CONCERNS ABOUT PROPOSED OPEN SPACE ZONE
CASE 02-42

SUMMARY OF TESTIMONY BY CAPITAL YACHT CLUB MEMBERS

Submitted for the record to:
D.C. Office of Zoning
441 4th Street, NW Ste. 210
Washington, DC 20001
March 13, 2003

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1. There is a strong appearance of spot zoning (an unconstitutional "taking"). The fear is that the Office of Planning (OP) will apply the W-0 proposed zone to the Southwest waterfront to diminish land values, buy out the leaseholders for less than the current fair market value, and then increase the zoning density for development purposes.

2. With the kind of unaccountable zoning power that you are seeking, businesses are being scared away. One reason our restaurant tenant La Rivage closed down in February is due to a fear that in that three years nothing will be left.

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3. Economy – Real Estate market bubble could burst. Financial indicators, and a recent statement from Alan Greenspan, demonstrate that we may be on the verge of a collapse in property values. Since this redevelopment is market driven, irreparable damage may be caused where buildings are vacant and developers cannot afford to re-build.

4. There is no money to fund major changes to the waterfront in the next budget. The city is attempting to close a $120 million budget deficit for FY 2003. The forecast for FY 2004 is another $120 million deficit, and this undoubtedly assumes that the economy will not worsen. The city should not start something it cannot finish, particularly when it comes at the expense of long standing communities such as the Capital Yacht Club.

5. Before making sweeping zoning changes remember that DC Official Code § 8-109.01 requires environmental impact studies before implementation of a plan, and such provision requires that any development minimize or have no environmental effects. The plan calls for 6 to 10 story buildings on the waterfront. Such immense development will result in unprecedented density, with strong adverse environmental impact.

Finally, the Mayor recently stated that his goal is to increase the population of District residents to 800,000. DHCD has partnered with OP 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).

OTHER CONCERNS

1. The DC Regulatory Agency (DCRA) has not yet ruled whether docks are required to have certificates of occupancy. 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 when the W-0 zone is applied due to the retroactive effect which already occurs in the past (see proposed 11 DCMR § 901.6). DCRA has stated that none of the marinas and yacht clubs in the District have Certificates of Occupancy (C of O) for docks.

2. NCRC is the lessee of Gangplank Marina. NCRC has not applied for a C of O for Gangplank Marina. Pursuant to DC Official Code § 1-301.68, the District government is required to obtain such C of O's and conform to zoning. The operator of Gangplank (who is not the lessee) has only secured a C of O for the 800 square feet of office space it uses. Additionally, there is no C of O covering the parking lot for either NCRC or the operator.

3. For reasons 1 and 2, above, the Zoning Commission must permit marinas and yacht clubs additional time to revisit their certificates of occupancy and have the amended certificates of occupancy deemed conforming uses. Additionally, none of the present marinas or yacht clubs, especially within the Washington Channel, have at least two acres of land for their exclusive use; this provision should be removed at its public policy purpose is unknown.

4. We repeat there is a strong appearance of illegal spot zoning. The Comprehensive Plan does not call for exclusive use of the Southwest Waterfront for swimming pools and parks. The Comprehensive Plan calls for significant development. To the extent that these regulations may be intended to apply to the Southwest Waterfront, they are inconsistent with the

Comprehensive Plan and therefore violate DC Official Code § 6-641.02. A December 2002 memorandum from the Office of Planning stated that the proposed W-0 zone would be intended to apply to the Southwest Waterfront.

The only reason to apply this zone to such area would be to greatly diminish property values for easier condemnation. Moreover, DC Official Code § 6-641.02 states that the regulations should encourage stability of land values within a district. A W-0 zone in Southwest will have a devastating effect on land values.

5. The retroactive effect in proposed 11 DCMR § 901.6 is illegal and inconsistent with the 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. Moreover, there is no classification in the Master Business License for yacht clubs.

6. Perceived absolute discretion in the Office of Planning under proposed 11 DCMR § 905 for special exceptions violates the law that "great weight" be given to recommendations of ANC's 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 by the Office of Planning is that the Office of Planning is

now being put on an equal footing with the ANC, thereby diminishing the great weight afforded to the recommendations and findings of the ANC.

The Office of Planning is attempting to increase its authority when the statute does not support such increase. There is no valid public policy reason why marinas and yacht clubs should always be subject to Office of Planning special exception review even in a W-1 zone.

7. Leave liveaboard density up to the marina/yacht club operator. The Mayor recently stated that his goal is to increase the population of District residents to 800,000. DHCD has partnered with OP 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, OP is trying to restrict the number of liveaboards through zoning restrictions in Zoning Commission Case No. 02-42. These positions of OP are inconsistent.

8. Don't differentiate between marinas and yacht clubs with respect to liveaboards. Yacht clubs are typically IRC § 501(c)(7) non-profit organizations, and typically operate like a cooperative.

9. Don't increase the parking space requirements. There is no reason to increase the parking spaces required from 1 per 4 berths in a W-1 zone. An increase may cause some marinas and yacht clubs to become deficient in the number of parking spaces that they are required to have.

10. The Zoning Commission advertised on January 24, 2003 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.

11. 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 and such review infringes upon the great weight accorded to recommendations of ANC's.

Keep the waterfront in the hands of its citizens, not commercial interests with no interest in our community.