its concerns. By letter dated March 14, 2002, ANC 6B indicated that at a regularly scheduled and properly noticed meeting, with a quorum present, the ANC voted to support the amendments, provided the overlay only cover those lots that face or front on Massachusetts Avenue, N.E.; Pennsylvania Avenue, S.E.; 8th Street, S.E.; and 7th Street, S.E. The ANC's concerns have been addressed, with the exception of Square 873 and S1019, both of which are commercially zoned.

Ward 6 Councilmember Sharon Ambrose testified in support of the amendments as a balanced means of restoring and reviving Capitol Hill's commercial corridors. According to Councilmember Ambrose, the zoning restrictions on nonresidential density have hampered these commercial corridors, resulting in many partially vacant or underutilized buildings, with limited

foot traffic and diminished customer demand for restaurants and retail services. She stated that the increased density would provide the incentive necessary to make building renovation or new infill development economically feasible, which will in turn attract small and mid-sized businesses.

The Stanton Park Neighborhood Association (SPNA) submitted a letter dated March 13, 2002, recommending that the amendments apply only to those commercially zoned properties fronting on Massachusetts Avenue, N.E., and the north and south sides of Stanton Park. At the hearing, SPNA indicated that with the deletion of Square 754 and other properties on 2nd Street, it supported the amendments.

The Eastern Market Community Advisory Committee requested the Commission to delete the Eastern Market and the Capitol East Natatorium, both in Square 872, from the overlay. The final rulemaking deletes this square.

Several Capitol Hill residents, who were either neutral or opposed to the amendments, expressed concern that the proposal had not undergone sufficient study or community review. The Commission notes, however, that the proposal has been under discussion by various community organizations and groups for the past five (5) years, and that the public notice requirements for amendments to the Zoning Regulations and Map Amendment have been met. In addition, the deletion of a number of the areas to be covered by the overlay ameliorated many of the opponents' concerns. The remaining concerns centered on whether several purposes of the overlay, including increased ground level retail and the protection of residential areas, would actually be fulfilled.

Proposed Rulemaking

Following the public hearing, the Commission took proposed action pursuant to 11 DCMR § 3027.2 at its regularly scheduled monthly meeting on April 19, 2002, to approve the proposed amendments. A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 17, 2002, at 49 DCR 4584, for a 30-day notice and comment period.

The Commission received comments from the petitioners in response to the Notice of Proposed Rulemaking, recommending the deletion from the overlay of properties that do not face or abut major commercial corridors on Capitol Hill or that are not appropriate for the overlay, such as Square 872, which contains Eastern Market and the Capitol East Natatorium. Based on agreements with several community organizations and ANCs 6A and 6B, and with OP's support, the petitioners requested at the public hearing that these properties be deleted from the overlay district. As these properties were inadvertently included in the Notice of Proposed Rulemaking, they have been deleted. The petitioners also suggested minor clarifying amendments to the proposed text in §§ 1570.3(d)-(e), to insert the abbreviation "S.E." after the phrase "Pennsylvania Avenue" and to replace the phrase "in this section" in §§ 1571.2 and 1571.3 with specific reference to "§§ 1572 and 1573." These changes have been made. The petitioners also recommended the inclusion of the phrase "for all permitted uses" in § 1573 relating to planned

unit development; however, the Commission believes the inclusion of such wording is unnecessary. No other comments were received.

The proposed rulemaking was referred to the National Capital Planning Commission (NCPC) under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated April 29, 2002, found that the proposed text and map amendments, which will provide minimal increase in FAR and no change in height or use, will neither adversely affect the federal interests, nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

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

Final Rulemaking

The Commission therefore took final action to adopt the rulemaking at its regularly scheduled public meeting on September 9, 2002. This final rulemaking differs from the proposed rulemaking in the following respects: (1) the final text amendment adds the new overlay to the list of zone districts in 11 DCMR § 105.1, a nonsubstantive change; and (2) certain areas are deleted from the CHC Overlay District in accordance with the petitioners' request and the public hearing testimony. No other substantive changes have been made.

