Board of Zoning Adjustment
Appeal of Fairview Heights Neighborhood Association #16604
September 13, 2000

Rec'd.
SEP 13 2000

Exhibit 1 - 11 DCMR 199 – definitions
Exhibit 2 – sections of
- **11 DCMR 400 – Height of building or structures**
- **11 DCMR 403 – Percentage of Lot Occupancy**
- **11 DCMR 404 – Rear Yards**
- **11 DCMR 405 – Side Yards**
- **11 DCMR 2115 – Size of Parking Spaces**
- **11 DCMR 2503 – Structures in Required Open Spaces**

Exhibit 3 – DC Code 5-413 – Zoning Commission

Exhibit 4 – 5-424 – Board of Zoning Adjustment

Exhibit 5 - Citizens Association of Georgetown, Inc. v. D.C. BZA, 337 A.2d 495 (1975)

Exhibit 6 – Tenley and Cleveland Park Emergency Committee, et al v. D.C. BZA, 550 A.2d 331 (1988)

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Apartment house - any building or part of a building in which there are three (3) or more apartments, or three (3) or more apartments and one (1) or more bachelor apartments, providing accommodation on a monthly or longer basis. (36 DCR 7625)

Art center - a multifunctional arts use that: (a) comprises three (3) or more distinct arts and arts-related uses as specified in §1909 of this chapter; (b) at least one of the uses must be an art gallery art school, artist housing, artist studio, concert hall, dinner theater, legitimate theater, movie theater, or museums; (c) is operated in a unified way under single management; and (d) occupies part or all of a building or a group of buildings within the same square. (39 DCR 8328)

Art gallery - an establishment that derives more than fifty per cent (50%) of its income from the display and sale of objects of art. (35 DCR 465)

Artist housing - an apartment or studio where an artist works and lives. (39 DCR 8328)

Artist studio - a place of work of one or more persons who are engaged actively, and either gainfully or as a vocation in the following:

(a) The fine arts, including but not limited to, painting, printmaking, or sculpturing;

(b) The performing and visual arts, including but not limited to, dance, choreography, photography or filmmaking;

(c) Ceramics; or

(d) The composition of music. (35 DCR 465)

Automobile laundry - a structure or portion of a structure, the principal use of which is the washing of automobiles or other motor vehicles with the use of a chain or other conveyor and blower or steam cleaning device.

Basement - that portion of a story partly below grade, the ceiling of which is four feet (4 ft.) or more above the adjacent finished grade.

Boarding house - a building or part of a building that provides, for compensation, meals or lodging and meals to three (3) or more guests on a monthly or longer basis. The term "boarding house" shall not be interpreted to include an establishment known as, or defined in this title as, a hotel, motel, inn, bed and breakfast, private club, tourist home, guest house, or other transient accommodation. (35 DCR 7625)

Building - a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.

Building, accessory - a subordinate building located on the same lot as the main building, the use of which is incidental to the use of the main building.

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Building area - the maximum horizontal projected area of a building and its accessory buildings. The term "building area" shall include all side yards and open courts less than five feet (5 ft.) in width, and all closed courts less than six feet (6 ft.) in width. Except for outside balconies, this term shall not include any projections into open spaces authorized elsewhere in this title, nor shall it include portions of a building that do not extend above the level of the main floor of the main building, if placed so as not to obstruct light and ventilation of the main building or of buildings on adjoining property.

Building, height of - 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 roof or parapet.

In those districts in which the height of building is limited to forty feet (40 ft.), the height of the building may be measured from the finished grade level at the middle of the front of the building to the ceiling of the top story.

In those districts in which the height of the building is limited to sixty feet (60 ft.), in the case of a building located upon a terrace, the height of building may be measured from the top of the terrace to the highest point of the roof or parapet, but the allowance for terrace height shall not exceed five feet (5 ft.).

Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

In those districts in which the heights of building is permitted to be ninety feet (90 ft.) or greater, the height of buildings shall be measured to the highest point of the roof excluding parapets not exceeding three feet (3 ft.) in height.

Cabaret - a restaurant or nightclub providing as the main focus of its business, programs of live entertainment such as singing, dancing, comedy, literary readings, or performance art. In a cabaret, the clientele generally sit at tables in order to watch the entertainment and are attended by waiters or waitresses who serve food or drink. Typically, there may be more than one show in an evening and a complete turnover in patrons. (39 DCR 8328)

Caregiver - an individual who is responsible for the supervision and administration of a child development home or child development center. (29 DCR 4913)

Caterer, catering establishment - a person or business that prepares and provides food or beverages or both, along with the necessary accessories for serving these products, for ordinary home consumption. The food and beverages are provided for events that are located off the business establishment's premises. Any establishment that receives more than seventy-five percent (75%) of its sales from orders placed less than three (3) hours prior to delivery or pick-up will not be considered a catering establishment. (40 DCR 3744)

Cellar - that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade.

For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars, stair or elevator penthouses, or other roof structures; Provided, that the total area of all roof structures located above the top story shall not exceed one-third (1/3) of the total roof area.

Story, top - the uppermost portion of any building or structure that is used for purposes other than housing for mechanical equipment, or elevator or stairway penthouses. The term "top story" shall exclude architectural embell.

Street - a public highway designated as a street, avenue, or road on the records of the Surveyor of the District of Columbia.

Street frontage - the property line where a lot abuts upon a street. When a lot abuts upon more than one (1) street, the owner shall have the option of selecting which is to be the front for purposes of determining street frontage.

Structure - anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground and including, among other things, radio or television towers, reviewing stands, platforms, flag poles, tanks, bins, gas holders, chimneys, bridges, and retaining walls. The term structure shall not include mechanical equipment, but shall include the supports for mechanical equipment.

Tenement - One (1) or more habitable rooms in an apartment house, under the exclusive control of the occupant of the apartment house.

Tenement house - a building or part of a building containing three (3) or more tenements, or any building or part of a building containing any combination of three (3) or more tenements and apartments.

Through square connection - a continuous improved area through a square for pedestrians providing a connection between two (2) parallel or opposite streets or on a corner lot; Provided, that the entrances to the area shall not be less than thirty feet (30 ft.) from the corner. (24 DCR 10787)

Uptown center - a multi-purpose major activity center with strong transit orientations and significant concentration of employment and high density residential as the principal elements, developed in a manner that serves the surrounding lower density community while protecting it from avoidable intrusions. (21 DCR 1423)

Use, accessory - a use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use.

Wall, lot line - an enclosing wall constructed immediately adjacent to a side lot line, but not a party wall.

Warehouse - any building or premises where goods or chattel are stored.

The term "warehouse" shall not include storage clearly incidental to the conduct of a retail business or other permitted use on the premises.

Wholesale use - the sale of goods to retail or service establishments which in turn will sell them to consumers who will directly use the commodity. (21 DCR 1030)

Yard - an exterior space, other than a court, on the same lot with a building or other structure. A yard required by the provisions of this title shall be open to the sky from the ground up, and shall not be occupied by any building or structure, except as specifically provided in this title. No building or structure shall occupy in excess of fifty percent (50%) of a yard required by this title.

Yard, rear - a yard between the rear line of a building or other structure and the rear lot line, except as provided elsewhere in this title. The rear yard shall be for the full width of the lot and shall be unoccupied, except as specifically authorized in this title.

Yard, rear, depth of - the mean horizontal distance between the rear line of a building and the rear lot line, except as provided elsewhere in this title.

Yard, side - a yard between any portion of a building or other structure and the adjacent side lot line, extending for the full depth of the building or structure.

199.2 For the purpose of this title, the following definitions shall not be held to modify or affect in any way the legal interpretations of these terms or words where used in other regulations:

(a) Words in the present tense shall include the future tense;

(b) Words in the singular number shall include the plural number, and words in the plural number shall include the singular number;

(c) The word "lot" shall include the words "plot" and "parcel";

(d) The word "shall" is mandatory and not directory;

(e) The word "person" shall include a corporation as well as an individual;

(f) The words "occupied" and "used" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied, offered for occupancy"; and

(g) Words not defined in this section shall have the meanings given in *Webster's Unabridged Dictionary*.

SOURCE: Unless otherwise noted, the source of these definitions is §§1201 and 1202 of regulations effective May 12, 1958; as amended by Final Rulemaking published at 39 DCR 1900, 1904 (March 20, 1992); by Final Rulemaking published at 40 DCR 1951 (March 19, 1993); by Final Rulemaking published at 40 DCR 3744 (June 11, 1993).; and by Final Rulemaking published at 40 DCR 6364 (September 3, 1993).

EDITOR'S NOTE: The spelling of the word "terrestrial" has been corrected in the definition of Antenna, microwave terrestrial. The phrase 'on May 12, 1958' has been substituted for the phrase 'at the time these regulations or any amendment of these regulations became effective' within the definitions of Nonconforming structure and Nonconforming use.

CHAPTER 4 RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS

Secs.

400 Heights of Buildings or Structures (R)
401 Minimum Lot Dimensions (R)
402 Floor Area Ratio (R)
403 Percentage of Lot Occupancy (R)
404 Rear Yards (R)
405 Side Yards (R)
406 Courts (R)
407 - 409 [Reserved]
410 Exceptions for R-5 Districts
411 Roof Structures (R)
499 Definitions

400 HEIGHT OF BUILDINGS OR STRUCTURES (R)

400.1 Except as specified in this chapter and in chapters 20 through 25, the height of buildings or structures in a Residence district shall not exceed that given in the following table:

DISTRICT	HEIGHT (Feet)	HEIGHT (Stories)
R-1-A, R-1-B, R-2 R-3, R-4, R-5-A	40	3
R-5-B	50	No Limit
R-5-C	60	No Limit
R-5-D	90	No Limit
R-5-E	90	No Limit

400.2 Except as provided in §2510, the height of buildings or structures as specified in §400.1 may be exceeded in the instances provided in §§400.3 through 400.13.

400.3 A spire, tower, dome, pinnacle, or minaret serving as an architectural embellishment, or an antenna may be erected to a height in excess of that which this section otherwise authorizes in the district in which it is located.

400.4 A chimney or smokestack may be erected to a height in excess of that authorized in the district in which it is located when required by other municipal law or regulation.

400.5 A building or other structure may be erected to a height not exceeding ninety feet (90 ft.); Provided, that the building or structure shall be removed from all lot lines of its lot for a distance equal to the height of the building or structure above the natural grade.

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400.6 A church may be erected to a height of sixty feet (60 ft.); Provided, that it shall not exceed the number of stories permitted in the district in which it is located.

400.7 If housing for mechanical equipment, a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:

(a) It shall meet the requirements of §411;

(b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and

(c) It shall not exceed eighteen feet six inches (18 ft. 6 in.) in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot six inch (18 ft. 6 in.) height of the housing.

400.8 Housing for mechanical equipment, a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located.

400.9 An institutional building or structure may be erected to a height not exceeding ninety feet (90 ft.); Provided, that the building or structure shall be removed from all lot lines of its lot a distance of not less than one foot (1 ft.) for each foot of height in excess of that authorized in the district in which it is located.

400.10 In an R-1 and R-2 district, a public school building or structure may be erected to a height not exceeding sixty feet (60 ft.).

400.11 In an R-3, R-4, R-5-A, R-5-B, and R-5-C district, a public school building or structure may be erected to a height not exceeding ninety feet (90 ft.).

400.12 In an R-5-B district, a college or university building or structure covered by an approved campus plan may be erected to a height not exceeding sixty feet (60 ft.).

400.13 Where required by the Act of June 1, 1910 (36 *Stat.* 452), as amended, a height in excess of that permitted shall be authorized by the Mayor.

AUTHORITY: Unless otherwise noted, the authority for this chapter is An Act approved June 20, 1938, 52 Stat. 797, ch. 534, as amended at 56 *Stat.* 122, D.C. Code §5-413 *et seq.* (1981).

SOURCE: §§3201.1, 3201.2, and 3201.3 of Regulations effective May 12, 1958; as amended by Final Rulemaking published at 33 DCR 3975 (July 4, 1986); by Final Rulemaking published at 36 DCR 1509, 1522 (February 24, 1989); renumbered by Final Rulemaking published at 39 DCR 8305, 8306 (November 13, 1992).

401 MINIMUM LOT DIMENSIONS (R)

401.1 Except as provided in chapter 20 through 25 of this title, in the case of a building located, on May 12, 1958, on a lot area or width of lot, or both, less than is prescribed in §401.3 for the district in which it is located, the building

may not be enlarged or replaced by a new building unless it complies with all other provisions of this title.

401.2 Except as provided in §401.3, in the case of an unimproved lot in single ownership on November 1, 1957, which has an area or width of lot less than that specified in §401.3 for the district in which it is located and which does not adjoin another unimproved lot in the same ownership, a structure may be erected on the lot if both the area and width of lot are at least eighty percent (80%) of the area and width of lot specified under §401.3; Provided, that the structure shall comply with all other provisions of this title.

401.3 Except as prescribed in the other provisions of this chapter, the minimum dimensions of a lot in a Residence district shall be as set forth in the following table:

ZONING DISTRICT AND STRUCTURE	MINIMUM LOT AREA (square feet)	MINIMUM WIDTH OF LOT (feet)
R-1-A		
All structures	7,500	75
R-1-B		
All structures	5,000	50
R-2		
One-family semi-detached dwelling	3,000	30
All other structures	4,000	40
R-3		
Row dwelling	2,000	20
One-family semi-detached dwelling	3,000	30
All other structures	4,000	40
R-4		
Row dwelling and flat	1,800	18
One-family semi-detached dwelling	3,000	30
Conversion to apartment house	900/apartment or bachelor apartment	None Prescribed
All other structures	4,000	40
R-5-A	As prescribed by the Board	As prescribed by the Board
R-5-B, R-5-C, R-5-D, R-5-E	None prescribed	None prescribed

401.4 In the case of an unimproved plot of ground in single ownership on November 1, 1957, which has an area or width less than two hundred percent (200%) of that prescribed in §401.3 or the district in which it is located and does not adjoin another unimproved plot of ground in the same ownership, two structures may be erected on the lot; Provided, that each structure shall be erected on a lot that complies with eighty percent (80%) of both the required area and width of lot specified in §401.3; and Provided further, that each structure shall comply with all other provisions of this title.

401.5 In R-5-A districts, each row dwelling shall have at least eighteen hundred square feet (1,800 ft.^{2}) of gross land area exclusive of any land area in the project used as a basis for determining the floor area ratio of multi-family buildings. Each row dwelling, however, need not have a site of eighteen hundred square feet (1,800 ft.^{2}), and the difference between the site area and the gross land area may be accumulated into common spaces. Land areas used to support this floor area ratio of multi-family buildings may also be used for common spaces.

401.6 Each lot created after the effective date of this subsection and to be used and occupied by a one-family detached dwelling, one-family semi-detached dwelling, community-house, or row dwelling, shall have a street frontage measured along the street a distance equal to at least forty percent (40%) of the required minimum width of lot and no case less than fourteen feet (14 ft.).

401.7 Each lot created after the effective date of this subsection and to be used and occupied by an apartment house shall have a street frontage measured along the street a distance of not less than thirty feet (30 ft.).

SOURCE: §§3301.1, 3301.2, 3301.3, and 3301.4 of Regulations effective May 12, 1958; as amended by Final Rulemaking published at 39 DCR 8305, 8306 (November 13, 1992).

402 FLOOR AREA RATIO (R)

402.1 In an R-1 and R-2 district, the maximum floor area ratio requirements applicable in each district may be increased for specific public school buildings or structures; Provided, the total gross floor area of all buildings and structures on the campus shall not exceed a floor area ratio of nine-tenths (0.9).

402.2 In an R-3, R-4, R-5-A, and R-5-B district, the maximum floor area ratio requirements applicable to each district may be increased for specific public school buildings or structures, but shall not exceed the floor area ratio prescribed for the R-5-B district.

402.3 In all other residential districts not provided for in §§402.1 and 402.2, increases in the floor area ratio of all public school buildings and structures shall not exceed the floor area ratio prescribed for the R-5-C district.

402.4 Except as provided in other provisions of this chapter and in §411, the maximum permitted floor area ratio in a Residence district shall be as set forth in the following table:

403.2 (Continued)

ZONING DISTRICT AND STRUCTURE	PERCENTAGE OF LOT OCCUPANCY
R-I-A, R-I-B, R-2	
Church or public school	60%
All other structures	40%
R-3	
Row dwelling, flat, church, or public school	60%
All other structures	40%
R-4	
Row dwelling, flat, church or public school	60%
Conversion to multiple dwelling	None prescribed
All other structures	40%
R-5-A	
Church or public school	60%
All other structures	40%
R-5-B	
All structures	60%
R-5-C, R-5-D, R-5-E	
All structures	75%

SOURCE: §3303 of Regulations effective May 12, 1958; as amended by Final Rulemaking published at 39 DCR 8305, 8307 (November 13, 1992).

404 REAR YARDS (R)

404.1 A rear yard shall be provided for each structure located in a Residence district, the minimum depth of which shall be as set forth in the following table:

ZONING DISTRICT	MINIMUM DEPTH OF REAR YARD
R-1-A, R-1-B	25 feet
R-2, R-3, R-4, R-5-A	20 feet
R-5-B, R-5-C, R-5-D	4 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 feet

404.1 (Continued)

R-5-E	3 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet.

404.2 In the case of a through lot or a corner lot abutting three (3) or more streets, the depth of rear yard may be measured from the center line of the street abutting the lot at the rear of the structure.

404.3 In the case of a lot proposed to be used by a public school which abuts or adjoins along the rear lot line a public open space, recreation area, or reservation, the required rear yard may be reduced or omitted.

404.4 In the case of a building existing on or before May 12, 1958, an extension or addition may be made to the building into the required rear yard; Provided, that the extension or addition shall be limited to that portion of the rear yard included in the building area on May 12, 1958.

SOURCE: §3304 of Regulations effective May 12, 1958; as amended by Final Rulemaking published st 39 DCR 8305, 8307 (November 13, 1992).

405 SIDE YARDS (R)

405.1 In an R-2, R-3, R-4, or R-5 district, a one-family detached dwelling shall be subject to the side yard requirements of an R-1 district.

405.2 In an R-3, R-4, or R-5 district, a one-family semi-detached dwelling shall be subject to the side yard requirements of an R-2 district.

405.3 In R-2, R-3, R-4, and R-5 districts when a one-family dwelling, flat, or multiple dwelling is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, then it shall have a side yard on each resulting free standing side.

405.4 Except as provided in §405.1, in an R-5-A district, one (1) side yard shall be provided for all structures unless the structure is an apartment house containing three (3) or more dwelling units per floor, in which case two (2) side yards shall be provided, each with the minimum width set forth in §405.9.

405.5 A side yard shall not be required along a side street abutting a corner lot in a Residence district.

405.6 Except as provided in §§405.1 and 405.2, a side yard shall not be required in an R-3, R-4, R-5-B, R-5-C, R-5-D or R-5-E district. However, if the yard is provided, it shall be at least three inches (3 in.) wide per foot of height of building, but not less than eight feet (8 ft.) wide.

405.7 In the case of a lot located in an R-1 or R-2 district proposed to be used by a public school that abuts or adjoins on one (1) or more side lot lines a public open space, recreation area, or reservation, the required side yard may be reduced or omitted.

405.8 In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; Provided, that the width of the existing side yard shall not be decreased; and Provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).

405.9 Side yards shall be provided on lots in Residence districts as set forth in the following table, subject to the special requirements of other provisions of this chapter:

ZONING DISTRICT	MINIMUM DEPTH OF EACH SIDE YARD
R-1-A, R-1-B, R-2	8 feet
R-3, R-4	None required, except as provided under §§405.1, 405.2, and 405.5
R-5-A	3 inches per foot of height of building, but not less than 8 ft.
R-5-B, R-5-C, R-5-D, R-5-E	None required, except as provided under §§405.1, 405.2, and 405.5.

SOURCE: §3305 of Regulations effective May 12, 1958; as amended by Final Rulemaking published at 39 DCR 8305, 8307 (November 13, 1992).

406 COURTS (R)

406.1 Where a court is provided in a Residence district, the court shall have the minimum dimensions set forth in the following table:

ZONING DISTRICT AND STRUCTURE	WIDTH OF OPEN COURT	WIDTH AND AREA OF CLOSED COURT
R-1-A, R-1-B, R-2, R-3, R-4, R-5-A One-family dwelling	4 in. per foot of height of court, but not less than 6 ft.	Width: 4 in. per foot of height of court, but not less than 1than 5 ft. Area: Twice the square of the required width of court dimension based on the height of court, but not less than 350 ft.^{2}

Other Uses" in the table in §2101.1, the amount of required parking spaces shall not be reduced by more than fifty percent (50%).

2108.3 The Board shall give consideration to the following:

(a) The nature and location of the structure;

(b) The maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;

(c) The amount of traffic congestion existing or which the building or structure can reasonably be expected to create in the neighborhood;

(d) The quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood which can reasonably be expected to be available when the building or structure is in use; and

(e) The proximity to public transportation,particularly Metrorail stations, and the availability of public transportation service in the area, or a ride-sharing program approved by the District of Columbia Department of Public Works.

2108.4 If the applicant relies on a ride-sharing program, the applicant shall demonstrate to the Board that the program shall continue as long as the use continues.

2108.5 Prior to taking final action on an application, the Board shall refer the application to the District of Columbia Department of Public Works for review and report.

SOURCE: Final Rulemaking published at 31 DCR 6585, 6600 (December 28, 1984), effective March 1, 1985.

2109 APPLICABILITY OF RESIDENTIAL BUILDING

2109.1 For the purposes of §§2104, 2105, 2107 and 2108, a non-residential building or structure includes any building or structure where eighty percent (80%) or more of the gross floor area is devoted to a use other than a dwelling, flat, multiple dwelling, rooming or boarding house, community based residential facility or hospital.

SOURCE: Final Rulemaking published at 31 DCR 6585, 6600 (December 28, 1984), effective March 1, 1985.

2110 - 2114 [RESERVED]

2115 SIZE OF PARKING SPACES

2115.1 Except as otherwise provided in this section, a required automobile parking space shall be a minimum of nine feet (9 ft.) in width and nineteen feet (19 ft.) in length,

exclusive of access drives, aisles, ramps, columns, office or work areas and shall be striped according to the requirements of §2117.2. Parking shall also be in compliance with the requirements of the District of Columbia Architectural Barriers Act of 1980 (D.C. Law 3-76, effective July 1, 1980).

2115.2 Any accessory parking area or accessory garage containing twenty-five (25) or more required parking spaces, may designate up to forty percent (40%) of the parking spaces for compact cars.

2115.3 A compact car parking space shall be a minimum of eight feet (8 ft.) in width and sixteen feet (16 ft.) in length exclusive of access drives, aisles, ramps, columns, office and work areas and shall be striped according to the requirements of §2117.3.

2115.4 Parking spaces shall be visibly marked as "**compact car**" or "**small car**" parking spaces and shall be placed in groups of at least five (5) contiguous spaces with access from the same aisle.

2115.5 Except as provided in §§2115.6 and 2115.7, all parking spaces shall have a minimum vertical clearance of six feet, six inches (6 ft. x 6 in.).

2115.6 Where one hundred (100) or more parking spaces are provided, whether the spaces are required or not and whether the spaces are a principal use or an accessory use, at least five percent (5%) of the parking spaces shall have a minimum vertical clearance of seven feet, two inches (7 ft. x 2 in.).

2115.7 All entrances, exits, access aisles, ramps, and driveways providing access to parking spaces shall also have the minimum vertical clearances as prescribed in §2115.5 and §2115.6, respectively.

2115.8 All parking spaces requiring the seven foot, two inch (7 ft. x 2 in.) vertical clearance shall be clearly marked for "**Van Parking Only**."

2115.9 In a commercial building or structure, where at least seventy-five (75) parking spaces are required according to the schedule of parking requirements under §2101.1, which is located in a C-3-C, C-4, C-5(PAD), SP, W or CR district and where parking spaces are provided within a parking garage, parking may be provided as set forth in §§2115.10 through 2115.18.

2115.10 A minimum of two hundred eighty-five square feet (285 ft.^{2}) of parking area shall be provided for each required parking space.

2115.11 Parking space dimensional, size, design and striping requirements stipulated under §§2115.1-2115.4, 2117.3, 2117.5 and 2117.6 may be waived; Provided, that the parking is managed during a specified twelve (12) hour peak period to be determined by the Department of Public Works by employed attendants who park the vehicles using the parking facility.

2115.12 A permanent sign shall be posted at each entrance in full view of the public which states: "**Attendant assisted parking is required by the District of Columbia Zoning Regulations.**" The sign shall also state the hours during which

2502.8 A chimney, smokestack, or flue may project into any required side yard for a distance not to exceed two feet (2 ft.).

2502.9 A room air conditioner (self-contained) may project into any required yard or court a distance not to exceed two feet (2 ft.).

SOURCE: §7602.1 of Regulations effective May 12, 1958.

2503 STRUCTURES IN REQUIRED OPEN SPACES

2503.1 Except for the structures specified, and the exceptions set forth in this section, every part of a yard required under the provisions of this title shall be open and unobstructed to the sky from the ground up.

2503.2 A structure, not including a building, no part of which is more than four feet (4 ft.) above the grade at any point may occupy any yard required under the provisions of this title. Any railing required by the D.C. Building Code shall not be calculated in the measurement of this height.

2503.3 A fence or retaining wall constructed in accordance with the D.C. Building Code may occupy any yard required under the provisions of this title.

2503.4 Stairs leading to the ground from a door located on the story in which the principal entrance of a building is located may occupy any yard required under provisions of this title. The stairs shall include any railing required by the provisions of the D.C. Building Code.

2503.5 An antenna which complies with all other requirements of this title may occupy any side or rear yard which is required by any provision of this title.

SOURCE: §7602.2 of Regulations effective May 12, 1958; as amended by Final Rulemaking published at 27 DCR 2226, 2228 (May 23, 1980); and by Final Rulemaking published at 36 DCR 1509, 1522 (February 24, 1989).

2504 STRIPPING OF TOPSOIL

2504.1 No person, firm, or corporation other than the District government or an agency acting under contract with the District government shall remove topsoil or sod in any district, other than an M district, except under one (1) of the following conditions:

(a) In connection with the construction or alteration of a building for which a building permit has been previously issued, or in connection with excavation or grading incidental to the building or maintenance of the building grounds;

(b) In connection with normal lawn preparation and maintenance on the lot from which the topsoil or sod is removed;

(c) In connection with any accessory use incidental to a permitted use;

(d) In connection with the construction or alteration of a street or alley; or

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§ 5-412.3. Same — Transfer of functions of Zoning Secretariat of Office of Planning.

In accordance with § 1-227(b), the functions of the Zoning Secretariat of the Office of Planning, under the direction of the Deputy Mayor for Economic Development pursuant to the Establishment of the Office of Economic Development, effective January 3, 1983 (M.O. 83-18; 30 DCR 319), and any position, property, record, unexpended balance of appropriations, allocation, or other funds available to or to be made available relating to the functions of the Zoning Secretariat of the Office of Planning, are transferred to the Office of Zoning established by § 5-412.1. (Sept. 20, 1990, D.C. Law 8-163, § 4, 37 DCR 4676.)

Section references. — This section is referred to in § 5-412.4.

Section effective October 1, 1991. — Section 7(b) of D.C. Law 8-163 provided that the provisions of the act shall not apply until October 1, 1991.

Legislative history of Law 8-163. — See note to § 5-412.1.

§ 5-412.4. Same — Recommendations, reports, review and comment by Office of Planning.

Nothing in §§ 5-412.1 through 5-412.4 shall be construed to prevent the Office of Planning from continuing to provide recommendations and reports to the Zoning Commission and the Board of Zoning Adjustment on any zoning case. The Office of Planning shall review and comment upon all zoning cases, and the Zoning Commission and the Board of Zoning Adjustment shall give great weight to the recommendation of the Office of Planning. Upon request of the Zoning Commission or the Board of Zoning Adjustment, the Office of Planning shall provide recommendations, information, or technical assistance in a timely manner. (Sept. 20, 1990, D.C. Law 8-163, § 5, 37 DCR 4676.)

Section effective October 1, 1991. — Section 7(b) of D.C. Law 8-163 provided that the provisions of the act shall not apply until October 1, 1991.

Legislative history of Law 8-163. — See note to § 5-412.1.

§ 5-413. Zoning Commission — Regulations; districts or zones.

To promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital, the Zoning Commission created by § 5-412, is hereby empowered, in accordance with the conditions and procedures specified in §§ 5-413 to 5-432, to regulate the location, height, bulk, number of stories and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density of population, and the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, or other purposes; and for the purpose of such regulation said Commission may divide the District of

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Columbia into districts or zones of such number, shape, and area as said Zoning Commission may determine, and within such districts may regulate the erection, construction, reconstruction, alteration, conversion, maintenance, and uses of buildings and structures and the uses of land. The said Zoning Commission shall also have power to promulgate regulations to require, with respect to buildings erected subsequent to the promulgation of such regulations, that facilities be provided and maintained either on the same lot with any such building, or on the same lot with any such building or elsewhere, for the parking of automobiles and motor vehicles of the owners, occupants, tenants, patrons, and customers of such building, and of the business, trades, and professions conducted therein. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in 1 district may differ from those in other districts. (June 20, 1938, 52 Stat. 797, ch. 534, § 1; Mar. 4, 1942, 56 Stat. 122, ch. 126; 1973 Ed., § 5-413.)

Cross references. — As to rules and regulations, see §§ 1-315, 1-319, and 1-322. As to recommendations of National Capital Planning Commission regarding zoning regulations, see § 1-2006. As to height of buildings, see §§ 5-401 to 5-409 and 5-418.

Section references. — This section is referred to in §§ 5-415, 5-423, 5-424, 5-426 to 5-432, and 9-401.

Section requires only that the zoning regulations be applied uniformly to all property throughout the District, with all owners of the same class being treated alike and does not prohibit a classification which is reasonable. Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n, App. D.C., 355 A.2d 550, aff'd, App. D.C., 364 A.2d 610, cert. denied, 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334 (1976).

Nonconforming use defined. — A nonconforming use is an exception to generally applicable zoning requirements for a previously lawful, existing use. George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 429 A.2d 1342 (1981).

Recognition of nonconforming uses to protect property owners. — The government recognizes nonconforming uses in derogation of the general zoning scheme in order to protect the interests of property owners. George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 429 A.2d 1342 (1981).

Right to nonconforming use generally runs with the land. George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 429 A.2d 1342 (1981).

Commission has broad authority to regulate nonconforming uses and structures. — While Congress was unwilling to empower the Zoning Commission to adopt regulations mandating the termination of nonconforming uses, it nevertheless gave the Zoning Commission broad authority to regulate both nonconforming uses and structures. Lenkin v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 428 A.2d 356 (1981).

And Commission may prohibit enlargement of nonconforming use. — Nothing in this section precludes the Zoning Commission from promulgating a regulation prohibiting the enlargement of a structure that is devoted to a nonconforming use. Lenkin v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 428 A.2d 356 (1981).

Regulations do not mandate perpetuation of nonconforming uses. — Although the Zoning Enabling Act of 1938 and zoning regulations protect nonconforming uses from arbitrary termination, they do not mandate any action that perpetuates such uses. Lenkin v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 428 A.2d 356 (1981).

Intent to preserve nonconforming use manifested by reconstruction. — Reconstruction to accommodate a new nonconforming use pursuant to Board of Zoning Adjustment approval manifests an intent to preserve, not give up, nonconforming use. George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 429 A.2d 1342 (1981).

Owner not deprived of nonconforming use by lapse of time without active pursuit. — The mere lapse of time without active pursuit of a nonconforming use does not deprive the owner of that right. George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 429 A.2d 1342 (1981).

Abandonment of nonconforming use. — If an owner evidences his rejection of the protection afforded to previously lawful, though

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ng Adjustment, App. 1).

constitutes "step Board for purposes nspection of the prop- permit is sought by stment constitutes a e" by the Board and Board's docket. Hot , 231 F. Supp. 825 F.2d 834 (D.C. Cir.

t applicant given nt findings. — The gulation which gives ng permit the chance n administrative offi- erty owners or other ated their side of the nt an opportunity to as the result of the Hot Shoppes, Inc. v. (D.D.C. 1964), aff'd, 1965).

licant to rebut evi- . — The failure to a building permit to evidence gathered at erty by the Board of make the inspection a denial of due pro- Clouser, 231 F. Supp. 346 F.2d 834 (D.C.

nducting business dant must prove In a prosecution for thout first having ob- endant wishes to rely se, the burden is on ming use. Hagans v. . D.C., 97 A.2d 922

to issue business li- to continue busi- by the Zoning Com- s license is wrongful, to continue the busi- Hagans v. District of A.2d 922 (1953).

oard has authority ring a nonconform- tion of an "enlarge- plicable criteria of aco v. District of Co- ustment, App. D.C.,

v. District of Colum- 649 (1983).

§ 5-424. Board of Zoning Adjustment.

(a) A Board of Zoning Adjustment is hereby created which shall be composed of 1 member of the National Capital Planning Commission or a member of the staff thereof to be designated in either case by such Commission and appointed by the Mayor of the District of Columbia; 1 member of the Zoning Commission or a member of the staff thereof to be designated in either case by such Commission and appointed by the Mayor of the District of Columbia; and 3 other members appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia, each of whom shall have been a resident of the District of Columbia for at least 3 years immediately preceding his appointment and at least 1 of whom shall own his own home.

(b) The representative of the National Capital Planning Commission may be changed from time to time by such Commission in its discretion, and in case of a vacancy in the position by death, resignation, or other disability, a new representative shall be designated by the said Commission and appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia to fill said vacancy. The representative of the Zoning Commission may be changed from time to time by such Commission in its discretion, and in case of a vacancy in the position by death, resignation, or other disability, a new representative shall be designated by the said Commission and appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia to fill said vacancy. The terms of the 3 members designated by the Mayor of the District of Columbia shall be 3 years each, excepting that, in the case of the initial appointments, 1 shall be for a term of 1 year and 1 for a term of 2 years. In case of any vacancy in the position of any of the 3 members designated by the Mayor of the District of Columbia, the same shall be filled for the remainder of the term.

(c) The Zoning Commission may provide and specify in its zoning regulations general rules to govern the organization and procedure of the Board of Adjustment not inconsistent with the provisions of §§ 5-413 to 5-432, and the Board of Adjustment may adopt supplemental rules of procedure which shall be subject to the approval of the Zoning Commission after public hearing thereon as provided in § 5-415. The Board of Adjustment shall choose its Chairman and its other officers. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

(d) The regulations adopted by the Zoning Commission may provide that the Board of Adjustment may in appropriate cases and subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the regulations, make special exceptions to the provisions of the zoning regulations in harmony with their general purpose and intent. The Commission may also

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authorize the Board of Adjustment to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines or similar questions as they arise in the administration of the regulations.

(e) The Board of Adjustment shall not have the power to amend any regulation or map.

(f) Appeals to the Board of Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any officer or department of the government of the District of Columbia or the federal government affected, by any decision of the Inspector of Buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part upon any zoning regulation or map adopted under §§ 5-413 to 5-432. The Mayor of the District of Columbia may require and fix the fee to be charged for an appeal, which fee shall be paid, as directed by said Mayor, with the filing of the appeal; provided, that no citizens' association, or association created for civic purposes and not for profit shall be required to pay said fee. There shall be a public hearing on appeal.

(g) Upon appeals the Board of Adjustment shall have the following powers:

(1) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by the Inspector of Buildings or the Mayor of the District of Columbia or any other administrative officer or body in the carrying out or enforcement of any regulation adopted pursuant to §§ 5-413 to 5-432;

(2) To hear and decide, in accordance with the provisions of the regulations adopted by the Zoning Commission, requests for special exceptions or map interpretations or for decisions upon other special questions upon which such Board is required or authorized by the regulations to pass;

(3) Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional stituation or condition of a specific piece of property, the strict application of any regulation adopted under §§ 5-413 to 5-432 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map;

(4) In exercising the above-mentioned powers, the Board of Adjustment may, in conformity with the provisions of §§ 5-413 to 5-432, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, determination, or refusal appealed from or may make such order as may be necessary to carry out its decision or authorization, and to that end shall have all the powers of the officer or body from whom the appeal is taken.

(h) The concurring vote of not less than a full majority of the members of the Board shall be necessary for any decision or order.

Supp.

§ 5-424. Board of Zoning Adjustment.

Cross references. — As to compensation of Board of Zoning Adjustment members, see § 1-612.8(c)(2)(A).

As to compensation of chairman of the Board of Zoning Adjustment, see § 1-612.8(c)(2)(J).

Section references.

This section is referred to in § 1-633.7.

Location and expansion of university. — The Board of Zoning Adjustment correctly concluded that it lacked the authority to prohibit American University from occupying commercially zoned off-campus property for the purpose of constructing a new law school on that property. Spring Valley Wesley Heights Citizens Ass'n v. Board of Zoning Adjustment, App. D.C., 644 A.2d 434 (1994).

Presumption of validity. — A certificate of occupancy enjoys a presumption of validity. Attacks on such certificate belong, in the first instance, not before the courts, but before the administrator and then the D.C. Board of Zoning Adjustment. Burka v. Aetna Life Ins. Co., 945 F. Supp. 313 (D.D.C. 1996).

Zoning regulations construed.

A private music school met the dictionary definition of a "school," in the context of zoning regulations, in that it was an organized source of education or training as well as a place where instruction was given. Neighbors on Upton St. v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 697 A.2d 3 (1997).

A music school was a "private school" and not a "trade school" in the context of zoning regulations that disallowed trade schools; the school was established, conducted, and primarily supported by a nongovernmental agency, and although some music school graduates became professional musicians, the school did not exist just to teach students a trade. Neighbors on Upton St. v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 697 A.2d 3 (1997).

Cited in National Trust for Historic Preservation v. Department of State, 834 F. Supp. 443 (D.D.C. 1993), aff'd in part and rev'd in part sub nom. Sheridan Kalorama Historical Ass'n v. Christopher, 49 F.3d 750 (D.C. Cir. 1995).

§ 5-426. Building permits; certificates of occupancy.

Understatement of occupancy not misrepresentation. — There was no basis to find that American University's assertion of an occupancy of 1200 students when it has an enrollment of 1354 constituted a misrepresentation. Burka v. Aetna Life Ins. Co., 945 F. Supp. 313 (D.D.C. 1996).

Cited in Bagley v. Foundation for Preservation of Historic Georgetown, App. D.C., 647 A.2d 1110 (1994).

§ 5-427. Enforcement of zoning regulations.

(a) The Mayor of the District of Columbia shall enforce the regulations adopted under the authority of §§ 5-413 to 5-432. Nothing contained in §§ 5-413 to 5-432 shall be construed to limit the authority of the Mayor or Council of the District of Columbia to make municipal regulations which are not inconsistent with the provisions of §§ 5-413 to 5-432 and the regulations adopted thereunder.

(b) If, pursuant to rules issued pursuant to §§ 5-413 through 5-432, the Zoning Commission approves a zoning density increase for a commercial office building or structure with a floor area ratio that is greater than the floor area ratio permitted as a matter of right under the zoning regulations, the applicant who obtains the zoning density increase shall be required to comply with the housing requirements set forth in section 308b of the Comprehensive Plan, as such requirements may be amended. (June 20, 1938, 52 Stat. 801, ch. 534, § 11; 1973 Ed., § 5-423; Oct. 6, 1994, D.C. Law 10-193, § 3(d), 41 DCR 5536.)

Effect of amendments. — D.C. Law 10-193 added the designation "(a)" and added (b).

Legislative history of Law 10-193. — Law 10-193, the "Comprehensive Plan Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-212, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on August 8, 1994, it was assigned Act No. 10-323 and transmitted to both Houses of Congress for its review. D.C. Law 10-193 became effective on October 6, 1994.

Effective date of District elements of the Comprehensive Plan for the National Capital. — Section 4(b) of D.C. Law 10-193 pro-

Zoning Comm has sole authority for amending Regulations

#5

337 A.2d 495 printed in FULL format.

CITIZENS ASSOCIATION OF GEORGETOWN, INC., PETITIONER, v. DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, RESPONDENT, SERAFIM ALATARIS, et al., INTERVENORS

No. 8643

District of Columbia Court of Appeals

337 A.2d 495; 1975 D.C. App. LEXIS 377

January 22, 1975, Argued
May 7, 1975, Decided

PRIOR HISTORY: [**1]

Petition for Review of an Order of the District of Columbia Board of Zoning Adjustment

DISPOSITION: Affirmed.

CORE TERMS: space, parking, intensification, terrace, regulation, restaurant, floor area, seating, gas station, establishment, intervenors, issuance, certificate, outdoor, certificate of occupancy, constructed, measurement, permanent, carry-out, plumbing, indoor, retail, roof

COUNSEL: Christopher W. Keller, with whom W. Bruce Shirk was on the brief, for petitioner. Courts Oulahan also entered an appearance for petitioner.

S. Perry Jones, Assistant Corporation Counsel, with whom C. Francis Murphy, Corporation Counsel, Louis P. Robbins, Principal Assistant Corporation Counsel, and Richard W. Barton, Assistant Corporation Counsel, were on the pleadings, for respondent.

Bennett M. Cooper for intervenors.

BZA
Case No. 16604
Exhibit No. 30 (c)

JUDGES: Kelly, Gallagher, and Harris, Associate Judges.

OPINIONBY: HARRIS

OPINION: [*495] Petitioner challenges the issuance by the District of Columbia Board of Zoning Adjustment (BZA) of a certificate of occupancy [*496] to intervenors for the operation of a restaurant and carry-out, known as Georgetown Plaza Restaurant, at 2833 M Street, N.W. Petitioner maintains that the BZA failed to consider the intensification of use occasioned by the conversion of the premises from a gas station to a restaurant, and contends that respondent should have required additional on-site parking spaces as a condition to the issuance of the certificate. We affirm.

Intervenors [**2] applied for a certificate of occupancy for a restaurant with a seating capacity of 75 persons indoors and an additional 100 persons outdoors on a terrace. The indoor area, consisting of a small one-story building, includes approximately 1,760 square feet. The outdoor terrace area, which had been most of the nonbuilding portion of the gas station, comprises approximately 3,100 square feet.

The BZA held two hearings on the matter. The first dealt with the issue of intensification of use; the second was limited to compliance with the plumbing code. The BZA's final order ruled that the plumbing code would permit a maximum seating capacity of only 100 persons (74 inside and 26 outside). As one of its findings, the BZA stated that there had been no facts introduced "regarding an increase by additions, additions of employees, gross floor area, seating capacity or other unit of measurement." That finding apparently meant that there were no facts probative of an intensification of use, as defined in @ 7201.3 of the Zoning Regulations, which would necessitate providing additional parking spaces. The BZA affirmed the Zoning Committee's conclusion that no additional parking spaces were [**3] required.

Petitioner first takes issue with the BZA's finding of "no facts" as to intensification of use. Considered in its most literal sense, the finding is correct. Petitioner introduced evidence of the seating capacity of the premises as a restaurant, but understandably introduced none as to the seating capacity of the premises during its prior use as a gas station. Similarly, petitioner proffered evidence on the number of employees of the gas station, but did not deal with the number of persons needed to service up to 100 seated restaurant customers (plus those patronizing the carry-out). However, the challenged finding is not of decisional relevance. Assuming "intensification" to exist (and to have been demonstrated), the BZA's findings and conclusions would be consistent with the Zoning Regulations, and the core question would remain whether the BZA was obliged to condition the issuance of the certificate on intervenors' providing additional parking spaces. In resolving this question, definitions become critical.

The BZA need not require more parking spaces where an intensification is involved than would be required for the entire structure if it were constructed new. [**4] n1 Zoning Regulations @ 7201.33. All newly built structures are to be provided with parking spaces to the extent specified in @ 7202. Zoning Regulations @ 7201.1. Thus, @ 7202 in effect sets the number of spaces that the BZA may require as a prerequisite to the issuance of an occupancy certificate. n2

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n1 "Structure" is defined as "anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground. . . ." Zoning Regulations @ 1202. We assume (without deciding) that this definition encompasses both the building and the terrace.

n2 Section 7201.33 conceivably could be interpreted to imply that the BZA may require parking spaces in excess of the number mandated in @ 7202. We see no basis for us to require extra spaces, nor for us to direct the BZA to so require. Additionally, it should be noted that the BZA has authority to grant exceptions to the minimum requisites of @ 7202. (No request for such an exception was made.)

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - -
[**5]

Section 7202 contains a table which specifies the number of parking spaces required for "all structures". Zoning Regulations [*497] @ 7201.1.

Business establishments such as the Georgetown Plaza Restaurant are covered under the heading "COMMERCIAL BUILDINGS." The subheading particularly applicable to intervenors is "Buildings containing retail or service establishments." Since @ 7202 by its terms applies to all structures, and since the generic term "structure" is defined as including but not limited to buildings, we interpret the limitation of the parking space requirement -- specifically applicable to buildings -- to mean that any commercial structure which does not fall within the definition of a "building" is excluded from the requirements of the regulation. This interpretation is further supported by the unit of measurement used to compute the actual number of necessary parking spaces. That criterion is "gross floor area", elsewhere defined in part in the regulations as the "sum of the gross horizontal areas of the several floors of all buildings on the lot". Zoning Regulations @ 1202.

The issue thus narrows to whether the terrace area properly is [**6] included in the definition of a building. We conclude that it is not. A building is defined as "a structure having a roof supported by columns or walls for the shelter, support or enclosure of persons. . . ." Ibid. The terrace area at issue here is not a building, lacking its most obvious and vital components, walls and a roof. Further analysis of the differences between a terrace and a building is unnecessary.

Since the terrace area does not come within the definition of either "gross floor area" or "building", our only remaining inquiry is whether the BZA complied with the zoning regulation mandate for the building. As to the parking spaces necessary for a retail or service establishment, @ 7202 provides that there is "[no] requirement for the first 2,000 square feet of gross floor area". The gross floor area of the building is approximately 1,760 square feet, considerably within the exception. The BZA was correct in concluding that no additional parking spaces were required.

Petitioner candidly has acknowledged its dilemma, stating in its brief that "even though the use of the structure . . . has clearly intensified within the terms of @ 7201, the Regulations [**7] do not specifically require additional parking commensurate with that intensification." That prompts a final observation. The advent of outdoor commercial facilities, most notably associated with restaurants, is a rather recent occurrence in the District of Columbia. The zoning regulations in question neither anticipated nor are readily adaptable to this change in the composition of business establishments. While petitioner would like the BZA to require additional parking spaces in a case such as this, it is not within that agency's authority to adapt the existing regulations to this type of commercial development. D.C. Code 1973, @ 5-420 states: "The Board of Adjustment shall not have the power to amend any regulation or map." The sole authority for whatever amendment, if any, may be determined to be appropriate or necessary is the Zoning Commission. It is that body to which petitioner (or others with similar interests) must look for prospective relief. D.C. Code 1973, @ 5-413.

Affirmed.

Exclusive authority of Zoning Comm to Amend Zoning regulations

550 A.2d 331 printed in FULL format.

#6

TENLEY AND CLEVELAND PARK EMERGENCY COMMITTEE, et al., PETITIONERS, v. DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, RESPONDENT. TENLEY AND CLEVELAND PARK EMERGENCY COMMITTEE, et al., APPELLANTS, v. DISTRICT OF COLUMBIA, et al., APPELLEES

Nos. 87-468, 86-813

Court of Appeals of the District of Columbia

550 A.2d 331; 1988 D.C. App. LEXIS 206

July 5, 1988, Argued
November 17, 1988, Decided

PRIOR HISTORY:
[**1] Appeal from the Superior Court of the District of Columbia, Hon. Richard S. Salzman, Trial Judge; Petition for Review of a Decision of the District of Columbia Board of Zoning Adjustment

CORE TERMS: comprehensive plan, zoning, regulation, map, Home Rule Act, land use, Land Use Act, building permit, notice, density, neighborhood, Comprehensive Plan Act, land use element, inconsistency, moratorium, matter-of-right, implementing, generalized, consistency, amend, committee report, statutory notice, developer, vested, legislative history, administrative remedies, real estate development, adequate notice, matter of right, progress report

COUNSEL: Brian W. Smith and Diane L. Olsson, with whom Philip C. Olsson, and Nathalie V. Black were on the brief, for appellants/petitioners.

Whayne S. Quin, with whom C. Francis Murphy, Louis P. Robbins, and John T. Epting were on the brief, for appellees/intervenors/respondents 4000 Wisconsin Avenue Associates, et al.

Lutz Alexander Prager, Assistant Deputy Corporation Counsel, with whom Frederick D. Cooke, Jr., Acting Corporation Counsel at the time the memorandum was filed, and Charles L. Reischel, Deputy Corporation Counsel, submitted a memorandum in lieu of brief for appellee District of Columbia.

JUDGES: Rogers, Chief Judge, * Mack, Associate Judge, and Pryor, ** Senior Judge.

* Judge Rogers was an Associate Judge of this court at the time of argument. Her status changed to Chief Judge on November 1, 1988.

** Judge Pryor was Chief Judge of this court at the time of argument. His status changed to Senior Judge on November 2, 1988.

BZA
Case No. 16604
Exhibit No. 30 (f)

'INIONBY: ROGERS

'ION: [*332] [**2] The principal issue presented in these lidated appeals is whether the District of Columbia Self Government Act and strict of Columbia Comprehensive Plan Act of 1984 impose a moratorium on

private real estate development permitted as a matter of right under the applicable zoning regulations where those regulations may be inconsistent with the District's Comprehensive Plan. Appellants Tenley and Cleveland Park Emergency Committee ("TACPEC") and Philip Mendelson appeal from a decision of the Superior Court dismissing their complaint challenging the issuance and validity of the building permit for a project located at 4000 Wisconsin Avenue, N.W. on the ground that they had failed to exhaust available administrative remedies before either the District of Columbia Zoning Commission or the Board of Zoning Adjustment (BZA). They also contend that the trial court erred in ruling that the Advisory Neighborhood Commission (ANC) 3-C received actual and statutory notice, to which it was entitled under D.C. Code @ 1-261 (c) (1987 Repl.), prior to the issuance of the building permit. They appeal too from the court's denial of a motion to amend the judgment or for a new trial. [**3] TACPEC and Mendelson, joined by the North Cleveland Park Citizens' Association, n1 also appeal from a decision of the District of Columbia BZA that it did not have jurisdiction to consider either the status and applicability of the Comprehensive Plan to the Wisconsin Avenue project or whether the notice requirement under D.C. Code @ 1-261 (c) had been satisfied. They further contend that the BZA's alternative ruling that ANC 3-C received actual and statutory notice is not supported by substantial evidence in the record.

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n1 For simplicity, we refer to all appellants as TACPEC.

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

We hold that the Home Rule Act and the Comprehensive Plan do not impose a moratorium on matter of right development and that because the Zoning Commission is the exclusive forum for addressing issues of inconsistency under the Comprehensive Plan, TACPEC failed to exhaust its administrative remedy by not presenting its case to the Zoning Commission. We also hold that ANC 3-C received the notice to which it was entitled under D.C. Code @ 1-261 (c) (3). Accordingly, we affirm.

I

This appeal involves the validity of a building permit issued to 4000 Wisconsin Avenue Associates n2 ("the developers") by [*333] the District [**4] of Columbia government for the construction of a large mixed use office-retail project at 4000 Wisconsin Avenue, N.W. n3 By application dated May 24, 1985 and filed on June 3, 1985, the developers submitted preliminary plans for the project to the Zoning Administrator for zoning review and approval. Changes and adjustments were made to the plans over the next several months. The developers formally applied to the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) for a permit to build the project on December 4, 1985. The application was included in a list, prepared weekly by the DCRA's Permit and Certificate Issuance Branch, which indicates projects for which applications have been received and permits issued. Pursuant to D.C. Code @ 1-261 (1987 Repl.), which requires the District government to provide thirty days written notice of building applications to affected Advisory Neighborhood Commissions (ANCs), the list was mailed to ANC 3-C on December 9, 1985, and received by ANC 3-C Commissioner Philip Mendelson on December 18, 1985.

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n2 Intervenor/Appellee 4000 Wisconsin Avenue Associates Limited Partnership, the developer of the project, is a partnership comprised of The Donohoe Construction Company and The Holladay Corporation. Other appellees are Carol Thompson for the District of Columbia Department of Consumer and Regulatory Affairs and John Touchstone as the Director of the D.C. Department of Public Works. [**5]

n3 The site on which the building is located consists of 4.7 acres at the west side of Wisconsin Avenue, bordering on Upton Street, N.W. and Glover Archbold Parkway, and is the fourth largest building in northwest Washington, and the eighth largest commercial building in the District.

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The thirty-day statutory period for comment by the ANC on the proposed building permit elapsed without the DCRA receiving any recommendations from ANC 3-C. DCRA issued a building permit to the developers on February 19, 1986. At the time the building permit was issued, the zoning regulations applicable to the project site permitted construction of the proposed building as a matter of right. n4 ANC 3-C subsequently wrote letters protesting the issuance of the building permit but by letter dated March 11, 1986, DCRA Director Carol Thompson declined to suspend the permit.

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n4 When the building permit was issued, the project site was zoned "C-3-A" which permits medium density mixed commercial development and allows buildings to be erected to a height of 65 feet with a floor area ratio of 2.5. 11 DCMR @ 740 (1987). The specifications of the proposed building were within "C-3-A"'s permissible limits. No special exception or variance was sought or required.

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[**6]

On February 28, 1986, TACPEC filed an appeal with the Board of Zoning Adjustment (BZA) challenging the validity of the building permit issued by the DCRA. TACPEC's primary argument was that the building permit was improperly issued because the building would be in violation of the District's Comprehensive Plan. n5 TACPEC also alleged that ANC 3-C had received insufficient notice under D.C. Code @ 1-261. The BZA ruled that it did not have jurisdiction over the issue of the alleged inconsistency of the proposed development with the Comprehensive Plan because "responsibility for comprehensive plan consistency issues is vested in the Zoning Commission." n6 The BZA also concluded that it was without jurisdiction to consider the issue of notice under D.C. Code [*334] @ 1-261; alternatively, the BZA found that the notice requirements were met.

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n5 TACPEC also challenged permits for excavation, sheeting and shoring and for public space. The BZA correctly ruled that it lacked jurisdiction to address the validity of these permits because they had not been issued by the Zoning Administrator or under the authority of the zoning regulations. See 12 DCMR @

107.1 (2) (1986); 12 DCMR @ 108.2 (1986). [**7]

n6 The BZA explained:

The Zoning Commission for the District of Columbia has the statutory duty to insure that the Zoning Regulations are not inconsistent with the Comprehensive Plan. The Land Use Element of the Comprehensive Plan was enacted in March, 1985, ten years after the installation of the elected Mayor and Council of the District of Columbia. Just as it was reasonable for the Executive and Legislative branches to take the time which they determined to be reasonably required to prepare and adopt the Comprehensive Plan, so also is it reasonable for the Zoning Commission to determine a reasonable schedule for the conduct of its business. The Board may not exercise oversight over the Commission in that respect. Further, the Zoning Commission is the only body which may amend the Zoning Regulations, including those provisions which govern matter-of-right developments.

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Overlapping the proceedings before the BZA, TACPEC filed a complaint on March 19, 1986, for declaratory and injunctive relief. TACPEC's complaint alleged that the District government had violated D.C. Code @ 1-261 by not providing ANC 3-C with adequate notice of the pending building permit application, thereby [**8] depriving ANC 3-C of its statutory right to file written recommendations with respect to the proposed permit. n7 TACPEC also claimed that the District's failure to give ANC 3-C adequate notice of a construction permit application violated the due process clause of the fifth amendment of the U.S. Constitution. TACPEC further alleged that the density of the proposed building violates the Comprehensive Plan for the District of Columbia. The trial court denied the motion for a temporary restraining order, TACPEC withdrew the motion for a preliminary injunction, and a bench trial was held on April 22-24, 1986. The trial court granted the District's motion to dismiss at the close of TACPEC's case. With respect to the validity of the building permit issued by the DCRA, the trial court held that TACPEC had not exhausted its administrative remedies because it had not sought review of that decision before the BZA or the Zoning Commission; the trial court did not decide which was, or if both were, the appropriate agency to provide TACPEC administrative relief. In the alternative, the court held that ANC 3-C received the statutory notice required under D.C. Code @ 1-261. n8 Thereafter the court [**9] denied TACPEC's motion to amend the judgment or, in the alternative, for a new trial.

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n7 TACPEC also alleged that the District government failed to provide notice of the applications for excavation, sheeting and shoring permits, and of the May 24, 1985, submission for zoning approval. Although these issues appeared in TACPEC's complaint, no evidence regarding these issues was presented at trial and, therefore, we decline to reach them on appeal. We also do not reach the notice issue with respect to the public space permit which was neither pleaded nor addressed in the trial court. Williams v. Gerstenfeld, 514 A.2d 1172, 1177 (D.C. 1986).

n8 The trial court also held that TACPEC had failed to establish its claim that traffic generated by the new building would become a public or private nuisance. This issue has not been pursued on appeal. Another claim relating to

Department of Public Works permits for paving Glover-Archbold Park and an extension of Upton Street was dismissed as premature. A separate action in Superior Court relating to these permits also resulted in a judgment against TACPEC. TACPEC v. District of Columbia, 115 Daily Wash. L. Rptr. 1973 (Sept. 21, 1987). This case is currently on appeal in this court. TACPEC v. District of Columbia, No. 87-604.

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[**10]

II

TACPEC contends on appeal that the trial court and the BZA both erred in ruling that they were without jurisdiction to adjudicate TACPEC's claim that the building permit for private development at 4000 Wisconsin Avenue, although concededly permitted as a matter of right under the applicable zoning regulations, was invalid as inconsistent with the District's Comprehensive Plan. In its own words, TACPEC claims that "the heart of [its] case is that since the Comprehensive Plan controls land use actions in the District and the challenged permits [see note 5, supra] violate the Plan, those permits are illegal, regardless of whether the permitted activity would comply with the zoning regulations." Consideration of the District of Columbia Self-Government Act n9 and the Comprehensive Plan demonstrate that the Comprehensive Plan is not self-executing and does not directly regulate the development of private property in the District of Columbia. n10

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n9 The District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, 87 Stat. 774 (1973), reprinted in 1 D.C. Code 175 (1981) (Home Rule Act).

n10 The first step in statutory construction is to examine the language of the statute and to interpret its words according to their plain and ordinary meaning. United States v. Bailey, 495 A.2d 756, 760 (D.C. 1985); Peoples Drug Stores, Inc. v. District of Columbia, 470 A.2d 751, 754 (D.C. 1983) (en banc). Our primary goal is to ascertain and give effect to the intent of the legislative body that drafted the language. Rosenberg v. United States, 297 A.2d 763, 765 (D.C. 1972) (quoting General Motors Acceptance Corp. v. One 1962 Chevrolet Sedan, 191 A.2d 140, 142 (D.C. 1963)). The statutory meaning of a term must be derived from a consideration of the entire enactment against the backdrop of its policies and objectives. Carey v. Crane Serv. Co., 457 A.2d 1102, 1105 (D.C. 1983) (quoting Don't Tear It Down v. Pennsylvania Ave. Dev. Corp., 206 U.S. App. D.C. 122, 128, 642 F.2d 527, 533 (1980)). Even where the words of a statute have superficial clarity, it is appropriate to undertake a review of the legislative history to aid in the ascertainment of legislative intent. Office of People's Counsel v. Public Serv. Comm'n, 477 A.2d 1079, 1084 (D.C. 1984) ("words are inexact tools at best") (quoting Harrison v. Northern Trust Co., 317 U.S. 476, 479, 87 L. Ed. 407, 63 S. Ct. 361 (1943)). Finally, the D.C. Council's interpretation of its responsibilities under the Home Rule Act is entitled to great deference. Marshall v. District of Columbia Rental Hous. Comm'n, 533 A.2d 1271, 1274 (D.C. 1987); Yu v. District of Columbia Rental Hous. Comm'n, 505 A.2d 1310, 1312 (D.C. 1986).

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[*335] A.

Before Congress enacted the Home Rule Act, land use planning for both the federal and District governments was vested in the National Capital Planning Commission (NCPC). In accordance with the Home Rule Act's purpose to delegate certain governmental powers to the District's newly created local government, the Home Rule Act fundamentally altered the way in which future planning decisions would be made in the nation's capital. The Act mandated, for the first time, the development of a Comprehensive Plan for the District of Columbia, to be created through the joint efforts of NCPC and the District of Columbia government. The Act retained NCPC as the central planning agency for the federal government, but restricted its authority to developing the federal elements of the new Comprehensive Plan and to exercising veto authority within sixty days over those proposed District elements, prepared by the Mayor and approved by the Council of the District of Columbia, that NCPC determined would have a negative impact on the interests or functions of the federal establishment. D.C. Code @@ 1-2002 (a) (2) & (4) (1987 Repl.); see Home Rule Act @ 203 (a). In addition, the Act vested the Mayor [**12] with the responsibility for the "coordination of planning activities of the [District] government and the . . . implementation of the District's elements of the comprehensive plan for the National Capital. . . ." D.C. Code @ 1-244 (a) (1987 Repl.); see Home Rule Act @ 203 (a).

The Home Rule Act also provided for a significant change in the standard governing the Zoning Commission's zoning authority. See generally Citizens Ass'n v. Zoning Comm'n, 392 A.2d 1027 (D.C. 1978) (en banc) (Georgetown III). Before passage of the Act, D.C. Code @ 5-414 (1973) provided that zoning maps and regulations "shall be made in accordance with a comprehensive plan. . . ." In Citizens Ass'n v. Zoning Comm'n, 155 U.S. App. D.C. 233, 477 F.2d 402 (1973) (Georgetown II), the United States Court of Appeals for the District of Columbia Circuit reaffirmed long standing case law in the District and held that the term "comprehensive plan" was not synonymous with the so-called "Red Book" comprehensive plan that NCPC had developed pursuant to the National Capital Planning Act of 1952, see D.C. Code @@ 1-1001 et seq. (1973), but only required the Zoning Commission to zone on a uniform [**13] and comprehensive basis. Georgetown II, supra, 155 U.S. App. D.C. at 237-38, 477 F.2d at 406-07. In part to overrule the Georgetown II decision, Congress amended the Zoning Enabling Act n11 to provide that "Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital. . . ." D.C. Code @ 5-414 (1988 Repl.); see Home Rule Act @ 492 (b) (1). n12 In addition, Congress specifically provided that "The Zoning Commission shall exercise all the powers and perform all the duties with respect to zoning in the District as provided by law." D.C. Code @ 5-412 (e) (1988 Repl.) (emphasis added); see Home Rule Act @ 492 (a). Significantly, for purposes of this appeal, the Home Rule Act left unchanged D.C. Code [*336] @ 5-415 (1988 Repl.), which provides in relevant part:

The regulations prior to June 20, 1938, adopted by the Zoning Commission under the authority of @ 5-412 and in force on June 20, 1938, including the maps which at said date accompany and are a part of such regulations, shall be deemed to have been made and adopted and in force under @@ 5-413 to 5-432 and shall be and continue in [**14] force and effect until and as they may be amended by the Zoning Commission as authorized by said @@ 5-413 to 5-432. The Zoning Commission may from time to time amend the regulations or any of them or

the maps or any of them.

Id. (emphasis added). The remainder of section 5-415, also left unrevised by the Home Rule Act, imposes notice and hearing requirements on the Zoning Commission for proposed amendments to the zoning regulations.

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n11 Act of June 20, 1938, 52 Stat. 797, ch. 534, as amended, D.C. Code @@ 5-413 et seq. (1988 Repl.).

n12 See also LEGISLATIVE HISTORY OF THE DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENTAL REORGANIZATION ACT, S. 1435 (Pub.L. No. 93-198) 93d Cong., 1st Sess. 1677 (Comm. Print (1973)).

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Thus, the Home Rule Act explicitly provides that the Zoning Commission is the exclusive agency vested with power to enact zoning regulations for the District of Columbia. TACPEC does not seriously dispute that the Zoning Commission is the sole governmental body entrusted with authority to amend the zoning regulations, but rather contends that once the Comprehensive Plan mandated by the Home Rule Act became law, any inconsistency between it [**15] and the existing zoning regulations would serve to impose a moratorium on private real estate development to the extent of the inconsistency. However, the Home Rule Act did not purport to displace existing statutory law which plainly mandates that zoning regulations and maps already in place continue to have the full force and effect of law until such time as the Zoning Commission shall amend them. D.C. Code @ 5-415. Nor does the Comprehensive Plan or its legislative history reflect any intent on behalf of the Council of the District of Columbia to impose a moratorium on development until such time as the existing zoning regulations are conformed by the Zoning Commission to those elements of the Comprehensive Plan with which the zoning regulations are alleged to be inconsistent.

B.

Pursuant to the Home Rule Act, @@ 203 (a), 423 (a), the D.C. Council enacted the Comprehensive Plan on April 10, 1984. District of Columbia Comprehensive Plan Act of 1984, D.C. L. No. 5-76 (1984) (Comprehensive Plan Act). The Comprehensive Plan Act adopted most of the District Elements of the Comprehensive Plan including those for economic development, housing, environmental protection, transportation, [**16] public facilities, urban design, preservation and historic features, the downtown area and human services. Id. at 1. The land use element of the Comprehensive Plan, Title XI, was enacted separately on March 16, 1985. District of Columbia Comprehensive Plan Act of 1984 Land Use Element Amendment Act of 1984, D.C. L. No. 5-187 (1985) (Land Use Act). Section 102 of the Comprehensive Plan Act sets forth the manner in which the District Elements of the Comprehensive Plan are to be interpreted and provides in pertinent part:

Except as specifically provided by other law, including but not limited to An Act Providing for the zoning of the District of Columbia and the regulation of the location, height, bulk, and uses of buildings and other structures and other purposes, as amended . . ., or as specifically provided by the District

elements of the Plan itself, the District elements of the Plan are a guide intended to establish broad policies and goals while affording flexibility for future implementation and are not binding policy directives. The District elements of the Plan should not be construed as a delegation of authority to establish new programs.

Id. (emphasis added) [**17] (citation omitted). With respect to the Land Use element of the Comprehensive Plan, @ 1101 (k) of the Land Use Act specifically declares that "The Land Use Element does not identify or fix every use, height, and density on every block in the District. The text and the maps construct a guiding framework within which public and private land use and zoning decisions are to be made." Id. [*337] (emphasis added). Section 1134 of the Land Use Act states the Plan's Public Action Objectives, which include the goals "to improve enforcement of land use regulations [and] to establish procedures for monitoring public and private land use actions for consistency with the policies of the Plan. . . ." n13 Among the various policies established in support of the Plan's Public Action Objectives, the Land Use Act provides:

Review the Zoning Regulations of the District of Columbia to determine that they are not inconsistent with provisions of the Plan and, based upon a zoning program to be developed by the Office of Planning, recommend required changes including performance standards, text and map amendments, where appropriate, for action by the Zoning Commission for the District of Columbia.

[**18] Land Use Act @ 1135 (5) (emphasis added).

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n13 Section 1136 of the Land Use Act provides generally for the adoption of generalized land use maps. Specifically, @ 1136 declares that Map 1, which depicts general land use policies, be amended to indicate that the west side of Wisconsin Avenue, N.W., between Rodman Street, N.W., and Van Ness Street, N.W., is included in the moderate density commercial land use category. Land Use Act @ 1136 (b) (56), The moderate density commercial land use category provides for

Shopping and service areas that generally provide a much broader range of goods and services are the predominant uses. Chain drug stores and grocery stores as well as branches of department stores, some specialty shops, and personal service establishments may be present.

Land Use Act @ 1136 (4) (H); see also id. @ 1107 (a) (2). In addition, @ 1136 states that Map 3, which depicts generalized commercial, production and technical employment land use policies, be amended to indicate that the area near the intersection of Wisconsin Avenue and Van Ness Street should be a local neighborhood rather than a multi-neighborhood center. Land Use Act @ 1136 (f) (9). In the Land Use Act commercial center classification scheme, local neighborhood centers call for the least intensive development of the three available classifications.

Local neighborhood centers supply sales of daily groceries, sundries, convenience goods and personal services to neighborhood residents and workers. There is limited parking. Motorists are likely to go to larger concentrations of stores where parking and a greater selection of goods and services are more readily available. A small food and sundries store selling convenience items is usually a principal element of a local neighborhood center. Service stores

such as gas stations, carryouts, barber shops, cleaners, diners, and bars also locate in local neighborhood centers. There is limited office space. Local neighborhood centers may be further subclassified to identify new centers to be established and existing centers to be upgraded.

Land Use Act @ 1108 (b) (1) (emphasis added).

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Thus, both the Comprehensive Plan Act and the Land Use Act make clear that the Comprehensive Plan is a broad framework intended to guide the future land use planning decisions for the District. While the Acts acknowledge that existing zoning regulations may be inconsistent in some instances with the policies outlined in the Comprehensive Plan, the Acts explicitly recognize that an examination of existing zoning regulations for conformance with the Comprehensive Plan is necessarily a time-consuming process to be carried out by the Zoning Commission assisted by the Office of Planning in a reviewing program to be developed after enactment of the Comprehensive Plan by the D.C. Council. See also note 17, infra. In short, the Comprehensive Plan is not self-executing, and contrary to TACPEC's contention, this statutory language plainly does not evince any legislative intent to impose a moratorium on development in the District.

The legislative histories of the Comprehensive Plan Act and the Land Use Act are replete with statements that confirm the D.C. Council's intent in this regard. In the introduction to the Council committee report [**19] recommending adoption of the Comprehensive Plan Act, the report states that "The [Comprehensive] Plan is a framework for growth and change in the District of Columbia over the next 20 years." REPORT OF THE COMMITTEE OF THE WHOLE ON BILL 5-282, DISTRICT OF COLUMBIA COMPREHENSIVE PLAN ACT OF 1984 (Jan. 17, 1984) COMPREHENSIVE PLAN ACT COMMITTEE REPORT). As to the impact on existing law, the report states:

Comprehensive plans have guided the growth of American cities for over 50 [*338] years. Whether it is called a comprehensive plan, general plan, master plan, or city development plan, the purpose is usually the same: to provide a statement of policy to guide future public decision-making. Although many comprehensive plans address social policy issues, the primary emphasis is on physical development over an extended time, usually 10 to 20 years.

* * *

Although the Plan serves as an important policy guide, its legal mandate is more limited. Except as provided by other law or the Plan itself, the District elements are advisory. Thus the District elements are binding on zoning as provided in the zoning enabling act, urban renewal as provided in the Redevelopment Act and public facilities [**20] planning as provided in the Plan. In other respects, however, the District elements guide but do not control government decisions.

Id. at 51 (emphasis added). The report specifically addresses the Plan's impact on zoning:

When the proposed District elements take effect, the Zoning Commission will be required to amend the Zoning Regulations to eliminate any inconsistency with

the District elements. . . After the District elements are adopted, the Office of Planning, citizens and property owners will initiate zoning cases, which will propose amendments to the Zoning Regulations. n14

Id. at 52 (emphasis added).

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n14 As one illustration of how the process will work, the report noted that a full year passed before the Zoning Commission adopted orders establishing a special diplomatic zoning district required by the passage by the NCPC of the Foreign Missions and International Agencies Element. Id.

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The Comprehensive Plan Act Committee Report includes several documents which the Council intended as valid interpretative guides for judicial construction of the Act. Id. at 57. Pauline Schneider, Director of the Intergovernmental Relations Office of the District government, [**21] wrote to D.C. Council Chairman David Clarke:

The Director, Office of Planning has requested that I . . . respond [] to . . . questions concern[ing] the zoning and urban renewal changes which may be necessary once the [Comprehensive] Plan is enacted and the process for making such changes. The Office of the Corporation Counsel has advised us that the current zoning process will not be affected by the enactment of the Plan given the fact that the Home Rule Act specifically gives the Zoning Commission sole authority to adopt and amend the zoning regulations. . . . The Planning Office . . . will prepare a zoning revision program . . . based on the Comprehensive Plan for the guidance of the [Zoning Commission] to make any necessary changes.

Letter from Pauline Schneider to David Clarke (Dec. 23, 1983) (emphasis added). Another document prepared by the Office of Planning in November 1983, and appended to the committee report, describes various projected zoning actions necessary to implement the Comprehensive Plan including amendments to zoning regulations and maps.

The legislative history of the Land Use Act similarly reflects the intent of the D.C. Council that the process [**22] of conforming existing zoning regulations and maps to the Comprehensive Plan would occur sometime after the Plan became effective and that no moratorium on real estate development in the District be imposed by the Plan itself. With respect to the Land Use Act's impact on existing law, n15 the committee report states:

Like other District elements, the Land Use Element establishes policies to guide future public decisions. The District elements do not impose specific implementation techniques. This task is [*339] the responsibility of the various agencies charged with regulatory authority. Instead the District elements establish policies, which guide but do not direct.

REPORT OF THE COMMITTEE OF THE WHOLE ON BILL 5-507, DISTRICT OF COLUMBIA COMPREHENSIVE PLAN ACT OF 1984 LAND USE ELEMENT AMENDMENT ACT OF 1984, at 4 (1984) (LAND USE ACT COMMITTEE REPORT) (emphasis added). A distinguishing feature of the Land Use Act is in the inclusion of four generalized [**23] land use maps to complement the text of the Act. In this regard, the Land Use

Act Committee Report states:

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The maps depict land use policies in a generalized manner. They do not identify specific parcels or properties. This "soft-edged" character is intended to provide policy guidance while affording needed flexibility. Although the language adopting the maps includes specific references to streets, blocks, and intersections, the maps are intended to remain generalized. The proposed legislation includes these specific descriptions because they are the only way the legislative body can give sufficient direction to the cartographers who must prepare the maps.

Id. The Committee report also specifically states that the generalized land use maps indicate objectives only and are not to be confused with the District zoning maps which are adopted by the Zoning Commission as part of the zoning regulations. Id. at 5. n16

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n15 The Land Use Act Committee Report lists as one of the map changes for Ward 3 the designation of the northwest corner of Wisconsin Avenue, N.W., and Van Ness Street, N.W., as low density commercial. LAND USE ACT COMMITTEE REPORT at 19.

n16 The committee report makes clear that the policies of the Land Use Element recognize that changes in the zoning regulations are needed and that to accomplish them the Office of Planning is to prepare a zoning modification program. In a letter of October 31, 1984, that was attached to the committee report, the response by the Office of Planning referred to the preliminary list of recommended zoning changes needed to implement the Comprehensive Plan that the Office had prepared and provided to the Council in November 1983, and advised:

Our implementation program will be initiated following the enactment of the Land Use Element of the Comprehensive Plan. The program includes not only preparing recommendations to the Zoning Commission regarding text and map changes but also a number of administrative and statutory changes to existing Executive Orders, permitting processes and laws.

The November 1983 list of zoning changes is the same document that also appears as an attachment to the Comprehensive Plan Act detailing projected zoning actions necessary to implement the Comprehensive Plan.

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[**24]

Also indicative of the D.C. Council's intent with respect to the imposition of a building moratorium is the Council's progress report to the Mayor on implementing the District elements of the Comprehensive Plan. n17 REPORT OF THE COMMITTEE OF THE WHOLE ON PR 6-320, PROGRESS REPORT ON THE COMPREHENSIVE PLAN FINDINGS RESOLUTION OF 1986 (1986) (PROGRESS REPORT). The progress report noted that the Mayor generally had not made satisfactory progress in implementing the District elements of the Comprehensive Plan and specifically observed the failure to make the zoning changes called for by the Plan that were necessary to protect residential neighborhoods from incompatible commercial development along Wisconsin Avenue. The report also noted the Mayor's failure

to establish priorities and a timetable for implementing the Plan. n18

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n17 Section 101 (6) of the Comprehensive Plan Act provides:

Continuous community input into the implementation of the Plan will be assured by the requirement of a periodic review. The Mayor of the District of Columbia shall submit to the Council of the District of Columbia every 2 years, a report on the progress being made by the District government in implementing the Plan. The Council of the District of Columbia will schedule public hearings on the matter and following each review period, will submit, to the Mayor of the District of Columbia, its findings and copies of the public testimony.

(Emphasis added). [**25]

n18 Dissatisfaction with the response of the executive branch in implementing the Comprehensive Plan previously had been registered by Council Chairman Clarke in a letter to the Zoning Commission and the Office of Planning. Letter from David Clarke to Zoning Commission and Office of Planning (March 17, 1985). Chairman Clarke expressed concern that these agencies had failed to "sponsor any cases within the past year for the purpose of amending Zoning Regulations that are inconsistent with the Land Use Element of the Comprehensive Plan." Id. After noting the Zoning Commission's responsibility to implement those aspects of the Plan that are inconsistent with existing zoning, the Chairman specifically referred to the western side of Wisconsin Avenue between Van Ness and Rodman Streets as an area requiring attention.

The C-3-A zoning district along this corridor may be inconsistent with the Plan's designation of it for moderate density commercial land use with a local neighborhood center. The Zoning Regulations state that the C-3 district "is designed to accommodate important sub-centers supplementary to the Central Business district" and that the C-3-A district "shall permit medium density development." This language is quite similar to the language in the Plan that describes medium density commercial land use and multi-neighborhood or regional centers. The language in the Zoning Regulations that is used to describe C-2-A and C-2-B districts more closely resembles the language in the Plan that describes the designations of local neighborhood center and moderate density commercial land use.

Id. The Chairman urged the Zoning Commission to institute immediately the process of implementing the Comprehensive Plan with particular focus upon the areas of inconsistency to which the Commission already had been alerted. The implementation process should not be further delayed, the Chairman observed, because

in the absence of changes in zoning, critical land use decisions will continue to be made in many areas throughout the District in a manner that not only is contrary to the policy objectives of the Comprehensive Plan but also may jeopardize the achievement of those objectives during the life of the Plan. In the case of the western side of Wisconsin Avenue between Van Ness and Rodman Streets, it already is too late to affect a controversial "matter-of-right" development that is underway at 4000 Wisconsin Avenue, but there are other adjacent parcels where new zoning could provide protection that is consistent with the Comprehensive Plan.

Id. (emphasis added). The Chairman sent another copy of this letter to the Zoning Commission as an attachment to a later letter to the Commission advising of the Council's unanimous approval of the Progress Report's general findings of "insufficient progress . . . in the examination and initiation of cases where present zoning is inconsistent with the Land Use Element of the Comprehensive Plan." Letter from David Clarke to Zoning Commission (July 8, 1986).

