Original

DISTRICT OF COLUMBIA REGISTER

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ZONING COMMISSION ORDER NO. 862

Case No. 97-7
(SP Text and Map Amendments)
November 9, 1998

The Zoning Commission for the District of Columbia initiated this case in response to a petition from the Office of Planning (OP) requesting the Commission to amend the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning, and the Zoning Map of the District of Columbia. Amendments to the text of the Zoning Regulations and the Zoning Map are authorized pursuant to the Zoning Act [Act of June 20, 1938, 52 Stat. 797, as amended, D.C. Code Ann. Section 5-413 (1981)].

The OP petition, filed on April 4, 1997, requested the Zoning Commission to schedule public hearings to consider text and map amendments relative to the Special Purpose (SP) zones. OP's recommended text and map amendments are based on a study of the provisions of the SP zones. The purpose of the recommendations is to achieve economic development and quality-of-life benefits for both residential and office uses, and to eliminate inconsistencies between existing zoning and the Comprehensive Plan.

At a regular public meeting on April 14, 1997, the Zoning Commission authorized public hearings on the petition. The Commission determined that the text amendments portion of the case would be heard first as Part 1, with the map amendments portion being heard in subsequent hearings as Part 2. Accordingly, the hearing sessions for Part 1 were properly noticed for July 21 and July 24, 1997. The July 24, 1997 hearing was not necessary, and, accordingly, was not conducted. The hearing sessions for Part 2 were properly noticed for October 6 and 9, 1997, but were rescheduled and properly noticed for January 5 and 8, 1998. All hearings were conducted in accordance with the provisions of 11 DCMR 3021.

At the July 21, 1997 hearing session, the Commission heard the presentations of the Office of Planning, Mr. Paul Burman, and Mr. Jacques B. DePuy of the law firm of Greenstein, DeLorme and Luchs (GDL).

By reports dated April 4 and July 11, 1997, and by testimony at the public hearing, the Office of Planning recommended approval of the proposed text amendments which would affect Subsections 503.1 and 508.1 of 11 DCMR. This additional text would create a new Subsection 508.4. Existing Subsections 508.4 and 508.5 would be renumbered 508.5 and 508.6, respectively.

BZA
Case No. 16730
Exhibit No. 55

Board of Zoning Adjustment
District of Columbia
CASE NO.16730
EXHIBIT NO.55

Advisory Neighborhood Commission (ANC) 2B, by statement submitted into the record, indicated its overall support for the proposed text amendments and urged the Zoning Commission to enact provisions of the Comprehensive Plan that deal with SP-zoned properties [i.e., Section 1339.1(k)(3)]. The protection of the housing supply in and residential character of the Dupont Circle community at the periphery of the Central Employment Area (CEA) is dependent upon maintaining, not expanding, limited office uses now in place.

Advisory Neighborhood Commission (ANC) 2F, by resolution submitted into the record, indicated its opposition to the specific recommendation to change the zoning of the property of the National City Christian Church at 1250 14th Street, N.W. from SP-2 to SP-1 (Square 212, Lot 123). The church had been granted earlier approvals to construct a 90-foot high office building on the site. However, the project has not been built because of the slow real estate market. Rezoning the property to SP-1 would not allow the church to go forward with the project when economic conditions improve. The ANC would, however, support the rezoning of the property to SP-1 if the previous approvals had not been obtained by the church.

Testimony in support of the proposed amendments was presented by Mr. Paul Burman in conjunction with Mr. Jacques B. DePuy of the law firm of Greenstein, DeLorme and Luchs. Mr. Burman expressed his overall support for the proposed changes in the permitted uses in SP zones, specifically to allow general office use in most SP-zoned areas. However, he noted that a slight modification should be made. The SP prohibitions on general office use have severely affected the ability to develop the property at 17th Street and Massachusetts Avenue, N.W. The site suffers from poor visibility and access and is located on the north side of Massachusetts Avenue out of the C-4 zoned Central Employment Area to the south across the street. The proposed general office use designation would improve the marketability of new development on the site and would help overcome many of the site's limitations. Furthermore, any unimproved SP-2 property fronting on or adjacent to the CEA boundary should be eligible for general office use. With this, there would be no pressure on any residential properties to convert to office use.

At the close of the hearing, the Commission closed the record for further submissions. However, the Commission requested that OP provide additional zoning text that would emphasize the public policy preference for existing apartment buildings and hotels to continue in use rather than potentially be converted to office buildings. Such conversions would require special exception approval by the Board of Zoning Adjustment (BZA) under existing and proposed rules.

By memorandum, dated July 24, 1997, OP submitted the requested additional zoning text amendments for further consideration by the Commission relative to Subsection 503.1 and Section 508 as follows:

Advertised text with additions shown in **bold face type** and deletions shown in ~~strike through~~:

501.3 General office use shall be permitted in SP Districts ~~located within the Central Employment Area~~; Provided that:

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a. A building that was constructed as an office building and has been occupied solely as an office building or for uses other than residential or hotel uses ~~nonresidential uses~~ may be occupied by general office uses as a matter of right; and:

b. Construction of a new office building or construction of an addition to a building for office use, or conversion of an existing residential or hotel use to office use shall be permitted in an SP District if approved by the Board of Zoning Adjustment as a special exception pursuant to Section 508 of this chapter.

