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February 19, 2002

Jerrily Kress, Director
D.C. Office of Zoning
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

D.C. OFFICE OF ZONING
RECEIVED
2002 FEB 19 PM 4:09

Re: Pre-Hearing Submission
Zoning Commission Case No. 01-35
Text Amendment – Waterside Mall

Dear Ms. Kress:

Pursuant to § 3013 of the Rules of Practice and Procedure before the Zoning Commission, we are herewith submitting twenty (20) copies of the Pre-Hearing Submission on behalf of the applicant in the above-referenced case. This information includes the following items:

1. Twenty (20) copies of the original Application;

2. A list of witnesses who will testify at the public hearing, a summary of their testimony, and an estimate of the time required for the applicant's presentation. This information is on the following two pages; and

3. Certification pursuant to § 3013.7: We hereby certify that all of the requirements of § 3013 have been complied with in this submission.

Also enclosed is a check in the amount of $250 for the Hearing Fee under 11 DCMR 3041.3. Thank you for your assistance in processing this application.

Sincerely,

CAGms

Cynthia A. Giordano

NWGross

Nathan W. Gross

ZONING COMMISSION
District of Columbia
Case 01-35
Exhibit 13

cc: Arthur Jackson, Office of Planning



ZONING COMMISSION
District of Columbia
CASE NO.01-35
EXHIBIT NO.13

**LIST OF WITNESSES AND ESTIMATE OF TIME REQUIRED TO PRESENT CASE**

**Witnesses**

Arthur Mosley, Development Manager, The Kaempfer Company

Shalom Baranes or Mark Gillian, Architects, Shalom Baranes Associates

Nathan W. Gross, City Planner, Arnold & Porter

**Estimated Time Required to Present Case:** 45 minutes

**Summary of Testimony of Representative of**
**The Kaempfer Company**

**Arthur Mosley, Development Manager:**

I. Overview of the Project and Project Goals

II. Identification of the Constraints Leading to the Petition for the Proposed Text Amendment

**Summary of Architect's Testimony**
**Shalom Baranes and Associates, Architects**

**Shalom Baranes or Mark Gillian:**

I. Overview of the Physical Layout of Waterside Mall

II. Summary of Redevelopment Concept for the Waterfront

III. Physical and Zoning Constraints to be Resolved by the Proposed Text Amendment

**Summary of Testimony by City Planner**
**Arnold & Porter**

**Nathan W. Gross, AICP:**

I. Summary of Public Benefits and Planning Objectives to be Achieved by the Proposed Text Amendment

II. Additional Discussion of Zoning Constraints, if needed

ARNOLD & PORTER

**Nathan W. Gross, AICP**
Zoning and Land Use Specialist
Nathan_Gross@aporter.com

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555 Twelfth Street, NW
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Not Engaged in the Practice of Law.

November 30, 2001

Ms. Carol Mitten, Chair
D.C. Zoning Commission
441 4th Street, NW
Suite 210
Washington, D.C. 20001

Re: Proposed Zoning Text Amendment – Waterside Mall

Dear Ms. Mitten and Members of the Commission:

***Summary of Proposal.*** This memorandum requests that the Zoning Commission schedule a public hearing to consider adopting a text amendment affecting the Waterside Mall property, located at 401 M Street, SW (Square 542, Lot 88 and Square 499, Lot 60, the "Property"). The requested text amendment is necessitated by the prospective demolition of part of the structure to allow the reopening of a roadway along the path of former 4th Street, SW. Because of the physical separation created by the demolition, the result would be two buildings for zoning purposes where there is now one building. The proposed text amendment would simply provide that, for zoning purposes, the complex would continue to be considered as a single building, so as to avoid various development complications discussed later in this memorandum. The Office of Planning ("OP") has indicated its support for this proposed amendment.

***Public-Private Partnership in Revitalization.*** The Kaempfer Company, Inc. and Forest City Enterprises, Inc. have entered into an agreement with the existing ground lessee of the Property to form a venture that will renovate and expand Waterside Mall. The revitalized complex, to be known as "Waterfront," will be constructed in phases over an extended period of years. The opportunity and the dire necessity to update and upgrade the complex derives from the impending departure of the major office tenant for many years, the Environmental Protection Agency ("EPA"). The successful upgrading and re-occupancy of the building will be critical for the well-being of the surrounding neighborhood in terms of employment, continuing support for retail uses in the mall and in avoiding the potential blighting influence of a large building complex possibly remaining vacant for an extended period of years.

The District of Columbia is an important partner in this endeavor. The Office of Planning has strongly recommended demolishing the part of the Mall constructed over the former right-of-way of 4th Street, SW, in order to create a new roadway[1] that would connect to 4th Street to the north and south of Waterside Mall. Fourth Street is especially important because it is one of the few streets that pass under the Southwest Freeway, thereby connecting the Southwest neighborhoods with the central core of the city. Reopening 4th Street was recommended in a 1998 Urban Land Institute study entitled, *Southwest Washington, D.C.: A Strategy for Revitalizing Waterside Mall and the Waterfront* ("ULI Study"). See the excerpts from the ULI Study attached as *Exhibit A*, which state the rationale for reopening 4th Street, together with a conceptual drawing showing this condition.

On September 29, 2001, Kaempfer and Forest City entered into a memorandum of understanding ("MOU") with the Deputy Mayor for Planning and Economic Development ("ODMPED"). The MOU contemplates that Kaempfer and Forest City will undertake certain activities in connection with the design, development and construction of the reopening of 4th Street. The MOU also states that because the reopening of 4th Street is in the public interest, ODMPED will endeavor to make District funds available to cover certain costs of the road reopening.

***Existing Development.*** The Waterside Mall was built in phases between the 1960s and 1985, pursuant to the provisions and processes of the Southwest Urban Renewal Plan, Area "C." The Property is situated on the major part of a large "superblock" bounded by M, Eye, 3rd and 6th Streets, SW. Other uses on this superblock include two large, high-rise apartment complexes to the east and west of the Waterside Mall, known as the Town Center East and Town Center West Apartments; two churches; parkland; and a District of Columbia library (Southwest Branch). The Waterside Mall complex faces M Street, and on that side partially wraps around the Waterfront Metrorail station and an adjacent surface parking lot serving the Property. Fourth Street between M and Eye Streets, SW, was closed to facilitate the development.

The central Mall structure is three to four stories and 40 to 65 feet in height, depending on the measuring point used, plus a basement level. Because of problems

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[1] The roadway would be constructed on private property but with covenants to assure that it functions as a public throughway.

leasing up and maintaining viable retail and personal service uses in the Mall, the upper floors are devoted to office uses, and even on the ground floor some spaces are vacant or are occupied by office uses. The ULI Study of 1998 found a vacancy rate of 50 percent of the 175,000 square feet of leasable space in the Mall.

Abutting and connecting to the Mall structure to the east and west are two 12-story, 130-foot office towers plus storage area that have been leased by the General Services Administration ("GSA"). With a land area of 584,655 square feet and an existing gross floor area of approximately 1,248,777 square feet, existing improvements constitute approximately a 2.14 FAR. In addition to the surface parking near the Metrorail station entrance on the M Street side, there are 725 underground parking spaces accessed from Eye Street. For approximately 28 years, the EPA has occupied virtually all of the office space, with a work force of 4,000 to 5,000 employees.

The EPA is now in the process of phasing out its occupancy, with its lease scheduled to expire in September 2002. Consequently, the time is ripe for the complex to be renovated and restructured. It is critically important from the public interest standpoint for this very large amount of office space to be reoccupied for at least two reasons. The first is to avoid the numerous negative effects on the surrounding neighborhood (and the local economy) of a large building complex remaining vacant for a period of years. The second is to provide a large number of employees in the building who will patronize the ground floor retail services so that they may survive and expand, and serve the surrounding neighborhoods as well as the employees. To the surrounding neighborhoods the existing large drug store and supermarket are especially important because alternative locations for these critical retail needs are quite distant.

***Zoning.*** With the expiration of the Southwest Urban Renewal Plan, Area "C" in 1996, the Office of Planning ("OP") prepared a zone plan, which the Zoning Commission adopted after public hearing in Order No. 807, dated October 19, 1998. The new zoning for Southwest includes zoning map classifications as well as several text amendments related to the Southwest Urban Renewal Area. The text amendments are in a new section under *Miscellaneous Zoning Requirements* in 11 DCMR §25. A copy of Zoning Commission Order No. 807, including both the map and text amendments, is attached as *Exhibit B* to this memorandum.

