

# STAFF RECOMMENDATION

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NCPC File No. Z.C. 04 – 33B



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**TEXT AMENDMENTS TO CLARIFY & ADD R-2 ZONES TO INCLUSIONARY  
ZONING REGULATIONS AND STANDARDS FOR CERTAIN OVERLAYS  
IN THE DISTRICT OF COLUMBIA ZONING REGULATIONS**  
Washington, D.C.

Submitted by the Zoning Commission of the District of Columbia

August 30, 2007

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## **Abstract**

The Zoning Commission of the District of Columbia has proposed a text amendment to the District of Columbia Zoning Regulations to amend Chapters 11, 12, 13, 15, 16, 19, and 26 of the Zoning Regulations (Title 11 DCMR). The amendments would subject properties in the R-2 zone district to the requirements of Chapter 26, Inclusionary Zoning, provide specific FAR, lot occupancy, density, and height flexibility for ten overlays, and make certain clarifications to the existing Inclusionary Zoning text. The Zoning Commission has also published a request for public comment on the proposal in the D.C. Register with a 30 day comment period.

## **Federal Interests**

The identified federal interests in this case are the Capitol Hill Historic District, in which the Eighth Street Southeast Overlay is located, the Height of Buildings Act of 1910, and the Latrobe Gate at the entrance to the Washington Navy Yard.

## **Commission Action Requested by Applicant**

Approval of comments to the District of Columbia Zoning Commission pursuant to Section 8 of the National Capital Planning Act (40 U.S.C. §8724(a)) and D.C. Code 2-1006(a).

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## **Executive Director's Recommendation**

The Commission:

- Finds that building heights of 55 feet within the 8<sup>th</sup> Street Overlay south of the Southeast Freeway would adversely affect the setting of the Navy Yard's historic Latrobe Gate, and therefore would adversely affect the federal interest.

- Otherwise, concludes that the proposal to modify the Inclusionary Zoning text is consistent with the Comprehensive Plan for the National Capital and would not have any adverse effects on federal interests.

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## PROJECT DESCRIPTION

### Background

By spring of 2006, the Zoning Commission (ZC) of the District of Columbia had proposed language for the basic elements of Inclusionary Zoning (IZ) including target incomes, percent of units affordable, bonus density, building envelope flexibility, and provisions for zoning relief. At its March 2, 2006 Commission meeting, NCPC's Executive Director determined that the proposed text amendment to promote affordable housing would not be inconsistent with the Comprehensive Plan for the National Capital, nor have an adverse impact on any federal interests. The ZC approved final language and voted to pass order 04-33 adding Chapter 26 to the Zoning Regulations in the summer of 2006.

Hearings were then held on the areas and zone districts where IZ should be required. The ZC voted to approve the zone districts and exemptions that the District of Columbia Office of Planning (DCOP) recommended, and NCPC's Executive Director determined that it would not be inconsistent with the Comprehensive Plan, nor have an adverse impact on any federal interests at its January 4, 2007 meeting.

Based on questions from the development community regarding interpretation of the IZ regulations to certain development scenarios, refinements discussed with the Office of Attorney General, and issues raised by the ZC, at its public meeting on May 14, 2007, the ZC voted to set down amendment to the IZ revisions that DCOP had introduced. These included:

- Applying IZ to the R-2 zone district, and
- Providing language to specify how the base, bonus and affordable set-aside are calculated for each overlay zone, and the appropriate height and lot occupancy increases to accommodate the IZ in the overlays.

At the May 14 public meeting the ZC requested DCOP to study and provide additional information about issues that included the following:

- The practicality of applying IZ to three neighborhood commercial overlay zones: Eighth Street (ES), Woodley Park (WP), and Cleveland Park (CP), that are also in historic districts,
- How IZ might impact the viewshed from the historic Fort Totten battlements, and
- How IZ would impact the Capital Gateway Overlay District, which provides for density incentives and combined lot development.

At its July 30 public meeting, the ZC asked the DCOP to provide additional analysis of the proposals for the ES Overlay to increase allowable height to 55 feet, and in the alternative, to continue to require those properties to conform to the current height limitation of 45 feet.

