Advisory Neighborhood Commission 6D

400 Eye Street SW • Washington, DC 20024
ANC Office: 202 554-1795

March 13th 2003

Chairperson Carol J. Mitten
DC Zoning Commission
441 4th Street, NW • Suite 210 South
Washington, DC 20001

ANC 6D Testimony presented by ANC Secretary Edward J. Johnson
re: Case No. 02-42, the W-0 Open Space Zone

Dear Chairperson Mitten and Zoning Commission Members:

At a duly noticed meeting on March 10, 2003, Advisory Neighborhood Commission 6D, representing the areas in near Southwest and near Southeast, voted 4-0-2 (four in favor, none opposed, two abstaining, with one Commissioner absent) to oppose the application of the Office of Planning in case 02-42, the W-0 Open Space Zone proposal. The ANC has seven Commissioners, and four Commissioners comprise a quorum. For the record, because Chairman Assalaam has a conflict for the date of this hearing, ANC 6D voted unanimously (6-0) to have me, Edward J. Johnson, Secretary to ANC 6D and Commissioner for ANC 6D-01, represent our ANC tonight.

ANC 6D supports a W-0 Open Space Zoning option in concept, and we would support this proposal once the following amendments and community concerns are addressed.

There are several items in the proposal that are either errata, or changes to recent information referenced in the proposal that I have included in Attachment I along with copies of the pertinent code and other documents referenced in this testimony. In the interests of time, I would ask that our full written testimony with attachments be submitted into the record so that we can more expeditiously use this time to discuss the most important issues.

The major items of concern to the community are as follows:

1. There is significant concern among stakeholders along the SW Waterfront that a W-0 Zoning could be applied in a way that would be detrimental to stakeholders and to the public. While the Office of Planning Final Report dated February 28th states that they "do not [propose] that any lands be zoned W-0 as part of this Zoning Commission case," and offer assurances that they do not intend to do so to businesses along the SW Waterfront, in a December 2002 memorandum (attached) the Office of Planning wrote that the proposed W-0 zone was indeed intended to apply to areas in the SW Waterfront. The Comprehensive Plan calls for significant development, as does the Office of Planning's new SW Waterfront Plan. To the extent that these regulations may conflict with plans for the Southwest Waterfront, they are inconsistent with the Comprehensive Plan and would violate DC Official Code § 6-641.02. The application of this zone to existing businesses or organizations in this area would certainly be to greatly diminish property values. DC Official Code § 6-641.02 states that the regulations should encourage stability of land values within a district. An improperly applied W-0 zone in Southwest could have a devastating effect on land and marina values, and the Final Set down document does not provide adequate measures to ensure against that.

2. The amended proposal's attempt to address the issue of protecting stakeholders in 11 DCMR § 901.6 is hazy at best, and also inconsistent with DC Official Code § 6-641 and other existing DCRA regulations. DC Official Code § 6-641.06a states that a lawful use of a building or premises pre-existing the adoption of a regulation is lawful; the language does not allow for retroactive application of a zoning regulation. Additionally, "grandfathering in" an existing business based upon its Master Business License issuance is not consistent with zoning generally where it is the Certificate of Occupancy that matters.

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Moreover, DCRA has not yet ruled whether docks are required to have Certificates of Occupancy, and has stated that none of the marinas and yacht clubs in the District have Certificates of Occupancy for docks. If DCRA were to rule that such permits are required, then all of the marinas and yacht clubs in the city would have to shut down if the W-0 zone were applied to them due to the retroactive effect.

3. What amounts to absolute discretion by the Office of Planning under proposed 11 DCMR § 905 for special exceptions essentially violates the "great weight" given to recommendations of ANCs under DC Official Code § 1-309.10(d)(3)(A). The Zoning Commission amends regulations under DC Official Code § 6-641.03 without initial triage by the Office of Planning but subject to the great weight afforded to ANC recommendations under DC Official Code § 1-309.10(d)(3)(A). The effect of giving preliminary screening to the Office of Planning is that the Office of Planning is now being put on an equal footing with the ANC, thereby diminishing the role of citizens in the neighborhoods that would be affected by any such application of the zoning. The statute does not support the Office of Planning attempting to increase its authority, and there is no valid public policy reason why any of the proposed Special Exception uses should always be subject to Office of Planning review, even in a W-1 Zone.