Pursuant to Zoning Commission Order No. 807, the Property is zoned C-3-B (Major Business and Employment Centers). The existing commercial improvements of approximately 2.14 FAR are well within the permitted maximum of 4.0 FAR for

commercial uses and 5.0 FAR for residential and mixed uses. The height of the existing office towers of 130 feet each would normally render the Property a nonconforming structure based on height. However, because of the complexities of converting land use controls from an urban renewal system based on project-by-project review to a matter-of-right zoning system, the Zoning Commission adopted a general "grandfather" clause to alleviate nonconformity problems, as follows:

> *2521.1 (c) A building or structure that was built prior to [November 20, 1998] which conformed to the height, area and bulk provisions of the Urban Renewal Plans shall be considered a conforming structure under these Regulations and in the event of fire, collapse, explosion or act of God may be built to its size as of the date specified above.*

Thus, the existing structure is conforming. One additional text amendment is needed to enable the Property to have normal, matter-of-right zoning controls for future development, as discussed below.

***Proposed Text Amendment.*** As future owners and developers of the Property, the petitioners need assurance that existing zoning rights will not be impaired by demolition undertaken at the District's request to reopen 4th Street. Creation of two separate buildings could result in problems of nonconformity regarding parking and loading requirements for one or the other of the two future buildings, a problem that could be exacerbated by construction of additional building components over time. Likewise, any additions to the complex should have the flexibility of allocating FAR based on the entire property.

The need to maintain zoning flexibility for the building complex as a whole is extremely important because of the magnitude and complexity of the revitalization project. The many phases of the project will include renovating and restructuring some existing spaces and building elements; relocating both Safeway and CVS to temporary and/or permanent locations; constructing new additions; and demolishing building fabric over the 4th Street roadway and other partial demolition of buildings. All of this will be lease-driven to a significant degree. Rather than one very large federal office tenant, there may be a number of private, government or association tenants of various sizes, contracting for occupancy at different times. The ability, after demolition creates two physical buildings, to allocate FAR and parking and loading spaces as if the complex were still one building will be essential for long-term development planning.

The petitioners are willing to work with ODMPED, the Office of Planning and other agencies to reopen 4th Street. The petitioners are also pleased that Planning Director Andrew Altman has provided the letter attached in *Exhibit C* in formal support of this proposed text amendment. Accordingly, petitioners propose that the following text amendment be considered for adoption after a public hearing. This provision would simply be added to the Zoning Regulations at Section 2521, which deals with properties formerly subject to the Southwest Urban Renewal Plan. The proposed text is as follows:

*2521.1(h) If part of the Waterside Mall property, comprising Lot 88 in Square 542 and Lot 60 in Square 499, is demolished so as to create a roadway or public throughway generally along the former right-of-way of 4th Street, SW, so that the parts of the building to the east and west of such roadway or throughway are no longer physically connected above grade, for zoning purposes all such improvements shall be deemed to be a single building.*

Thank you for your consideration of this amendment.

Sincerely,

Nathan W. Gross

Cynthia A. Giordano

Cc: Office of Planning

Attachments

**Attachment A:** **Excerpts from *Southwest Washington D.C.: A Strategy for Revitalizing Waterside Mall and the Waterfront*, Urban Land Institute, 1998**

# Excerpts from "Design and Planning" In *Southwest Washington D.C.: A Strategy for Revitalizing Waterside Mall and the Waterfront, pp. 37, 41, 47*

## STREET PATTERNS

City street patterns are the framework that set the stage for development. Although the rigorous street network originally laid out by Pierre L'Enfant is consistent and intact for most of the city, it has been disrupted in Southwest by interstate highways, rail lines, and the planning efforts of the post–World War II era, leaving Southwest cut off from the rest of the District. Today, Fourth, Seventh, and South Capitol streets are the only streets that connect the northwestern to the southwestern quadrant of the city. Only Seventh Street actually connects from the north through to the Southwest waterfront. And only one east/west street—Maine Avenue/M Street—runs through the study area to the waterfront. All other streets have been interrupted.

Southwest's isolation is a mixed blessing. The strong edge embodied in the interstate highway and railroad tracks has helped to preserve the quiet residential character of the neighborhood. But Southwest is not well known beyond its boundaries because it is difficult to reach, especially on foot.

## WATERSIDE MALL

Waterside Mall, which blocks Fourth Street and prevents it from continuing through the neighborhood, is situated on one of the largest contiguous blocks in all of Washington. This formidable superblock inhibits both pedestrian and automobile access and separates the surrounding residential neighborhoods from one another. Waterside Mall, a federal office center stranded in the middle of a residential waterfront district, is an inward-focused compound surrounded by a moat of parking lots, walls, and parks spaces hidden from view. The areas around Waterside Mall, especially to the immediate north, are perceived to be dark and dangerous, especially at night. The entrances to the mall are hard to see and difficult to negotiate on foot. There is no obvious signage, and pedestrian lighting is seen as inadequate. The interior is equally grim, with empty storefronts, little natural light, dead-end corridors, and escalators to nowhere. Waterside Mall is misdesigned and altogether isolated from its residential surroundings.

## NEIGHBORHOOD SHOPPING AND COMMERCIAL DISTRICT

Most significant among the panel's recommendations is the transformation of Waterside Mall from a federal office center above an enclosed shopping mall into a mixed-use center that would serve and be supported by the Southwest neighborhood. To accomplish this, the central section of Waterside Mall would be demolished, allowing for the reconnection of Fourth Street as part of the original street grid pattern. In this way, the monolithic Waterside Mall building would become two separate structures along both sides of Fourth Street, which would become Southwest's main neighborhood shopping street. Access for pedestrians, vehicles, and Metro riders would be improved. Fourth Street would bend around the Metro station, forming an attractive, more accessible, circular pedestrian plaza.

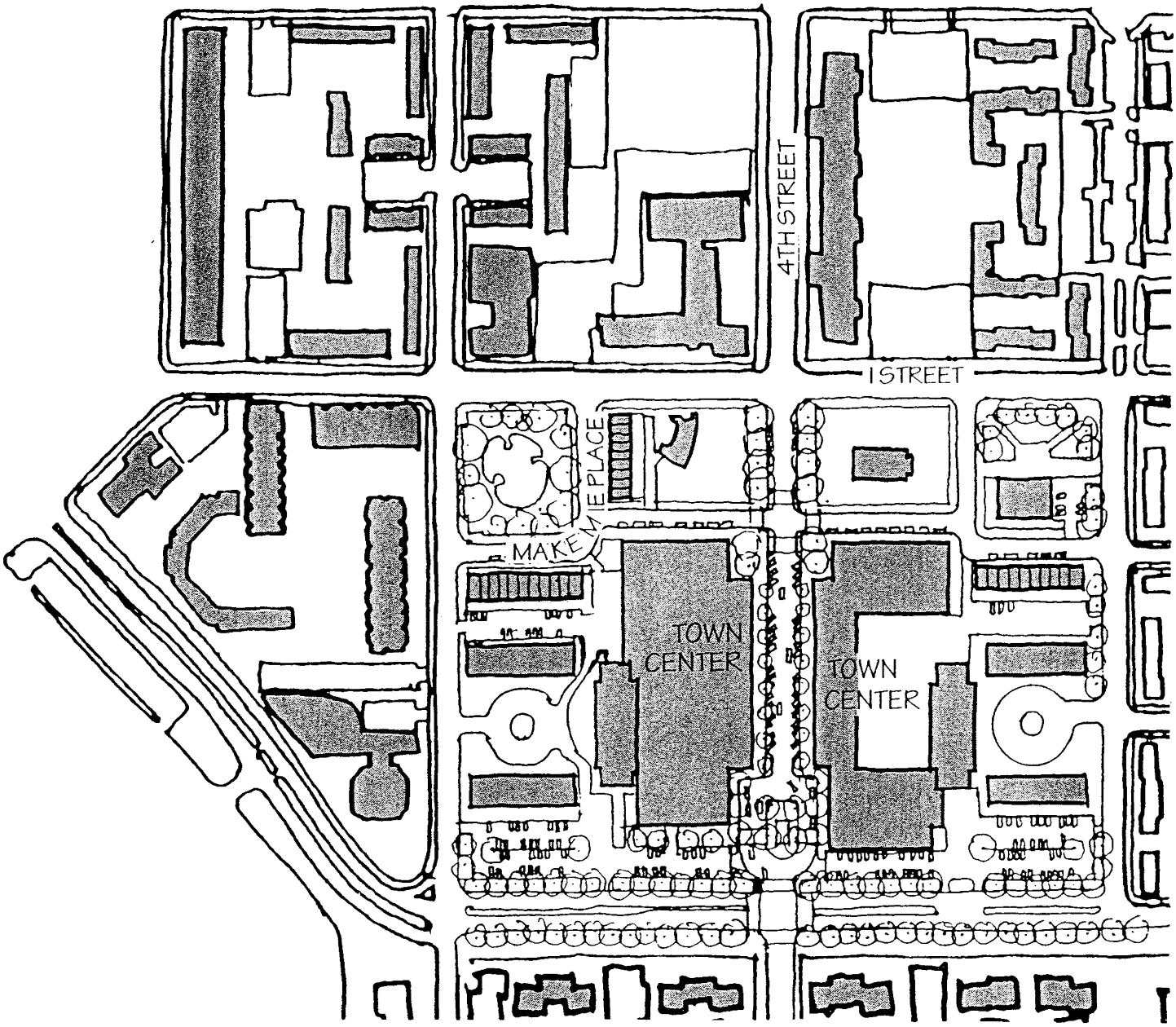
If this plan is followed, Fourth Street will be lined on both sides with the remaining three-story building, now two separate structures, re-clad in a variety of new facades recalling the traditional architecture of Southwest Washington. Classically proportioned adaptations of traditional masonry commercial buildings would house neighborhood-serving uses, including a grocery store, drugstore, hardware store, coffee shop, and sidewalk cafe. Together, these uses will form a convenient neighborhood shopping center and gathering place for the community.