### Proposal

The proposed amendments to Chapter 26, Inclusionary Zoning, would:

1. Apply IZ to the R-2 zone district and refine the application of IZ to the R-3 and R-4 zone districts;
2. Amend floor area ration (FAR), lot occupancy and height for each zoning overlay, to ensure potential access to the 20% bonus density provided by IZ;
3. Amend §2604.3 to amend minimum lot area/reduce the 90% lot occupancy to 80% lot occupancy, in order to increase the availability of light and air to units in these zone districts.
4. Amend §2601 and §2602 to bring them into conformance with the Inclusionary Zoning Implementation Act of 2006;
5. Amend §2603.1, §2603.2, and §2604.3 to base the minimum IZ requirements on the residential use provided and not on the overall matter of right density of a given site, or the non-residential use developed;
6. Delete §2606, which requires projects to go before BZA if they are not achieving the full 20% bonus, but are otherwise meeting the language of §2603;
7. Amend §2607, Off-Site Compliance, to allow the use of Combined-Lot covenants and to clarify the relief process;
8. Amend §2608 to resolve the date of applicability and projects previously approved by the Zoning Commission.

Proposed amendments would subject the following zoning chapters and overlay districts to specific FAR, lot occupancy, density, and height flexibility:

- Chapter 11: Hotel-Residential Incentive Overlay District
- Chapter 12: Capitol Interest Overlay District
- Chapter 13: five Neighborhood Commercial Overlay Districts:
  - Cleveland Park
  - Woodley Park
  - Eighth-Street Southeast
  - Takoma Park
  - H Street
- Chapter 15: Fort Totten Overlay District

- Chapter 16: Capital Gateway Overlay District
- Chapter 19: Uptown Arts-Mixed Use Overlay District.

The proposed height flexibility would be as shown below for each overlay district:

	Base Zone	Overlay Zone	IZ Bonus
	Maximum Height (ft)	Maximum Height (ft)	Maximum Height (ft)
Capitol Interest (CAP)			
R-5-B	50	40	40
C-2-A	50	40	40
SP-1	65	40	40
Cleveland Park (CP)	50	40	45
<b>Eighth Street</b>	<b>65</b>	<b>45</b>	<b>55*</b> <b>Or alternatively 45</b>
Fort Totten			
C-3-A	65	65	65
CR	90	80	90
Woodley Park			
C-2-A	50	40	50
C-2-B	65	50	55
Takoma Park			55
H Street			
C-2-A			50
C-2-B			70
C-2-C			100
Capital Gateway			
C-2-C			110
C-3-C			90
CR			100
W-1			50
W-2			80
W-3			100
Uptown Arts-Mixed Use			
C-2-A			50
C-2-B			70
C-3-A			75
CR			100

## CONFORMANCE

### Comprehensive Plan for the National Capital

Previously, relative to the overall IZ overlay, staff determined that IZ would not be inconsistent with the *Comprehensive Plan for the National Capital: Federal Elements*, and in particular, several Federal Workplace policies from the Development of Workplaces with Communities.

Staff has determined that the amendment proposed for 04-33B would remain consistent with Policy #3, Page 161, under National Capital Image, even in view of increased allowable heights proposed for the various overlay districts:

- Preserve the horizontal character of the national capital through enforcement for the 1910 Height of Buildings Act.

Staff highlights Policy #6, Page 164, below, from the Stewardship of Historic Properties as requiring careful consideration in order to respect the historic scale of buildings and the Historic Latrobe Gate at the entrance to the adjacent Washington Navy Yard:

- Protect the settings of historic properties, including views to and from the sites where significant, as integral parts of the historic character of the property.

Staff notes that the following policies from the Stewardship of Historic Properties, are being acted upon:

- Coordinate with local agencies, citizen groups, and property owners in the identification, designation and protection of historic properties, public and private, since collectively these resources reflect the image and history of the National Capital Region” (Policy # 12), and
- Work cooperatively with local agencies to ensure that development adjacent to historic properties not detract from their historic character (Policy 13).