508.1 Construction of a new **office** building or construction of an addition to a building for office use, or conversion of an existing building to office use shall be permitted in an SP District if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of Chapter 31 of this title, subject to the provisions of this section.

508.2 Each application shall be referred to the Office of Planning in accordance with the provisions of Subsection 500.6.

508.3 The use, height, bulk, and design shall be in harmony with existing uses and structures on neighboring property.

508.4 **If the application proposes to convert a residential building or a hotel to office use, the residential or hotel use shall be considered the preferred use of the property unless the applicant can demonstrate a superior public interest in conversion to office use rather than retention of residential or hotel use.**

508.5 The use shall not create dangerous or other objectionable traffic conditions.

508.6 The Board may require special treatment in the way of design, screening of buildings, accessory uses, signs, and other facilities as it shall deem necessary to protect the value of neighboring property.

(508.2 through 508.6 are existing SP criteria, except for proposed 508.4)

At the hearings for Part 2 of the case, the Commission heard presentations from OP, representatives from the law firm of Wilkes, Artis, Hedrick and Lane, Advisory Neighborhood Commissions (ANCs) 2B and 2F, various community groups, a number of private concerns, and interested citizens.

By reports dated April 4, 1997 and September 26, 1997, and by testimony presented at the public hearing sessions, OP recommended approval of the proposed map amendments. The proposals affect a number of properties in the Dupont Circle/West End, Foggy Bottom, and Logan Circle/Thomas Circle subareas, and are located at the edge of the Central Employment Area (CEA).

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Advisory Neighborhood Commissions (ANCs) 2B and 2F, by material submitted into the record and by testimony at the public hearings, indicated general support of the proposed amendments and opposition to certain specific proposed rezonings in Square 314, respectively.

Both testimony in support of and in opposition to the proposed map amendments was presented at the second hearing session on January 8, 1998. ANC-2B indicated its general support of all four proposed map amendments in the Dupont Circle/West End subarea as did the Dupont Circle Citizens Association. Several individuals indicated that OP's proposed rezonings were not appropriate and should be re-evaluated. The National Society of Colonial Dames voiced its opposition to the proposed rezoning of its property from SP-2 to R-5-E because the organization's current use of it would then become nonconforming.

A number of proposed rezonings in the Foggy Bottom Subarea were opposed by affected property owners. Specifically, George Washington University opposes the rezoning of its properties, while the National Association of Life Under-Writers opposes the proposed rezoning of its headquarters building from SP-2 to R-5-E, both because of concerns about future options for the properties as well as a number of other issues. Several of the proposed rezonings in this subarea were supported.

In the Logan Circle/Thomas Circle Subarea, a large number of proposed rezonings were opposed, while several were supported. ANC-2F opposes a number of rezonings in Square 314. Several of the proposed rezonings received no testimony specific to the affected properties.

At the close of this second hearing session, the Commission left the record open until January 30, 1998, for the submission of any additional information. Submissions were received from OP, the law firms of Wilkes, Artis, Hedrick and Lane and Greenstein, DeLorme and Luchs, and a number of interested groups, firms and individuals regarding various issues and questions raised at the hearings.

The Zoning Commission took proposed action to approve a number of the proposed text and map amendments on March 9 and April 13, 1998. Several proposed map amendments in the Logan Circle/Thomas Circle Subarea were not acted upon at those meetings and were the subject of a notice to reopen the record for further public comments. Accordingly, that notice was published in the D.C. Register on July 31, 1998, and was open for 60 days. The proposed map amendments that were <u>not</u> acted upon are as follows:

A. Rezone from R-5-D to R-5-B:

- All of Square 280, except Lot 27.
- Square 314, lots 7-11, 15-22, and 46.
- Those parts of Squares 242, N-242, 243, 279, 312, and 313 now zoned R-5-D.

B. Rezone from SP-2 to R-5-B:

- Square 280, Lot 27.

C. Rezone from SP-2 to R-5-E:

- Square 314, lots 3, 4, and 41-44.

The record on the proposed map amendments not acted upon noted above was closed on September 30, 1998. At its regular monthly meeting on November 9, 1998, the Commission removed an additional number of Logan Circle/Thomas Circle Subarea properties from the proposed map amendments and grouped them with the properties above that were not acted upon earlier. Those additional properties removed are as follows:

I. Rezone from SP-2 to R-5-E:

- Square 245, lots 27, 28, 803-907, 821, 825, 827, 828, 834, 835, 838, and 840-842.

- All of Square 281, except lot 51.

II. Rezone from R-5-D to R-5-E:

- Square 281, lot 51.

As a result, the entire group of Logan Circle/Thomas Circle Subarea properties not acted upon will be readvertised for public hearing as Case No. 97-7(I).