This plan would demolish approximately 37,000 square feet of the existing mall. However, because the current mall is so overscaled and poorly configured, the demolition would actually result in an increased amount of rentable space. The two upper levels of the mall, currently used by EPA, would then be more easily accessed and used for ancillary services, such as a fitness center, daycare, medical offices, and other nonretail, neighborhood-serving functions. Entrances for the two towers would be reconfigured and integrated into the new streetscape.

Parking for the town center would be accommodated in angled spaces along Fourth Street, in several on-site surface lots, and in the existing Waterside Mall underground garages. A new east/west street would connect Makemie Place on the west with the Southwest Branch Public Library on the east. Makemie Square and Public Library Square will be lined with townhouses and become residential squares. These now-empty and dangerous spaces would be replaced by traditional streets and squares, easily understood and monitored day and night by residents of the new housing.

Through elimination of the barriers and reconnection of the neighborhoods, Waterside Mall could become the community center it was originally envisioned to be.

**PROPOSED STREET REALIGNMENT**




**WATERSIDE MALL REDEVELOPED AS TOWN CENTER**

*The center portion of the mall would be demolished, creating a new, pedestrian-oriented shopping district.*

**Attachment B: Zoning Commission Order No. 807**

*CORRECTED ORDER* - PAGE NOS.21 & 22*

**ZONING COMMISSION ORDER NO. 807**
**Case Nos. 95-15 and 95-15I**
**( Text & Map Amendment – Southwest Urban Renewal Area – Portion of Subarea C, South of the Southwest Freeway)**
**October 19, 1998**

The Zoning Commission for the District of Columbia initiated this case in response to a proposal by the District of Columbia Office of Planning (OP) to amend the Zoning Map of the District of Columbia, pursuant to Section 102 of the District of Columbia Municipal Regulations (DCMR). Title 11, Zoning. Amendments to 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)].

By memoranda, dated November 2 and 7, 1995, OP petitioned the Zoning Commission to zone currently unzoned properties in the Southwest Urban Renewal Area, indicating that the land development controls in Project Area C of the Southwest Urban Renewal Plan for Subarea C (south of the Southwest Freeway) will expire on November 30, 1996. OP proposed amendments to the Zoning Regulations and Map that would put zoning controls in place for a portion of Project Area C, South of the Southwest Freeway, a subarea of the Southwest Urban Renewal Plan Area. The properties situated north of the Southwest Freeway in the Southwest Urban Renewal Area were rezoned in Z.C. Case No. 94-22, Order No. 776.

The Southwest Redevelopment (or Urban Renewal) Area is bounded generally by Independence Avenue on the north, South Capitol Street on the east, P Street on the south, the Washington Channel on the southwest, and 14th Street on the west, all in the Southwest sector of the city.

The plans for Subarea C, as adopted by the District of Columbia Board of Commissioners, provides guidelines for the acquisition, disposition and redevelopment of land assembled by the District of Columbia Redevelopment Land Agency (RLA).

The plan was prepared by National Capital Planning Commission (NCPC), pursuant to the District of Columbia Redevelopment Act of 1995, and approved August 2, 1996.

The portion of Project Area C of the Southwest Urban Renewal Plan that is the subject of this case is bounded to the north by the Southwest Freeway, to the southwest by Fort McNair/P Street; the Washington Channel and Main Avenue, 14th Street on the west, and South Capitol and 1st Streets on the east, all in S.W. The specific properties affected by the rezoning and the specific recommended zoning categories for the various squares are as follows:

1. **Rezone from UR (unzoned) to W-1:**

All property situated between Maine Avenue, S.W., Water Street, S.W. and the Washington Channel as follows:

Square 390
Square 391
Square S415
Square S439
Square W471
Square 472, lots 123, 126 and that portion of Lot 820 situated south of a westward extension of the northern boundary of Lot 126.
Square 473, except for lots 83 and 814.
1300 Maine Avenue, S.W. – Washington Marina

2. **Rezone from UR (unzoned) to C-3-A:**

Square 413, the western one-third, comprising a distance of 162 feet measured eastward along G Street, S.W., and the Southwest Freeway, from the 9th Street, S.W. right-of-way

3. **Rezone from UR (unzoned) to C-3-A or C-3-B:**

Square 499, lots 60 and 853
Square 542, lots 88 and 816

4. **Rezone from UR (unzoned) to R-5-D:**

Square 468, that portion of Lot 107 between the right-of-way of 7th Street, S.W., and a line connecting two points 165 feet to the east as measured along G and Eye Streets, S.W.
Square 472, that portion of Lot 128 developed with three, nine-story highrise apartments (Waterside Towers).
Square 499, Lot 50
Square 502, a portion of Lot 184, comprising the highrise (approximately 90 feet high) apartment buildings in the Tiber Island apartment complex.
Square 503, a portion of Lot 116, comprising the highrise (approximately 90 feet high) apartment buildings in the Harbour Square apartment complex).
Square 504, lots 41 and 42
Square 542, Lot 79
Square 546, a portion of Lot 302, comprising the highrise (approximately 90 feet high) apartment buildings in the Carrollsburg Square apartment complex, and a portion of Lot 295 occupied by the River Park apartments.

Square 547, a portion of Lot 24, comprising the highrise (approximately 90 feet high) apartment building in the Channel Square apartment complex.

**5. Rezone from UR (unzoned) to R-5-B:**

Square 467, lots 59, 189 and 190.
Square 468, lots 61, 79 and that part of Lot 107 situated east of the proposed north-south zone boundary for the R-5-D District referenced in Item 4 above.
Square 498, Lot 82.
Square 503, part of Lot 116, comprising the mid-rise and low-rise apartments in the Harbour Square apartment complex.
Square 504, lots 26 through 30, 43 and 44.
Square 546, a portion of Lot 295.

**6. Rezone from UR (unzoned) to R-5-A:**

Square 594, Lot 69

**7. Rezone from UR (unzoned) to R-3:**

Square 413, approximately the western two-thirds of the square, specifically that area situated east of the boundary identified in No. 2 above regarding the proposed C-3-A District.
Square 414, lots 829, 831 and 832.
Square 467, with the exception of lots 59, 189 and 190.
Square 468, lots 50 through 60, 62 through 78, and 80 through 106.
Square 472, lot 127; that part of Lot 820 situated to the north of an eastward extension of the northern lot line of Lot 126; and part of Lot 128.
Square 473, lots 83 and 814.
Square 498, lots 52, 55 through 81, 83 through 89, and Lot 886.
Square 499, lots 52 and 55 through 57.
Square 502, lots 182, 183, a portion of Lot 184, and 185 through 189.
Square 503, that part of Lot 116 oriented to 4th Street, S.W., and improved with rowhouse structures.
Square 504, lots 45 through 50.
Square 542, lots 82, 85 and 87.
Square 546, lots 285 through 301, 303 through 307, and 310 through 316.
Square 547, part of lot 24, comprising the land area occupied by the low-rise apartment buildings located between P and O Streets, S.W.

The proposed text amendments to Chapter 25 of the Zoning Regulations that will govern the portion of Project C of the Southwest Urban Renewal Area, South of the Southwest Freeway are as follows:

2521.1 SOUTHWEST URBAN RENEWAL AREA

2521.1 The following exceptions to development controls shall apply to specified properties located in the former Southwest Urban Renewal Area, an area that was geographically delineated and regulated for development by the District of Columbia Redevelopment Act of 1946\5, P.L. 592, 79th Congress, 63 Stat. 413 and the several Urban Renewal Plans adopted pursuant thereto, until the development controls expired in 1992 through 1996:

(a) A lot in a W-1 District shall be permitted a maximum FAR of 2.0 for commercial or nonresidential uses;

(b) A lot in a W-1, R-3, R-5 or C-3 District shall be permitted to provide all or a portion of its parking requirements on a different lot, provided that the required parking shall be located within 200 feet of any part of the lot that generates the parking requirements;

(c) In a W-1 District an addition to a hotel existing as of date shall be permitted a maximum height of 62 feet, D.C. Datum; and

(d) In Square 536 in the C-3-C District, a building shall be permitted a maximum FAR of 8.0 and a lot occupancy of 100 percent; no rear or side yard requirement shall apply.