## CONSULTATION

### Advisory Neighborhood Commissions

The Zoning Commission received one letter from Advisory Neighborhood Commission (ANC) 6B Capitol Hill/Southeast in opposition to the subject proposal. In its letter dated June 14, 2007, the ANC questioned how the IZ bonus would apply in the area of Barracks Row south of the SE Freeway. The ANC opposed any application of additional bonus density in the Eighth Street Overlay District that would allow a building height of more than 45 feet, since part of the rationale for the height restrictions in this area was to prevent taller buildings from overwhelming the historic Latrobe Gate entrance to the Navy Yard. **NCPC staff shares the ANC’s view.**

Although DCOP's July 16 report/proposal does not refer to the letter or the potential to "overwhelm the historic Latrobe Gate", and does not illustrate the IZ development scenario from this perspective looking towards the gate, it states that a hypothetical 55-foot tall building at the farthest point away from the Navy Yard gate on 8<sup>th</sup> Street would not block the view of the gate as a southbound person emerged from under the twenty-five foot high freeway structure.

Although no other letters were received, at the public meeting on July 26<sup>th</sup>, seven citizens testified to support the proposed refinements to the IZ regulations. Of the seven, four spoke as individuals and three represented organizations including the Campaign for Mandatory Inclusionary Zoning, Coalition for Smarter Growth, and the local affiliate of Habitat for Humanity in Washington, D.C. One citizen, representing the Committee of 100 on the Federal City, testified in opposition to the proposal, and referenced a second written testimony submitted.

#### D.C. Office of Planning

The D.C. Office of Planning (DCOP) Final Report dated July 16, 2007, recommended that the ZC adopt the amendments included in DCOP's May 14, 2007 report, with several changes and additions, which have since been consolidated in the Notice of Proposed Rulemaking (NPR) published on August 10, 2007, attached as enclosure #1. The proposed changes would make clear that the FAR bonuses for residential use that stem from the overlays not be used in calculating the required affordable set aside. This would help maintain the bonuses' value as an incentive for residential development.

