The Capital Yacht Club

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Director
District of Columbia Zoning Commission
441 4th Street NW, Suite 210
Washington, DC 20001

March 13, 2003

Subject: Zoning Commission Case #02-42, Text Amendment
W-0 Waterfront Open Space Zone
Comments

The proposed text amendment creating a W-0 Open Space Zone appears to be a useful tool for use as part of the Anacostia Watershed Initiative. However, there are several aspects of the proposal that seem inconsistent with the stated intent of the proposal to "provide a low density, low intensity zone". These inconsistencies and a December 2002 memo from the Office of Planning that indicate an intent to apply this new Open Space Zone to the SW Washington Waterfront are very concerning to us. We can see no reason why a low density W-0 Open Space Zone should be used in an area where it is obvious that the proposed re-development of the SW waterfront will require a much higher density that currently allowed by the area's current zoning of W-0. This question prompted us to take a much closer look at the proposed regulations. We found that 11 DCMR 917.1 gives the Board of Zoning Adjustment or the Zoning Commission absolute discretion in granting special exceptions in the W-0 Open Space Zone. While we can understand the need for a mechanism to grant special exceptions, there appears to be few uses for which special exceptions may be granted that are not already prohibited in a waterfront zone by 11 DCMR 902.1. Of particular interest are the special exceptions that would allow a fishmonger or floating homes. Why would such special exceptions be necessary unless there really was an intention to apply the W-0 Open Space Zone to the SW Washington waterfront, the only place in the District of Columbia where fishmongers and floating homes can be found?

While we would like to believe in the integrity of both those in the Office of Planning and Zoning Commission, we believe that it is foolish to create a situation where these groups have total discretion in granting special exceptions

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in a W-0 Open Space Zone that would allow activities that are inconsistent with the concept of creating open space. The idea that the SW Washington waterfront could possibly be designated a W-0 Open Space Zone is completely inconsistent with the well known intentions to re-develop the area and create a much higher density than its current W-1 zoning. Granting the Office of Planning and Zoning Commission absolute authority to grant (and possibly revoke) special exceptions in the SW Washington waterfront development is essentially the same as allowing spot zoning, a practice that is illegal for obvious reasons. Granting special exceptions achieves the same effect as zoning businesses on a case by case basis with no oversight and no public involvement. Such a situation can easily lead to abuse of the system and must be avoided.

At a recent meeting of the Washington Waterfront Association a representative of the DC Zoning Commission explained that the proposed change to the regulations is a text change, not a map change. We were also told that a separate hearing would be required before the W-0 zone could be applied to any specific area. If there is no proposal to apply the W-O zone in a specific area, why is it necessary for 11 DCMR 901.6 to establish a fixed definition for an existing business that is linked to having a Certificate of Occupancy or a Master Business License as of January 31, 2003? This creates a situation where a business can become subject to the W-0 Open Space Zone retroactively. 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. This language does not allow for retroactive application of a new zoning designation to an existing business. Under the proposed regulations, any future reclassification of any portion of an existing waterfront zone to the W-0 zone would make the W-0 zoning regulations retroactive to any business that was established after January 31, 2003, even if the change in zoning occurred a year from now, 10 years from now or a hundred years from now. This is clearly inconsistent with the statute and existing regulations. The definition of an existing business must be linked to the date the area the business is located in is reclassified as W-0 Open Space Zone and not a date associated with this text amendment.

On a related issue, we do not understand the idea of grandfathering a business based on its Master Business License instead of a Certificate of Occupation. We would also like to point out that there is no classification in the Master Business License for a yacht club. I would hate to think that after 110 years of operation the Capital Yacht Club would not be considered an existing business because our Master Business License classifies us as a restaurant.

We would also like to point out that Certificates of Occupancy are generally issued to a building or space and not necessarily a business. The Capital Yacht Club is a non-profit business but our Certificate of Occupancy is only for our clubhouse and apparently does not include our docks. We checked with DCRA and have been told that a Certificate of Occupancy is not required for docks and that none of the marinas or yacht clubs in the District have Certificates of

Occupancy for their docks. We asked for something in writing to document that A Certificate of Occupancy was not required but were refused, thus leaving the question open for further interpretation. We have since formally requested that DCRA to rule whether Certificates of Occupancy are required on docks but have yet to receive a response. Were they to rule the Certificates of Occupancy were required, it could be argued that none of the marinas or yacht clubs in the District would be existing businesses according to these proposed regulations. Clearly this is an issue which must be resolved prior to the application of the proposed regulations or the definition of an existing business must be modified.

