

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING
and

ORDER NO. 971

Z.C. Case No. 96-3/89-1

(Text and Map Amendments – 11 DCMR)

(Map Amendment & Overlay District @ Buzzard Point – Capitol Gateway)

November 18, 2002

The Zoning Commission for the District of Columbia, pursuant to its authority under §§ 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended, D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act, (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of a new Chapter 16 to the Zoning Regulations (Title 11 DCMR) and amendments to the Zoning Map of the District of Columbia that together establish the Capital Gateway Overlay District (“CG Overlay District” or the “Overlay”). A notice of Proposed Rulemaking was published in the August 2, 2002, edition of the *D.C. Register* at 49 DCR 7538. The Commission took final action to adopt the amendments within minor changes at public meetings on October 28, 2002 and November 18, 2002. The current membership of the Commission reviewed the order and authorized its issuance during in an executive meeting held on December 13, 2004.

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

Set Down Proceeding and Public Hearings

This case was originally advertised in 1996. Public hearings were held on November 21 and 26, 1996. Although the case was placed on the agenda for two decision meetings in 1997, no proposed action was taken. After consideration of the record, and after hearing from the Office of Planning, the Commission believed that further refinement of the previously advertised text was desirable. The Commission re-advertised the case on June 15, 2001, and an additional public hearing was held on September 20, 2001.

Description of Text Amendment

Uses

In general, the CG Overlay District allows the same range of uses anticipated by the underlying zones.

FAR and Height

The Overlay does not increase floor area ratio ("FAR") and height limitations as a matter of right in the underlying zones, but provides circumstances in which bonus density may be earned.

In the CG/CR and CG/W-3 Districts, the Overlay permits a building or combined lot to earn a density bonus of 1.0 FAR that may be used only on-site for residential uses. Additional height is provided to accommodate this bonus density subject to setbacks for certain properties. The added height is thus only available if the additional density is earned.

Similarly, the Overlay also allows a building or combined lot in the CG/W-1 District to earn a density bonus of 1.0 FAR that may only be used onsite for residential uses. However, if at least 2.0 FAR of the matter of right density is already devoted to residential development, the additional 1.0 FAR may be used for any use permitted within the underlying W-1 Zone District. If the bonus density is earned, a height of up to fifty-five (55) feet is permitted.

Lastly, with respect to properties located in the CG/W-2 District, the amount of bonus density that may be earned is left to the discretion of the Zoning Commission, to be exercised as part of its review and approval process for that area to be discussed below.

Combined Lot

The rulemaking allows two (2) or more lots within the Overlay to allocate residential and non-residential uses, similar to the combined lot process that exists for CR properties at 11 DCMR § 631.3.

Zoning Commission Approval

The Commission concluded that the development of the few remaining waterfront parcels in the CG/W-2 District is of such importance to the District that mandatory development review is in the public interest. The Commission also concluded that matter of right development in the CG Overlay District along M Street, S.E., may not be appropriate to the creation of an active pedestrian streetscape for mixed use development. As a result, the Zoning Commission will review and approve all projects within either area. The review and approval provision allows the Zoning Commission to exercise additional oversight in the expectation of ensuring higher quality development on the Anacostia Waterfront and along the M Street corridor. The Zoning Commission may also hear and decide any related variances or special exceptions for the properties simultaneously with the required project review and approval.

The new rules provide the Zoning Commission with a specific set of policies and standards tailored to each of the two (2) areas, to be used as guidelines in reviewing a proposed project. For CG/W-2 properties, the Zoning Commission will review a project for impact on the waterfront, open space treatment, setback measurements from the bulkhead, and eligibility for any density or height bonus within the perimeters of the CG/W-2 District. For properties along M Street, S.E., the Zoning Commission will review a project based on the mix of uses, architectural design, and the quality of the landscaping and sidewalk treatments.

As noted, the Zoning Commission review of CG/W-2 projects offers a flexible mechanism for granting bonus density in recognition of the setback required of those properties that face or abut the Anacostia River and for projects providing at least 2.0 FAR of residential uses. In the case of the latter type of bonus density, the Commission will also determine, in each instance, whether bonus density may be constructed on-site or sent off-site through the transfer of development rights process.

The Commission determined that it would use its own rules of procedure for these reviews. These amendments, therefore, include the conforming changes to Title 11 needed to process and hear such requests. Unlike most zoning proceedings (but similar to the campus plan further processing procedures), such requests will not go through the “set down” process and the Commission will only take a single vote to approve or deny each request.

Description of Map Amendment

This rulemaking establishes the Capital Gateway Overlay District and amends the zoning map for all or parts of Squares 601, 602, 603, 605, 607, 609, 611, 612, 613, 656, 657, 658, 660, 661, 662, E662, 664, E664, 665, 666, E667, S667, ES667, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, E708, S708, 742, N743, S744, 769, 771, and 800.

Heretofore, the squares were fully or partially mapped in the General Industry (M), Commercial-Light Manufacturing (C-M-2 and C-M-1), Commercial- Major Business and Employment (C-3-C), and Waterfront (W-1 and W-3) Zone Districts.

The rulemaking also includes a map amendment for Squares 651 and 653 from Commercial-Light Manufacturing, C-M-1, to Commercial, C-2-C, without the overlay.

Relationship to the Comprehensive Plan

The CG Overlay will create an opportunity for an active mixed-use community in the Buzzard Point-South Capitol Street area of the District. The text and map amendments are not inconsistent with the Comprehensive Plan. The Comprehensive Plan Generalized Land Use Map identifies the area as a mixed-use area with the land use categories of high-density residential, medium-high density commercial, and production and technical employment. A combination of land use categories is depicted in areas where a variety of uses are to be encouraged. Mixed-use areas include existing commercial areas and areas proposed for significant land use changes.

The high-density residential category anticipates high-rise apartment buildings and may also include low-, moderate-, and medium-density housing. The medium-high density commercial category anticipates a service area that most customers may reach by car, bus or subway, and that generally offers the largest concentration and variety of goods and services outside the Central Employment Area.

The production and technical employment category anticipates restructured industrial land intended to encourage growth industries and industries with a high ratio of employees to land area occupied, such as office support systems, communications, printing and publishing, wholesaling, transportation services, food services, tourism support services, warehousing, and other commercial activities that generally do not occur to a substantial degree in other commercial areas.

The Comprehensive Plan Generalized Land Use Policies Map also identifies much of the area as being a “metrorail station development opportunity area.” Chapter 11, Land Use, of the Comprehensive Plan (the Plan) describes development opportunity areas as “areas that offer opportunities to accommodate new growth and development.” (§ 1118.3) The Plan further states that development opportunity areas usually are areas with a significant amount of vacant or poorly used land, areas that exhibit potential for successful joint public and private initiatives, represent unrealized employment and economic development potential, and areas where development can be used to improve neighborhood quality and stability. (§ 1118.4)

Proposed Rulemaking

The Commission took proposed action on April 19, 2002. Several changes were made to the advertised text at that time.

1. Hotel Uses

The Commission decided that hotel uses should not be considered residential uses, both for the purpose of calculating the maximum amount of non-residential FAR or for earning bonus residential density in the CG\CR Districts. In the CG/W Zone Districts, the Zoning Commission voted to allow hotel use to be considered a residential use, but not to generate bonus density. The Commission considered it appropriate to hold a hearing on the issue, which was held on September 26, 2002.

Written and oral testimony was presented by Allison Prince of the law firm Shaw Pitman, LLP, on behalf of Riverside Associates Limited Partnership, then a property owner within the proposed CG/CR district, in opposition to the prohibition. Ms. Prince contended that restricting hotel use to commercial FAR could prevent “the economic conditions necessary to sustain a comprehensive urban renewal.”

2. Existing Industrial Uses

The advertised text would have recognized existing industrial uses as conforming. The Zoning Commission concluded that the existing commercial or industrial uses that are first permitted in a

CM or M industrial zone should not be permitted to expand, because the uses are inconsistent with the intent of these map and text amendments, and the Commission's vision for the Overlay area. The Commission recognized the importance of the uses to the District, but concluded that allowing the expansion of such uses would be contrary to the efforts to change the character of the area and stimulate redevelopment of the Overlay area as a residential and commercial mixed-use community. Therefore, the Zoning Commission modified the advertised language to deem existing industrial uses conforming, but to prohibit their expansion.

3. Consolidated Proceedings

Where it took a proposed action, the Commission also voted to include text that would permit applicants seeking Zoning Commission approval of properties located along M Street or within the CG/W-2 zone district to also request any additional special exception or variance relief necessary in order for the project to be constructed and used. The Commission included this proposal within the advertised scope of the additional hearing discussed above, but no written or oral comments were received.

4. Overlay Name Change

The case was originally advertised and considered as the Buzzard Point Overlay. The Zoning Commission determined that the name Buzzard Point was not a conducive moniker to creating the sense of a special place as anticipated by the Overlay and map amendments. The Commission, therefore, changed the Overlay's name to Capitol Gateway Overlay because it represents the larger Overlay area.

Additional Map Amendments

Prior to voting to take proposed action, the Zoning Commission also considered requests from the property owners of Squares 700 and 701 to map the Squares CG/C-3-C, high-density commercial, instead of the CG/CR, mixed use zone, as advertised. The Commission decided against the requested change. Establishing C-3-C zoning on the south side of M Street, S.E. would create an undesirable precedent that could easily result in an office enclave along M Street instead of the desired mixed-use community envisioned by the rulemaking. The Commission is aware of the increased presence of the Navy at the Navy Yard and earlier this year approved a nearby planned unit development ("PUD") for the proposed U.S. Department of Transportation Headquarters (ZC Case No. 03-05). Taken together, this increase in federal activity could result in increased demand for ancillary office space that would preclude the desired residential development necessary to the mixed-use community the Overlay area is trying to create.

The Zoning Commission considered a request from the property owners of the Capital Point PUD (Zoning Commission Case No. 90-20F/87-04, also known as the Riverside PUD) to map the base zone of their site CG/CR (which is the zone designation made by the PUD-related map amendment). The site was advertised to be rezoned CG/W-1 and CG/W-3. Since that time, the site was taken by United States Army through the filing of an eminent domain proceeding, so that the issue raised is now moot.

Referral to National Capital Planning Commission

The proposed rulemaking was referred to the National Capital Planning Commission (“NCPC”) as required by § 492 of the District of Columbia Charter. NCPC, by report dated October 3, 2002, found that the proposed text and map amendments will neither adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

NCPC, however, expressed concern that it would not be referred applications that sought Zoning Commission approval of uses and structures within the CG/W-2 zone district, as provided for in § 1603. NCPC felt such referrals would be appropriate given the federal interest in the Anacostia Waterfront Initiative and in South Capitol Street and Potomac Avenue, which are designated Special Streets in the Preservation and Historic Features Element of the Comprehensive Plan, and also due to the proximity of the Southeast Federal Center and Fort Lesley J. McNair, which are federal facilities directly adjacent to the rezoning area.

