Government of the District of Columbia
OFFICE OF ZONING

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES
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MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Alberto P. Bastida, AICP
Secretary to the Zoning Commission

DATE: August 26, 2003

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on September 5, 2003:

1. Z.C. Order No. 02-32 (Z.C. Case No. 02-32);
2. Z.C. Order No. 02-39 (Z.C. Case No. 02-39);
3. Z.C. Order No. 02-41 (Z.C. Case No. 02-41);
4. Z.C. Order No. 02-51 (871-B) (Z.C. Case No. 02-51); and
5. Z.C. Order No. 03-02 (Z.C. Case No. 03-02).

Received By

8/27/03
Date

Attachments

ZONING COMMISSION
District of Columbia
Case 02-39
Exhibit 31

441 4th Street, N.W., Suite 210-S, Washington, D.C. 20001
Tel: (202) 727-6311 • Fax: (202) 727-6072
E-Mail: zoning info@dcoz.dcgov.org • Web Site: http://dcoz.dcgov.org/

ZONING COMMISSION
District of Columbia
CASE NO.02-39
EXHIBIT NO.31

ZONING COMMISSION ORDER NO. 02-39
Case No. 02-39
(Amendment to the Zoning Map for Earthclot Design)

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on May 5, 2003, to consider an application from Earthclot Design ("Earthclot") on behalf of the owners of 3101, 3103, 3105, 3107, and 3109 Mt. Pleasant Street, N.W. (the "subject properties") for review and approval of an amendment to the Zoning Map of the District of Columbia from R-5-D to C-2-A for Lots 1049-1053 in Square 2595, pursuant to § 102 of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

FINDINGS OF FACT

Preliminary Matters

1. On September 30, 2002, Earthclot submitted an application to the Office of Zoning for a map amendment to rezone the subject properties from a high-density residential zone (R-5-D) to a low-density mixed-use commercial-residential zone (C-2-A).

2. Following a presentation by the Office of Planning ("OP"), the Commission agreed to set the case down for a public hearing at its January 13, 2003 public meeting. Notice of the public hearing was published in the *D.C. Register* on March 28, 2003, and the Office of Zoning mailed notice to property owners within 200 feet of the subject properties.

3. Earthclot filed an additional submission in support of its application to the Office of Zoning on February 21, 2003.

4. At the public hearing on May 5, 2003, the Commission learned that Earthclot had failed to post a placard at the subject properties announcing the proposed map amendment in accordance with 11 DCMR §§ 3015.4 through 6. Charlotte Schoeneman, an architectural designer appearing for Earthclot, testified that Earthclot had made several attempts to notify community members regarding the proposed map amendment: representatives went "door to door" speaking to neighbors about the proposal; a "listserve" for community members was published about the proposal; and representatives made presentations about the proposal at three (3) Advisory Neighborhood Commission ("ANC") meetings. Ms. Schoeneman testified that Earthclot knew of no opposition to the proposal, except for one person who was generally opposed to all new development along Mt. Pleasant Street. Earthclot also submitted a petition in support of the map amendment (Exhibit 13), which numerous members of the community had signed.

5. There were no persons present at the public hearing who were in opposition to the proposed map amendment, and the Commission received no written submissions in opposition to the proposal.

6. Notwithstanding Earthclot's failure to post, the Commission found that notice was provided through publication in the *D.C. Register* and mailings to nearby property owners, and that members of the community received actual notice of the proposal. As a result, the Commission proceeded with its hearing and deliberations on May 5, 2003, subject to Earthclot's subsequent compliance with the formal posting requirements.

7. Other than the statements proffered by Ms. Schoeneman, Earthclot offered no testimony in support of its application and requested the Commission to decide the matter based upon its application and the written record.

The Application

8. The subject properties are located on Mt. Pleasant Street, N.W. at the corner of Mt. Pleasant and Irving Streets. They comprise approximately 6,819 square feet and are located in the R-5-D zone. The subject properties are developed with row houses, and three (3) of the five (5) row houses have existing home occupations. The owners wish to expand these three (3) properties into small businesses beyond their current home occupation limit.

9. Except for the subject properties, other properties on Mt. Pleasant Street are commercial in nature. The subject properties face commercial buildings and are adjacent to buildings in the C-2-A commercial zone. The properties are bounded to the north along Mt. Pleasant Street by low-scale neighborhood-serving retail uses in two- (2) and three- (3) story row buildings. Similar properties are located across the street. The subject properties and all of the properties along Mt. Pleasant Street are within the Mt. Pleasant Historic District, which developed as a commercial center around the turn of the century.

