Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
ORDER NO. 968
Z.C. Case No. 01-02TA
(Text Amendment – 11 DCMR)
(Technical Corrections Regarding Antenna Towers)
September 9, 2002

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code, 2001 Ed. § 6-641.01), and 11 DCMR § 3030 (Consent Calendar), hereby gives notice of the adoption of amendments to Chapters 7, 9, 12, and 31 of Title 11, DCMR, which correct codification errors so as to clarify that antenna towers are allowed only as a special exception in Commercial Districts (C). The Zoning Commission took final action to adopt the amendments at a public meeting held on September 9, 2002. These final rules will be effective upon publication of this notice in the *D.C. Register*.

This final rulemaking includes minor, non-substantive changes to the text of the proposed rules published on June 28, 2002, at 49 DCR 5985. The changes are in response to comments received, as discussed below, and are within the scope of the proposed rulemaking.

This rulemaking was initiated by the Zoning Commission in response to comments by the Cleveland Park Citizen's Association, which identified an inaccuracy in the Zoning Regulations with respect to antenna towers in Commercial Districts. Prior to this rulemaking, antenna towers were listed as a matter-of-right use in a C-1 District. By virtue of this designation, antenna towers would also be permitted in all other Commercial Districts. However, a review of the Zoning Commission's Order No. 587, published in 1989, clearly indicates that antenna towers were to be allowed only as a special exception in Commercial Districts. The Zoning Commission's failure to delete the matter-of-right provisions in Chapter 7 was an unfortunate oversight, which this rulemaking corrects. In addition, a conforming change is made to Chapters 12 and 31.

Pursuant to § 3030 of the Zoning Regulations, no hearing was required for this rulemaking. That section authorizes the Commission "in the interests of efficiency, to make without public hearing, minor modifications and technical corrections to previously approved final orders, rulemaking or other actions of the Zoning Commission, including corrections of inadvertent

mistakes". As this action was taken to correct inadvertent mistakes made in Zoning Commission Order No. 587, it comes under the purview of § 3030.

The Commission received several written comments on the proposed version of this rulemaking. The Capitol Hill Restoration Society, the Cleveland Park Citizens Association, the Penn-Branch Citizens/Civic Association, and the D.C. Federation of Civic Associations, Inc. all agreed that deletion of §§ 701.6(g) and 721.2(t), which list antenna towers as a matter-of-right in the Commercial Districts, would be in accordance with the Zoning Commission's original intent in Order 587 and supported the Zoning Commission's proposed action.

Additional support for the Zoning Commission's action was received from the Ward Three Democratic Committee and Carolyn M. Sherman.

Several comments focused on the proposed technical change to the text of the Capitol Interest (CAP) District, as established by Chapter 12 of Title 11. The proposed change would delete the erroneous reference in § 1201.2(c) to antenna towers as a matter-of-right use in the underlying SP district. Antenna towers are only permitted by special exception in SP districts pursuant to 11 DCMR, §§ 514 and 515, which the Zoning Commission added through Order No. 777 (July 10, 1995).

The Zoning Commission agrees with the Capitol Hill Restoration Society that a similar deletion is needed in §§ 1201.2 (d) (3) & (4), which refer to antenna towers as a matter-of-right use in the underlying C-2-A District. As noted above, the Zoning Commission intended such structures to be regulated as special exceptions in all Commercial Districts, including C-2-A.

The Capitol Hill Restoration Society expressed concern that deleting the language in § 1201.2(c), which prohibits antenna towers as matter-of-right use in CAP/SP, would have the unintended effect of allowing antenna towers in the CAP/SP as a special exception for the first time. However, as noted above, antenna towers have been permitted as a special exception in SP since 1995. Pursuant to 11 DCMR § 1201.3(b), any use permitted by special exception in the underlying SP District is also permitted as a special exception in CAP/SP, except for three uses identified in that section[1]. Since antenna towers are not among those three uses, special exception approval is permitted. Therefore, the deletion proposed will not alter the *status quo*.

The Cleveland Park Citizens Association and the Penn-Branch Citizens/Civic Association, however, contend that the Zoning Commission actually intended to add antennas towers to the three uses for which special exceptions are not available, but mistakenly placed the antenna tower prohibition in § 1201.2 (c), which governs matter-of-right uses in CAP/SP.

This contention is premised upon a belief that antenna towers were not matter-of-right uses in the SP District when the overlay was created in 1985, but were only permitted by special exception. If that were true, the reference to antenna towers in § 1201.2(c) as a matter-of-right use in the SP

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[1] The three prohibited uses are: (1) parking lot or parking garage; (2) telephone exchange; and (3) public utility pumping station.