Final Rulemaking

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on October 28, 2002. A supplemental vote was taken on November 18, 2002, to add a provision including the NCPC in the agency referral process prior to the Zoning Commission’s consideration of projects within the CG/W-2 district. The Commission recognized that, unlike a typical special exception application, the approval process for these properties will not be reviewed by NCPC through its representative on the Board of Zoning Adjustment. The Commission agreed with NCPC that there are significant areas of federal interest adjacent to this portion of the Overlay.

The Commission also decided to retain the provisions of the Overlay that pertained to hotel use, which was the subject of the hearing held after proposed action was taken. The Commission continues to believe that a concentration of hotel uses would not create the permanent residential community that was intended by the Overlay and that a critical mass of housing is necessary to create new neighborhoods. Therefore, hotel uses should not be considered residential for the purposes of calculating the maximum amount of non-residential uses permitted or for earning bonus density.

Events Occurring After Final Action

As a result of the set down rule, 11 DCMR § 3202.5, the rezoning made permanent by the publication of this Order has actually been in place since August 15, 2001, the date on which the advertisement of these revised rules was published in the *D.C. Register*.

Since the Commission took final action in November of 2002, properties both within and adjacent to the Overlay have been the subject of several Zoning Commission actions and proposed development initiatives. As noted, the Commission approved the planned unit development for the U.S. Department of Transportation Headquarters and the proposed Riverside PUD has been withdrawn as a result of the condemnation of the property by the Army.

In addition, the Commission approved map and text amendments to establish the Southeast Federal Center Overlay, which includes the new W-0 Zone District. The Commission also denied a request to extend the Florida Rock PUD, but granted an extension to the first stage approval. A second stage application has since been filed and set down for hearing. In February 2004, the Commission granted first stage and consolidated PUD approvals of a mixed-use project that will replace and redevelop the Arthur Capper/Carrollsborg complex. Lastly, the Commission is aware that the Mayor has identified a portion of the Overlay as the site for a proposed stadium to house the Washington Nationals major league baseball team and that the District Department of Transportation is studying the South Capitol Street corridor and the replacement of the Frederick Douglass Bridge.

In recognition of these intervening events, the current membership of the Commission has taken the opportunity to review this order. It is the consensus of the Commission that no change to the rezoning actions or text is necessary at this time. As development within the Overlay proceeds, the Commission would anticipate that the Office of Planning would suggest any needed revisions.

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 Title 11 of the Zoning Regulations, 11 DCMR, and the following amendments to the Zoning Map of the District of Columbia:

A. Amend the Zoning Map of the District of Columbia as follows:

1. Rezone from C-M-1 to C-2-C:

Those lots now zoned C-M-1 in Squares 651 and 653.

2. Rezone from C-3-C to CG/C-3-C:

Square 698, Lots 1, 20, 23, 801, 805, 807, and 813.

Square 699, Lots 816 and the southern part of Lot 28, to a depth of 145 feet from M Street, S.E.

Square N743, Lots 44 through 53, 58, 59, 63 through 66, 800, 816, and 817.

Square 742, Lots 27 through 29, 36, 37, and the southern part of Lot 826, to a depth of 145 feet from M Street, S.E.

Square 769, the southern parts of Lots 18, 20, 21, and 821, to a depth of 145 feet from M Street, S.E.

Square 800, Lot 22.

3. Rezone from C-M-2 to CG/CR:

All of Squares 603, 657, 658, 700, 701, 702, 704, and those lots now zoned C-M-2 in Squares 601 and 656.

4. Rezone from M to CG/CR:

All of Squares 605, 607, 609, 611, 660, 661, 662, E662, 664, 703, 705, 706, and the Square 665 except that portion within 400 feet of the V Street, SW right-of-way line.

5. Rezone from M to CG/W-2:

Squares 612, 613, E664, 666, E667, S667, ES667, 707, 708, S708, E708, S744, Lot 800 in Square 771, and the southern part of Square 665, for a distance of 400 feet north of the right-of-way line of V Street, SW.

6. Rezone from W-1 and W-3 TO CG/W-1 and CG/W-3:

Square 602.

B. Title 11 DCMR, ZONING, is amended as follows. Deleted wording is shown in ~~strike-through~~ lettering and added wording is shown **bolded** and underlined:

1. Amend Chapter 1, § 105.1, to add a new subparagraph (p) to read as follows:

(p) CAPITOL GATEWAY (CG) OVERLAY DISTRICT.

2. Amend Chapter 6, Mixed use (commercial Residential) Districts, § 631.2 to read as follows:

631.2 For the purposes of this section, the term “residential purposes” shall include dwellings, flats, multiple dwellings, rooming and boarding houses, community-based residential facilities, inns, and guest room areas and service areas within hotels, except that this term shall not include guest room areas and service areas within hotels located or proposed to be located on CR zoned property **in the Capital Gateway Overlay District as established by Chapter 16 of this Title** or the Southeast Federal Center Overlay District established by chapter 18 of this Title.

3. Amend Chapter 30, Zoning Commission Rules of Practice and Procedure, as follows:

a. Section 3010.2 is amended to read as follows:

3010.2 Contested cases are adjudicatory in nature; present issues for resolution at a public hearing that potentially will affect a relatively small number of persons or properties; and involve primarily questions of fact applicable to a small number of persons or properties, while broader issues of public policy are secondary concerns. Contested cases include, without limitation, the following:

- (a) Planned unit developments filed according to chapter 24 of this title;
- (b) Requests for zoning map amendments filed by the property owner or owners for a single property or for multiple properties that are contiguous or are only separated by a street or alley;
- (c) Applications for air space development; and
- (d) Applications for Zoning Commission review and approval pursuant to Chapters **16 and** 18 of this Title.

b. Section 3011.1 is amended to read as follows:

3011.1 As soon as an application or petition is accepted for filing by the Director of the Office of Zoning, the Director shall place a copy of the application or petition in the public record of the Commission and refer a copy to the D.C. Office of Planning for review and recommendation on whether the matter should be processed further, except that applications for Zoning Commission review and approval filed pursuant to Chapters **16 and** 18 of this Title, which are deemed complete by the Director, shall be immediately scheduled for hearing consistent with the notice provisions of this chapter.

c. The second sentence of § 3012.1 is amended to read as follows:

As soon as an application requesting Zoning Commission review and approval pursuant to Chapter **16 or** 18 of this Title is accepted for filing by the Director of the Office of Zoning, a copy of the application shall be referred to the D.C. Office of Planning and other appropriate agencies **for review and comment,** ~~as well as~~ **A copy shall also be sent** to the National Capital Planning Commission, for review and comment, **of all Chapter 16 applications and those applications for approval pursuant to 11 DCMR § 1603.**

d. Section 3015.4 is amended to read as follows:

3015.4 When a Zoning Map amendment, planned unit development, ~~or~~ air space development, or Zoning Commission review and approval pursuant to Chapters **16 and** 18 is requested by a property owner for the property owned, the applicant shall give additional notice of the public hearing by posting the property with notice of hearing at least forty (40) days in advance of the hearing.

e. Section 3022.1 is amended to read as follows:

3022.1 The contested case procedures in § 10 of the D.C. Administrative Procedure Act, D.C. Official Code § 2-509, and this section shall apply to applications for a change in the Zoning Map pursuant to § 102 and to applications for planned unit developments, air space developments, and similar plan review activities of the Commission, including those required by Chapters **16 and** 18 of this Title, except as otherwise provided in § 3010.7.

f. Section 3027 is amended by adding a new subsection 3027.4 to read as follows:

3027.4 The Commission need not take proposed action with respect to an application for Zoning Commission review and approval pursuant to Chapters **16 and** 18, but may take final action in accordance with § 3028, either at the close of the hearing or at a subsequent public meeting.

4. Add a new Chapter 16, to read as follows:

CHAPTER 16 CAPITOL GATEWAY OVERLAY DISTRICT

1600 PREAMBLE

1600.1 The Capitol Gateway (CG) Overlay District is applied to the Buzzard Point and Capitol Gateway areas, which are designated for mixed use development in the Comprehensive Plan for the National Capital. The following Squares and portions of Squares in the Southwest and Southeast quadrants of the District of Columbia are included in the CG Overlay District: 601, 602, 603, 605, 607, 609, 611, 612, 613, 656, 657, 658, 660, 661, 662, E662, 664, E664, 665, 666, E667, S667, ES667, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, E708, S708, 742, N743, S744, 769, 771, and 800.

1600.2 The purposes of the CG Overlay District are to:

- (a) Assure development of the area with a mixture of residential and commercial uses, and a suitable height, bulk and design of buildings, as

generally indicated in the Comprehensive Plan and recommended by planning studies of the area;

- (b) Encourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural and hotel or inn uses;
- (c) Allow for continuation of existing industrial uses, which are important economic assets to the city, during the extended period projected for redevelopment;
- (d) Provide for a reduced height and bulk of buildings along the Anacostia riverfront in the interest of ensuring views over and around waterfront buildings, and provide for continuous public open space along the waterfront with frequent public access points; and
- (e) Require suitable ground-level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Yard Metrorail station.

1600.3 The CG Overlay District and the underlying CR, W-1, W-2, W-3, and C-3-C Districts shall constitute the Zoning Regulations for the geographic area referred to in § 1600.1. Where there are conflicts between this chapter and the underlying zoning, the provisions of the CG Overlay District shall govern.

1601 BONUS DENSITY AND HEIGHT

1601.1 In the CG/CR and CG/W-3 Districts, a building or combined lot development shall be allowed a maximum density of 7.0 FAR; provided that the additional 1.0 FAR in excess of the matter-of-right maximum of 6.0 FAR shall be devoted solely to residential uses, which, for the purposes of this subsection, does not include hotel uses.

1601.2 For the purpose of accommodating bonus density as authorized by § 1601.1, the maximum permitted building height 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; D.C. Official Code §§ 6-601.01 to 6-601.09), as amended; provided that in Squares 601, 656, and 657 those lots abutting or separated only by a street or alley from residentially zoned property shall provide a one-to-one (1:1) building setback for any part of a building that exceeds ninety (90) feet in height on the side abutting the residential zone.

1601.3 In the CG/W-1 District, a building or combined lot development shall be allowed a maximum density of 3.5 FAR and a maximum height of fifty-five (55) feet to accommodate the additional density. The additional 1.0 FAR in excess of the matter-of-right maximum of 2.5 FAR shall be devoted solely to residential uses unless the building or the combined lot development includes at least 2.0 FAR of residential uses, in which case the additional 1.0 FAR may be devoted to any

permitted use in the W-1 zone. For the purposes of this subsection, the term “residential uses” does not include hotel uses.