4. The Mayor recently stated that his goal is to increase the population of District residents to 800,000. DHCD has partnered with the Office of Planning to ensure that boats on the waterfront continue to be another affordable housing resource (see action ID # 1638 of the Cluster 9 District of Columbia Strategic Neighborhood Action Plan). Nevertheless, this proposal limits the number of liveaboards through zoning restrictions, and it does not allow for residential use of any kind even as a Special Exception. These positions of the Office of Planning are inconsistent with the Mayor's initiative and the SNAP.

5. The Zoning Commission advertised on January 24, 2003 (attached) that the regulations will apply to Anacostia Park or abutting property east of the River owned by WMATA and PEPCO. The regulations, as they will apply to Anacostia Park, are inconsistent with the Comprehensive Plan of the National Capital Planning Commission (NCPC), which calls for a working boat yard where the Anacostia Marina was located.

6. There is no valid public policy reason to restrict yacht clubs from renting slips to transients in proposed 11 DCMR § 917.1(y)(1). This restriction will make the District a non-friendly destination for tourists. Again, the Office of Planning is inconsistent in recommending Cruise Line Use and Facilities as a Special Exception on one area, while limiting similar tourist activity in another.

This ANC recognizes the many benefits that a properly applied W-0 Zoning could bring to neighborhoods throughout our City. However, the proposal fails to provide clear and substantive protections to prevent possible abuse of this zoning to the detriment of long-term stakeholders. In addition, the potential for application of a W-0 Zoning when a business changes hands and applies for a new Certificate of Occupancy could deter new investment and be a stumbling block rather than a stepping stone to achieve the goals of the Anacostia Waterfront Initiative and other plans.

This proposal also vests too much discretion to the Office of Planning, and calls for regulation of business and housing at a level more appropriate to DCRA and other regulatory agencies. Such discretion also allows the Office of Planning to circumvent the public process of community input, and could lead to the disenfranchisement of the people most affected at the local level. Until such concerns are addressed, the ANC opposes adoption of the W-0 Open Space Zone.

Thank you,

Ed Johnson

Edward J. Johnson
Secretary, Advisory Neighborhood Commission 6D

Attachment I – Errata and Miscellaneous Corrections to the W-0 Open Space Zone Proposal, Cited References to DC Official Code

Office of Planning Final Set Down Report for Case #02-42 dated February 28, 2003

1. The header on all pages says "Text and Map Amendments"
2. On page 4 it states "PUD is not considered necessary or appropriate" in reference to W-0, but PUD is included on the table in Attachment I.
3. The expected Floating Homes Residency Act referenced on pages 4 and 5 has now been introduced as Bill 15-181 in City Council Session 15.
4. Page 4 calls for replacing the term "houseboat" with "floating home" then the term "houseboat" is used 6 times in the rest of the document.
5. Attachment II uses a definition of the term "floating home" that has been superceded by a new definition in B15-181 to read "Floating home means a sailboat, motorboat, or other floating structure or vessel which is designed and built to be used, or is modified to be used, as a waterborne residential dwelling, is dependent for utilities upon a utility linkage to a source originating on shore, and is used as a residence by the tenant or owner.
6. Section § 936.3 excludes floating home marinas in its definition of "residential building"

DC Official Code References

§ 6-641.02. Zoning regulations--Purpose.
Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

§ 6-641.06a. Nonconforming use.
The lawful use of a building or premises as existing and lawful at the time of the original adoption of any regulation heretofore adopted under the authority of § 6-621.01, or, in the case of any regulation adopted after June 20, 1938, under this subchapter, at the time of such adoption, may be continued although such use does not conform with the provisions of such regulation, provided no structural alteration, except such as may be required by law or regulation, or no enlargement is made or no new building is erected. The Zoning Commission may in its discretion provide, upon such terms and conditions as may be set forth in the regulations, for the extension of any such nonconforming use throughout the building and for the substitution of nonconforming uses.