It appears that the proposed 11 DCMR 905 and 11 DCMR 917.1 would grant absolute discretion in approving any proposed special exceptions to the Office of Planning and Zoning Commission. This appears to be inconsistent with DC Official Code 1-309.10(d)(3)(A), which requires that "great weight" be given to the recommendations of ANC's because it removes the ANC's from the decision process.

We do not understand the need to restrict the maximum density of floating homes, because floating homes are only allowed within an approved marina. The only approved liveaboard marina in the District of Columbia is the Gangplank Marina, which is within the SW Washington waterfront, an area that is already targeted for much higher density use. Considering the number of residences to be added within the immediate area and further considering how important a large number of local residents are to the vitality and therefore the success of the redevelopment of the SW Washington waterfront, it seems clear that more rather than less liveaboards would be beneficial to the neighborhood. Considering the Mayor's goal to increase the District's population and the limited areas for additional housing and the DHCD partnership with the Office of Planning to ensure that boats on the waterfront remain an affordable housing resource, restricting the number of liveaboards by zoning appears inconsistent. If anything, it would appear beneficial for the District to try to influence the National Park Service to remove the prohibition of liveaboards from their marinas as well as any marinas on District property. If living aboard was an option, there would probably be a significant number of CYC members who would consider moving aboard their vessels and this could add to the city's tax base tremendously.

11 DCMR 917.1(y) (2) both restricts the use of a yacht club clubhouse for the exclusive use of its members and requires that the clubhouse be located directly in front of the yacht club berths. A strict interpretation of these requirements would not allow members of yacht clubs to bring guests into the clubhouse and would prevent the yacht club from hosting events that are attended by non-members. Each year the Capital Yacht Club hosts the Easter Seals Cruise for Kids, the Annual Police/Firefighters Picnic and often volunteer our space for various community meetings. We find no justification or valid public policy reason to create such a restriction. Additionally, the Capital Yacht Club leased out the upstairs portion of its building to Le Rivage Restaurant for over 18 years

before they closed due to uncertainty about the development of the waterfront. The restriction on how this space could be used would prevent the space from being re-leased and would create a severe economic hardship for the yacht club. Also, the fact that the Capital Yacht Club is within the area of the intended redevelopment of the SW Washington waterfront and that no specific site for the clubhouse has been designated within the 6 redevelopment sites, it is very possible that the Capital Yacht Club clubhouse may not continue to be located directly in front of the yacht club berths following redevelopment. Naturally, that would be our choice, but the decision may not be ours to make.

If we make the assumption that the redevelopment of the SW Washington waterfront is completed and the Capital Yacht Club is relocated to a site within the new development. If so, it seems logical that once our new space has been completed and inspected, a new certificate of occupancy would be issued. Based on the current proposed regulations, we would then no longer be an existing business. Does this mean that we would then be required to have a minimum area of two acres as required by 11 DCMR 917.1 (y)(1)? We sincerely doubt that would be the intent of the regulations but this does illustrate the problem of the proposed definition of an existing business.

We can see no reason to increase the parking space requirements for yacht clubs from one for every four berths to one for every three berths. While all marinas and yacht clubs would be happy if additional parking was available, this change would retroactively apply to all buildings built after 1958 and there is the potential that some existing businesses could become deficient in the number of parking spaces they have.

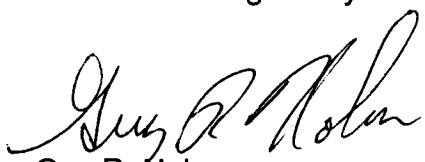
It was advertised on January 24, 2003 by the Zoning Commission that the proposed W-0 Open Space Zone regulations would be applied to Anacostia Park and property east of the River owned by WTAMA and PEPCO. If these regulations for an Open Space Zone are applied to Anacostia Park they would prevent the reopening of the Anacostia Marina without a special exception and this would be inconsistent with the Comprehensive Plan of the National Capital Planning Commission, which calls foe a working boatyard in that location.

The proposed change to Chapter 6 of 11 DCMR is material that is outside the scope of the notice that was given for the rest of these proposed changes. The notice requirement of the law has not been met. Therefore, this portion of the amendment should not be considered and it should be removed from this proposal.

In conclusion, I believe it is safe for me to say that the members of the Capital Yacht Club would support the creation of a W-0 Open Space Zone if it were being used as a low density, low height area. However, if our perception that the W-0 zone is to be used in the area of the SW Washington waterfront redevelopment is correct, we believe that the use of a low density classification

on such an obviously high density area is completely improper and a misrepresentation of the situation that should be considered regulatory misconduct.

Sincerely,



Guy R. Nolan
Commodore