1601.4 In the CG/W-2 District, the Zoning Commission may grant additional density to lots as part of the review and approval process applicable to that area, in the manner set forth in §§ 1603.5 and 1603.6.

1601.5 A building that qualifies as a Capitol South Receiving Zone site under § 1709.18 shall be subject to the maximum height and bulk limits of § 1709.21 of this Title.

1602 COMBINED LOT DEVELOPMENT

1602.1 Two (2) or more lots within the Overlay District may be combined for the purpose of allocating residential and nonresidential uses regardless of the normal limitation on floor area by uses on each lot; provided, that the aggregate residential and nonresidential floor area shall not exceed the matter-of-right maximum height or density of the underlying zone district(s), except when bonus density is being constructed.

1602.2 No allocation of gross floor area shall be effective unless an instrument, legally sufficient to effect such a transfer, is filed with the Zoning Administrator and recorded by the Recorder of Deeds in the land records against all lots included in the combined lot development.

1602.3 The instrument shall be in the form of a declaration of covenants that:

- (a) Is signed by the owners of all affected lots;
- (b) Runs with the land in perpetuity;
- (c) Burdens all lots involved in the allocation of gross floor area;
- (d) Binds the present and future owners of the lot sending nonresidential gross floor area to forgo the nonresidential development and occupation of an on-site area equal to the amount of gross floor area of nonresidential uses transferred; and
- (e) States the maximum permitted gross floor areas for all uses in all lots, the maximum allowed gross floor area for nonresidential uses in all lots, and the gross floor area of nonresidential uses allocated. The covenant shall further state that, after the transfer, the combined lots conform with the maximum gross floor area limitations for nonresidential uses on the lots before the transfer.

1602.4 The declaration of covenants shall expressly state that it may be substantively amended or terminated only with the approval of the Zoning Commission, after

public hearing, and only upon a finding that the proposed amendment or termination is fully justified and consistent with the purposes of this chapter.

1602.5 The declaration of covenants shall be approved in content by the Zoning Administrator and certified for legal sufficiency by the Office of the Attorney General. The declaration shall also contain a written statement by the Director of the D.C. Office of Planning attesting to:

- (a) The lots' eligibility to allocate residential and nonresidential uses;
- (b) The accuracy of the computations with respect to the amount of residential and nonresidential uses allocated; and
- (c) Whether, after the transfer, the combined lots will conform with the maximum gross floor area limitations on nonresidential uses for the lots before any such transfer.

1603 ZONING COMMISSION REVIEW OF BUILDINGS, STRUCTURES, AND USES IN THE CG/W-2 DISTRICT

1603.1 All proposed uses, buildings, and structures in the CG/W-2 District, or any proposed exterior renovation to any existing buildings or structures in the CG/W-2 District that would result in an alteration of the exterior design, shall be subject to review and approval by the Zoning Commission.

1603.2 In addition to proving that the proposed use, building, or structure meets the standards set forth in § 3104, the applicant shall further demonstrate that the use, building, or structure:

- (a) Will help achieve the desired mixture of uses in the CG Overlay District as set forth in §§ 1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail or service uses; and
- (b) In the case of waterfront lots, provides suitably designed public open space along the waterfront, as specified in § 1603.3.

1603.3 With respect to a building or structure to be constructed on a lot that faces or abuts the Anacostia River:

- (a) The building or structure shall be set back by no less than seventy-five (75) feet from the bulkhead, unless the Commission finds that such setback creates an undue economic hardship for the owner of the lot and in no case less than fifty (50) feet from the bulkhead; and
- (b) The application shall include a plan for suitable open space treatment of the setback area for such uses as walkway and bikeway, passive or active

recreational use, and including provisions assuring private maintenance of the space, convenient and permanent public access to the space, and suitable connections to adjacent public space along the waterfront.

- 1603.4 With respect to all applications, the proposed building or structure shall be designed with a height, bulk, and siting so as to provide for openness of views and vistas to and from the waterfront and, where practical, to maintain views of federal monumental buildings.
- 1603.5 The Zoning Commission, at its discretion, may also provide for additional on-site or off-site bonus density to be earned for setbacks required under this section, based on the land area of the setback and the proposed features for public open space uses; provided, that 2.0 FAR based on the land area of the open space setback shall be used as a general guideline.
- 1603.6 In the CG/W-2 District, the Zoning Commission, at its discretion, may grant bonus density for residential development in a building or a combined lot development, using a guideline of 1.0 FAR in excess of the normally allowed maximum of 4.0 FAR and an additional ten (10) feet in excess of the normally allowed maximum height of sixty (60) feet; provided that:
- (a) The building or combined lot development shall include at least 2.0 FAR of residential development;
 - (b) The Zoning Commission, at its discretion, may allow construction of such bonus density on the property zoned CG/W-2 or may allow only for the bonus density to be transferred off-site to a lot or lots zoned CG/CR; and
 - (c) The provisions of §§ 1709.6 through 1709.12 and § 1709.14 shall govern the procedures for transferring bonus density off-site if permitted by the Commission.
- 1603.7 The Commission may hear and decide any additional requests for special exception or variance relief needed for the subject property. Such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval.
- 1603.8 At the time of filing an application with the Commission, the applicant shall pay the filing fee specified in § 3180.1(b)(16), plus such fees as apply to any additional zoning relief requested. The provisions of § 3181 relating to the administration of fees shall apply, except that the applicant may appeal any decision of the Director regarding the fee schedule to the Commission, which shall decide the appeal as a preliminary matter to hearing the application.

1604 ZONING COMMISSION REVIEW OF BUILDINGS AND STRUCTURES ON M STREET, S.E.

- 1604.1 Any proposed building on a lot that abuts M Street, S.E., between South Capitol Street and 4th Street, S.E., shall be subject to review and approval by the Zoning Commission.
- 1604.2 An applicant requesting approval under this section must prove that the proposed building's architectural design, site plan, landscaping, and sidewalk treatment are of a superior quality, pursuant to the design and use requirements set forth in §§ 1604.3 through 1604.7.
- 1604.3 The streetwall of each new building shall be set back for its entire height and frontage along M Street not less than fifteen (15) feet measured from the face of the adjacent curb along M Street, S.E.
- 1604.4 Each new building shall devote not less than thirty-five percent (35%) of the gross floor area of the ground floor to retail, service, entertainment, or arts uses ("preferred uses") as permitted in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of this Title; provided, that the following uses shall not be permitted: automobile, laundry, drive-through accessory to any use, gasoline service stations, and office uses (other than those accessory to the administration, maintenance, or leasing of the building). Such preferred uses shall occupy 100% of the building's street frontage along M Street, except for space devoted to building entrances or required to be devoted to fire control.
- 1604.5 For good cause shown, the Commission may authorize interim occupancy of the preferred use space required by § 1604.4 by non-preferred uses for up to a five (5) year period; provided, that the ground floor space is suitably designed for future occupancy by the preferred uses.
- 1604.6 Not less than fifty percent (50%) of the surface area of the streetwall of any new building along M Street shall be devoted to display windows having clear or low-emissivity glass except for decorative accent, and to entrances to commercial uses or the building.
- 1604.7 No driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building.
- 1604.8 A building that qualifies as a Capitol South Receiving Zone site under § 1709.18 and for which a building permit has been applied for prior to August 31, 2001, shall not be subject to the requirements of this section.
- 1604.9 The Commission may hear and decide any additional requests for special exception or variance relief needed for the subject property. Such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval.

1604.10 At the time of filing an application with the Commission, the applicant shall pay the filing fee specified in § 3180.1(b)(16), plus such fees as apply to any additional zoning relief requested. The provisions of § 3181 relating to the administration of fees shall apply, except that the applicant may appeal any decision of the Director regarding the fee schedule to the Commission, which shall decide the appeal as a preliminary matter to hearing the application.

1605 EXISTING INDUSTRIAL USES

1605.1 A commercial or industrial use that is first permitted in the CM or M Zone Districts and that is in existence with a valid Certificate of Occupancy as of the date the provisions of this Chapter first became effective shall be deemed a conforming use, but shall not be entitled to expand.

1699 DEFINITIONS

1699.1 When used in this chapter, the term “residential uses” shall have the same meaning as the term “residential purposes” as set forth in § 631.2, except as otherwise qualified. See § 1601.3 for example.

Vote of the Zoning Commission taken at its public hearing on April 19, 2002, to approve the proposed rulemaking 5-0-0 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, James H. Hannaham, and Herbert Franklin to approve).

Final rulemaking action taken by the Zoning Commission at its meeting on October 28, 2002, by a vote of 4-0-1 (Carol J. Mitten, John G. Parsons, Herbert Franklin, Anthony J. Hood to approve; James H. Hannaham, not present, not voting).

Supplemental vote to add the NCRC provision taken by the Zoning Commission at its meeting on November 18, 2002, by a vote of 5-0-0 (John G. Parsons, Anthony J. Hood, Carol J. Mitten, and James H. Hannaham to approve; Herbert Franklin to approve by absentee ballot).

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 JAN - 7 2005.



CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

and

ORDER NO.

Z.C. Case No. Case No. 96-3/89-1

(Text and Map Amendments – 11 DCMR)

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

and

Z.C. ORDER NO. 05-08

Z.C. Case No. 05-08

(Text Amendments – 11 DCMR)

(Text Amendment - Capitol Gateway Overlay District)

October 17, 2005

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 and § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §§ 6-641.01 and 6-641.07) (2001); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to of § 492 of the District of Columbia Home Rule Act hereby gives notice of the adoption of the following amendments to Chapters 16 (Capitol Gateway Overlay District) and 30 (Zoning Commission Rules of Practice and Procedure).

A notice of proposed rulemaking was published on July 29, 2005, at 50 DCR 7838. Comments were received from the National Capital Planning Commission. In addition, the Office of Planning submitted a supplementary report providing information requested by the Zoning Commission at the proposed action public meeting.

The Commission took final action to adopt the amendments at a public meeting held on October 17, 2005.

