March 13, 2003
c/o Capital Yacht Club
1000 Water St. SW
Washington, DC 20024

Director
District of Columbia Zoning Commission
441 4th St. NW, Ste 210
Washington, DC

Sir,

Thank you for an opportunity to address you on the Office of Planning's zoning proposals for the Southwest Waterfront. My comments allege that this proposal is illegal and inconsistent with acceptable zoning policy, that this process is not supported by DC statute, that it would have a ruinous effect upon the waterfront's businesses and finally, that it may, in fact, be unconstitutional.

First, retroactive effect in proposed 11 DCMR § 901.6 is illegal and inconsistent with statute and existing 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.

Furthermore, the proposed amendment to Chapter 6 of 11 DCMR is new material for which notice was never given as required by law. Therefore this proposed amendment must not be considered and stricken from the proposal. Additionally, there is no rational reason for Office of Planning review. Such review infringes upon the great weight accorded to recommendations of ANC's, per DC Official Code § 1-309.10(d)(3)(A), and turns on its head the priority given to recommendations considered by the Zoning Commission, as stated in DC Official Code § 6-641.03. Thus, the Office of Planning is attempting to increase its authority in a manner not supported by the language of the statute.

With regard to the December 2002 Office of Planning memorandum proposing W-0 zoning for the Southwest Waterfront, DCRA has not yet ruled whether docks are required to have certificates of occupancy (C of O). It has acknowledged, however, that none of the marinas and yacht clubs in the District have C of O for docks. If DCRA were to rule that such permits are required, and the zoning restrictions were applied retroactively, as proposed, all of the marinas and yacht clubs in the city would have to shut down when the W-0 zone is applied (see proposed 11 DCMR § 901.6). Thus, a W-0 zone in Southwest would have a devastating effect on these organizations and waterfront property values.

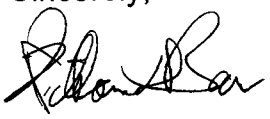
ZONING COMMISSION
District of Columbia
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EXHIBIT NO. 32

Finally, the Office of Planning zoning proposal, in conjunction with the NCRC plan, may very well constitute an illegal action. The Comprehensive Plan calls for significant development. To the extent that the OP zoning proposals apply to the Southwest Waterfront, they are inconsistent with the Comprehensive Plan. This inconsistency violates DC Official Code § 6-641.02. Additionally, when viewed in combination, it appears that the only reason to apply W-O zoning to the area would be to greatly diminish property values for easier condemnation. The District could then buy out the leaseholders for less than the current fair market value, increase the zoning density for development, consistent with the NCRC plan, and sell development lots at an enormously higher price. This practice, commonly referred to as "spot zoning", has been ruled unconstitutional.

In conclusion, I feel that this zoning proposal is not supported by DC statute and, indeed not lawful, and that the process for even submitting the proposal is out of order. One need not resort to legalisms, however, to see the folly of this proposal. Any reasonable person can see that it is simply ridiculous to apply open zoning (W-0) to a high density area. Clearly, such a proposal is either a mistake, or a deception.

Thank you for the opportunity to present my concerns.

Sincerely,



William D. Barr,
Member
Capital Yacht Club