On November 13, 1995, at its regular monthly meeting, the Zoning Commission considered the OP report and authorized the scheduling of a public hearing in Case No. 95-15. The Commission indicated in the notice of public hearing that it would receive testimony and written submissions about, and would consider adoption of, other alternative proposals that are reasonably related to the scope of the proposed amendments that were set forth in the notice of public hearing.

Pursuant to notices, public hearing sessions were held by the Zoning Commission on May 23, 1996 and May 24, 1997 to consider proposed amendments to the text of the Zoning Regulations and Zoning Map. The hearing sessions was conducted in accordance with the provisions of 11 DCMR 3021. The May 24, 1997 hearing session was held to address specific issues which were readvertised. The readvertised issues relate to areas designated P1 through P6 in the Southwest Urban Renewal Area.

The specific text and map amendments that the Commission set for public hearing are as follows:

1. **Rezone from UR (unzoned) to R-5-B:**

In Square 472, that portion of Lot 128 developed with townhouses.

2. **Rezone from UR (unzoned) to R-4 or R-5-B:**

The eastern two-thirds of Square 413, which constitutes Parcel 76 in the Southwest Urban Renewal Plan. The zone boundary is to be 162 feet east of 9th Street, S.W.

3. **Rezone from UR (unzoned) to W-1 or to W-1 in conjunction with proposed Paragraph 2521.1(f) in item four below:**

Those properties known as P-1, P-2, P-3, P-4, P-5 and P-6.

4. **Add the following text to Chapter 25 of the Zoning Regulations to govern the properties known as P 1 through P-6:**

2521.1(f) A building or structure that is constructed on a lot designated in the Urban Renewal Plan as P-1 through P-6 shall not exceed a height of 22 feet unless the Board of Zoning Adjustment, after public hearing, determines that the proposed height, bulk and design are in harmony with existing uses and structures on neighboring property.

At the May 23, 1996 hearing session, the Commission heard the testimony of approximately 20 witnesses. The witnesses included but were not limited to the Office of Planning (OP), Advisory Neighborhood Commission (ANC) 2D, the law firm of Wilkes, Artis, Hedrick and Lane, the Channel Inn/Manuel Fernandez, the Harbour Square Owners, Inc., and the law firm of Jackson and Campbell. About eight people testified in support of the proposal, while 12 witnesses testified in opposition or for a modification to the proposal. Some of the witnesses also submitted written comments into the record of the case.

OP, by memorandum dated May 10, 1996 (final report) and through testimony at the public hearing, reiterated its recommendations in the preliminary and supplemental reports, and reaffirmed the need to have zoning controls in place prior to the expiration of the Southwest Urban Renewal Plan which has governed the use of land and building in the area for approximately 40 years. The report indicated that the Zoning Regulations require that all privately owned and District of Columbia owned properties be zoned.

OP reported that three years ago, the Zoning Commission adopted zoning for Subarea B of the Southwest Urban Renewal Area (Case No. 92-7, Order No. 736 dated May 10, 1993 ). Two years ago, C-3-C zoning was established in the major office precinct situated north of the Southwest Freeway (Case No. 94-22, Order No. 776 dated October 23, 1995). The area rezoned in Z.C. Case No. 94-22 constitutes the northernmost portion of Subarea C. Subarea C-1 in the Southwest Urban Renewal Area has been rezoned (Case No. 95-11). The instant petition that triggered Case No. 95-15 presumably is the final phase in replacing the Southwest Urban Renewal Plan with zoning controls.

The OP testified that the following policy guidelines were used in determining the appropriate zone districts proposed to be mapped in the various sections of the area:

1. Primary emphasis is placed on the Urban Renewal Plan, as the area is almost entirely built out pursuant to this public plan. In most locations, the recommended zoning approach is to zone to current use and density in order to maintain generally the results of the physical implementation of the Urban Renewal Plan. This is in furtherance of the Comprehensive Plan, other public policy guidance, and the Home Rule Act. These require that zoning shall be "not inconsistent" with the Comprehensive Plan.

2. The proposed zoning aims to avoid overzoning "as well as under-zoning" Overzoning (excessive permitted height and bulk relative to existing buildings) encourages redevelopment or major building additions, which might well mar the planned open spaces and the other design features built pursuant to the renewal plan. Underzoning would create undue amounts of nonconformity of uses or structures.

3. In keeping with OP policy guidelines, the R-3 District permits matter of right development of single-family residential uses including detached, semi-detached and row dwellings with a minimum lot area of 2,000 square feet, a minimum lot width of 20 feet, a maximum lot occupancy of 60 percent, and a maximum height of 3 stories/40 feet. This zone is proposed for residential areas that are entirely or almost developed with single-family row dwellings under the Urban Renewal Plan. It is intended to preserve or retain the zone's residential dwelling stock as single units and to preclude their conversions to multiple units.

4. R-3 zoning is also recommended for two areas not already improved with row dwellings. The first location is the eastern two-thirds of Square 76, approved by an urban renewal plan amendment for the development of new row dwellings to be known as Challenger Mews. OP believes that R-3 zoning will accommodate this development. Immediately to the south and also recommended for R-3 zoning is Jefferson Junior High School. Schools and parks are normally zoned as part of the surrounding or adjacent neighborhood area, and such is recommended here. Benjamin Banneker Overlook, a public open space across Main Avenue from the fish market, is federally owned and therefore unzoned.

5. The R-5-B District is a moderate density apartment house zone which permits a maximum floor area ratio (FAR) of 1.8, a maximum lot occupancy of 60 percent, and a maximum building height of 50 feet. This zone is recommended for four locations. The first is a portion of Harbour Square and the adjacent area that is developed with single-family row-houses, garden apartments and midrise apartments. The other three locations are three walk-up apartment buildings in Squares 467, 468 and 498. The intent of the proposal is to zone these residential buildings approximately to current use and density to maintain the existing development pattern of the Southwest Urban Renewal Plan.

6. R-5-D, a medium-high density zone permitting a maximum FAR of 3.5 and a maximum building height of 90 feet is proposed for six acres, encompassing all of the 21 highrise apartment buildings in the Urban Renewal Area. OP believes that R-5-D will help to retain the well-designed common landscape areas that have been built in the Southwest Urban Renewal Area.

7. W-1 zoning, which is the lowest density of the three waterfront zones, is proposed for the entire waterfront area of the Southwest Urban Renewal Area. The area between Maine Avenue, the bulkhead line, the Arena Stage at Maine Avenue, M Street, S.W. and two small office buildings on or near Maine Avenue, S.W. One of the office buildngs (807 Main Street) is occupied by the Disabled American Veterans Association, the other ( 800 – 9th Street, S.W), was occupied until early 1995 by Blue Cross/Blue Shield and is now occupied by agencies of the District of Columbia. The resultant mapping pattern is a corridor of W-1 zoning on the waterfront (south) side of Maine Avenue plus the three limited locations on the north frontage.

OP indicated that the W-1 zoning, with its various waterfront uses such as boat houses and marinas, is only permitted in waterfront zones. Waterfront zones also permit a mixture of residential, retail, office, hotel and entertainment uses. The waterfront zone is needed in this area to accommodate the existing restaurant and hotel uses along the southwest waterfront as a matter of right. The allowed 40-foot height and low density of permitted commercial uses tend to encourage the retention of existing uses.

Nevertheless, OP acknowledged that standard W-1 provisions limiting commercial use to 1.0 FAR apparently would create a significant degree of nonconformity of existing commercial structures since several of the existing restaurant uses are closer to 2.0 FAR than 1.0 FAR. Standard W-1 provisions would also inappropriately restrict future development of several remaining urban renewal development lots in the waterfront area.

Additionally, OP recommended the adoption of a text amendment that would allow 2.0 FAR of commercial use and retain the 40-foot height restriction in the W-1 zone. In the alternative, OP proposed a W-2 zoning of 2.0 FAR of commercial use, a total FAR of 4.0, and a height of 60 feet. However, OP pointed out that the alternative W-2 zoning exceeds the level of development authorized by the Urban Renewal Plan and that the Generalized Land Use Map designation of the waterfront is low density commercial which reinforces the suitability of W-1 zoning.

After submitting its preliminary report, OP met with the Department of Housing and Community Development (DHCD), the President of Tiber Island Condominiums, and the attorney representing area residents. The meeting recommended that the Zoning Commission advertised the following alternative that would be in harmony with existing uses and structures on neighboring property for consideration at a public hearing.

> "2621.1(e) A building or structure that is constructed on a lot designated in the Urban Renewal Plan as P-1 through P-6 shall not exceed a height of 22 feet unless the Board of Zoning Adjustment, after public hearing, determines that the proposed height, bulk and design are in harmony with existing uses and structures of neighboring property."

OP stated that all of the designated parking lots in the Urban Renewal Plan, designated P-1 through P-6, are specifically limited to surface parking or parking garage use in the Urban Renewal Plan,

and that a height limit is specified for parking structures. The Urban Renewal Plan provides no guidelines as to other types of uses or development that should occur on these parcels.

