



Zoning Commission  
Government of the District of Columbia  
411 4<sup>th</sup> Street NW  
Washington, DC 20001

June 15, 2000

In the Matter of:

Yale Steam Limited Partnership #2000-01

Dear Members of the Zoning Commission:

In the above-mentioned case, the Developer was to appear, on numerous occasions, before the Zoning Commission to request Approval to construct a "skybridge" over a Public Alley, as an important, if not critical, element in the furtherance of the development of a proposed **Yale Laundry Hotel Towers Project**.

This Yale Laundry Hotel Towers Project is now to consist of two massive and grossly-high twin towers, of **120-feet**, and **100-feet** in height, respectively, that are not only fully situated on the site of the Yale Laundry DC Historic Landmark, but also fully within, and surrounded by, the Residential **Mount Vernon Square Historic District**, in which the average height of dwellings was only **42-feet**.

The Developer has repeatedly requested continuances, for one reason or the other, and the issue, and case, has not even been before the Zoning Commission as to even for determination for consideration to be placed on a Hearing Calendar. The Developer has never bothered to even appear before the Zoning Commission, even to request aforesaid numerous continuances.

One of the side-effects of this case was that the Zoning Commission questioned the propriety of aforesaid project, especially in relation to the comparison of the excessive height, massing, and scale of the proposed Yale Laundry Hotel Towers Project in relation to the diminutive height, massing, and scale of the surrounding Residential Mount Vernon Square Historic District.

In addition, a disturbing question was raised as to the potential inpropriety and illegality of a previous Zoning Administrator's "granting" the Yale Laundry site in question blanket exemption from any Housing Requirement, that would have otherwise been mandated

by Zoning, without prior-approval by either the Zoning Commission, and/or the Board of Zoning Adjustment.

This so-called, and legally-questionable, "exemption", was the result of a so-called, and infamous, "**Exemption Memorandum**", dated **25 September, 1998**, that was drafted by lawyers from two law firms (that both happen to currently still represent the Developer) and that was signed in "concurrence" by the Zoning Administrator at the time, on **4 November, 1998**. (For your information and reference, that "Exemption Memorandum" is attached as an Enclosure to this document)

This grave, and justified, concern, led the Zoning Commission, on **14 February, 2000**, to direct the District of Columbia Office of Planning to further investigate the matter for possible legal remedial action, and to report back such findings to the Zoning Commission within 30 days.

As of this date, the Office of Planning has apparently failed to thoroughly investigate the matter, and provide the Zoning Commission with a full report as to what legal options would be available to correct that blatant usurping of power and authority that legally should have required prior-approval by either the Zoning Commission, and/or the Board of Zoning Adjustment.

It is intuitively obvious, even to the most casual observer, that one possible intention of aforesaid "Exemption Memorandum" may have been an attempt to perhaps legitimately, and perhaps reasonably, "exempt" six (6) certain specifically and individually named legitimate and existing (at the time) "historic landmarks", such as "Old Engine Company No. 6" or "Fletcher Chapel", from a "housing requirement", dictated by Zoning, that they would otherwise have had to bear.

The case, and the arguments, presented in support of that position regarding the interpretation of Zoning Regulations with respect to the existing six (6) specifically-named DC Historic Landmarks may be legitimate and valid ones. However, it was not within the purview of the Zoning Administrator's authority to "interpret the law" and thereby essentially "exempt" or "waive" aforesaid properties from the Housing Requirement otherwise mandated by the Zoning Regulations. There are established procedures in place for such action, and they should have been followed in that case.

The proper route would have been to refer the matter to the Zoning Commission or the Board of Zoning Adjustment, but that, at this time, is another matter that needs to be addressed and remedied.

Careful further reading of the "Exemption Memorandum" indicates that a concerted and deliberate effort was then made to obfuscate the situation, and to surreptitiously add four (4) alleged future unnamed and potential "historic landmarks" into the same group of six (6)

certain specifically and individually named legitimate and existing (at the time) "historic landmarks".

Such a tactic might have worked, given that no one might have noticed, but it was noticed, and the very tactics of obfuscation and surreptitiousness used are now the very factors that can be used against, and to nullify, such an effort to attempt to circumvent Zoning requirements and the Zoning Commission.

In that infamous "Exemption Memorandum", after listing the six (6) specifically-named potentially legitimate candidates for exemption from any Housing Requirement, a deliberately ambiguous ***"four additional sites in the Northern DDD will be nominated for historic landmark status, as a result of research into a potential Mt. Vernon Square Historic District"*** was added in the paragraph after the detailed listing of Historic Landmarks that were up for consideration for exemption.

These alleged ***"four additional sites"*** were never individually and/or specifically identified within the "Exemption Memorandum", although their identities were known, or should have been known, at the time to the drafters of the Memorandum, and were introduced into aforesaid memorandum **without proof**.

If they were intended to also be considered for any "Housing Exemption", **these alleged "four additional sites" should have been individually and specifically listed, by name, as were the other six (6) certain specifically and individually named legitimate and existing (at the time) "historic landmarks". To do otherwise would constitute a "fishing expedition" that has no place under the law, and would set an unconscionable precedent that could virtually allow any site to claim status as one of those alleged "four additional sites".**

**These alleged "four additional sites", having never been specifically and/or individually identified within the memorandum, and/or never having been officially acknowledged by the Zoning Administrator at the time, or subsequently, fail to meet, and/or lack, the legal burden, and/or degree, of specificity required to legally properly and fully identify them in terms of the "Exemption Memorandum".**

**Therefore, any claim by any property and/or site claiming to be one of those alleged "four additional sites" is null and void, with respect to aforesaid "Exemption Memorandum", whether that Memorandum turns out to have constituted legal approval or not, and/or notwithstanding any potential future legality or illegality of the "Exemption Memorandum" under the Law and the Zoning Regulations.**

In addition, the intentional and deliberate withholding of the identities of the alleged unnamed ***"four additional sites"***, well known at the time to the drafters of the Memorandum if they, in fact existed, would indicate and constitute an **intentional and deliberate intent to deceive and/or misrepresent material facts** in the matter, thereby further nullifying any subsequent actions allegedly granting them a "Housing Exemption".

In other words, since those alleged "*four additional sites*" were never specifically identified (as were all the other six sites in the "Exemption Memorandum"), and since their identities were patently known at the time to the drafters of the Memorandum, or should have been known, yet they were deliberately and/or intentionally withheld, and additionally **based solely on the contents of the Memorandum, upon which the Zoning Administrator relied and based his "concurrence"**, there is no way to positively and uniquely identify them, and therefore there is no possible legal way to ascertain, to a degree of legal absolute certainty, that the Yale Laundry Site was one of those alleged "*four additional sites*" mentioned, nor that it ever was intended to be one of them.

As a result, the **Yale Laundry Site** would **not** be exempt from any Housing Requirement, and therefore would have to subsequently **comply with the Housing Requirement Overlay as required by Zoning.**

I respectfully request:

1. That the Zoning Commission take such actions as appropriate to **rescind any so-called "Housing Requirement Exemption"** from not only the **Yale Laundry Site**, but any and all other alleged unspecified sites, if, and when, they may be subsequently identified through their claims for such "Housing Exemption" based on aforesaid "Exemption Memorandum".

If the Developer disagrees with the Zoning Commission's ruling, there are proper remedies available to him, such as individual application for "exemption" or "variance".

2. The Zoning Commission take such actions as appropriate to **rescind the so-called "Exemption Memorandum"** that concurred to a so-called "**Housing Requirement Exemption**".

If the Owners of any of the aforesaid six (6) identified properties disagree with the Zoning Commission's ruling, there are proper remedies available to them, individually and/or collectively, such as specific application(s) for "exemption" or "variance".

Respectfully submitted,



Jonathan Fox

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September 25, 1998

**MEMORANDUM**

**TO:** Armando Lourenco and Gladys Hicks, Department of Consumer and  
Regulatory Affairs

**CC:** David Colby, Office of Planning  
David Maloney, Historic Preservation Division

**FROM:** Nathan W. Gross, Arnold & Porter  
David W. Briggs and Robin Hayes, Holland & Knight

**RE:** Historic Preservation Regulations, Downtown Development District (DDD)

**Request.** We request your determination that a historic landmark covered by the provisions of Section 1707 of the Zoning Regulations, but located outside the area described in Section 1707.4 is also entitled to the exemption under the provisions of Section 1706.20 (related to residential uses) if the landmark is located in a Housing Priority Area.

**Issue.** The Historic Preservation provisions in §1707 of the Downtown Development District (DDD), and related residential provisions in §1706, contain some ambiguities or inconsistencies with regard to historic landmarks. In particular, several subsections in the DDD refer only to a contiguous area described by squares and lots in §1707.4, which properties constitute a listing of both individual landmarks, contributing historic buildings within the Downtown Historic District and the Pennsylvania Avenue Historic Site and associated land. There are a number of historic landmarks within the DDD boundaries which are not listed in §1707.4 and which could be subject to different rules if some provisions of the DDD text are read too literally.

Subsection 1707.2 and other provisions make references to historic landmarks generically, and the government agencies have generally interpreted the historic preservation rules to apply to both "listed" landmarks and "unlisted" landmarks.

This memorandum seeks confirmation that the normal waiver of the residential requirements for historic buildings applies to historic landmarks not located in the area described in §1707.4 on an equal footing with contributing buildings and landmarks that are located in the area described. With new development and renovations moving rapidly

northward and eastward in the Downtown (East) End, where many of these landmarks are located and where the Housing Priority Area of the DDD is mapped, it will be important for the rules to be clear.

**Adopted Zoning Rules for Historic Buildings.** In summary, the DDD provides the following zoning restrictions and incentives regarding historic properties:

- Properties located within the area described in §1707.4 are restricted to a maximum on-site density of 6.0 FAR;
- Transferable development rights (TDRs) are provided for unbuilt density of up to 4.0 FAR on the lot accommodating the historic building (§1707.5(d)); and
- Historic buildings in a Housing Priority Area are not subject to a housing requirement if located within the area described in §1707.4 (§1706.20).

We are raising an issue only with the third regulation above, the required residential component in the Housing Priority Area.

**Applicable Properties.** Subsection 1707.4 describes by lots and squares an area of the DDD containing both contributing historic buildings and historic landmarks. All of these properties are clearly subject to the restrictions and incentives of the DDD affecting historic properties. These properties are either located within the Downtown Historic District or the Pennsylvania Avenue Historic Site. These properties and historic districts were the focus of testimony and analysis in Zoning Commission Case No. 89-25 (Downtown Development District), because the D.C. Preservation League had petitioned to include the entirety of the Downtown Historic District within the purview of special zoning controls. The applicable parts of the Pennsylvania Avenue Historic Site were added to the list in §1707.4 in the interest of uniform treatment. It was also the clear intent of the Zoning Commission, the Office of Planning and the Historic Preservation Division to treat other historic landmarks in DDD in a consistent manner, but the rules as written contain some ambiguities, discussed below.

**Legislative Intent.** It is clear from numerous provisions in §1707 that the Zoning Commission and participating government agencies intended all historic buildings to be governed consistently by the historic preservation rules in DDD, as indicated below (with emphasis added):

*1707.3 The provisions of this section apply to historic landmarks and to specified properties within the Downtown Historic District and Pennsylvania Avenue Historic Site.*

It is clear from this wording that all landmarks, including those within and outside the historic districts, were intended to be governed by §1707. This is the first substantive provision in §1707, following immediately after the purposes stated in §1707.1, which suggests that this statement should govern the following rules in a general, over-arching way.

The immediately following subsection raises to issue within historic buildings and, again, clearly expresses the broad intent of governing historic buildings both within and outside of the two historic districts:

*1707.3 Uses within buildings in the historic districts and landmark sites within the DD District are governed by the underlying zones and the special use requirements . .*

Additional indications of the legislative intent to treat historic landmarks and contributing buildings equally in the DDD zoning provisions are found in the formal purposes as set forth in §1707.1:

*Paragraph (a) makes broad reference to preserving the unique character and fabric of historic buildings, the Downtown Historic District, and the Pennsylvania Avenue Historic Site.*

The above is a clear statement of these included categories, including historic buildings generally, and those within the Downtown Historic District and the Pennsylvania Avenue Historic Districts.

*Paragraph (b) refers both to historic landmarks and contributing buildings: (b) Encourage restoration and adaptive reuse of historic landmarks and adaptive reuse of contributing buildings in historic districts, together with compatible alterations and compatible new construction.*

*Paragraph (c) states the intent of restricting permitted building bulk on critical historic frontages and lots with historic buildings so as to encourage preservation of historic buildings and assure a compatible scale of new construction in historic districts, especially in projects combining new development with preservation.*

Other relevant text in Paragraphs (d) through (f) refers to "historic buildings" broadly, clearly indicating the legislative intent to include all historic buildings in the DDD.

Finally, the provisions for transferable development rights in §1707.5 in several places carefully include historic landmarks outside of the §1707.4 area as being eligible for TDRs. One example is as follows:

*1707.5 (b) The property (that is eligible to transfer TDRs) shall be one of those properties identified in 1707.4 and accordingly restricted in on-site density to 6.0 FAR or shall be an historic landmark that has an FAR of 6.0 or less including any existing or proposed additions.*

**Waiver of the Residential Requirement for Historic Landmarks.** Despite the Commission's clear intent to treat all historic properties by the same rules, a discrepancy exists regarding the waiver from a required residential component as provided in §1706.20. Given the legislative intent of the DDD zone to provide incentives and

protections for historic buildings generally, and specific regulations accomplishing that intent, a uniform treatment regarding the residential waiver would be logical and consistent.

Historic buildings within the §1707.4 area are exempted from any residential use requirements for policy reasons. Specifically, given the density restrictions and the (typically) limited profitability of residential uses, the Zoning Commission and the executive agencies decided to allow all-commercial use, as well as transferable development rights, to help defray the relatively high cost of restoring historic buildings. Another important reason for the waiver is that many historic buildings may not lend themselves reasonably to conversion for residential use because of the character or design of the building.

The provision that creates a potential problem is §1706.20 within §1706 "Residential and Mixed Use" provisions, as follows:

*1706.20 The residential requirements shall not apply to any lot restricted to a maximum development of 6.0 FAR pursuant to 1707.4.*

A narrow reading of this rule would mean that any individual landmark located within the Housing Priority Area and not within the area described in §1707.4 would have a residential requirement of 4.5 FAR in DD/C-2-C districts, 3.5 FAR in DD/C-3-C districts and 2.0 FAR in DD/C-4 districts. The 4.5 FAR, in particular, exceeds the existing density of the majority of applicable landmarks and clearly appears to be contrary to sound historic preservation practices — in terms of mandatory density, mandatory and potentially inappropriate use of the historic building, and reduced financial viability to support high-quality historic restoration of the landmark building.

**Affected Historic Landmarks:** A moderate, but significant, number of historic landmarks are potentially affected by this interpretation question. The historic landmarks outside of the area defined in §1707.4 but within the Housing Priority Area of DDD include the following:

**DD/C-3-C**

American Federation of Labor  
Asbury United Methodist Church

**DD/C-2-C**

Fletcher Chapel (Church of God and Saints of Christ)  
Moran Building (restored prior to the adoption of the DDD)  
Myrene Apartments  
Old Engine Company # 6

**Additional Historic Landmarks**



It is our understanding four additional sites in the northern part of DDD will be nominated for historic landmark status, as a result of the research into a potential Mt. Vernon Square Historic District. This work was authorized by the agreements related to approval of the site for the new Convention Center north of Mt. Vernon Square. Those four buildings, if formally designated as historic landmarks, would also be subject to the rules discussed in this memorandum. This is because "historic landmark" is a defined term in the Zoning Regulations, so that the DDD zoning rules that refer to "historic landmarks" would apply.

**Conclusion.** We understand that the executive agencies of the District of Columbia government have been interpreting and continue to interpret the DDD historic preservation rules in a generally consistent fashion as regards properties identified in §1707.4 and individual historic landmarks outside of that geographic area. Because our firms represent the owners of several historic landmarks that are within a Housing Priority Area but are not within the area described in §1707.4, we seek your confirmation that such landmarks are also included in the intent of §1706.20 and are eligible for the housing waiver.

CONCUR:

Zoning Administrator

By: Annabelle L...  
11/4/98