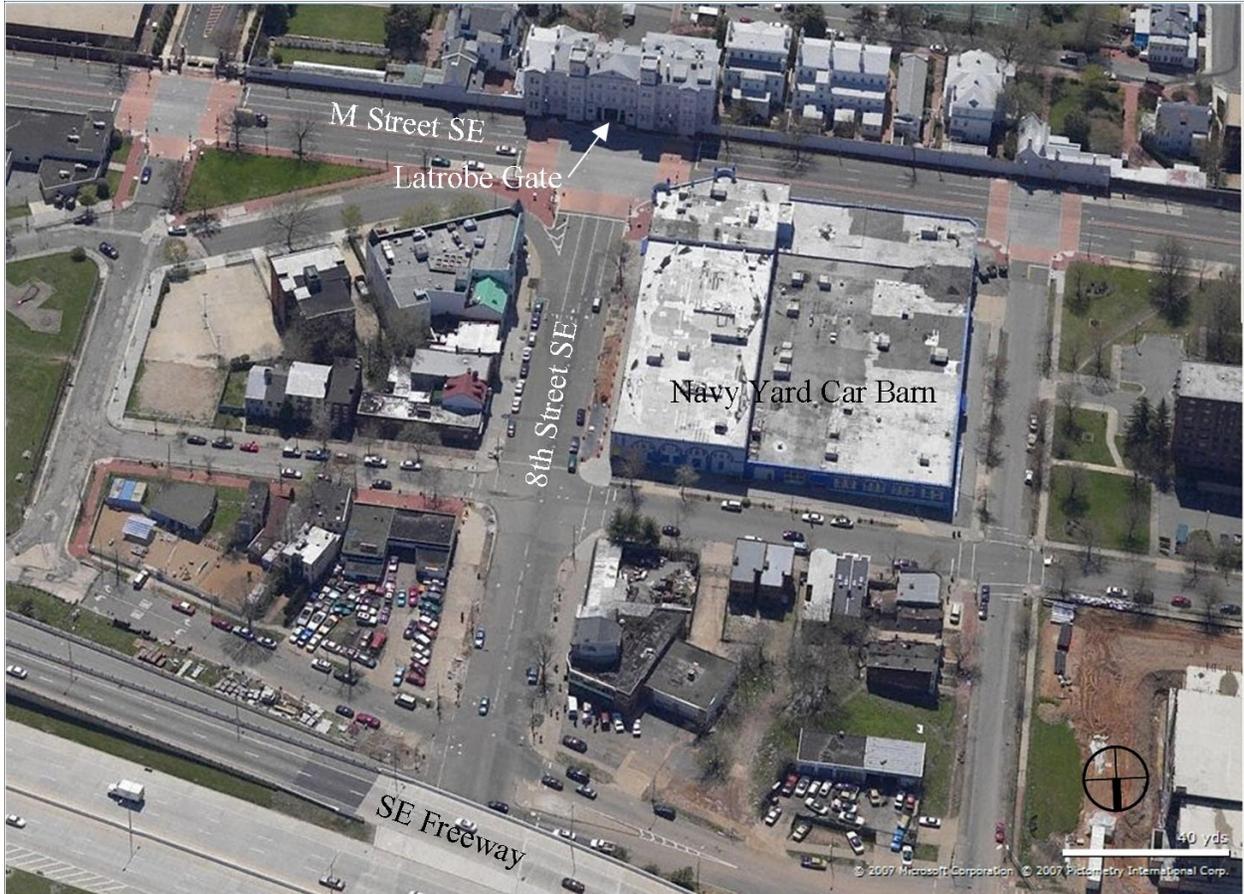
#### Analysis of Federal Interests

The identified federal interests in this case are the Capitol Hill Historic District, within which the ES Southeast Overlay is located, the Height of Buildings Act of 1910, and the Latrobe Gate at the entrance to the Washington Navy Yard.

At the July 26 hearing, DCOP staff responded to the Zoning Commission's earlier request that DCOP analyze affects on several of the density restricted overlay districts in further detail. Cleveland Park, Woodley Park and Eighth Street (ES) Southeast, each have overlay restrictions designed to preserve the character of the neighborhood commercial center and to some extent the Historic District in which the overly is located. For Cleveland and Woodley Parks, DCOP staff collaborated with the Historic Preservation Review Board (HPRB) staff and agreed that IZ proposed in both overlays were generally congruent with the feeling and context of the neighborhoods and historic districts. All such proposals located in historic districts would be subject to design review and possible changes as part of review by the HPRB, which NCPC staff agrees is the appropriate body when potential effects may be local rather than federal.

For the ES Southeast Neighborhood Commercial Overlay, the ZC requested still more analysis. The ES Overlay covers a block to the east and west of 8<sup>th</sup> Street to 7<sup>th</sup> and 9<sup>th</sup> Streets between Virginia Avenue and M Street SE, which is the lower end of the 8<sup>th</sup> Street commercial corridor, just north of the Washington Navy Yard. The area is composed of a mix of mostly 19<sup>th</sup> century and early 20<sup>th</sup> century commercial and residential structures, and a significant amount of vacant land. Building heights range from one to three stories in the overlay, which is within the Capitol

Hill Historic District. The underlying base zone is C-3-A, allowing 65 foot building heights, as modified by the overlay, allowing 45 foot building heights. The overlay is intended to encourage commercial development that is supportive of Navy Yard functions, and that is low enough to respect the scale of the Navy Yard's historic 8<sup>th</sup> Street gate and nearby structures.



Aerial View South of Freeway Towards Gate



Pedestrian View South of Freeway Towards Gate

DCOP tested a vacant site at the southeast corner of 8<sup>th</sup> and L Streets and Virginia Avenue just south of the freeway to study potential impacts on neighborhood scale of the IZ bonuses. Staff notes that HPRB in fact did approve a four story building for the site last year. Overlay restrictions would permit a four-story building, and IZ bonuses would allow an increase of a fifth floor, both of which were viewed in computer generated visualizations. The hypothetical five-story building would be taller than existing nearby one to four story buildings, and approximately three stories taller than the top of the freeway.



Eighth Street Overlay Boundaries

Of the three overlays analyzed for massing and scale, the ten foot increase in the ES overlay was the most significant in relation to the exiting scale of buildings. That factor, taken together with the purpose of the overlay to “restrict ...heights to a low level so as to respect the historic scale of buildings and the entrance to the adjacent Navy Yard”, led to the ZC solicitation of the public’s view as to whether and how a balance can be achieved between the effect of the added height depicted in the two perspectives on the next page and the intent to provide additional affordable housing within the ES overlay.

Therefore, in response to that request, NCPC staff submits its view that the additional IZ height increase to 55 feet in the ES overlay is too dramatic and would be too tall relative to the historic scale of the surrounding buildings. Staff finds that building heights of 55 feet within the 8<sup>th</sup> Street Overlay south of the Southeast Freeway would adversely affect the setting of the Navy Yard’s historic Latrobe Gate, and therefore would adversely affect the federal interest.

The proposed allowable height increases for the overlay districts included in this proposed amendment were developed in consultation with the staff of the D.C. Historic Preservation Division (HPD) for its possible effects on the architectural and historic character of the historic district. However, each individual case located in a historic district would be reviewed by the HPRB, where, should issues arise regarding effect on a historic district, they would be addressed locally by the HPRB. NCPC staff believes that the HPRB is the appropriate venue for addressing local impacts rather than treating them as federal interests in all of the overlays except for the ES overlay.

Of the three overlays analyzed for massing and scale, the ten foot increase in the ES overlay was the most significant in relation to the

Furthermore, views seen in the perspectives are looking north towards the freeway, whereas the reverse perspective looking south would show the juxtaposition of the hypothetical 5-story building with the 8<sup>th</sup> Street Gate in the background for a more relevant comparison and showing of effects.