10. Although the C-2-A commercial zone is less restrictive than the R-5-D zone in terms of use, the area limitations of the C-2-A commercial zone (its maximum height, FAR, and lot occupancy requirements) are more restrictive than those of the R-5-D zone.[1]

11. The proposed rezoning is fully consistent with and fosters the goals and policies stated in various elements of the District of Columbia Comprehensive Plan, specifically:

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[1] The R-5-D zone allows: matter-of-right high-density development of general residential uses, including single family dwellings, flats, and apartment buildings. The maximum lot occupancy is 75%; the maximum density is 6.0 FAR for apartment houses and hotels and 5.0 FAR for other structures. The maximum height is 90 feet.

The C-2-A zone allows: matter-of-right low-density development, including office, retail, and all types of residential uses. The maximum lot occupancy for residential use is 60%. The maximum density for residential use is 2.5 FAR, and 1.5 FAR for other uses. The maximum height is 50 feet.

(a) Economic Development Element – The Economic Development Element contains a goal to revitalize older business areas. The rezoning of Square 2595 from residential to commercial would revitalize the Mt. Pleasant business area, which developed at the turn of the century.

(b) Land Use Element – The Land Use Element objectives for commercial land are to promote the vitality of the District's commercial areas and to provide for continued growth and vitality of the District's economy and employment base. Additionally, the Comprehensive Plan Generalized Land Use Map identifies this area as a Local Neighborhood Center to be upgraded.

(c) Ward 1 Element – The Ward 1 Element identifies Mt. Pleasant Street as a target for revitalization and improvement. It also encourages commercial development that is compatible with current neighborhood uses and historic districts. Specifically, § 1203.1(s)(1) details the following objective: "Maintaining and preserving the local neighborhood shopping character of Mount Pleasant Street to better serve the immediate neighborhood, including an examination of the possibility of rezoning Mount Pleasant Street." The rezoning of Square 2595 would permit the commercial home occupations to develop into small businesses on Mt. Pleasant Street that are compatible with the other commercial uses on the street. These commercial uses would serve the nearby residential properties and would not be inconsistent with the historic district. (Exhibit 21, p. 5)

12. The proposed rezoning is fully consistent with the Generalized Land Use Map, which specifically designates the subject properties as low-density commercial. (Exhibit 21, p. 5) The C-2-A zone is designed to provide facilities for shopping and business needs for segments of the city outside of the central core. Thus, this proposed zoning designation is consistent with a low-density neighborhood shopping area, whereas the current residential zoning is contrary to the Generalized Land Use Map.

13. The proposed rezoning would not significantly impact traffic or transportation in the neighborhood. While the zoning change would likely lead to the addition of two (2) or more businesses on Mt. Pleasant Street, the traffic impact would be negligible. The total possible area of business use in the proposed map amendment area is only 10,229 square feet. (This sum is based upon the 6,819 square feet of land within the subject properties multiplied by the 1.5 FAR commercial use permitted in the C-2-A zone.) Since the existing business area is currently 1,800 square feet, the rezoning could result in a possible increase of approximately 8,400 square feet of business use. An increase in business use of this size would not result in a significant amount of commercial activity along an already largely commercial street such as Mt. Pleasant Street.

14. OP reviewed the proposed rezoning and submitted a final report recommending approval of the map amendment. (Exhibit 21) In its report, OP noted that other agencies of the District of Columbia supported the proposal as well: the Historic Preservation Office; the Department of Housing and Community Development; and the Fire and Emergency Medical Services Department. The Historic Preservation Office stated in particular that the existing residential buildings on the square were constructed in 1978 and were considered not to contribute to the character of the historic district. It stated further that

the introduction of additional commercial uses could be accommodated, as long as the changes were generally in character with the historic district.

15. ANC 1D submitted a resolution dated March 3, 2003 in support of the map amendment. (Exhibit 19) The ANC noted that the proposed zoning change would reflect the commercial nature of Mt. Pleasant Street and would be consistent with the 2002 Generalized Land Use Map.