§ 1-309.10 Advisory Neighborhood Commissions-Duties and responsibilities; notice; great weight; access to documents; reports; contributions.
(d)(3)(A) The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity. Great weight requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission's issues and concerns.

§ 6-641.03. Zoning regulations--Existing regulations continued; public hearing on amendments required; notice.
The regulations prior to June 20, 1938, adopted by the Zoning Commission under the authority of § 6-621.01 and in force on June 20, 1938, including the maps which at said date accompany and are a part of such regulations, shall be deemed to have been made and adopted and in force under this subchapter and subchapter V and shall be and continue in force and effect until and as they may be amended by the Zoning Commission as authorized by said this subchapter and subchapter V. The Zoning Commission may from time to time amend the regulations or any of them or the maps or any of them. Before putting into effect any amendment or amendments of said regulations, or of said map or maps, the Zoning Commission shall hold a public hearing thereon and provide notice of the hearing in accordance with the requirements of subchapter I of Chapter 5 of Title 2. Such published notice shall include a general summary of the proposed amendment or amendments of the regulation or regulations and the boundaries of the territory or territories included in the amendment or amendments of the map or maps, and the time and place of the hearing. The Zoning Commission shall give such additional notice of such hearing as it shall deem feasible and practicable. At such hearing it shall afford any person present a reasonable opportunity to be heard. Such public hearing may be adjourned from time to time and if the time and place of the adjourned meeting be publicly announced when the adjournment is had, no further notice of such adjourned meeting need be published.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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TO: **Mike Bouchard**
Washington Waterfront Citizens Association
N101 - 560 N St. SW
Washington DC 20024

FROM: Joel Lawson, Development Review Specialist, DC Office of Planning

DATE: December 12, 2002

SUBJECT: ZC Case #02-42 – Application for an amendment to the Zoning Text to provide for a new W-O Waterfront Open Space Zoning District.

The above proposal for the creation of a new zoning category specifically for waterfront open space use is being forwarded to the Washington Waterfront Citizens Association for your information, and to request your review and comment.

The Office of Planning is recommending the creation of a new W-O Waterfront Open Space District. The Zoning Regulation text amendments would provide a low density, low intensity zone which permits waterfront open space parks as of right, as well as a number of waterfront related recreation, retail, and cultural uses by Special Exception.

Please note that this proposal does not involve the zoning or rezoning of any specific lands or existing businesses to this new W-O District. Existing waterfront businesses would not be rezoned. Rather, the zone would be available for use as appropriate when new waterfront proposals come forward. Eligible lands could include undeveloped stretches of waterfront along the Potomac River (including the site of the proposed Georgetown University rowing club); Washington Channel; the Anacostia Waterfront (including areas such as the South-West Waterfront; South-East Federal Center and Buzzard Point waterfronts); and portions of Anacostia Park.

We would greatly appreciate any comments or suggestions that you might have regarding this proposal. The Office of Planning report to the Zoning Commission, which includes a draft W-O Zone in concept form, is attached. A more detailed and refined W-O zoning text is currently being drafted. Although timing is tight, any comments received by **December 31, 2002** can be fully incorporated into the final Office of Planning report to the Zoning Commission – please send them to me at the address listed below. Comments can also be forwarded directly to the Zoning Commission prior to the Public Hearing date, or you can attend the Zoning Commission meeting to be held:

6:30 p.m. on January 23, 2003,
Room 220, One Judiciary Square, 441 4th Street, NW, Washington, DC 20001.

If you have questions, would like additional information, or would like to comment on the proposal by phone, please call me at 202-442-8813. My fax number is 202-535-2497.

Thank you, and I look forward to hearing from you.