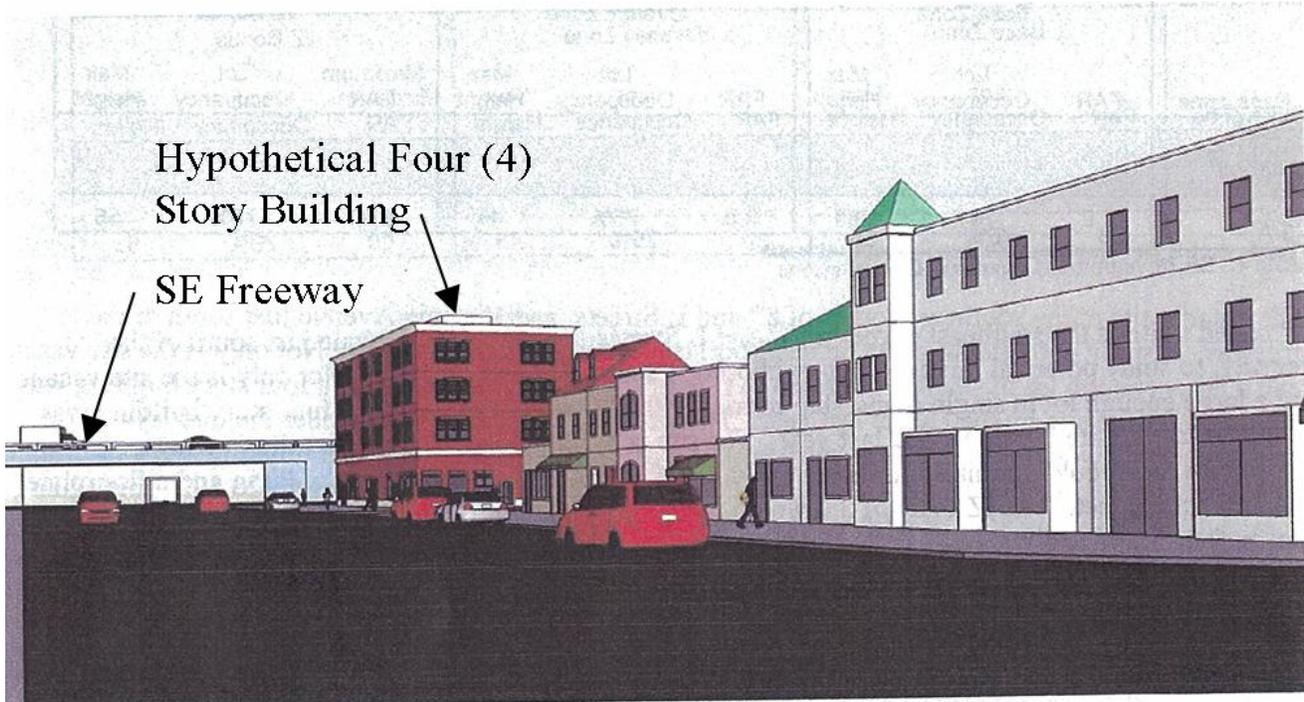


Figure 23. Perspective – Eighth Street Overlay Matter of Right Development Scenario

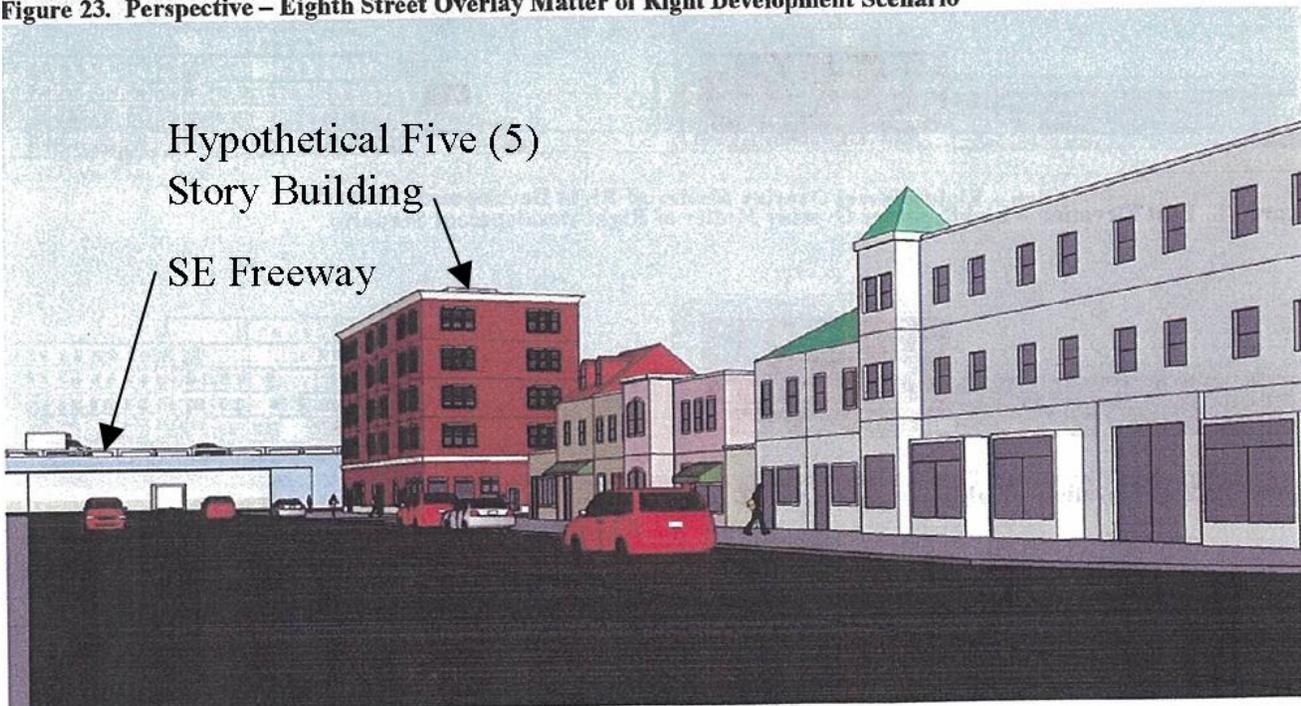


Figure 24. Perspective – Eighth Street Overlay IZ Development Scenario

Views North Towards SE Freeway



View South Towards Latrobe Gate with Four Story Building



View South Towards Latrobe Gate with Five Story Building