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

Set Down Proceeding

The Commission initiated this rulemaking in response to a petition from the District of Columbia Office of Planning, which recommended text amendments to the existing Capitol Gateway Overlay District. This petition followed the announcement from the Mayor in September 2004 that an agreement had been reached with Major League Baseball for the return of a major league team to Washington D.C. This agreement includes a requirement for the construction of a new baseball stadium in the Near Southeast within Squares 702-706 and Reservation 247, adjacent to South Capitol Street between N Street S.E. and Potomac Avenue S.E., as well as a number of more specific obligations for the new structure, such as seating and parking requirements. In December 2004, the Council of the District of Columbia adopted the Ballpark Omnibus

Financing and Revenue Act of 2004, effective April 8, 2005 (D.C. Law 15-320; 52 DCR 1757), which provides for the financing of the ballpark. As the baseball use for this site has been established by the Mayor and the Council, the Office of Planning proposed that the Capitol Gateway Overlay District be amended as it applies to the subject site, to:

- Provide a definition for a "Ballpark" and a "Ballpark Area";
- Provide for a District and Major League Baseball and in accordance with adopted Council policy; and
- Establish a Commission review and approval process and design guidelines for a ballpark and associated uses.

At its March 14, 2005 regular meeting, the Commission agreed to set down the proposed rulemaking for a public hearing. A Notice of Public Hearing was published in the April 1, 2005 edition of the *D.C. Register* (52 DCR 3246), for a Public Hearing to be held on June 2, 2005.

Description of Text Amendment

The Office of Planning proposed that the Capital Gateway Overlay District be amended to recognize a ballpark as a permitted use subject to design criteria and Commission approval of the design. Specifically, the proposed amendments would:

- Define a "Ballpark" as a "stadium or arena, including accessory buildings or structures (including, but not limited to office and transportation facilities) that has as its primary purpose the hosting of professional athletic team events", and define the "Ballpark Area" as the subject site, consisting of Squares 702-706 and Reservation 247.
- Make explicit that a ballpark is a permitted use on the subject site.
- Allow for a non-residential density of 6.0 floor area ratio ("FAR") within the Ballpark Area.
- Provide for a maximum height of 130 feet.
- Establish a building setback requirement of fifteen (15) feet along South Capitol Street; require sixty percent (60%) of the façade to be constructed to that setback line; and establish a one-to-one (1:1) setback for the building above a height of 100 feet.
- Establish a parking requirement that would also operate as a cap, require all such parking to be underground, and allow for Commission approval to diverge from these requirements.
- Require that all loading facilities and any bus parking be internal to buildings, but provide for Commission to grant relief from this requirement.
- Require twenty percent (20%) of the ground floor of all new buildings (including the Ballpark) to be devoted to retail and other public uses, to encourage streetscape vitality and safety throughout the year.

- Prohibit new driveway access for loading or parking from either South Capitol Street or P Street S.E.
- Require Commission review of any proposed new building or structure, including a ballpark, in the subject area against a specific set of objectives and guidelines for the area, intended to ensure that siting, architectural design, site plan, landscaping, and sidewalk treatment will address potential neighborhood and streetscape impacts. An application may be scheduled for hearing, without the Commission first holding a “set down” proceeding, if the application is accompanied by a written report from the Office of Planning certifying that the application is compliant with the established standards, prior to any Commission review.
- Permit the Commission to consider requests for additional zoning relief, such as special exceptions or variances, as part of the required review.

Relationship to the Comprehensive Plan

The proposed amendments to the CG Overlay would further a number of major themes of the Comprehensive Plan, as outlined and detailed in Chapter 1 - General Provisions Element, including:

- (a) Stabilizing and improving the District's neighborhoods*
- (e) Respecting and improving the physical character of the District*
- (f) Preserving and ensuring community input*
- (g) Preserving the historic character of the District*
- (i) Promoting enhanced public safety*

The proposal would also help to ensure that eventual construction on the subject site furthers Economic Development, Environmental Protection, Transportation, Urban Design, and Land Use goals and objectives of the Comprehensive Plan, as well as Ward 6 Economic Development, Transportation, Urban Design, and Land Use objectives.

The area is designated on the Generalized Land Use Map as mixed Production and Technical Employment; Medium to High Density Commercial, “a shopping and service area that generally offers the largest concentration and variety of goods and services outside the Central Employment Area;” and High Density Residential (Comprehensive Land Use Map). This designation generally corresponds to zoning currently on the site. A ballpark would not be inconsistent with this designation, particularly since the Generalized Land Use Map does not include a fully relevant land use category. The site is within the Navy Yard Metro Development Area, and within the Central Employment Area, the core area of the District where the greatest concentration of employment in the city and region is encouraged.

Public Hearing

The Commission held a public hearing on this case on June 2, 2005. Commission members present were Vice Chairperson Anthony J. Hood, and Commissioners Kevin L. Hildebrand, Gregory N. Jeffries, and John G. Parsons.

In its testimony, the Office of Planning used a PowerPoint presentation to describe the site and surrounding area, and how the proposed text amendment would further general planning objectives for the Ballpark site and for the Near Southeast area in general. The Office of Planning included in its presentation objectives related to encouraging active streetscapes, minimizing negative impacts on surrounding residential communities, providing access to the waterfront, ensuring neighborhood connectivity, enabling traffic management, encouraging "green" design, and providing for neighborhood input, as well as responding to the agreement between Major League Baseball and the District.

In response to comments made by the Commission at set down, and comments made by ANC commissioners at ANC meetings, other District government departments, and members of the public, the Office of Planning proposed a number of modifications to the draft as presented to the Commission in concept form at the set-down meeting and advertised for public hearing. These changes were described in a report to the Commission from the Office of Planning dated May 23, 2005. Generally, the changes were intended to provide clarity or to provide additional direction with regards to their intent and priorities, and included the following:

- Remove "office use" from the list of the preferred use retail types;
- Allow parking access driveway from P Street S.E.;
- Separate review guidelines into two separate clauses – one to address neighborhood impact and the second to address building form;
- Add review guideline provisions to minimize parking and traffic conflicts between Ballpark patrons and neighborhood residents and to encourage use of bicycles and other alternative modes of transportation;
- Separate the view analysis provision into two – one addressing openness of views from multiple points around the ballpark and one to address views from the stadium seating;
- Note the existing low density residential neighborhood as part of South Capitol Street character;
- Expand the "active streetscape" provision to include articulation and landscape design in addition to active uses;
- Refer to stormwater management and recycling as part of best practice environmental design assessment; and
- Note that the provision addressing signage is intended to apply to external signage only.

The Commission questioned the Office of Planning on issues related to Ballpark height and method of measurement; view shed analysis; other potential development on the Ballpark site;

traffic and proposed parking regulations; signage regulations; and the proposed design review process.

No other District government department or agency testified before the Commission. The report from the Office of Planning included comments from the Department of Housing and Community Development which noted support, and the Department of Employment Services which noted, in essence, no concerns with this text amendment.

Advisory Neighborhood Commission ("ANC") 6D, within which the site lies that is the focus of the proposed text amendment, provided written and verbal testimony in opposition to the text amendment. At its May 9, 2005 meeting, the ANC unanimously voted to oppose the text amendment, for the following reasons:

- Opposition to the chosen Ballpark site;
- Insufficient prioritization of neighborhood protection related guidelines over building design guidelines;
- Insufficient on-site parking required;
- Impacts of vehicular and pedestrian (from Metro station) traffic through existing neighborhoods and along M Street;
- Insufficient bus parking, and the need to ensure that buses do not use local streets through neighborhoods to access the ballpark;
- Inclusion of a guideline related to assessment of views from the stadium;
- Insufficient community engagement in planning and design for the stadium site;
- Potential north-west orientation of the ballpark having a greater neighborhood impact than a more southerly orientation;
- Potential light spill from the ballpark;
- Emergency Preparedness; and
- Lack of comprehensive traffic management planning given the many new area developments.

One area resident testified in support of the proposal noting the urban context for the site and the need to integrate the site into the surrounding neighborhood. In addition, a written submission in support of the text amendment was received from the Anacostia Waterfront Corporation.

The Southwest Neighborhood Assembly in written and verbal testimony at the Public Hearing recommended that the Commission not take action on this proposal at this time, pending resolution of concerns related to:

- The cumulative amount of (re)development in the general area;
- Lack of confidence that the tax revenues generated will match expenditures; and
- Loss of industrial lands.

Four area residents, including two ANC 6D Commissioners, testified in opposition, based upon the potential adverse impact of the proposed use on:

- The Federal presence and Homeland Security;
- Adjacent residential communities;
- The ability to clean up the Anacostia River;
- Views from area residential units; and
- Traffic and parking in residential areas.

The Commission left the record open for receipt of ANC 6D's report that met the requirements of 11 DCMR § 3012.5; a written presentation from the SWNA; and additional analysis by the Office of Planning regarding scoreboard design, the design approval process, height measurement, view impacts, traffic and mitigation, and case studies of other ballparks in urban settings.

In its written testimony dated June 27, 2005, the SWNA reiterated its recommendation that the Commission not take action on the proposal until it is determined that the South Capitol Street site is the most suitable and financially beneficial site for the city and the ball team. The SWNA report also noted a need to amend the Comprehensive Plan Generalized Land Use Map, and questioned the potential tax revenue lost; the use of eminent domain to acquire land; and "spot zoning".

Proposed Rulemaking

Following the public hearing, the Commission took proposed action pursuant to 11 DCMR § 3027.2 at a regular meeting on July 11, 2005. The Office of Planning, in a report dated June 30, 2005, provided additional information on other comparably sited ballparks. In response to this additional analysis and concerns and issues raised by the Commission and members of the public at the Public Hearing, the Office of Planning made the following recommendations including:

- The limitations on FAR, heights, and step-backs proposed in the text amendment should remain generally as proposed to adequately accommodate a new ballpark building;
- A multi-faceted approach is necessary to address accessibility to the ballpark, including various forms of public transportation, safe pedestrian routes, taxis, ferries, bicycles, buses, and remote parking to compliment (or in some cases replace) driving and parking adjacent to the stadium, to reduce traffic impacts;
- An amendment to clarify §1616.5 to add a clause specifically describing how height will be measured for a Ballpark;
- A minor wording clarification to the view analysis requirement of §1606.19, and possible deletion of § 1606.20 in response to concerns raised by the community;

- Addition of a new guideline provision in § 1606.19 to provide for specific review of the scoreboard and other signage for safety, enjoyment of adjacent residential property and impact the character and integrity of the ballpark site;
- That the maximum amount of relief from required retail (§ 1605.14) not be limited, but the report provided the necessary amendment language to §1604.15 should the Commission decide to do so;
- No change to the bus parking requirement (§1606.10) or relief (§ 1606.11) provisions; and
- A new provision, § 1606.24, which would provide an opportunity for the Commission to give preliminary comments regarding the submitted ballpark design proposal subsequent to submission of an application but prior to the hearing.

The Commission accepted most of these recommendations, but decided to limit the amount of relief that may be granted from the ground floor retail requirement of § 1605.14 to fifty percent (50%).