Joel Lawson, Development Review Specialist

DC Office of Planning
801 North Capitol Street, N.E., Suite 3000, Washington, D.C. 20002
phone: 202-442-8813 fax: 202-535-2497 email: joel.lawson@dc.gov

AFFIDAVIT OF PUBLICATION

AD# 10005536

District of Columbia, ss,
Personally appeared before me, REBEKAH W. HAYES
a Notary Public in an dfor the District of Columbia

TIM PRICE who being duly sworn according to law, on oath says that he is an AUTHORIZED AGENT of NEWS WORLD COMMUNICATIONS, INC., publisher of

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D.C. OFFICE OF ZONING
2003 FEB -3 PM 3:58

The Washington Times

Circulated daily, in the City of Washington, District of Columbia, and that the advertisement, of which the annexed is a true copy was published in said newspaper 1 times(s) on the following dates:

2003, JAN. 24

at the rate of $ 2.91 per line.

Total Cost $ 87.30 Dollars

Tim Price

Subscribed and sworn to before me

JAN. 27, 2003

Notary Public Rebekah W. Hayes
Rebekah W. Hayes
Notary Public, District of Columbia
My Commission Expires: 07-14-05

My Commission expires

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE and RESCHEDULING OF PUBLIC HEARING

TIME AND PLACE: THURSDAY, March 13, 2003 @ 6:30 P.M. (2nd Case)
Office of Zoning Hearing Room
441 4th Street, NW, Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING: CASE NO. 02-42 (Text Amendment - Waterfront Open Space Zone District)

The D.C. Zoning Commission will conduct a public hearing at the above- stated date, time, and place concerning a text amendment to create a new W-G Water front Open Space Zone District for Parcel 016/0111 or reservation 343, pursuant to the District to the District of Columbia Zoning Regulations, 11 DCMR (July 1958, as amended) (All ANCs)

ZONING COMMISSION
District of Columbia
Case 02-42
Exhibit 13

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Notary Public, District of Columbia
My Commission Expires: 07-14-05

Reservation
343
Advertisement

Agency Responses to Citizen Priorities

PRIORITY 1: **Affordable and Diverse Housing**

OBJECTIVE 4: Maintain and create a diverse community that includes residential and commercial development that provides an enhanced quality of life.

Act-ID#	Action	Location	Partner	Res-ID#	Response	Starting
1637	Allow small businesses that serve the needs of the local population to be incorporated into new residential development.	Cluster 9	OP	8337	The OP is currently considering a new overlay zone that permits neighborhood-serving commercial uses in certain residential buildings.	FY2002
			DHCD	8336	DHCD will initiate discussions with the OP on this matter.	FY2002
1638	Ensure that boats on the waterfront continue to be another affordable housing resource.	Washington waterfront	DHCD	8338	DHCD will support any efforts in this area that are eligible for a Community Development Block Grant (CDBG). The National Capital Revitalization Corporation (NCRC) will be responsible for redeveloping the waterfront.	Ongoing
1639	Enforce regulations that evict tenants who operate drug or prostitution rings in public housing.	Greenleaf, James Creek, and Syphax Gardens	DCHA	8340	DCHA's Public Safety division is currently a member of the "Nuisance Task Force," which coordinates with local and Federal agencies in ongoing monitoring and nuisance abatement activities. DCHA Division of Public Safety relies on MPD for observation activities. An MOU was signed in 1997 between DCHAPD and the Metropolitan Police Department (MPD). Through its partnership with MPD, DCHAPD has had full access to all information pertaining to criminal activity on and around DCHA developments and properties. Policing strategies that have been developed and put in place are Operation Ziplock, Weed and Seed, Operation Bark and Bite, Operation Shoe Drop, Surveillance Narcotics Intervention Patrols, and Housing Enforcement Action Team.	
			MPD	8341	MPD will work with Housing Police to enforce drug laws. This effort is ongoing. MPD has had great success in getting tenants evicted who have violated drug laws.	FY2002
1640	Evict squatters who have moved into buildings in the 1300 block of South Capitol Street.	1300 block of South Capitol Street	MPD	8342	District 1 checks properties, evicts squatters, and encourages residents and business owners to report any unwanted activities in vacant properties.	FY2002