OP added that the proposed text was drafted to apply uniformly to all six designated parking areas (P-1 through P-6) in the Urban Renewal Plan, in the interest of uniform treatment of the properties. These lots are all situated immediately across Water Street from the commercial properties on the waterfront and were designed to serve waterfront uses. They are similarly regulated in the Urban Renewal Plan, although lots P-1 through P-5 have more restrictive height limits than P-6, which permits a parking structure of up to 22 feet in height.

OP concluded its testimony by identifying different types of land use controls in the Urban Renewal Plan that require exceptions to the Zoning Regulations. Consequently, OP recommended that the following text amendment be added to the miscellaneous Zoning Requirements (Chapter 25) to take care of the special features of the land use controls in the urban renewal area that are not covered by traditional zoning categories and provisions. These amendments are to provide additional FAR in certain W-1 zones, flexibility in location of required parking, permit additions to existing hotels in W-1, and allow a height of 62 feet. The special exceptions would not apply to W-1 or C-3-C properties elsewhere in the city. Other referenced zone classifications in this case would not be affected by the following exceptions:

2521 SOUTHWEST URBAN RENEWAL AREA

2521.1 The following exceptions to development controls shall apply to specified properties located in the former Southwest Urban Renewal Area, an area that was geographically delineated and regulated for development by the District of Columbia Redevelopment Act of 1945, P.L. 592, 79th Congress, 63 Stat. 413 and the several Urban Renewal Plans adopted pursuant thereto, until the development controls expired in 1992 through 1996:

(a) A lot in a W-1 District shall be permitted a maximum FAR of 2.0 for commercial or nonresidential uses;

(b) A lot in a W-1, R-3, R-5 or C-3 District shall be permitted to provide all or a portion of its parking requirements on a different lot, provided that the required parking shall be located within 200 feet of any part of the lot that generates the parking requirements;

(c) In a W-1 District an addition to a hotel existing as of date shall be permitted a maximum height of 62 feet, D.C. datum; and

(d) In Square 536 in the C-3-C District, a building shall be permitted a maximum FAR of 8.0 and a lot occupancy of 100 percent; no rear or side yard requirement shall apply.

The District of Columbia Department of Housing and Community Development (DHCD), in a memorandum addressed to OP, indicated that after reviewing the proposed zoning of the Urban Renewal Area South of the Freeway, DHCD does not object to the proposal or the proposed exceptions to be indicated in Section 2521 of the proposed regulations. However, DHCD observed and cautioned as follows:

1. P-6 is actually different from the others in being adjacent to residential property, whereas, P-1 through P-5 are bordered by commercial properties. The nearest developments are commercial and are situated across Maine Avenue, a broad street, from the parking sites.

2. Major view obstruction will occur on the lower levels of the Tiber Island buildings if a structure other than a low parking structure is built on site P-6. This will result in a decline in living quality and property values for Tiber Island resident and property owners.

3. Restricting site P-6 to parking use is a continuation in zoning of the adopted Urban Renewal Plan policies.

By letter, dated May 23, 1996 and through testimony at the public hearing, Advisory Neighborhood Commission (ANC) 2D testified as to the quality, diligence and excellence of the District of Columbia Redevelopment Land Agency (RLA) administration of the Southwest Urban Renewal Area. The ANC representative noted that the neighborhood has existed in the midst of the city but almost immune to the multitudes of stress and strain experienced by many other areas of the city.

The ANC representative acknowledged the existence of residential densities that could have increased ten-fold, highrises located adjacent to town homes and a variety of commercial uses in direct contact with residences and residentially oriented open spaces. There still has remained a high degree of cohersion in the neighborhood outlook. The ANC unanimously supported the approach of drawing zone districts to match the urban renewal plan and recommended that the Commission adopt the OP zone plan.

The ANC representative commended OP for the extensive efforts in consulting with a wide spectrum of citizentry in the preparation of the OP report. She urged the Zoning Commission to adopt the proposal with the following modifications to address the issues of nonconformity of structures built in accordance with the plan and to protect area residents, particularly those immediately adjacent to the waterfront:

1. Residential structures built pursuant to the adopted plan controls with approved architectural specifications that are located within the Southwest Urban Renewal Area, Project C, shall not be deemed nonconforming.

2. Subsection 2523.1(e) should be amended to read:

   A building or structure that is constructed on a lot designated in the Urban Renewal Plan as P-1 through P-6 shall not exceed a height of 22 feet, D.C. datum, unless the Board of Zoning

Adjustment, after public hearing, determines that the proposed height, bulk and design are in harmony with existing uses and structures on neighboring property.

3. Subsection 2521.1(c) should be amended to read:

In place of a maximum of 62 feet, D.C. datum, the ANC recommended a maximum of 48 feet from the finished grade level at the middle of the front of the building to the ceiling of the top story.

A representative of the Tiber Island Cooperative Homes, Inc. by a written submission, dated May 23, 1996, and through presentation at the public hearing, urged the Commission not to endanger the atmosphere, the flavor and the success of the Southwest community. The representative pointed out that the neighborhood has enjoyed the flavor and scenery of the waterfront while living under the Urban Development Plan. He cautioned the Commission not to take errant action as this would lead to unbridled development that would impact the neighborhood. He stated that residents of the area like the neighborhood the way it is. The Commission should adopt the text amendments contained in OP's report, dated November 7, 1995. He emphasized that the report comprehensively protects investments, quality-of-life and future developments in the area. He submitted copies of resolutions adopted by the Tiber Island Cooperative Homes, Inc., the Edgewater Condominium, the River Park and the Riverside Condominiums in support of the proposal and proposed the following language for adoption:

"2521.1(e) A building or structure that is constructed on a lot designated in the Urban Renewal Plan as P-1 through P-6 shall not exceed a height of 22 feet, D.C. Datum, unless the Board of Zoning Adjustment, after public hearing, determines that the proposed height, bulk and design are in harmony with existing uses and structures on neighboring property.

By letter, dated May 23, 1996, in testimony at the public hearing, and in a post-hearing submission, dated June 24, 1996, the law firm of Wilkes, Artis, Hedrick and Lane, representing the Washington Boat Lines, Inc., supported the rezoning initiative, but objected to the Zoning Commission's consideration of any height limitation less than 40 feet and any additional restriction in the W-1 District on P1 through P6 with emphasis on P6 on the following grounds:

1. The advertised public hearing notice did not cover the height limitations on the parking areas or in the W-1 zone. There is nothing in the notice indicating that the Commission would consider or receive testimony on a proposal for limitations in W-1 Districts. The height limitation is outside the scope of the public hearing.

2. A limitation of height to less than 40 feet is unprecedented anywhere in the District. There is no zone district classification which has a minimum height of less than 40 feet. Even the most restrictive R-1-A District allows a height of three stories and 40 feet. To single out the subject property for a height of less than 40 feet would be arbitrary and discriminatory.

3. The Southwest waterfront area, including the parking areas, are shown on the Generalized Land Use Map, as amended through the Comprehensive Plan Amendment Act of 1994, in the low density commercial category. There is nothing in the Comprehensive Plan which suggests or requires a greater limitation on height for these properties than would otherwise be applicable to properties similarly designated. Such a limitation would therefore have no basis in Comprehensive Plan policy or law.

4. It is unrealistic for the residents of Tiber Island to assert that they are owed a view across a property they neither own nor have an interest in. There is no scenic easement or other development restriction which gives Tiber Island the right to inhibit development on property belonging to another entity.

5. The proposed restrictions would severely limit development which could occur on the site. With a typical retail commercial floor height in excess of 13 feet, only one floor could be constructed if the height were limited to 22 feet. This could well amount to a taking without compensation, prohibited by the Constitution.

Additionally, Wilkes, Artis, Hedrick and Lane stated that the Waterside Towers apartments and townhouses comprise a single development. The entire development has a single owner and a single record lot fronting on 6th and I Streets, with one mortgage. The apartments are proposed to be zoned R-5-D and the townhouses are proposed to be zoned R-3, thus splitting a single entity by a zone boundary line.

Wilkes, Artis, Hedrick and Lane urged the Commission not to split the properties and supported R-5-D for the entire property, since none of the individual units can be subdivided into a separate lot with street frontage. The testimony stated that R-5-D is more suitable for the entire property and more consistent with the Urban Renewal Plan which anticipates a single project on the site. Wilkes, Artis, Hedrick and Lane identified the following apartments and supports the proposed R-5-B, subject to the adoption of additional text amendments . Those apartment units are as follows:

| | | |
|---|---|---|
| 1. | 521-525 G Street, S.W. | (Square 467, Lot 221) |
| 2. | 527-529 G Street, S.W. | (Square 467, lot 220) |
| 3. | 724-744 6th Street, S.W. | (Square 498, lot 82) |
| 4. | 615-623 H Street, S.W. | (Square 468, lot 79) |
| 5. | 614-622 H Street, S.W. | (Square 468, lot 61) |

Other witnesses who testified in support of the rezoning emphasized the appropriateness of basing the proposed zoning on the Urban Renewal Plan and the Comprehensive Plan. They pointed out that the area has been substantially built out in accordance with a duely adopted urban renewal plan. Subsequent zoning in the area should take into consideration the prevelent development patterns.

Those who testified in support of the proposal indicated that the proposed zoning protects the as-built community and the established character of the Southwest Urban Renewal Area. The technique of zoning the area to current use and the grandfathering of existing special features and

buildings developed or approved under the Urban Renewal Plan mitigates, if not eliminates, overzoning and underzoning. This technique supports and adds to neighborhood stability.

The supporters of the proposal were of the opinion that the views and vistas of the waterfront are adequately protected since they were provided for under the Southwest Urban Renewal Plan, whose provisions and development partners have been accommodated in the rezoning proposal.

The witnesses in opposition suggested modifications to the rezoning proposal. The opposition indicated that the use of zone districts is not the ideal way to regulate the area's development, especially the residential components that were constructed with flexible site plans under the urban renewal land use controls. The witnesses urged the Commission to consider other land use control techniques like the Planned Unit Development (PUD) process and neighborhood association restrictive designs and development.

The opposition expressed concern about nonconforming structures, especially regarding rebuilding rights after a fire. The testimony stressed that the 40-foot height permitted in the W-1 zone would block vistas to the waterfront. The testimony added that W-1 is mapped too far south along the waterfront, suggesting development potentials between residential complexes and the Washington Channel.

At the close of the hearing on May 23, 1996, the Commission left the record open until June 24, 1996 for those who gave oral testimony to set that testimony in writing as part of the record of the case. Commissioner Franklin asked the Office of Zoning to make the Southwest Urban Renewal Plan part of the record of the case. The Commission requested the Office of Planning to survey the ways in which other jurisdictions around the country handle similar situations.

On August 8, 1996, at its regular monthly meeting, the Commission reviewed, discussed and considered all post-hearing submissions, including additional information submitted by the law firms of Wilkes, Artis, Hedrick and Lane and Freer and McGerry; a copy of the Southwest Urban Renewal Plan; and album of photographs depicting different views from Tiber Island; and additional information from Berstucci on Films and Theatre.

The Commission also reviewed and discussed the OP summary abstract and final comments, dated June 25, 1996. The summary abstract highlighted points made by the witnesses at the public hearing. It suggested modifications and changes to specific elements of the Southwest Urban Renewal Plan and the proposed rezoning recommendations.

The summary abstract and final comments indicated that OP staff telephoned several cities as requested by the Commission for information on zoning approaches that had been used in former urban renewal areas. OP indicated that the only response was from St. Louis, officials there stated that regular zone districts were applied in Urban Renewal areas. In instances where urban renewal parcels have multiple buildings on a single lot, they are viewed the same as other older complexes having multiple buildings on a single lot. If any modified development is to occur, a subdivision must be obtained to achieve a single lot of record, with a Board of Zoning Adjustment approval almost universally required.

The post-hearing submissions summarized the testimony of the various witnesses at the public hearing. The submissions discuss and suggest solutions to issues that included but are not limited to accommodation of nonconforming structures in the proposed zone plan; the W-1 zone district proposed for certain areas of the waterfront with height and bulk limits; the special height for the Channel Inn roof structures on the waterfront; and the additional protection for sensitive properties in various parts of the area. The submissions reduced the differences between testimony in support and opposition. Nevertheless, it noted diverse testimony on the area designated P1 through P6, and the question of imposing additional restrictions or an overlay on certain W-1 proposed zones, persisted.

The Commission reviewed and evaluated the post-hearing submissions and the OP summary abstract and final comments. The Commission concurred with OP in that the traditional zoning classifications are the most appropriate land use controls to replace the Southwest Urban Renewal Plan. The Commission noted contentious issues concerning P-1 through P-6. The Commission acknowledged that the P-1 through P-6 sites and the related issues of height limitation and additional restrictions were not adequately advertised in the notice of public hearing for the case. Consequently, the Commission authorized an additional public hearing (Z.C. Case No. 95-15I) to deal with issues associated with the P-1 through P-6 sites.

The Commission, after reviewing and considering the post-hearing submissions, and having authorized an additional public hearing to deal with the P-1 through P-6 sites of the Southwest Urban Renewal Area, took proposed action to approve the various OP recommended zone categories for the sites based on the following findings:

1. The area under consideration has been substantially built-out in accordance with the Urban Renewal Plan. In most places, the proposed zone plan preserved the as-built community and the character of the Southwest Urban Renewal Plan, hence different zone districts are recommended for various areas.

2. The proposed zoning approach took into consideration the Comprehensive Plan provisions and the Home Rule Act which require that zoning shall be "not inconsistent with the Comprehensive Plan."

3. The R-3 District is appropriate for residential areas developed entirely or almost entirely with single-family row dwellings and townhouses. The R-3 District is also appropriate for the eastern two-thirds of Square 76. This was already approved under the Urban Renewal Plan. R-3 will accommodate the neighborhoods surrounding Jefferson Junior High School, since schools and parks are zoned as part of the adjacent neighborhood area.

4. The R-4 District permits matter of right development of residential uses, including detached, semi-detached, and row single-family dwellings and flats with a minimum lot area of 1,800 square feet, a minimum lot width of 18 feet, a maximum lot occupancy of 60 percent, and a maximum height limit of 3 stories/40 feet.

5. R-5-B, a moderate density apartment zone, is considered suitable for locations in the southwest portion of the area that includes Harbour Square and the adjacent single-family rowhouses and garden and midrise apartments which includes three walk-up apartment buildings in Squares 467and 498.

6. R-5-D is deemed appropriate for the 21 highrise apartment buildings in the area because of its medium height restrictions and its ability to accommodate the well-designed landscape areas that have been built in the southwest.

7. The intent to zone different parts of the area to current uses and densities, particularly residential buildings, maintains the existing development pattern of the Southwest Urban Renewal Plan.

8. The Commission finds that the advertised public hearing notice did not adequately emphasize the additional restrictions or the overlay proposed for some (waterfront) W-1 zones. The Commission also readvertised certain properties as R-5-B originally advertised as R-3.

**CASE NO. 95-15I (PARKING LOTS P-1 THROUGH P-6)**

At the public hearing session on March 20, 1997 (Case No. 95-15I), the Commission heard the testimony of approximately 13 witnesses, including OP, the Department of Housing and Community Development (DHCD), the law firm of Wilkes, Artis, Hedrick and Lane, on behalf of Lessee, and attorney Stephen Gell representing the Channel Inn and Pier 7 Restaurant. Some of the witnesses only submitted written statements into the record of the case.

Through testimony at this second public hearing, OP reinforced its support for the proposal. The OP testimony and comments were organized in accordance with the items in the notice of the public hearing as follows:

1. Rezone from UR (unzoned) to R-5-B that portion of Lot 128 in Square 472 improved with townhouses.

   OP testified that the proposal noted above was originally advertised for an R-3 designation, but is now advertised for R-5-B. OP pointed out that R-5-B is more suitable than R-3 and stated that the townhouses cannot be subdivided into individual record lots since they do not have street frontage. In addition, the townhouses and the apartment community share various common characteristics, including common access, egress and utilities. R-5-B will also place the apartment complex in an apartment zone classification.

2. Rezone the eastern two-thirds of Square 413 to R-4 or R-5-B, beginning at a distance of 162 feet east of 9th Street, S.W. (Part of Parcel 76).

3. Rezone from UR (unzoned) to W-1 or to R-1 in conjunction with proposed Paragraph 2521.1(f) in item four below, those properties known as P-1, P-2, P-3, P-4, P-5 and P-6.

OP indicated that both proposed zoning classifications (R-4 and R-5-B) can accommodate the site plan, but preferred R-5-B because of its additional degree of flexibility in the layout of units. OP recommended that the site be changed to R-5-B.

4. Add the following text to Chapter 25 of the Zoning Regulations to govern the properties known as P-1 through P-6:

2521.1(f) A building or structure that is constructed on a lot designated in the Urban Renewal Plan as P-1 through P-6 shall not exceed a height of 22 feet unless the Board of Zoning Adjustment, after public hearing, determines that the proposed height, bulk and design are in harmony with existing uses and structures on neighboring property.

Regarding items three and four above, OP recommends adoption of W-1 zoning with the special restriction provided by advertised Paragraph 2521.1(f). This approach is justified for several reasons as follows:

a. To conform with the Comprehensive Plan, these properties need to be zoned in a low-density commercial classification. The Comprehensive Plan was modified as recently as 1990 to provide this low-density commercial designation. W-1 is a low density, mixed-use zone with special provisions suited to waterfront locations such as this.

b. The height restriction of 22 feet strongly favors commercial development over residential or mixed-use development. If construction occurs on any of the parking sites under this restriction, the likely use will be commercial in a one- or two-story building – perhaps a restaurant similar in height to those previously constructed along the waterfront, or perhaps a marine-related or tourist-related retail use. This development pattern is consistent with the development pattern along the waterfront and provides for maximum visibility to (and from) the water. Any taller building that is proposed will be subject to public review, including a public hearing, as to its height, bulk and design in the context of its surroundings.

c. These sites need not be reserved solely for parking in perpetuity, as some testimony in the case has suggested. As part of its pre-hearing submission, OP introduced into the record a copy of the Southwest Waterfront Master Plan, Washington, D.C., also known as the "Sasaki Report", named for the lead consulting firm that performed the analysis and recommendations. The study, completed in 1991 for the D.C. Department of Housing and Community Development (DHCD), focuses on means of economic revitalization, improvements to public spaces, and vehicular and pedestrian access in the waterfront area. The report emphasizes the need to encourage additional economic activity along the waterfront and makes proposals that recommend low building scale but are intended to create a greater critical mass of people and activity along the waterfront.

d. OP also testified regarding the additional issue relating to the modification of parking-related text amendments advertised as Paragraph 2521.1(b). This is the issue of general commercial parking as against accessory parking. P-1 through P-6 parking facilities have always operated as general commercial parking facilities rather than parking accessory to the nearby restaurant or other uses across Water Street. As a result, OP recommended an addition to Paragraph 2521.1(b) that would effectuate a continuation of urban renewal parking rules and provide assurance to the general usage of the parking facilities. The addition is as follows:

-- "and provided further, that parking lot and parking garage use shall continue to be allowed on P-1 through P-6 as designated in the Urban Renewal Plan."

DHCD and OP noted in their testimony that the Generalized Land Use Map of the Comprehensive Plan includes P-6 along with other waterfront properties in the low-density commercial designation, suggesting a commercial or mixed-use zone, such as W-1 in a waterfront context. They indicated that the nearest residential development and Law House are 200 feet removed from P-6, so that a low-scale building on the site would leave ample vistas over and around the building. The vistas will be protected as public open space that will not be built on. Any building in excess of 22 feet would be subject to public review and approval.

Advisory Neighborhood Commission (ANC) 2D, by letter dated March 20, 1997 (Exhibit 35 of the record), supported the map and text amendments with minor modifications to the proposed text amendment. The ANC suggested that P-1 through P-5 be treated separately from P-6. The ANC also recommended that Subsection 2521.1(f) apply to P-1 through P-5 with "0 feet" substituted for 22 feet in height. Further, the ANC expressed concern that the language of Subsection 2521.1(f) is inadequate to protect the waterfront and its view. Consequently, ANC-2D recommended that the Commission adopt the following text for P-6:

"No building or structure constructed on a lot designated in the Urban Renewal Plan as P-6 shall be above the existing grade level."

The law firm of Wilkes, Artis, Hedrick and Lane, by letter (marked as Exhibit No. 40 of the record) and through testimony at the hearing, supported the proposed amendment with the following suggested modifications to the OP proposal:

1. Allow residential use to have a maximum height of 40 feet as a matter of right (without BZA review).

2. The normal 40-foot height permitted under W-1 is the lowest minimum height for any zone district (including R-1-A).

3. Since property to the east and west would be allowed 40 feet in height for residential developments as a matter of right, it would be arbitrary and inadequate to limit that height on this property.

4. Adjoining residential development is located approximately 200 feet away and is separated by a stand of mature trees approximately 40 feet in height. This creates a visual barrier between the subject site and the adjoining Tiber Island development.

5. The closest building is Law House, approximately 100 feet away, and is not occupied as a residence.

6. There are no records with the Redevelopment Land Agency of any view easements affecting this property in favor of the residences or the Law House.

The Channel Inn Hotel and Pier 7 Restaurant, through testimony presented by attorney Stephen Gell, supported the proposal. However, he urged the Commission to adopt a further exception that would provide for a two-level parking structure on P-5 as was provided in the Urban Renewal Plan. He argued that such an exception, with the previously adopted W-1 exception which permits parking on a lot within 200 feet of the principal use, would permit construction of a two-level parking structure.

The testimony and comments of residents of the neighborhood sharply differentiated between parking lot P-6 and the other parking lots, P-1 – P-5. They presented the following distinctive features of P-6 as a basis for more restrictive land use regulations for it.

1. The proposed zoning of P-6, even with the 22-foot height limitation, interferes with the visual linkage and physical setting of Law House, a historic landmark, with the waterfront.

2. P-6 is in a residential setting south of M Street, unlike the other parking sites which are in a more commercial setting north of M Street.

3. P-6 is at the "end of the road" surrounded by public open space, unlike sites P-1 through P-5 which are surrounded by streets and commercial traffic.

4. Views from the Tiber Island apartments to the water would be impaired, property values would suffer, and residents would lose an amenity they were assured of under the Urban Renewal Plan.

5. Existing problems of parking, noise and litter could be exacerbated if development occurred on P-6.

6. The height limit provided in the Urban Renewal Plan for P-6 is 22 feet, D.C. datum, with a differential of 14 feet. The effective height allowed by the Urban Renewal Plan was therefore eight feet above grade for the propose of allowing a low wall to screen a parking lot or sunken parking garage.

Advisory Neighborhood Commission (ANC) 2D participated in the hearing, submitted a resolution in support of the initiative, and recommended that no building or structure be constructed above the existing grade level on the lot designated in the Urban Renewal Plan as P-6. (Exhibit No. 35).

At the close of the hearing, the Commission left the record open until May 7, 1997 for additional information to be submitted into the record.

On May 12, 1997, at its public meeting, the Commission reaffirmed the proposed action it took on August 5, 1996 to approve zoning categories for various areas advertised for rezoning in Z.C. Case No. 95-15.

At the same meeting session, the Commission reviewed and considered the record in Z.C. Case No. 95-15I, the OP hearing report, dated April 11, 1997, (marked as Exhibit No. 62), and all other written testimony and evidence introduced into the record. The Commission reopened the record and accepted a letter, dated May 12, 1997, from Councilmember Jack Evans (Ward 2) that was submitted after the record had closed.

The Commission noted that the major contentious issues in the case were related to the differences between P-1 through P-5 and P-6 in terms of the locations of the sites and their vistas. The Commission evaluated the various suggestions in the testimony and pre-hearing submissions which addresses the differences, including the adoption of language that will highlight and address those differences. The Commission considered the various suggested allowable heights for the sites and whether or not to allow the construction of two-level parking structures on them.

After balancing the contentious issues and providing for the unique characteristics of P-6 in relation to P-1 through P-5, the Commission took proposed action to approve the OP recommended amendments with some modifications.

The Zoning Commission believes that its decision to replace the land development controls of the Southwest Urban Renewal Plan (which expired in 1996) with the various zone categories recommended for different parts of the area in accordance with the existing development pattern is in the best interest of the District of Columbia and is in furtherance of and is not inconsistent with the Comprehensive Plan for the National Capital.

A notice of proposed rulemaking was published in the D.C. Register on February 13, 1998 (45 DCMR 872-876). The notice was also referred to the Zoning Administrator (ZA) and OP for comments, and to the Office of Corporation Counsel (OCC) for legal sufficiency review. No comments were received or entered into the record as a result of the publication of the proposed rules.

The proposed decision to approve the text amendments was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. By report dated March 5, 1998, NCPC found that the

proposed text amendments would not adversely affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

At its monthly meeting on September 14, 1998, the Commission considered the comments on the notice of proposed rulemaking from the law offices of Stephen N. Gell, representing the Channel Inn Inc. and the law firm of Wilkes, Artis, Hedrick & Lane. The Commission requested that the Office of Zoning (OZ) and OP analyze the comments and make recommendations on the following requests for revisions to the map and text amendments. The comments indicated as follows:

1. Mr. Gell in a letter dated March 6, 1998, stated that the proposed rulemaking inadvertently omitted a provision that would have enabled the Channel Inn to build a two-level parking garage on site P-5.

2. The law firm of Wilkes, Artis, Hedrick, & Lane, in a letter dated March 16, 1998, noted that the property known as the Waterside Towers (Square 472, lot 128) was split zoned between R-5-B and R-5-D. The law firm requested the Commission to revise the proposed rulemaking as follows:

   a. Revise the boundary line so that all of the of the high-rise apartment buildings are in the R-5-D District.

   b. Revise the proposed language in Subsection 2521.1(e) to clarify that a conforming building may be reconstructed to its existing condition in the event of fire, collapse or other catastrophe.

By memorandum dated October 14 and 15, 1998, respectively, the OP and OZ provided the Commission with the comments and recommendations.

On October 19, 1998, at its regular public meeting, the Commission reviewed, discussed and further considered the comments on the notice of proposed. The Commission also considered the OP and the OZ recommendations. The Commission voted 3-0: (Herbert M. Franklin, John G. Parsons, and Jerrily R. Kress – Anthony J. Hood and Angel F. Clarens not voting, not having participate in the case) to include all the three apartment buildings in R-5-D District and to revise the provisions of Subsection 2521.1(e).

The Zoning Commission believes that its decision to replace the land development controls of the Southwest Urban Renewal Plan – Portion of Subarea C, South of the Southwest Freeway set forth in this order is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission has accorded "great weight" to the written reports and recommendations submitted by Advisory Neighborhood Commission 2D.

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

1. **Rezone from UR (unzoned) to W-1:**

   All property situated between Maine Avenue and Water Street, S.W. and the Washington Channel, as follows:

   Square 390.
   Square 391,
   Square S415,
   Square S439,
   Square W471.
   Square 472, lots 123, 126 and that portion of Lot 820 situated south of a westward extension of the northern boundary of Lot 126.
   Square 473, except for lots 83 and 814.
   1300 Maine Avenue, S.W. – Washington Marina

2. **Rezone from UR (unzoned) to C-3-A:**

   The western one-third of Square 413, comprising a distance of 162 feet measured eastward along G Street, S.W., and the Southwest Freeway from the 9th Street, S.W. right-of-way.

3. **Rezone from UR (unzoned) to C-3-B:**

   Square 499, lots 60 and 853.
   Square 542, lots 88 and 816.

4. **Rezone from UR (unzoned) to R-5-D:**

   Square 468, that portion of Lot 107 between the right-of-way of 7th Street, S.W. and a line connecting two points 165 feet to the east as measured along G and Eye Streets, S.W.
   Square 472, that portion of lot 128 developed with three, 9-story high-rise apartments (Waterside Towers).
   Square 499, Lot 50
   Square 502, a portion of Lot 184, comprising the high-rise (approximately 90 feet high) apartment buildings in the Tiber Island apartment complex.
   Square 503, a portion of Lot 116, comprising the high-rise (approximately 90 feet high) apartment buildings in the Harbour Square apartment complex.
   Square 504, lots 41 and 42
   Square 542, lot 79

Square 546, a portion of Lot 302, comprising the high-rise (approximately 90 feet high) apartment buildings in the Carrollsburg Square apartment complex, and a portion of Lot 295 occupied by the River Park apartments.
Square 547, a portion of Lot 24, comprising the high-rise (approximately 90 feet high) apartment building in the Channel Square apartment complex.

5. **Rezone from UR (unzoned) to R-5-B:**

Square 467, lots 59, 220 and 221, 189 and 190.
Square 468, lots 61, 79 and that part of Lot 107 situated east of the proposed north-south zone boundary for the R-5-D District referenced in Item 4 above.
*Square 472, lot 127; that part of Lot 820 situated to the north of an eastward extension of the northern lot line of Lot 126; and that part of Lot 128 defined by a line starting 130 feet west of the 6th Street, S.W. boundary of the lot and extending 227 feet north of the Eye Street, S.W. boundary of the lot.
Square 498, Lot 82.
Square 503, part of Lot 116, comprising the midrise and lowrise apartments in the Harbour Square apartment complex.
Square 504, lots 26 through 30, 43 and 44.
Square 546, a portion of Lot 295.

6. **Rezone from UR (unzoned) to R-5-A:**

Square 594, Lot 69.

7. **Rezone from UR (unzoned) to R-3 *:**

Square 413, approximately the western two-thirds of the square, specifically that area situated east of the boundary identified in Item 2 above.
Square 414, lots 829, 831 and 832.
Square 467, with the exception of lots 59, 189 and 190.
Square 468, lots 50 through 60, 62 through 78, and 80 through 106.
Square 473, lots 83 and 814.
Square 498, lots 52, 55 through 81, 83 through 89, and Lot 886.
Square 499, lots 52 and 55 through 57.
Square 502, that part of Lot 116 oriented to 4th Street, S.W. improved with rowhouse structures.
Square 504, lots 45 through 50.
Square 542, lots 82, 85 and 87.
Square 546, lots 285 through 301, 303 through 307, and 310 through 316.

Square 547, part of Lot 24, comprising the land area occupied by the lowrise apartment buildings located between P and O Streets, S.W.

8. **Rezone from UR (unzoned) to W-1 in conjunction with proposed Paragraph 2521.1(f):**

Those properties known as P-1, P-2, P-3, P-4 and P-5.

9. **Rezone from UR (unzoned) to W-1 in conjunction with a new proposed Paragraph 2521.1(g) the property known as P-6.**

The proposed text amendment additions to Chapter 25 are as follows:

SOUTHWEST URBAN RENEWAL AREA

2521.1 The following exceptions to development controls shall apply to specified properties located in the former Southwest Urban Renewal Area, an area that was geographically delineated and regulated for development by the District of Columbia Redevelopment Act of 1945, P.L.79-592, 60 Stat. 790, and the several Urban Renewal Plans adopted pursuant thereto, until the development controls expired in 1992 through 1996:

(a) A lot in a W-1 District shall be permitted a maximum FAR of 2.0 for commercial or nonresidential uses;

(b) A lot in a W-1, R-3, R-5 or C-3 District shall be permitted to provide all or a portion of its parking requirements on a different
* lot, provided that the required parking shall be located within **300** feet of any part of the lot that generates the parking requirements;

(c) In a W-1 District an addition to a hotel existing as of November 20, 1998, shall be permitted a maximum height of 62 feet, D.C. datum;

(d) In Square 536 in the C-3-C District, a building shall be permitted a maximum FAR of 8.0 and a lot occupancy of 100 percent; no rear or side yard requirement shall apply;

(e) A building or structure that was built prior to November 20, 1998 (The effective date of the adoption of the Order for zoning for the Southwest Urban Renewal areas) which conformed to the height, area and bulk provisions of the Urban Renewal Plans shall be considered a conforming structure under these Regulations and in

the event of fire, collapse, explosion or act of God, may be built to its size as of the date specified above;

(f) A building or structure that is constructed on a lot designated in the Urban Renewal Plan as P-1 through P-5 shall not exceed a height of 22 feet above grade unless the Board of Zoning Adjustment, after public hearing, determines that the proposed height, bulk and design are in harmony with existing uses and structures on neighboring property.

(g) No development above grade shall be permitted on Lot 844 in Square 473 (the property designated P-6 in the Urban Renewal Plan for the Southwest Urban Renewal Area Project C). However, the density permitted on the property as a matter of right may be constructed elsewhere as transferable development rights (TDR). These TDRs may be developed on property in the C-3-C District within TDR receiving zones.

Vote of the Zoning Commission taken at the August 5, 1996 monthly meeting to approve Case No. 95-15: 4-0 (Jerrily R. Kress, Maybelle Taylor Bennett, Herbert M. Franklin and John G. Parsons to approve).

Vote of the Zoning Commission taken at the May 12, 1997 monthly meeting to approve the text of Z.C. Case No. 95-15I: 4-0 (John G. Parsons, Jerrily R. Kress, Maybelle Taylor Bennett and Herbert M. Franklin to approve).

This order was adopted by the Zoning Commission at its public meeting on October 19, 1998.

By a vote of 3-0: (Herbert M. Franklin, John G. Parsons, and Jerrily R. Kress, to adopt, as amended, Anthony J. Hood and Angel F. Clarens, not voting, not having participate in the case.

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

**Attachment C: Letter from Office of Planning**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

5 September 2001

Mr. Mitchell Schear
President
Kaempfer Company
1900 K Street, Suite 650
Washington, D.C. 20006

Mrs. Deborah Ratner Salzburg
Vice President and Asset Manager
Forest City Enterprises
Washington Regional Office
5803 Nicholson Lane
North Bethesda, MD 20852

**RE: Request for Zoning Changes, Waterside Mall, Southwest Waterfront**

Dear Mr. Schear and Mrs. Ratner Salzburg:

With this letter I am pleased to acknowledge the stated interest of Kaempfer Company and Forest City Enterprises (hereafter the "Joint Venture") in moving forward with a redevelopment of the Waterside Mall in our Southwest Waterfront area. This letter responds to your request that the District Office of Planning (hereafter "OP") support changes in zoning before the District of Columbia Zoning Commission; and your agreement to pursue these changes through a two-stage Planned Unit Development (hereafter "PUD") process.

With respect to your request that OP support the joint venture's desire to have the existing Waterside Mall held harmless from the zoning consequences of the construction, at the District's request, of the road through the center of the building and site, I am prepared to support achievement of this outcome through appropriate zoning changes.

With respect to your request for an increase in the height limit for development on the property, the Office of Planning will consider this through submission of the PUD to the Zoning Commission, and will work with you on an appropriate site plan to accomplish our mutual objectives to redevelop the site.

I hope that this gives your joint venture the confidence they need to begin preparation of the two-stage PUD submission. We look forward to working with you on this project.

Sincerely,



Andrew Altman
Director