District would have been erroneous. It was therefore suggested that since the Zoning Commission clearly wanted to apply a prohibition to antenna towers, the prohibition must have been intended to apply to the ability to receive a special exception. For this reason, the two associations requested that the Zoning Commission amend § 1201.3(b) to add antenna towers to the list of uses for which special exceptions are unavailable in the CAP/SP Overlay District.

However, the premise upon which this argument relies is inaccurate. In fact, antenna towers were permitted as a matter-of-right use in the SP District at the time the CAP Overlay District was established. The apparent confusion results from the fact that the version of Title 11 in effect when the overlay was created contained a § 511 that appeared to subject such towers to special exception review in all SP districts. However, the 1979 edition of the Zoning Regulations includes a note indicating that the predecessor version of § 511 was enjoined and that antenna towers were to be considered matter-of-right uses. The version of Title 11 in effect when the CAP/SP Overlay District was created includes a similar note beneath § 511. The Zoning Commission ultimately deleted § 511 in its 1989 antenna rulemaking order as follows:

> 11. Delete existing section 511 that permits antenna towers as of right in SP and less restrictive zone districts.

Zoning Commission Order No. 587 (Sept. 15, 1988 and Feb. 13, 1989) at 14.

Thus, the Zoning Commission's prohibition of antenna towers as matter-of-right uses within the CAP/SP Overlay District made sense in 1985, because antenna towers were matter-of-right uses in the underlying zone district. In 1995 when the Zoning Commission subjected antenna towers to special exception review in the SP District, it did not prohibit such approvals in the CAP/SP Overlay District. To make this change now would constitute more than a technical correction that can be accomplished through the consent calendar process. The Commission notes, however, that a public hearing on a proposed revision to its antenna regulations (ZC Case No. 01-02) is scheduled for a public hearing on October 17, 2002. Advocates of prohibiting antenna towers in the CAP/SP Overlay District should review the advertisement of that hearing, as published in the August 9, 2002, edition of the *D.C. Register,* for instructions concerning how they may participate in that proceeding.

The Capitol Hill Restoration Society, the Cleveland Park Citizens Association, and the Penn-Branch Citizens/Civic Association also note a grammatical error in § 914.1, which has been corrected by this rulemaking (the word "objections" was changed to "objectives").

Cleveland Park Citizens Association, the Penn-Branch Citizens/Civic Association, and the D.C. Federation of Civic Associations, Inc. suggested a technical change to § 211.1 to replace a reference to § 3108 with the correct reference of § 3104. This change has already been made and will appear in the next published version of Title 11.

Lastly, the Zoning Commission is taking this opportunity, as suggested by several of the comments, to amend the table of special exceptions in § 3104 to reflect the changes recognized by this rulemaking.

ANC 2C, by report dated July 26, 2002, indicated its unanimous support for the proposed rulemaking.

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

No substantive changes to the proposed rulemaking have been made. The Commission therefore took final action to adopt the rule at its regularly scheduled public meeting on September 9, 2002.

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 7, 9, 12, and 31 of the Zoning Regulations, Title 11, DCMR.

A. Chapter 7, COMMERCIAL DISTRICTS, is amended as follows:

1) By repealing § 701.6(g); and

2) By repealing § 721.2(t).

B. Chapter 9, WATERFRONT DISTRICTS, § 914, ANTENNAS, § 914.1 is amended by deleting the word "objections" and inserting the word "objectives" in its place.

C. Chapter 12, CAPITOL INTEREST DISTRICT, § 1201, USE REGULATIONS, § 1201.2 is amended as follows:

1) Paragraph (c) is amended by deleting the phrase: ", except that an antenna tower for television and radio broadcasting and in conjunction therewith the erection, alteration, or use of buildings for transmission or reception equipment shall not be permitted".

2) Paragraph (d), subparagraphs (3) and (4) are repealed. Subparagraphs (5) through (12) shall be renumbered accordingly.

D. Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, Section 3104, SPECIAL EXCEPTIONS, subsection 3104.1 is amended by amending two categories included the list of special exceptions to read as follows

Antenna for commercial TV or FM broadcast	Any R, SP, Any C, C-M, CR, or W District	§§ 211, 514, 617, and 914
Antenna, other than commercial	Any R, SP, Any C, C-M, CR, or W District	§§ 212, 515, 617, and 914

Vote of the Zoning Commission taken at its public meeting on ___, 2002, to approve the proposed rulemaking: 5-0-0 (Anthony J. Hood, John G. Parsons, Carol J. Mitten, Peter G. May, and James H. Hannaham to approve).

This order was adopted by the Zoning Commission at its public meeting on September 9, 2002, by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, Peter G. May, and James H. Hannaham to adopt).

In accordance with the provisions of § 3028.9, this order shall become effective upon publication in the *D.C. Register*, that is, on_____.

Carol J. Mitten
CAROL J. MITTEN
Chairman
Zoning Commission

Jerrily R. Kress
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