The Commission believes that the concerns and views expressed during the public hearing proceedings have been thoroughly discussed and considered, and that the remaining map amendments in the Logan Circle/Thomas Circle Subarea that were not acted upon initially will be acted upon separately and appropriately. The Commission further believes that it has accorded ANC-2B and ANC-2F the "great weight" to which they are entitled.

A Notice of Proposed Rulemaking was published in the D.C. Register on July 24, 1998 and was referred to the Office of Corporation Counsel (OCC), the Zoning Administrator (ZA), OP, and the National Capital Planning Commission (NCPC) for review and comment. With this, the Commission received comments from OCC, OP, NCPC the law firm of Wilkes, Artis, Hedrick and Lane, the Dupont Circle Citizens Association, the law firm of Greenstein, DeLorme and Luchs, Advisory Neighborhood Commission 2B, and a number of concerned property owners/representatives. These submissions generally requested the Commission to make further modifications to the proposed amendments and to correct a number of errors. As a result, the comments received prompted the Commission to further modify the proposed text and map amendments

The proposed decision to approve the text and map amendments was referred to NCPC under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. In a letter dated August 7, 1998, NCPC indicated that the proposed amendments would adversely affect the federal establishment or other federal interests in the National Capital, and would be inconsistent with the Comprehensive Plan for the National Capital, unless the amendments are

revised so that "the limitations and conditions applicable to chanceries shall not exceed those applicable to other office or institutional uses" in the SP zones [Foreign Missions Act]. In order to be consistent with the Foreign Missions Act and the Comprehensive Plan, the amendments would need to allow chancery use as well as general office use in the SP zone as a matter of right for conversions of existing office or other BZA–approved use. In a memorandum, dated July 30, 1998, OP suggested a number of revisions to the proposed amendments that would include chanceries with the proposed treatment for general office use in the SP zones. As a result, the Zoning Commission concurs with OP's suggested revisions. These specific revisions are provided in this order.

The Zoning Commission believes that the proposed text and map amendments included herein will provide a workable mechanism to protect the residential supply and character at the periphery of the Central Employment Area (CEA) and to allow general office use within a number of SP-zoned areas within the CEA. This action would also eliminate a number of inconsistencies between existing zoning and the Comprehensive Plan. Further, the Commission believes that its decision to approve the text and map amendments set forth in this order is in the best interests of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations, Zoning Map and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the following amendments to the Zoning Regulations and Map:

A. Title 11 DCMR, Chapter 5, Section 501, USES PERMITTED AS A MATTER OF RIGHT, is amended by adding a new section 501.3 to read as follows:

501.3 General office use, including chancery, shall be permitted in an SP District as a replacement for office use for international organization, non-profit organization, labor union, architect, dentist, doctor, engineer, lawyer or similar professional person existing and approved by the Board of Zoning Adjustment or the Zoning Commission or authorized by a validly issued certificate of occupancy prior to (effective date of these amendments).

B. Titie 11 DCMR, Chapter 5, Section 508, OFFICE USES (SP), is amended as follows:

508.1 Construction of a new office building or construction of an addition to a building for office use, or conversion of an existing building to office use, shall be permitted in an SP District if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of chapter 31 of this title, subject to the provisions of this section.

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C. The proposed amendments to the Zoning Map are as follows:

1. DUPONT CIRCLE/WEST END SUBAREA

a. Rezone from DC/SP-2 to DC/R-5-E:
- Square 96, lot 814
- Square 97, lots 816, 2341-2410 (condominium lots at 1316 New Hampshire Avenue, N.W.), and 2045-2340 (condominium lots at 1330 New Hampshire Avenue, N.W.)

b. Rezone from DC/SP-2 to DC/C-3-C:
- Square 116, lots 59, 60, 61, 809 and 833

c. Rezone from SP-2 to C-3-C:
- That part of lot 49 in Square 99 now zoned DC/SP-2

d. Rezone from DC/SP-2 to DC/C-2-B:
- Square 96, lot 99

2. FOGGY BOTTOM SUBAREA

a. Rezone from SP-2 to R-5-E:
- Square 31, lots 28 and 835
- Square 81, lots 98, 835 and 836

b. Rezone from R-5-E to R-5-D:
- All of Square 58

c. Rezone from R-5-D to SP-2:
- All of Square 59

3. LOGAN CIRCLE/THOMAS CIRCLE SUBAREA

a. Rezone from SP-2 to R-5-E:

- Square 211, lots 37, 38, 47, 821, 822, 850, 852 and 856 and that part of Lot 852 now zoned SP-2

- Square 243, lots 827 and 832

b. Rezone from SP-2 to HR/SP-2:

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- Square 212, lots 115-117, and 122

This order was adopted by the Zoning Commission at its public meeting on November 9, 1998, 5-0: (John G. Parsons, Jerrily R. Kress, Herbert M. Franklin, Angel F. Clarens, and Anthony J. Hood, to approve, as amended).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is on _____.