A Notice of Proposed Rulemaking was published in the *D.C. Register* on July 29, 2005 at 50 DCR 7838, for a 30-day notice and comment period.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") in accordance with the provisions of § 492 of the District of Columbia Home Rule Act. NCPC reviewed this proposal at its meeting of August 4, 2005, and by report dated August 10, 2005, found that the text amendment would not in itself adversely affect the identified federal interests. The NCPC noted:

- (a) Retail space should be utilized to articulate the South Capitol façade;
- (b) Stadium lighting should be designed to minimize adverse night views of the illuminated Capitol Dome;
- (c) The definition of stadium height should include light standards;
- (d) Internal and external signage should be designed to minimize adverse affect on the Capitol building, the waterfront, and South Capitol Street;
- (e) Parking facilities should be located interior to the site and below grade, and that compliance not be limited by adverse impacts on the economic viability of the ballpark;
- (f) Total number of parking spaces should be limited to 1,225 unless otherwise demonstrated that more are needed and can be accomplished without adverse impact;
- (g) A higher percentage than the required sixty percent (60%) of the South Capitol Street façade be built to the setback line, and that building articulation not be used as a substitute for street level activity; and
- (h) That security concerns of the Architect of the Capitol and the Capitol Police Board be given due consideration in the Ballpark design process.

In a submission dated August 29, 2005, the United States Capitol Police Board requested that the process for review of the final design include an opportunity for timely and meaningful input from the Capitol Police Board with regards to building height and sightlines to address its security concerns.

The Office of Planning submitted a Supplemental Report dated September 2, 2005, providing additional information on similarly sited ballparks, and noting no concerns with limiting the amount of relief from the required retail requirement of §1614 as discussed above.

The Office of Zoning did not receive any other submissions in response to the notice.

Final Rulemaking

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on October 17, 2005. In response to the security issues raised by United States Capitol Police and NCPC, the Commission decided to refer all design review applications to the Capitol Police Board for review and comment. In addition, the Commission decided to revise proposed § 1606.19 to require that the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation of any building within the ballpark site must minimize potential impacts to the United States Capitol. As proposed, the subsection only addressed potential impacts to the neighborhood.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency and that no re-advertisement or re-publication of the proposed rule is required by virtue of the changes made.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations 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 16 (Capitol Gateway Overlay District), and 30 (Zoning Commission Rules of Practice and Procedure) of the Zoning Regulations, Title 11 DCMR.

Added wording to existing provisions is underlined, and deleted wording is shown in ~~strike-through~~ lettering:

- A. Chapter 16, CAPITAL GATEWAY OVERLAY DISTRICT, is amended as follows:
 - 1. Subsection 1600.1, PREAMBLE, is amended by adding a new paragraph (f) to read as follows:
 - (f) Provide for development of Squares 702-706 and Reservation 247 as a ballpark for major league sport and entertainment and associated uses.

2. By adding a new Section 1606 to read as follows:

1606 BALLPARK

- 1606.1 A Ballpark may be constructed and operated within Squares 702, 703, 704, 705, and 706 and Reservation 247 (the "Ballpark Site").
- 1606.2 For the purposes of this section, the term "Ballpark" means a stadium or arena, including accessory buildings or structures (including, but not limited to office and transportation facilities) that has as its primary purpose the hosting of professional athletic team events.
- 1606.3 The Ballpark may also be used to host events customarily held in such facilities including, but not limited to performances, amateur sporting events, municipal functions, and public or private ceremonies.
- 1606.4 Notwithstanding § 631.1 of this Title, no portion of the FAR need be used for residential purposes within the Ballpark Site.
- 1606.5 The Ballpark's maximum permitted height 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; D.C. Official Code §§ 6-601.01 to 6-601.09), as amended. For the purposes of determining height for a Ballpark, height shall mean the vertical distance measured from the level of the curb opposite the middle of the front of the building to the highest point of the building including a scoreboard, roof, cantilevered sunscreen, or parapet, with the exception of elements noted in § 630.3.
- 1606.6 In addition to the streetwall setbacks of §1606.15, any portion of the Ballpark that exceeds 110 feet in height shall provide an additional one-to-one (1:1) step back from the building line along South Capitol Street.
- 1606.7 All parking spaces within the Ballpark Site shall be provided underground. At or above grade parking spaces shall be permitted if approved by the Zoning Commission pursuant to §1606.18; subject to the applicant demonstrating:
- (a) Practical difficulty with the provision of underground parking; and
 - (b) Compliance with the provisions of §§ 1606.19 and 1606.20.
- 1606.8 A maximum of 1,225 vehicular parking spaces shall be provided for the Ballpark use within the Ballpark Site, in addition to bus parking requirements of §1606.10. Of this number, a minimum of 125 shall be designated handicapped parking spaces. Any parking spaces in addition to the 1,225 amount shall be permitted if approved by the Zoning Commission pursuant to §1606.18; subject to the applicant demonstrating:
- (a) That the parking spaces are needed to satisfy parking demand generated by the Ballpark not met by existing or approved but not yet constructed parking facilities; and
 - (b) Compliance with the provisions of §§ 1606.19 and 1606.20.

- 1606.9 In considering whether to approve additional ballpark-related at or above-ground parking spaces under §1606.8, the Zoning Commission shall judge, balance, and reconcile the need for additional on-site parking against any adverse impacts the presence of the parking will have on traffic, and the aesthetics and development of the surrounding neighborhood.
- 1606.10 Any on-site bus parking shall be located internal to a building, with doors and entranceways designed to compliment the building façade, and shall permit safe and convenient vehicular and pedestrian movement.
- 1606.11 The Zoning Commission may grant relief from the requirements of § 1606.10 pursuant to §1606.18 if necessary to the economic viability of the Ballpark and if consistent with the purposes of the CG Overlay as stated in §1600.2 and the provisions of §§ 1606.19 and 1606.20.
- 1606.12 Loading platforms and berths for the Ballpark shall be located internal to a building, with doors and entranceways designed to compliment the building façade, and shall permit safe and convenient vehicular and pedestrian movement.
- 1606.13 A minimum of one pedestrian entrance gate to the Ballpark shall be provided on each street frontage.
- 1606.14 Not less than twenty percent (20%) of the Ballpark building's exterior perimeter frontage, not including any detached accessory building, shall be devoted to retail, service, entertainment, or arts uses ("preferred uses") as permitted in §1807.2 of this Title, with the addition of "museum", in accordance with the following provisions:
- (a) Preferred uses shall have a street orientation;
 - (b) Preferred uses shall provide direct exterior access at ground level;
 - (c) Not less than fifty percent (50%) of area devoted to preferred uses shall be devoted to display windows having clear or low-emissivity;
 - (d) The minimum floor to ceiling height of area devoted to preferred uses shall be fourteen (14) feet clear; and
 - (e) The average depth from the exterior façade in towards the center of the building for space devoted to preferred retail shall be fifty (50) feet minimum.
- 1606.15 The Zoning Commission may grant relief to a maximum of fifty percent (50%) of the amount of space required by § 1606.14 if necessary for the economic viability of the Ballpark and if consistent with the purposes of the CG Overlay as stated in §1600.2 and the provisions of §§1606.19 and 1606.20.
- 1606.16 Each building or structure located on the portion of South Capitol Street that lies within the Ballpark Site shall be set back for its entire height and frontage not less than fifteen (15) feet, provided that a minimum of sixty percent (60%) of the street-wall shall be constructed on the setback line

- 1606.17 No private driveway may be constructed or used from South Capitol Street to any parking or loading berth areas in or adjacent to a building or structure constructed after November 4, 2005.
- 1606.18 The Ballpark and all other proposed buildings or structures within the Ballpark Site shall be subject to the approval of the Zoning Commission in accordance with the provisions of §§1606.19 and 1606.20.
- 1606.19 An applicant requesting approval under this section must prove that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will minimize potential impacts to the neighborhood and the United States Capitol Police Board by:
- (a) Minimizing associated noise, particularly into adjacent residential neighborhoods;
 - (b) Minimizing light spill, particularly into adjacent residential neighborhoods;
 - (c) Minimizing parking and traffic conflict between Ballpark patrons and neighborhood residents;
 - (d) Encouraging the use of bicycles through the provision of safe, secure and convenient bike storage, as well as other forms of alternative transportation to the site;
 - (e) Minimizing conflict between vehicles and pedestrians;
 - (f) Encouraging the design and development of properties in a manner that is sensitive to the establishment of South Capitol Street as a monumental civic boulevard while recognizing the proximate residential neighborhood use and context;
 - (g) Being in context with the surrounding neighborhood and street patterns;
 - (h) Providing view analysis which assesses openness of views and vistas around the Ballpark, including views toward the Capitol Dome, other federal monumental buildings, and the waterfront, from the surrounding neighborhood and neighborhoods east of the Anacostia River, South Capitol Street, the Frederick Douglas Bridge, and the waterfront;
 - (i) Providing for safe and convenient movement to and through the site, including to public transit and to the Anacostia River; and
 - (j) Ensuring that signage on the exterior of building or internal to the ballpark structure but visible from the outside, including the scoreboard, will not have such intensity or brilliance as to cause glare or impair the vision of any driver, or otherwise interfere with the driver's operation of a motor vehicle; adversely impact an owner's enjoyment of residential property located proximate to the ballpark; or impact the character and integrity of the ballpark site.

- 1606.20 In addition to the required provisions of § 1606.19, an applicant requesting approval under this section shall also demonstrate that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation will:
- (a) Help achieve the objectives of the CG Overlay District as set forth in §1600.2;
 - (b) Be of a superior quality;
 - (c) Encourage safe and active streetscapes through building articulation, landscaping, and the provision of active ground level uses including retail, entertainment, cultural, and pedestrian concourse space;
 - (d) Minimize unarticulated blank walls adjacent to public spaces through facade articulation; and
 - (e) Promote the use of best practice environmental design, including minimizing potential impacts on the Anacostia River through stormwater management and recycling practices.
- 1606.21 The Zoning Commission may impose requirements pertaining to building or structure design, appearance, landscaping, signage, lighting, and other such requirements, as it deems necessary to protect neighboring property and to achieve the purposes of the Capitol Gateway Overlay District.
- 1606.22 The Zoning Commission may hear and decide any additional requests for relief from Zoning Regulations for the subject site. Such requests may be advertised, heard, and decided together with the application for Zoning Commission review and approval.
- 1606.23 At the time of filing an application with the Zoning Commission, the applicant shall pay the filing fee specified in § 3180.1(b)(16), plus such fees as apply to any additional zoning relief requested. The provisions of § 3181 relating to the administration of fees shall apply, except that the applicant may appeal any decision of the Director regarding the fee schedule to the Zoning Commission, which shall decide the appeal as a preliminary matter to hearing the application.”
- 1606.24 At any time after the application is filed, but no later than 30 days prior to the hearing date, at the request of one or more Zoning Commission member(s), the Zoning Commission may, at a regular or special public meeting, offer preliminary comment on the design presented. Written notice of the Zoning Commission’s intent to offer preliminary comment shall be provided to the Applicant, ANC 6D, and the Office of Planning. The Office Planning may participate at the meeting only through responding to the Zoning Commission’s questions and offering solutions to any concerns expressed.

