Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 836
Case No. 96-15
(Text and Map Amendments – Georgetown Overlay District)
March 9, 1998

On January 22, 1996, the Zoning Commission for the District of Columbia received a petition from the law firm of Robins, Kaplan, Miller & Ciresi on behalf of Advisory Neighborhood Commission (ANC) 2E, the Georgetown Homeowners Alliance, the Burleith Citizens Association, the Hillandale Homeowners Association, the Foxhall Citizens Association, the Cloisters of Georgetown Homeowners Association and the Cloisters West Homeowners Association requesting the Commission to adopt a text and map amendment for a proposed Georgetown Overlay District.

The area proposed for inclusion in the proposed Georgetown Overlay District is bounded by the Potomac River on the south, the Georgetown University Campus on the west, Whitehaven Parkway, N.W. on the north and the Rock Creek Park on the east. The Georgetown Foxhall, Hillandale and Burlieth neighborhoods, which would constitute the proposed overlay area, are low scale residential, and historic in character.

The petitioners allege that the low scale residential and historic character of the neighborhoods is being disrupted by incompatible land uses, overcrowding, noise, proliferation of homes with large numbers of unrelated occupants and chronic parking shortages.

The purposes of the proposed Georgetown Overlay District are to enhance the residential character of the area, control the rental of houses to large numbers of unrelated persons, ensure compatibility of development with the Comprehensive Plan and the Ward 2 Plan, and to provide a family environment consistent with the zone plan for the R-3 District.

The R-3 District permits matter-of-right development of single-family residential uses including detached, semi-detached, and row dwellings with a minimum lot area of 2,000 square feet, a minimum lot occupancy of 60 percent, and a maximum height of three stories/40 feet.

The District of Columbia Office of Planning (OP), by memorandum dated October 31, 1997, analyzed the proposed overlay. The OP indicated that the issues raised in the petition are: the large number of group rental houses in the neighborhoods in question; unprecedented conversion of single-family homes into rental housing for groups of four or more unrelated individuals in the area, and their resultant undesirable neighborhood effects. The specific alleged adverse effects of group residences on neighbors and the neighborhoods are noise, parking problems, poor property maintenance, declining property values, and unstable neighborhood character whose residents are mainly transients.

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EXHIBIT NO.149

The preliminary report stated that on May 22, 1997, the Mayor, together with several staff persons from the OP and other agencies attended a community meeting on the proposed overlay. After a wide range discussion of issues relative to the petition, the Mayor formed the Georgetown Overlay Task Force. The task force included representatives from the Georgetown University, Georgetown Students Association, Georgetown Residents and the Georgetown Rental Association. The Director of the Office of Planning was asked to lead the task force and produce a report on the issue.

The task force met four times. At the conclusion of these series of meetings, each group of participants submitted its final position statement. Copies of the submissions were attached to OP's preliminary report to assist the Commission in determining whether the petition had sufficient merit for a public hearing.

The OP also referred the petition to the Office of the Corporation Counsel (OCC) for advice as to whether the proposed overlay zone is discriminatory under the D.C. Human Rights Act or otherwise.

By memorandum dated July 14, 1997 attached to the OP report, the OCC responded to the OP referral. The OCC response in part stated as follows:

1. The proposed overlay zone may by inconsistent with the Human Rights Act and the Comprehensive Plan.

2. The Petition, as submitted to the Zoning Commission and as advocated by its supporters, repeatedly states that its principal purpose is to reduce the number of students renting property (or the number of students per house) in the affected neighborhoods. Students are a protected class under the Human Rights Act and are afforded protection against discrimination in housing, among other things.

3. Eliminating discrimination in the housing market is also a major goal of the Comprehensive Plan. The Zoning Commission must assure that the Zoning Regulations are consistent with D.C. laws and are not inconsistent with the Comprehensive Plan.

4. "These (virtually universal) references to students in the proposed overlay regulations are noteworthy because, not only do they tend to demonstrate an adverse and disproportionate effect on students, but importantly, they tend to evince a discriminatory intent. And whereas effect is significant...discriminatory intent usually proves fatal." (Opinion, p.3)

5. Various court precedents suggest that regulations of a narrowly limited type may be legally supportable. If the issue is overcrowding of small houses in Burleith,...consideration might be given to limiting the number of occupants in reasonable relation to sleeping and bathroom facilities or habitable floor space. Such a

resolution has received the approbation of courts on both sides of the divisive issue of numerical restriction."(p.8)

The Georgetown Residents'Report attached to the OP report supported the petition for the same reasons advanced by the petitioner. The residents report argued that improved enforcement of existing laws will not solve the problems and that zoning overlays can be used to check the decline in quality of life and property values and growing loss of residential character in the area. It added that there are no other effective alternative mechanisms to the proposed overlay. It urged the Commission to approve the petition and strengthen the regulatory framework for rental units by developing additional registration and licensing requirements for rental units.

The Georgetown University and the Georgetown University Student Association in a position statement attached to the OP report indicated that the Georgetown University's Community Relations Office convened an internal working group to review the proposed overlay. This group concurred with the Georgetown Task Force that overcrowding, trash, noise, and declining property value are the concerns of the petitioners. However, the University concluded that an overlay is not a solution to the problems. An overlay may not address those issues, achieve the desired outcome and may result in unintended adverse consequences.