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

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to chapters 1 and 15 of the Zoning Regulations, Title 11 DCMR. Added wording is underlined, and deleted wording is shown in strike-through lettering:

- A. Chapter 1, The Zoning Regulations, § 105.1, Zone Districts, is amended by deleting the word "and" in subparagraph (m)(7); adding the word "and" at the end of subparagraph (m)(8); and adding a new subparagraph (m)(9) to read:

105 ZONE DISTRICTS

105.1 For the purpose of this title, the District of Columbia shall be divided into the following zone districts:

.....

(m) **MISCELLANEOUS OVERLAY DISTRICTS**, as follows:

.....

- (7) Fort Totten (FT) Overlay District;
- (8) Chain Bridge Road/University Terrace (CB/UT) Overlay District;
and
- (9) Capitol Hill Commercial (CHC) Overlay District;

B. Chapter 15, Miscellaneous Overlay Districts, is amended by adding new §§ 1570 through 1573 to read:

1570 CAPITOL HILL COMMERCIAL OVERLAY DISTRICT (CHC)

1570.1 The Capitol Hill Commercial (CHC) Overlay District is established to implement the goals and policies of the Comprehensive Plan, particularly those land use objectives and policies relating to improving the physical condition of Capitol Hill through the provision of functional, efficient, and attractive commercial areas; minimizing conflicts between various land uses; locating more intensive and active land uses in areas of Capitol Hill that can accommodate and support such uses; stabilizing and improving commercial areas in portions of Capitol Hill; ensuring the integrity of the Capitol Hill Historic District; and developing and establishing special land use categories to meet the unique characteristics of the commercial areas of Capitol Hill.

1570.2 The purposes of the CHC Overlay District are to:

- (a) Implement § 1735.1(w) of the Comprehensive Plan, Title 10 DCMR;
- (b) Encourage the adaptive use and reuse of existing buildings, many of which are located in the Capitol Hill Historic District, particularly with respect to the portions of the buildings that exceed the commercial floor area ratio permitted in the underlying zone districts;
- (c) Concentrate nonresidential uses in Commercial Zone Districts in certain areas of Capitol Hill, thereby enhancing and protecting the residential character of the areas surrounding the Commercial Districts and relieving pressure to use properties zoned residential for commercial uses; and
- (d) Provide appropriate incentives for new infill construction that is compatible with the Capitol Hill Historic District and its predominance of low scale row house structures.

1570.3 The CHC Overlay District encompasses the geographic area in southeast and northeast Washington generally identified as follows:

- (a) Massachusetts Avenue, N.E./Stanton Park corridor, between 2nd Street and 6th Street, N.E.;
- (b) Pennsylvania Avenue, S.E., between 2nd Street and 4th Street, S.E.;
- (c) Pennsylvania Avenue, S.E., between 6th Street and 13th Street, S.E.;
- (d) Eighth Street, S.E., between Pennsylvania Avenue, S.E., and the Southeast Expressway; and
- (e) Seventh Street, S.E., between North Carolina Avenue and Pennsylvania Avenue, S.E.

1570.4

The CHC Overlay District shall include all of the following lots or squares zoned C-2-A and CAP/C-2-A:

- (a) Square 755: those lots that abut Massachusetts Avenue, N.E.;
- (b) Square 756: those lots that abut Massachusetts Avenue, N.E., and D Street, N.E.;
- (c) Square 762: those lots that abut Pennsylvania Avenue, S.E.;
- (d) Square 781: those lots that abut Massachusetts Avenue, N.E.;
- (e) Square 782: those lots that abut Massachusetts Avenue, N.E.;
- (f) Square 789: those lots that abut Pennsylvania Avenue, S.E.;
- (g) Square 790: those lots that abut Pennsylvania Avenue, S.E.;
- (h) Square 813: those lots that abut Stanton Park (also known as Stanton Square) and C Street, N.E.;
- (i) Square 814: those lots that abut Stanton Park (also known as Stanton Square) and C Street, N.E.;
- (j) Square 837: those lots that abut Stanton Park (also known as Stanton Square) and C Street, N.E.;
- (k) Square 838: those lots that abut Stanton Park (also known as Stanton Square) and C Street, N.E.;
- (l) Square 873;
- (m) Square 874: those lots that abut Pennsylvania Avenue, S.E.;

- (n) Square 900: those lots that abut 7th Street, S.E.;
- (o) Square 902: those lots that abut 8th Street, S.E., and D Street, S.E.;
- (p) Square 903: those lots that abut 8th Street, S.E.;
- (q) Square 904: those lots that abut 8th Street, S.E.;
- (r) Square 925: those lots that abut 8th Street, S.E.; D Street, S.E.; and Pennsylvania Avenue, S.E.;
- (s) Square 926: those lots that abut 8th Street, S.E.;
- (t) Square 928;
- (u) Square 947;
- (v) Square 948;
- (w) Square 972: those lots that abut Pennsylvania Avenue, S.E.;
- (x) Square 973: those lots that abut E Street, S.E., and Pennsylvania Avenue, S.E.;
- (y) Square 994: those lots that abut Pennsylvania Avenue, S.E.;
- (z) Square 1019: those lots that abut Pennsylvania Avenue, S.E., and 12th Street, S.E.; and
- (aa) Square S1019.

1571 GENERAL PROVISIONS (CHC)

- 1571.1 The CHC Overlay District is mapped in combination with, and not instead of, the underlying Commercial District and the Capitol Interest (CAP) Overlay District.
- 1571.2 All buildings and structures permitted under §§ 1572 and 1573 and the pertinent regulations of the underlying Commercial District and the CAP Overlay District shall be permitted in the combined district.
- 1571.3 Except as provided in §§ 1572.2 and 1572.4, where there is a conflict between §§ 1572 and 1573 and the underlying Commercial District or the CAP Overlay District, the provisions of §§ 1572 and 1573 shall govern.

1572 HEIGHT AND FLOOR AREA RATIO RESTRICTIONS (CHC)

1572.1 Except as provided in § 1572.2, the maximum permitted building height in the CHC Overlay District shall be the height permitted in the underlying Commercial District.

1572.2 If the affected property is located in both the CHC Overlay District and the CAP Overlay District, the maximum permitted building height shall be the height permitted in the CAP Overlay District.

1572.3 Except as provided in § 1572.4, the maximum permitted floor area ratio for a building or structure in the CHC Overlay District shall be 3.0 for all permitted uses.

1572.4 Notwithstanding § 1203.3, the maximum permitted floor area ratio for a building or structure located in both the CHC Overlay District and the CAP Overlay District shall be 2.5 for all permitted uses.

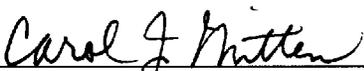
1573 PLANNED UNIT DEVELOPMENT STANDARDS (CHC)

1573.1 In the CHC Overlay District, the development standards in §§ 1572.3 through 1572.4 shall serve as the maximum permitted floor area ratio for a planned unit development.

Vote of the Zoning Commission taken at its public meeting on April 19, 2002, to **APPROVE** the proposed rulemaking: **4-0-1** (Anthony J. Hood, John G. Parsons, James H. Hannaham, and Peter G. May (by absentee vote), to approve; Carol J. Mitten, not voting, not having attended the public hearing on the petition).

This order was **ADOPTED** by the Zoning Commission at its public meeting on September 9, 2002, by a vote of **3-0-2** (Anthony J. Hood, Peter G. May and James H. Hannaham to adopt; John G. Parsons not voting, having abstained; and Carol J. Mitten not having heard the case, 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 ~~NOV 22 2002~~.



Carol J. Mitten
Chairman
Zoning Commission



Jerrily R. Kress, FAIA
Director
Office of Zoning

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
CORRECTED NOTICE OF FINAL RULEMAKING
and
ORDER NO. 966-A
Z.C. Case No. 00-41P
(Text and Map Amendment – 11 DCMR)
(Capitol Hill Commercial Overlay District)

The full text of this Zoning Commission order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.