B. Chapter 30, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, is amended as follows (new language is shown in bold and underline and deletions in strikethrough).

1. Subsection 3011.1 is amended to read as follows:

3011.1 As soon as an application or petition is accepted for filing by the Director of the Office of Zoning, the Director shall place a copy of the application or petition in the public record of the Commission and refer a copy to the D.C. Office of Planning for review and recommendation on whether the matter should be processed further, except that applications for Zoning Commission review and approval filed pursuant to Chapters 16 and 18 of this Title, which are deemed complete by the Director, shall be immediately scheduled for hearing consistent with the notice provisions of this chapter. **The exception from the requirements of this subsection shall not apply to an application for Zoning Commission approval pursuant to § 1606 unless accompanied by a written report of the Office of Planning certifying that the application is compliant with the standards of that section.**

2. Subsection 3012.1 is amended to read as follows:

3012.1 As soon as an application or petition is set down for a public hearing, the matter shall be referred to the D.C. Office of Planning and any other public agencies that may be requested to provide information and assistance, depending on the nature of the case. As soon as an application requesting Zoning Commission review and approval pursuant to Chapter 16 or 18 of this Title is accepted for filing by the Director of the Office of Zoning, a copy of the application shall be referred to the D.C. Office of Planning and other appropriate agencies for review and comment. A copy shall also be sent **for review and comment** to:

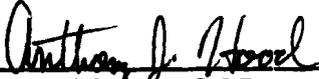
(a) The National Capital Planning Commission ~~for review and comment~~, of all Chapter 18 applications and those applications for approval pursuant to 11 DCMR § 1603; **and**

(b) The Capitol Police Board for those applications for approval pursuant to 11 DCMR § 1606.18.

Vote of the Zoning Commission taken at its public meeting on July 11, 2005, to **APPROVE** the proposed rulemaking: **4-0-1** (Anthony J. Hood, Kevin L. Hildebrand, Gregory N. Jeffries, and John G. Parsons to approve; Carol J. Mitten, having recused herself, not voting).

This order was **ADOPTED** by the Zoning Commission at its public meeting on October 17, 2005, by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Kevin L. Hildebrand, and John G. Parsons to adopt; Carol J. Mitten, having recused herself, 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 - 4 2005.



ANTHONY HOOD
VICE-CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

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

and

Z.C. ORDER NO. 05-10

Z.C. Case No. 05-10

(Text Amendment - 11 DCMR)

(Capitol Gateway (CG) Overlay District – Chapter 16)

January 8, 2007

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, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to Section 492 of the District of Columbia Charter; hereby gives notice of the adoption of the following amendments to Chapters 16 and 30 of the Zoning Regulations (Title 11 DCMR). The amendments place limits on density transferred through combined deployments, extend the Zoning Commission review and approval process and design guidelines to additional properties within the boundaries of the Capitol Gateway ("CG") Overlay, and establish preferred retail and entertainment use requirements and regulations along First and Half Streets S.E. within the area. In addition, the rules impose, within the Overlay, a 15-foot setback and a 1:1 upper story step-back above a height of 110 feet for buildings fronting South Capitol Street; an upper stories step-back for building fronting Half Street S.E.; and a 1:1 upper story step-back above a height of 110 feet for buildings fronting Potomac Avenue S.E. and S.W. ~~The rules also provide for referral to the National Capital Planning Commission of all applications for the review of buildings and uses on lots that abut South Capitol Street. A technical amendment was made to § 1603 to substitute the date "January 7, 2005" in place of the references to "the effective date of this section."~~

A Notice of Proposed Rulemaking was published in the *D.C. Register* on November 10, 2006, at 53 *DCR* 9234. The Commission took final action to adopt the amendments at a public meeting on January 8, 2007. No substantive changes were made to the text as proposed. This final rulemaking is effective upon publication in the *D.C. Register*.

Set Down Proceedings

The Office of Planning ("OP") initiated this rulemaking by filing a report with the Commission. The OP report requested text amendments to the Zoning Regulations to the CG District to establish a Commission review and approval process and design guidelines for certain properties; provide regulations pertaining to existing Combined Lot provisions; establish preferred use

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(retail and entertainment) requirements and regulations at certain locations; and provide for setbacks and upper story step-backs along specific streets within the area.

At its November 14, 2005 public meeting, OP requested that the Commission set down the case for a public hearing. The Commission requested clarification material from OP, which was received at a November 21, 2005 special public meeting. At its December 5, 2005 special public meeting, the Commission agreed to set down the case for a public hearing.

Existing Regulations

On October 28, 2002, the Zoning Commission took Final Action to establish the CG Overlay District, covering portions of the Near Southeast and Southwest (Buzzard Point) areas (Z.C. Case No. 96-3/89-1). The map and text amendments became effective upon the publication of a notice of final rulemaking on January 7, 2005.¹ The CG Overlay is mapped to include an area roughly bounded by M Street to the north, the Anacostia River to the south, Fort McNair to the west, and the Southeast Federal Center site to the east. The CG Overlay:

- Establishes a set of objectives or purposes for the area;
- Allows additional density and height to accommodate bonus density for residential development;
- Permits combined lot development for the purposes of allocating residential and commercial uses within the District;
- Permits the transfer of some density within the area, from the CG/W-2 District to the CG/CR District (the CR District allows the transfer of density from one lot to another within a square, § 631.3);
- Requires the provision of ground floor retail and a 15-foot setback along M Street S.E.;
- Requires the provision of publicly accessible open space along the waterfront via a 75-foot building setback; and
- Establishes mandatory Commission review of projects fronting M Street S.E. and within the CG/W-2 District.

The CG Overlay was subsequently amended to regulate the construction and operation of a Major League baseball stadium within a portion of the overlay (Z.C. Order No. 05-08, November 4, 2005).

¹ Pursuant to 11 DCMR § 3202.5, the requirements and incentives of the overlay have actually been in place since the case was first set down.

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Description of Text Amendment

The CG Gateway area is currently experiencing significant development interest. To ensure that the overall goals and objectives for the area are maintained and in accordance with more recent planning initiatives, this rulemaking would provide for amendments to a number of specific CG Overlay regulations. The proposed amendments include:

- Additional objective or purpose statements, related to the form and character of South Capitol Street, Half Street S.E., and First Street S.E. (§ 1600.2)
- Amendments to existing combined lot development regulations to regulate the transfer of density from one parcel to another within the CG Overlay. (§ 1602)
- Addition of new regulations for specific streets or geographical areas within the CG Overlay (§§ 1603 through 1609), including:
 - a new provision to prevent access to parking or loading facing the waterfront within the CG/W-2 District;
 - a minimum floor to ceiling height for required retail space along M Street S.E.;
 - a setback requirement of 15 feet, a 1:1 upper story step-back above 110', and a prohibition on new driveways to loading or parking along South Capitol Street;
 - a requirement for and regulation of preferred use retail on First Street S.E.;
 - a requirement for an upper story step-back, new requirements for preferred use retail, and a prohibition on new driveways to loading or parking along Half Street S.E.;
 - a new 1:1 upper story step-back along Potomac Avenue S.E. and S.W.; and
 - a prohibition on new driveways to loading or parking from P Street S.W.
- Mandatory Zoning Commission Review (§ 1610) for any lot that:
 - abuts South Capitol Street;
 - is located within Squares 700 or 701, north of the Ballpark site;
 - is within Squares 601, 656, and 657, adjacent to existing lower density residential development to the north; or
 - is the recipient of density through the combined lot provisions of § 1602.

Relationship to the Comprehensive Plan

The amendment would not be inconsistent with the Comprehensive Plan Title 10 DCMR. This amendment would particularly further the following major themes as outlined in Chapter 1 of the Comprehensive Plan:

- (a) *Stabilizing and improving the District's neighborhoods*
- (b) *Increasing the quantity and quality of employment opportunities in the District*
- (e) *Respecting and improving the physical character of the District*
- (f) *Preserving and ensuring community input*
- (g) *Preserving the historic character of the District*

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- (i) *Promoting enhanced public safety*
- (j) *Providing for diversity and overall social responsibilities*

The proposed amendments would also help to ensure that new development within the area furthers Comprehensive Plan goals and objectives within the Environmental Protection, Urban Design, and Ward 6 Chapters. For protecting the quality of the land areas, The Environmental Protection Element (Chapter 4) of the Comprehensive Plan recommends that new development, "*Ensure public access to waterfront areas and protect and enhance their aesthetic and recreational qualities.*" (§ 405.2(f)) For waterfront design areas, The Urban Design Element (Chapter 7) of the Comprehensive Plan, "*Require(s) that site planning in these areas establish, and be sensitive to, the close interrelationship between buildings, parks and open spaces, and the rivers.*" (§ 706.2(d)) Chapter 17, the Ward 6 Plan, includes objectives to "*encourage a range of commercial services and facilities for Ward 6 residents through appropriate development of commercial areas when needed and to upgrade commercial areas such as ... South Capitol from the Capitol to Buzzard's Point.*" (§ 1701.1(a)); "*Minimize conflicts between vehicular and pedestrian traffic.*" (§ 1714.1(c)); and "*encourage a high quality of architecture consistent with the styles and characteristics of buildings in Ward 6.*" (§ 1721.1(c)).

Public Hearing

The Commission held a public hearing on this case on January 30, 2006.

At the public hearing, OP described the intent of the proposed text amendment, to better respond to the rapidly changing nature of the area and provide greater opportunity for input from the community. The Anacostia Waterfront Corporation ("AWC") testified in favor of the proposal, ~~but noted a need to further study proposed amendments related to the South Capitol Street setback; the step backs along Half Street S.E.; and the amount and nature of preferred use retail space.~~

Advisory Neighborhood Commission ("ANC") 6D testified in opposition to the proposal, following a vote by the ANC to reject a motion to support the proposal at its January 9, 2006 meeting. The ANC indicated a willingness to provide specific proposals for text amendments to address their concerns.

Representatives of area landowners noted concerns related to the proposed Combined Lot provisions, particularly in relation to the transfer of density from the Ballpark site to other development sites within the CG Overlay area. During this discussion, the Chairman recused herself from involvement in this case.

The Commission decided to leave the record open for the receipt of additional information and analysis for a period of 60 days. The Commission, at its April 20, 2006 public meeting, subsequently extended the deadline for receipt of additional information for a period of 30 days.

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Proposed Action

The Zoning Commission took proposed action at a properly noticed special public meeting held on May 25, 2006. Prior to taking Proposed Action, the Commission noted the receipt of additional information from AWC and OP, a staff report from the National Capital Planning Commission ("NCPC"), and from representatives of certain landowners in the area. OP submissions dated April 10, 2006 and May 19, 2006 proposed additional changes to the text amendment, specifically to:

- eliminate the requirement within the CG/CR District for the provision of publicly accessible open space adjacent to the main entrances of buildings, in the amount of 10% of the total lot area requirement, where preferred use retail is required to be located – along portions of First Street, Half Street, and M Street S.E.;
- permit an additional 1.0 FAR of density to be transferred through the Combined Lot provisions, with Commission approval, to or within Squares 700 or 701; and
- provide for Commission special exception relief to the previously proposed Half Street S.E. step-back, to require a setback of 12 feet above a height of 80 feet.

The Commission also reopened the record for receipt of a supplemental report from the OP dated May 25, 2006, noting clarifications to the proposed Combined Lot provisions.

The Notice of Proposed Rulemaking was published in the *D.C. Register* on November 10, 2006 at 53 DCR 9234, for a 30-day notice and comment period.

The proposed rulemaking was referred to NCPC under the terms of § 492 of the District of Columbia Charter. By report dated June 29, 2006, NCPC recommended approval of the proposed text amendment and requested that the Commission further consider an expansion of the CG Overlay to include all of South Capitol Street, north of M Street to Virginia Avenue.

No other comments were received.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

At its properly noticed January 8, 2007 public meeting, the Commission took final action to approve the proposed text amendments.

In response to NCPC's comment, the Commission will look to OP for guidance as to whether to expand the Overlay in the manner suggested.

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Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and the Zoning Act.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapters 16 and 30 of the Zoning Regulations, Title 11 DCMR:

A. Chapter 16, CAPITOL GATEWAY OVERLAY DISTRICT, is amended as follows:

1. Section 1600, PREAMBLE, § 1600.2 is amended to add the following new purposes:

- (g) Provide for the establishment of South Capitol Street as a monumental civic boulevard;
- (h) Provide for the development of Half Street S.E. as an active pedestrian-oriented street with active ground floor uses and appropriate setbacks from the street facade to ensure adequate light and air, and a pedestrian scale; and
- (i) Provide for the development of First Street S.E. as an active pedestrian-oriented street with active ground floor uses, connecting M Street, the Metro Station, and existing residential neighborhoods to the Ballpark site and the Anacostia Waterfront.

2. Subsection 1602.1 is amended to read as follows:

~~1602.1 Two (2) or more lots within the Overlay District may be combined for the purpose of allocating residential and nonresidential uses regardless of the normal limitation on floor area by uses on each lot; provided, that the aggregate residential and nonresidential floor area shall not exceed the matter-of-right maximum height or density of the underlying zone district(s), except when bonus density is being constructed, subject to the following:~~

- (a) Within the CG/CR District, the residential and nonresidential floor area on each individual parcel shall not exceed a maximum floor area ratio of 8.0 on parcels for which a height of 110 feet is permitted or 8.5 on parcels for which a height of 130 feet is permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code §§ 6-601.01 to 6-601.09) as amended (the "Height Act"), including any bonus density;

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- (b) Within the CG/CR District, the amount of commercial density transferred from one parcel to another may not exceed the lesser of a density of 3.0 FAR or the amount of residential density being transferred;
- (c) Maximum permitted height shall be that permitted for any site receiving combined lot density within the CG/CR District, but only to the extent necessary to accommodate any additional density received from another parcel;
- (d) The combined lot provisions may not be used to transfer density to or from any property within the CG/C-3-C, CG/W-1, CG/W-2, or CG/W-3 Districts; and
- (e) In addition to the amount of density that may be transferred in accordance with § 1602.1(a), the Zoning Commission may, at its discretion, grant an additional transfer of density of 1.0 FAR maximum to or within Squares 700, 701, and 702, subject to the applicant addressing to the satisfaction of the Zoning Commission the objectives and guidelines of §§ 1601 and 1604-1607, as applicable.

3. Section 1603 is amended to read as follows:

1603 BUILDINGS, STRUCTURES, AND USES IN THE CG/W-2 DISTRICT

- 1603.1 The following provisions apply to new buildings, structures, or uses within the G/W-2 District.
- 1603.2 No private driveway to any parking or loading berth areas in or adjacent to a building or structure constructed after January 7, 2005 shall directly face the waterfront.
- 1603.3 All buildings or structures constructed after January 7, 2005 on a lot that faces or abuts the Anacostia River shall be set back by no less than seventy-five (75) feet from the bulkhead, unless the Zoning Commission finds that such setback creates an undue economic hardship for the owner of the lot and in no case less than fifty (50) feet from the bulkhead.
- 1603.4 In the CG/W-2 District, the Zoning Commission, at its discretion, may grant bonus density for residential development in a building or a combined lot development, using a guideline of 1.0 FAR in excess of the normally-allowed maximum of 4.0 FAR and an additional ten (10) feet in

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excess of the normally-allowed maximum height of sixty (60) feet; provided that:

- (a) The building or combined lot development shall include at least 2.0 FAR of residential development;
- (b) The Zoning Commission, at its discretion, may allow construction of such bonus density on the property zoned CG/W-2 or may allow only for the bonus density to be transferred off-site to a lot or lots zoned CG/CR; and
- (c) The provisions of §§ 1709.6 through 1709.12 and § 1709.14 shall govern the procedures for transferring bonus density off-site if permitted by the Zoning Commission.

1603.5 The Zoning Commission, at its discretion, may also provide for additional on-site or off-site bonus density to be earned for setbacks required under this section, based on the land area of the setback and the proposed features for public open space uses; provided, that 2.0 FAR based on the land area of the open space setback shall be used as a general guideline.

4. Section 1604 is amended to read as follows:

1604 BUILDINGS AND STRUCTURES ON M STREET, S.E.

- 1604.1 The following provisions apply to new buildings, structures, or uses with frontage on M Street S.E. within the CG Overlay.
- 1604.2 No driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building.
- 1604.3 The streetwall of each new building shall be set back for its entire height and frontage along M Street not less than fifteen (15) feet measured from the face of the adjacent curb along M Street, S.E.
- 1604.4 Each new building shall devote not less than thirty-five percent (35%) of the gross floor area of the ground floor to retail, service, entertainment, or arts uses ("preferred uses") as permitted in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of this Title; provided, that the following uses shall not be permitted: automobile, laundry, drive-through accessory to any use, gasoline service stations, and office uses (other than those accessory to the administration, maintenance, or leasing of the building). Such preferred uses shall occupy 100% of the building's street frontage along M Street,

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except for space devoted to building entrances or required to be devoted to fire control.

1604.5 For good cause shown, the Commission may authorize interim occupancy of the preferred use space required by § 1604.4 by non-preferred uses for up to a five (5) year period; provided, that the ground floor space is suitably designed for future occupancy by the preferred uses.

1604.6 Not less than fifty percent (50%) of the surface area of the streetwall of any new building along M Street shall be devoted to display windows having clear or low-emissivity glass except for decorative accent, and to entrances to commercial uses of the building.

1604.7 The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be fourteen (14) feet.

1604.8 A building that qualifies as a Capitol South Receiving Zone site under § 1709.18 and for which a building permit has been applied for prior to August 31, 2001, shall not be subject to the requirements of this section.

1604.9 Where preferred use retail space is required under this section and provided, the requirement of 11 DCMR § 633 to provide public space at ground level shall not apply.

5. The existing text of §§ 1605 and 1606 is redesignated as §§ 1611 and 1612.

6. New §§ 1605 through 1610 are added to read as follows:

1605 BUILDINGS, STRUCTURES, AND USES ON SOUTH CAPITOL STREET

1605.1 The following provisions apply to new buildings, structures, or uses with frontage on South Capitol Street within the CG Overlay.

1605.2 Each new building or structure located on South Capitol Street shall be set back for its entire height and frontage not less than fifteen (15) feet, provided that a minimum of sixty percent (60%) of the streetwall shall be constructed on the setback line.

1605.3 Any portion of a building or structure that exceeds 110 feet in height shall provide an additional one-to-one (1:1) step-back from the building line along South Capitol Street.

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- 1605.4 No private driveway may be constructed or used from South Capitol Street to any parking or loading berth areas in or adjacent to a building or structure constructed after February 16, 2007.
- 1606 BUILDINGS, STRUCTURES, AND USES ON FIRST STREET S.E, SOUTH OF M STREET S.E.
- 1606.1 The following provisions apply to new buildings, structures, or uses with frontage on First Street S.E. south of M Street S.E., within the CG Overlay.
- 1606.2 Each new building shall devote not less than seventy-five percent (75%) of the gross floor area of the ground floor to retail, service, entertainment, or arts uses ("preferred uses") as permitted in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of this Title; provided, that the following uses shall not be permitted: automobile, laundry, drive-through accessory to any use, gasoline service stations, and office uses (other than those accessory to the administration, maintenance, or leasing of the building).
- 1606.3 Preferred uses shall occupy 100% of the building's street frontage along First Street S.E., except for space devoted to building entrances or required to be devoted to fire control.
- 1606.4 The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be fourteen (14) feet.
- 1606.5 For good cause shown, the Zoning Commission may authorize interim occupancy of the preferred use space required by § 1606.2 by non-preferred uses for up to a five (5) year period; provided, that the ground floor space is suitably designed for future occupancy by the preferred uses.
- 1606.6 Where preferred use retail space is required under this section and provided, the requirement of 11 DCMR § 633 to provide public space at ground level shall not apply.
- 1607 BUILDINGS, STRUCTURES, AND USES ON HALF STREET S.E., SOUTH OF M STREET S.E.
- 1607.1 The following provisions apply to new buildings, structures, or uses with frontage on Half S.E. south of M Street S.E., within the CG Overlay.
- 1607.2 Any portion of a building or structure that exceeds sixty-five (65) feet in height shall provide a minimum step-back of twenty (20) feet in depth

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from the building line along Half Street S.E. Pursuant to § 3104, the Zoning Commission may grant relief from this requirement, to a maximum of fifteen (15) feet in height and eight (8) feet in depth, for the provision of reasonable development footprints.

- 1607.3 Each new building shall devote not less than seventy-five percent (75%) of the gross floor area of the ground floor to retail, service, entertainment, or arts uses ("preferred uses") as permitted in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of this Title; provided, that the following uses shall not be permitted: automobile, laundry, drive-through accessory to any use, gasoline service stations, and office uses (other than those accessory to the administration, maintenance, or leasing of the building).
-
- 1607.4 Preferred uses shall occupy 100% of the building's street frontage along Half Street S.E., except for space devoted to building entrances or required to be devoted to fire control.
- 1607.5 The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be fourteen (14) feet.
- 1607.6 For good cause shown, the Zoning Commission may authorize interim occupancy of the preferred use space required by § 1607.2 by non-preferred uses for up to a five (5) year period; provided, that the ground floor space is suitably designed for future occupancy by the preferred uses.
- 1607.7 No private driveway may be constructed or used from Half Street S.E. to any parking or loading berth areas in or adjacent to a building or structure constructed after February 16, 2007.
- 1607.8 Where preferred use retail space is required under this section and provided, the provisions of DCMR 11 § 633 shall not apply.
- 1608 STEP-BACK FOR CERTAIN BUILDINGS AND STRUCTURES ON POTOMAC AVENUE
- 1608.1 The following provisions apply to new buildings, structures, or uses with frontage on Potomac Avenue within the CG Overlay.
- 1608.2 Any portion of a building or structure that exceeds 110 feet in height shall provide an additional one-to-one (1:1) step-back from the building line along Potomac Avenue.

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1609 PRIVATE DRIVEWAYS ON P STREET S.W.

1609.1 No private driveway may be constructed or used from P Street S.W. to any parking or loading berth areas in or adjacent to a building or structure subject to the provisions of this chapter that is constructed after February 16, 2007.

1610 ZONING COMMISSION REVIEW OF BUILDINGS, STRUCTURES, AND USES

1610.1 The following provisions apply to properties located:

-
- (a) Within the CG/W-2 District;
 - (b) On a lot that abuts M Street S.E.;
 - (c) On a lot located within Squares 700 or 701, north of the Ballpark site;
 - (d) On a lot that abuts South Capitol Street;
 - (e) On a lot within Squares 601, 656, or 657; or
 - (f) Any lot that is the recipient of density through the combined lot provisions of § 1602.

1610.2 With respect to those properties described in § 1610.1, all proposed uses, buildings, and structures, or any proposed exterior renovation to any existing buildings or structures that would result in an alteration of the exterior design, shall be subject to review and approval by the Zoning Commission in accordance with the following provisions.

1610.3 In addition to proving that the proposed use, building, or structure meets the standards set forth in § 3104, an applicant requesting approval under this section must prove that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will:

- (a) Help achieve the objectives of the CG Overlay District as set forth in § 1600.2;
- (b) Help achieve the desired mix of uses in the CG Overlay District as set forth in §§ 1600.2(a) and (b), with the

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identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail, or service uses;

- (c) Be in context with the surrounding neighborhood and street patterns;
- (d) Minimize conflict between vehicles and pedestrians;
- (e) Minimize unarticulated blank walls adjacent to public spaces through facade articulation; and
- (f) Minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards.

1610.4

With respect to a building or structure to be constructed on a lot within the CG/W-2 District:

- (a) The building or structure shall provide suitably designed public open space along the waterfront;
- (b) A plan shall be included in the application for suitable open space treatment of the setback area for such uses as walkway and bikeway, passive or active recreational use, and including provisions assuring private maintenance of the space, convenient and permanent public access to the space, and suitable connections to adjacent public space along the waterfront; and
- (c) The application shall include a view analysis that assesses openness of waterfront views and vistas, and views and vistas toward the Capitol Dome, other federal monumental buildings, existing neighborhoods, South Capitol Street, and the Frederick Douglass Bridge.

1610.5

With respect to a building or structure which has frontage on Half Street S.E. south of M Street S.E. or Front Street S.E. south of M Street S.E.:

- (a) The building or structure shall provide for safe and active streetscapes through building articulation, landscaping, and the provision of active ground level uses including retail, entertainment, cultural, and pedestrian concourse space;

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- (b) The building or structure shall provide for safe and convenient movement to and through the site, including to public transit, the Ballpark, and to the Anacostia River; and
- (c) The application shall include a view analysis that assesses openness of views and vistas around, including views toward the Capitol Dome, other federal monumental buildings, the Ballpark, and the waterfront.

1610.6 With respect to a building or structure which has frontage on South Capitol Street S.E.:

- (a) The building or structure shall incorporate massing, materials, and buildings and streetscape landscaping to further the design and development of properties in a manner that is sensitive to the establishment of South Capitol Street as a monumental civic boulevard;
- (b) The building or structure shall incorporate massing, location of access to parking and loading, and location of service areas to recognize the proximate residential neighborhood use and context, as applicable; and
- (c) The application shall include a view analysis that assesses openness of views and vistas around, including views toward the Capitol Dome, other federal monumental buildings, the Ballpark, and the waterfront.

1610.7 The Commission may hear and decide any additional requests for special exception or variance relief needed for the subject property. Such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval.

1610.8 At the time of filing an application with the Zoning Commission, the applicant shall pay the filing fee specified in § 3180.1(b)(16), plus such fees as apply to any additional zoning relief requested. The provisions of § 3181 relating to the administration of fees shall apply, except that the applicant may appeal any decision of the Director regarding the fee schedule to the Zoning Commission, which shall decide the appeal as a preliminary matter to hearing the application.

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1610.9 A building that qualifies as a Capitol South Receiving Zone site under § 1709.18, and for which a building permit has been applied for prior to August 31, 2001, shall not be subject to the requirements of this section.

B. Chapter 30, ZONING COMMISSION PROCEDURES, § 3012.1(a) is amended to read as follows:

(a) The National Capital Planning Commission of all Chapter 18 applications and those applications for approval pursuant to 11 DCMR §§ 1603 1610(a) and (d); and

Vote of the Zoning Commission taken at its public meeting on May 25, 2006, to **APPROVE** the proposed rulemaking by a vote of **3-0-2** (Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; John G. Parsons abstaining; and Carol J. Mitten not present, not voting).

This order was **ADOPTED** by the Zoning Commission at its public meeting on January 8, 2007 by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to adopt; Carol J. Mitten having not participated, 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 _____.

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

and

Z.C. ORDER NO. 05-10

Z.C. Case No. 05-10

(Text Amendment - Capitol Gateway Overlay District)

January 8, 2007

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Thursday, November 16, 2006, 6:30 p.m.**
 Office of Zoning Hearing Room
 441 4th Street, N.W., Suite 220-South
 Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Case No. 06-25 – Map and Text Amendment - DCMR Title 11 Chapter 16 Capitol Gateway Overlay (CG) District

THIS CASE IS OF INTEREST TO ANC 6D

On May 19, 2006, the Office of Zoning received a petition from the District of Columbia Office of Planning (the “Petitioner”) for a map and text amendment to the zoning regulations. The Zoning Commission set down the case for public hearing at its special public meeting of May 25, 2006. The Office of Planning set down report also served as the pre-hearing statement for this case.

The map amendment would extend the boundaries of the Capitol Gateway Overlay District to include Lot 48 within Square 649; those portions of Squares 651 and 653 zoned C-2-C; and Square 655, adjacent to South Capitol Street SW. Other than mapping the area within the CG Overlay, no changes to the base zones are recommended.

The intent is to ensure the provision of a more consistent streetscape treatment along South Capitol Street, in accordance with planning initiatives for the creation of a more appropriately monumental character for South Capitol Street. The east side of South Capitol is currently within the CG Overlay, and subject to similar regulations and requirements.

The text amendment would:

- Require a setback of 15 foot setback from South Capitol Street for any new development within Squares 653 and 655.
- Require that a minimum of 60% of the façade be constructed to the 15’ setback line or to the property line where the setback is not required;

Z.C. NOTICE OF PUBLIC HEARING

Z.C. CASE NO. 06-25

PAGE NO. 2

- Restrict driveway access from South Capitol Street;
- Establish a Zoning Commission review and approval process and design guidelines for any new development on property which abuts South Capitol Street.
- Restrict the use of Combined Lot transfer of density to or from property within these Squares. Combined Lot transfer of density FROM lots within Square 655 is being considered. Use of the Combined Lot provisions for the purpose of transferring USE would be permitted.

Title 11 DCMR (Zoning), Chapter 16 CAPITOL GATEWAY OVERLAY DISTRICT is proposed to be amended as follows:

- A. Section 1600, PREAMBLE, subsection 1600.1 is amended to add the following Squares and portions of Squares to which the CG Overlay would apply:

“Square 649, Lot 48; Square 651, Lots 147 and 148; Square 653 lots 14, 15, 52-54, 60-66, 68-72, 74, 75, 810, 811, 823, 824, 827 and 828; and all of Square 655”

- B. Section 1602, COMBINED LOT DEVELOPMENT, subsection 1602.1 (d) is amended restrict these squares from Combined Lot Development, as follows:

“(d) The combined lot provisions may not be used to transfer density to or from any property within the CG/C-3-C, **CG/C-2-C**, CG/W-1, CG/W-2, or CG/W-3 Districts. **The combined lot provisions may be used to transfer density from, but not to, the CG/R-5-E District.**”

- C. Section 1605, BUILDINGS, STRUCTURES, AND USES ON SOUTH CAPITOL STREET is amended to read as follows:

“1605.1 The following provisions apply to new buildings, structures, or uses with frontage on South Capitol Street within the CG Overlay.

1605.2 Each new building or structure located on South Capitol Street shall be set back for its entire height and frontage not less than 15 feet, **with the exception of buildings within Squares 649 and 651.**

1605.3 For each new building or structure located on South Capitol Street, provided that a minimum of 60% of the street-wall shall be constructed on the setback line, with the exception of buildings within Squares 649 and 651 where a minimum of 60% of the street-wall shall be constructed to the South Capitol Street property line.

- 1605.4 Any portion of a building or structure that exceeds 110 feet in height shall provide an additional one-to-one (1:1) step back from the building line along South Capitol Street, **with the exception of buildings within Squares 649.**
- 1605.5 No private driveway may be constructed or used from South Capitol Street to any parking or loading berth areas in or adjacent to a building or structure constructed after [*effective date of this section*].”

Proposed amendments to the Zoning Regulations and Map of the District of Columbia are authorized pursuant to the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 *et seq.*)

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning. The Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, Suite 210, 441 4th Street, N.W., Washington, D.C. 20001. Please include the number of the particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

CAROL J. MITTEN, ANTHONY J. HOOD, JOHN G. PARSONS, MICHAEL G. TURNBULL, AND GREGORY N. JEFFRIES ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JERRILY R. KRESS, FAIA, DIRECTOR, AND BY SHARON SCHELLIN, SECRETARY TO THE ZONING COMMISSION.