The Proceedings

16. The Commission voted at the May 5, 2003, public hearing to approve the map amendment subject to Earthclot's filing a proper affidavit of posting. On May 6, 2003, Earthclot posted a placard on each of the five (5) properties announcing the proposed map amendment and maintained the placard for 30 days, until June 6, 2003. In accordance with the Commission's directive, Earthclot filed a posting affidavit and an affidavit that the posting was maintained for 30 days. (Exhibits 27 and 29)

17. Pursuant to the District of Columbia Home Rule Act, the Commission referred its proposed decision of approval to the National Capital Planning Commission ("NCPC") for review and comments. The NCPC reviewed the proposed rezoning and found that the proposal would not adversely affect the identified federal interest nor be inconsistent with the Federal Elements of the Comprehensive Plan for the District of Columbia. (Exhibit 30)

CONCLUSIONS OF LAW

Section 1 of the Zoning Act of 1938, D.C. Official Code § 6-641.01 (2001), establishes the authority of the Zoning Commission "to promote the health, safety, morals, convenience, order, prosperity or general welfare of the District of Columbia." Approval of the requested change in zoning from the R-5-D to C-2-A District is not inconsistent with the Comprehensive Plan for the National Capital and the purposes of the Zoning Act. The approval of the application will promote orderly development in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map.

The Commission finds that the proposed rezoning is consistent with the Comprehensive Plan, specifically the various provisions of the Land Use, Economic Development, and Ward 1 Elements described in this order. In addition, the proposed change in zoning is fully consistent with the Generalized Land Use Map's designation of the subject properties as low-density commercial, and is fully consistent with the commercial character of Mt. Pleasant Street.

The Commission takes note of ANC 1D's resolution in support of the project and finds its advice persuasive. In doing so the Commission has accorded to the ANC's decision the "great weight" required by law.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of this application for an amendment of the Zoning Map for Lots 1049, 1050, 1051, 1052, and 1053 in Square 2595, as identified in this application.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

Vote of the Zoning Commission taken at its public hearing of this case on June 9, 2003, by a vote of 4-0-1 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, and Peter G. May to approve; James H. Hannaham not present, not voting).

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

SUBDIVISION

SQUARE 2595

THE UNDERSIGNED OWNER(S), BEING FIRST DULY SWORN, CERTIFIES, DEPOSES AND SAYS THAT THEY ARE THE OWNER(S) IN FEE SIMPLE OF THE PROPERTY MENTIONED BELOW; THAT NO OTHER PERSON OR PERSONS THAN THE UNDERSIGNED OWNER(S) HAVE ANY INTEREST OR CLAIM THEREIN EXCEPT FOR EXISTING TRUST(S) NOTED BELOW; THAT THE UNDERSIGNED IS IN PEACEFUL OCCUPATION THEREOF; THAT THERE ARE NO SUITS OR ACTIONS PENDING AFFECTING THE TITLE TO SAID PROPERTY. THAT THERE ARE TRUST(S) ON SAID PROPERTY HEREBY SUBDIVIDE LOT 683 IN ESLIN ESTATE (BOOK 46, PAGE 22,) AND PART OF LOTS 100 AND 104 IN ESLIN ESTATE (CO. BOOK 6, PAGE 4,) AND LOTS 162 TO 166 (CO BOOK 15, PAGE 42,) AND LOT 171 (CO BOOK 16, PAGE 16,) AND LOTS 177 AND 178 (CO. BOOK 16, PAGE 27,) ALL IN MOUNT PLEASANT AND PLEASANT PLAINS INTO FIFTEEN LOTS AND PART OF A NEW SQUARE 2595 AS SHOWN HEREON AND REQUEST THAT THIS SUBDIVISION BE APPROVED AND RECORDED IN THE OFFICE OF THE SURVEYOR OF THE DISTRICT OF COLUMBIA.