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[*340] To summarize, the language and the legislative histories of the Comprehensive Plan Act and the Land Use Act clearly reflect the intent of the D.C. Council that the process of conforming existing zoning regulations and maps to the Comprehensive Plan would occur after the Plan became effective and that matter-of-right real estate development in the District would continue while this process was underway. The Home Rule Act vests the Zoning Commission with exclusive authority to amend the zoning regulations of the District of Columbia. Home Rule Act @ 492 (a); D.C. Code @ 5-412 (e). By leaving D.C. Code @ 5-415 untouched, the Home Rule Act did not repeal existing zoning regulations or maps, but rather provided for the creation of a Comprehensive Plan and a mechanism for its future implementation. The D.C. Council understood that the process of reviewing existing zoning regulations for consistency with the Comprehensive Plan would be a time-consuming, deliberative process, and although the Council may have anticipated that the conforming process would commence more quickly than it did, there is nothing in the statutes or legislative histories to suggest that enactment of the Comprehensive [**27] Plan would itself halt all matter-of-right development until that process was completed.

C.

That the Comprehensive Plan was not self-executing and did not automatically impose a moratorium on matter-of-right private development did not leave TACPEC without a remedy once the Comprehensive Plan was enacted. TACPEC need not have awaited action by the Office of Planning and the Zoning Commission to raise the issue of inconsistency it now presses before this court. Under the District's Administrative Procedure Act, "any interested person may petition . . . an independent agency, requesting the promulgation, amendment, or repeal of any rule." D.C. Code @ 1-1506 (b). TACPEC, as an interested party, could have initiated a petition before the Zoning Commission as early as March 16, 1985, the date the Land Use element of the Comprehensive Plan became effective, and requested emergency action to consider whether the existing zoning regulations were inconsistent with the Comprehensive Plan. The D.C. Council expected interested parties or individuals to [*341] initiate cases before the Zoning Commission where inconsistency between current zoning regulations and the Comprehensive Plan allegedly exists. [**28] COMPREHENSIVE PLAN ACT COMMITTEE REPORT at 52 ("the Office of Planning, citizens and property owners will initiate zoning cases, which will propose amendments to the Zoning Regulations"): see also note 18, supra. The Zoning Commission is authorized to issue emergency orders, and has done so, on several highly publicized occasions, to prevent matter-of-right development permitted under preexisting zoning regulations. D.C. Code @ 1-1506 (c); see Citizens Ass'n v. Washington, 291 A.2d 699, 702 n.3 (D.C. 1972) (Georgetown I); Georgetown II, supra, 155 U.S. App.

D.C. at 236 & n.9, 477 F.2d at 405 & n.9; Salyer v. McLaughlin, 100 U.S. App. D.G. 29, 31, 240 F.2d 891, 893 (1957); Ruppert v. Washington, 366 F. Supp. 686 (D.D.C. 1973). Had a timely petition n19 been filed with the Zoning Commission, judicial relief would have been available n20 to review the Commission's determination of consistency. n21 However, the Zoning Commission is the only forum n22 capable of granting the zoning change TACPEC seeks, n23 and therefore TACPEC's failure to pursue any action before the Commission amounts to a failure to exhaust administrative remedies.

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n19 We do not reach any issue concerning the precise moment a property owner's right to pursue matter-of-right development vests. See 11 DCMR @ 3202.6 (1987). [**29]

n20 Judicial review of rulemaking proceedings before the Zoning Commission is initially in the Superior Court, while initial judicial review of contested case proceedings is in this court. D.C. Code @ 1-1510; Georgetown III, supra, 392 A.2d at 1029 n.3; see Capitol Hill Restoration Soc'y v. Zoning Comm'n, 380 A.2d 174, 184 (D.C. 1977), overruled in part on other grounds, Georgetown III, supra, 392 A.2d 1027. Judicial relief may also be available to compel agency action in the event of unwarranted or unreasonable delay. See Georgetown I, supra, 291 A.2d at 705 n.15.

n21 TACPEC cites a number of cases to support its assertion that the District of Columbia is a "consistency" jurisdiction, i.e., that zoning maps and regulations must be consistent with the Comprehensive Plan. See, e.g., Neighborhood Action Group v. Calaveras County, 156 Cal. App. 3d 1176, 203 Cal. Rptr. 401 (1984); Philippi v. City of Sublimity, 294 Ore. 730, 662 P.2d 325 (1983); see generally 1 A. RATHKOPF & D. RATHKOPF, THE LAW OF ZONING AND PLANNING @ 12.04 (2), at 12-15 (1987). Case law from other jurisdictions, however, is unhelpful in this area of the law because "the extent to which zoning decisions must conform to independent comprehensive plans varies from state to state depending upon the phraseology of the consistency legislation and the nature of the mandatory plan." 5 P. ROHAN, ZONING AND LAND USE CONTROLS @ 37.03[2], at 37-50 (1988) (footnotes omitted). The cases cited by TACPEC are readily distinguishable. [**30]

n22 The BZA and the Zoning Administrator have no power to implement the Comprehensive Plan. The BZA's enabling statute explicitly states that it "shall not have the power to amend any [zoning] regulation or map." D.C. Code @ 5-424 (e) (1981); see Rose Lees Hardy Home & School v. District of Columbia Bd. of Zoning Adjustment, 343 A.2d 564, 566 (D.C. 1975); Palmer v. District of Columbia Bd. of Zoning Adjustment, 287 A.2d 535, 539 (D.C. 1972). The Zoning Administrator is limited to enforcing and certifying occupancy regulations. 11 DCMR @ 3200 (1987); Reorg. Order No. 55, Pt. III F, 1 D.C. Code @ 185 (1973).

n23 The parties have represented to us that on May 21, 1987, the Zoning Commission voted to rezone the area at issue from C-3-A to C-2-B, the conformance Chairman Clarke advocated, see note 18, supra, and the kind of lower density zoning that TACPEC argued was mandated by the Comprehensive Plan. To our knowledge, the Zoning Commission has yet to issue an order to that effect. See 11 DCMR @ 3028.8 ("A written order setting forth a final action shall become final and effective upon publication in the D.C. Register, unless a later effective date is provided for by the Commission.").

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Accordingly, we hold that the Zoning Commission is the exclusive agency vested with responsibility for assuring that the zoning regulations are not inconsistent with the Comprehensive Plan, and that TACPEC failed to exhaust its administrative remedies.

III

TACPEC also contends that the trial court and the BZA n24 erred in ruling that [*342] the list of building applications sent to ANC 3-C by the DCRA was sufficient notice as a matter of law under D.C. Code @ 1-261 (c). n25 Section 1-261 (c) (3) requires that "each affected Advisory Neighborhood Commission is provided regularly by mail with a current list of applications for construction and demolition permits within the boundaries of that Advisory Neighborhood Commission." On December 18, 1985, ANC 3-C received a list of building permits applied for and issued by the DCRA's Permit and Certificate Issuance Branch during the week of December 2-6, 1985. Issued building permits are listed first and are designated with the letter "B" and a number. Pending building permit applications follow and are designated with the letter "A" and a number. The list of "A" permits included a reference to the application for the 4000 Wisconsin Avenue, N.W. project [**32] and identified it by the letter "A" and a number, by street address, lot and square numbers, and indicated that the application was for a "new building." The listing also stated the date that the application was received, that plans had been filed, the amount of the fee and the date it was paid, and a projected cost of $ 22,000,000.

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n24 The BZA ruled that it did not have jurisdiction to consider the notice issue, but nevertheless heard evidence and rendered its decision on the issue. The District of Columbia urges that the BZA has ancillary jurisdiction to consider certain limited threshold procedural issues, such as notice, that arise in the context of substantive zoning disputes before the BZA. It cites Brown v. District of Columbia Bd. of Zoning Adjustment, 413 A.2d 1276, 1280-81 (D.C. 1980), appeal after remand, 486 A.2d 37 (1984), in which the court held that the BZA had inherent authority, and the duty to protect the integrity of its proceedings, to entertain a motion to disqualify an attorney alleged to have violated the revolving door, conflict of interest rule (MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 9-101 (B) (1979)). 413 A.2d at 1284. In view of our decision in Kopff v. District of Columbia Alcoholic Beverage Control Bd., 381 A.2d 1372 (D.C. 1977), construing the Home Rule Act and the act setting forth the duties and responsibilities of the ANCs (D.C. Law 1-58) to require agencies to give "great weight" to the ANC's written comments and to discuss the issues raised therein in the agency's decision on the merits, id. at 1384, the District's position is not without some appeal. However, we need not decide whether the BZA has jurisdiction to decide the notice issue. Assuming that the BZA did have such jurisdiction, its finding that ANC-3 received the statutory notice to which it was entitled was also the finding of the trial court.
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n25 Although the BZA's decision on the notice issue used the term "actual notice," the BZA's findings of facts numbers 11 through 15 make clear that the BZA more precisely determined only that the list of applications sent by the DCRA to ANC 3-C complied with the statutory requirements of D.C. Code @ 1-261 (c) (3).

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We hold that this list provided ANC 3-C with the statutory notice to which it was entitled under D.C. Code @ 1-261 (c) (3). See Kopff, supra note 24, 381 A.2d at 1380-81. While the list may not have been a "model of clarity," to borrow the BZA's observation, we are satisfied that in view of the clear statutory mandate to provide ANCs with current lists of construction applications, the list sufficiently distinguished applications from issued permits to place ANC 3-C on notice that a permit application for 4000 Wisconsin Avenue was pending. See American Sec. Bank v. American Motorists Ins. Co., 538 A.2d 736, 739-40 (D.C. 1988); George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment, 429 A.2d 1342, 1345 (D.C. 1981). n26 The BZA concluded that the list was "more than adequate for any person with an interest in proposed construction to become [**34] informed about the significance of [the] distinction [between the "A" and "B" permits], and thereby to know when an application is pending." We think this conclusion even more compelling for elected representative ANC commissioners.

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n26 In view of our conclusion that ANC 3-C received adequate notice under D.C. Code @ 1-261 (c) (3), we do not reach the trial court's alternative ruling that ANC 3-C also had actual notice of the pendency of the building permit application. See Shiflett v. District of Columbia Bd. of Appeals and Review, 431 A.2d 9, 10 (D.C. 1981). In any event, TACPEC's reliance on ANC 3-C Commissioner Philip Mendelson's testimony is misplaced because the trial court specifically discredited his testimony. Washington v. District of Columbia, 429 A.2d 1362, 1369-70 (D.C. 1981) (credibility determination is within the province of the trier of fact). See American Sec. Bank, supra, 538 A.2d at 739-40; George Washington Univ., supra, 429 A.2d at 1345.

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Accordingly, we affirm both the judgment of the trial court and the decision of [*343] the BZA. n27

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n27 TACPEC's final contention, that the District's failure to provide adequate notice of the pending building permit application denied ANC 3-C due process, is meritless. Assuming arguendo that the District provided no notice at all, this failure would establish only a statutory violation of D.C. Code @ 1-261. ANCs are political subdivisions of the District of Columbia government and therefore do not receive due process protections under the Constitution against actions of the District of Columbia. Williams v. Baltimore, 289 U.S. 36, 40, 77 L. Ed. 1015, 53 S. Ct. 431 (1933); Bowen v. State Comm'n of Correction, 104 A.D.2d 238, 484 N.Y.S.2d 210, 212 (N.Y. App. Div. 1984).

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