The Georgetown University could not support the overlay for the following reasons.

1. The Overlay does not address the real problem – rental properties that are poorly maintained by their owners. The real problem is the failure of some landlords to manage their properties responsibly and comply with existing District housing codes.

2. The Overlay arbitrarily sets a cap on houses and doesn't take into account the size of houses or the diversity of families in the community. The arbitrary cap of three unrelated persons is clearly inappropriate for many larger homes in the neighborhood. In addition, would penalize adults of all ages – not just undergraduates, but also medical students, young professionals, domestic partners, responsible landlords, and many families, such as those with extended family members or live-in day care providers. And it would send a chilling message to individuals in many neighborhoods of this city that they are legally prohibited from moving into certain Northwest neighborhoods.

3. The Overlay is unenforceable. District officials acknowledge that they cannot enforce the city's current limit of six persons per house because of a severe shortage of housing inspectors –the Overlay would require even more inspections, and the District simply lacks the resources to perform them. Housing officials also admit that enforcing any limit is difficult because they often must accept the word of the landlord or tenant who can easily conceal the facts.

4. The Overlay is potentially discriminatory against certain classes of people and certain types of families. Although petitioners make an occasional effort to suggest the Overlay is aimed broadly at "unrelated individuals, " in fact, it is aimed at Georgetown University students.

The Georgetown Student Association position paper in opposition stated in part, as follows:

1. We believe the proposal would not survive a legal challenge for three reasons. First, the Supreme Court has ruled that limitations restricting who lives in a house, such as family or non-family members, are subject to scrutiny under the Fair Housing Act. Second, the Overlay has a clear and undeniable discriminatory effect on university students. Third, although we have not studied this issue in great detail, some have suggested that the Overlay might violate the doctrine of equal protection, because it would create different definitions for a "family" in different parts of the same city.

2. The Overlay clearly has discriminatory intent against Georgetown University students. This intent becomes obvious upon even a cursory reading of the petition, and has been consistently repeated in frequent media interviews given by the overlay proponents.

The Office of Zoning received about 56 postcards through the Mayor's Correspondence Unit. 40 of the postcards indicated opposition to the overlay while 16 indicated support.

Councilmember Jack Evans, by a letter dated May 21, 1997, expressed his support the for overlay.

At its regular monthly meeting on November 10, 1997, the Commission reviewed and discussed the petition to determine whether the petition has sufficient merit to warrant a public hearing.

The Commission considered the preliminary report presented by the OP, the Office of Corporation Council advice; and other submissions in the record to the case. The OP report acknowledged that the petition presents legal, practical and enforcement issues, but recommended that the Commission set the case for a public hearing to enable the Commission to address the issues.

The Commission after reviewing and discussing the record of the case, found as follows:

1. The substantive issues that led to the filing of the petition are housing code enforcement problems and not zoning or land-use matters.

2. The petition seemed to target a segment of the city's population, the Georgetown University students.

3. There is no likelihood that an overlay will solve the problems of noise, parking, overcrowding, late night parties by students, poor property maintenance, declining property values or put in check the transient characteristics of renters in the neighborhood.

4. There are other existing mechanisms to address the problems stated by the petitioners.

5. The petition as filed restricting the number of people living in a house may be in conflict with the Fair Housing Act.

In consideration of the above findings the Commission concluded as follows:

The reasons advanced by the petitioners for the Overlay were not persuasive enough to warrant a public hearing.

The Commission concurred with the Georgetown Task Force that the problems that prompted the petition for the Overlay are multifaceted and transcend regulatory and enforcement agency lines and cannot be addressed by zoning or other land-use techniques.

The Commission also concurred with the OCC that the Overlay targeted a protected class, Georgetown students. It is discriminatory to the students, may impose a barrier to elimination of discrimination in housing, and may be inconsistent with the Comprehensive Plan and the Fair Housing Act.

The Commission is of the opinion that the issues addressed in the petition are neither zoning nor land-use issues and doubts the legality of solving an enforcement problem with zoning.

The Commission believes that the petition lacks sufficient merit to be set-down for a public hearing.

The Commission also believes that the petition, as filed, is not in the best interest of the District of Columbia, is inconsistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is inconsistent with the Comprehensive Plan for the National Capital.

Upon consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby **ORDERS** that the petition in Z.C. Case No. 96-15 be **DENIED** without a public hearing.

Vote of the Commission taken at its regular monthly meeting on November 10 1994: 3-0 (John G. Parsons, Herbert M. Franklin to deny the petition without a public hearing; Jerrily R. Kress, to deny the petition without a public hearing by absentee vote – Maybelle Taylor Bennett not voting, having recused herself).

This order was adopted by the Zoning Commission at its regular monthly meeting of February 9, 1998 by a vote of 3-0: (Herbert M. Franklin, John G. Parsons, and Jerrily R. Kress, to adopt – Maybelle Taylor Bennett not voting, having recused herself).

In accordance with 11 DCMR 3028, this Order is final and effective upon publication in the D.C. Register; that is on MAR 27 1998.

MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission

MADELIENE H. DOBBINS
Director
Director of Zoning

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