Witness our hands and seals this 4th day of April 19 77

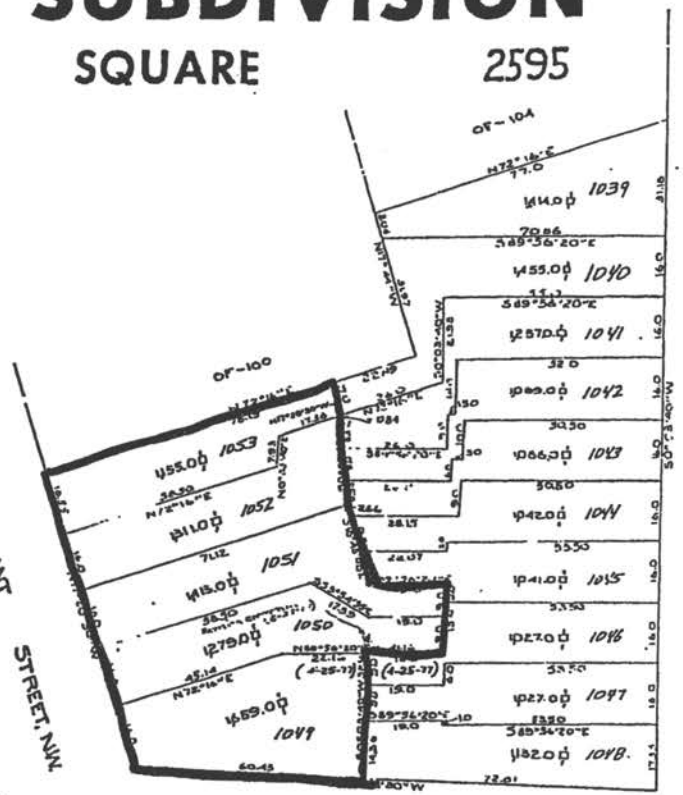
Owners:	Witnesses:
SEMIH USTUN	
LLOYD G. PAUL	

Subscribed and sworn before me this 7 day of April 19 77

Notary public

My commission expires: 3-31-79

Trustees under existing trust(s)



OFFICE OF THE SURVEYOR OF THE D.C.
WASHINGTON, D.C. APRIL 26, 1977
I CERTIFY THAT THE ADDITION TO THE PLAT AS SHOWN HEREON IS CORRECT.
D.K. Compton
SURVEYOR, D.C.

Office of the Surveyor of the D.C.
Washington D.C. June 27 19 77
I certify that the revision to the Plat as shown herein is correct.
Acting Surveyor, D.C.

DEPARTMENT OF FINANCE AND REVENUE

April 7 19 77

I certify to the following statements as correct:

1. Owner's name agrees with our record: April 7, 1977
2. Real estate taxes are paid to: June 30, 1977
3. There are no unpaid real estate taxes in the arrears: April 7, 1977
4. There are no unpaid special assessments: F. 7 7 RK

Associate Director, Assessment Administration

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

June 5 19 77

I certify that this subdivision and the remaining parts of lots complies with the zoning regulations of the District of Columbia.

Zoning: R-5-B

James T. Bailey
Acting Chief Zoning Regulations Division

OFFICE OF THE SURVEYOR

April 8 19 77

I certify that the subdivision shown hereon is correct and is hereby approved for record in this office.

D.K. Compton
Surveyor, D.C.

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Requested by: SEARLES, LESTLIE	Receipt no 4-4075
Research by: Leonard A. Adamson	Checked by:
Computation by: Leonard A. Adamson	Checked by:
Drawn by: A. JOHNSHIN	Checked by:
Scale: One inch = 20 Feet	Recorded: Date: April 8 1977 Time: 4:25 P.M.
S.O. file no. 77-53	Book: 166 Page: 68

OFFICE OF DOCUMENTS
AND PUBLICATIONS

RULEMAKING TRANSMITTAL FORM

DATE AND TIME RECEIVED
Office of Documents use only

TYPE OF RULEMAKING ACTION: [ ] EMERGENCY RULES [X] FINAL RULES [ ] PROPOSED RULES [ ] COMBINED

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: ALBERTO BASTIDA

ADDRESS: 441 4th Street, N.W., Suite 210 South

TELEPHONE: 727-0330

TITLE AND DESCRIPTION OF RULES: Amendment to the Zoning Map of the District of Columbia Zoning Commission Case No. 02-41

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Zoning Map of the District of Columbia

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 50 DCR 4278 DATE: MAY 30, 2003

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Code 2001 Ed. § 6-641.01 (formerly codified at D.C. Code § 5-413 (1994 Repl.)).

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.

DATE: JULY 15, 2003 SIGNED: Robert J. Spagnoletti PHONE: (202) 442-9777

✓	FINAL		CONDITIONAL	NAME:	ROBERT J. SPAGNOLETTI	TITLE: CORPORATION COUNSEL

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)
Zoning Commission For The District Of Columbia Title:

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes the issuance of the substance of these rules: Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Code 2001 Ed. § 6-641.01 (formerly codified at D.C. Code § 5-413 (1994 Repl.)

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL OF VOTE: 8/31/03

APPROVAL OF ATTEST: Alberto P. Bastida

TITLE: Secretary to the Zoning Commission PHONE: (202) 727-0330

Office of Documents use only: THIS NOTICE PUBLISHED AT: VOL: DCR: DATE: