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VIA FACSIMILE AND FIRST CLASS MAIL

Carol Mitten, Chair
D.C. Zoning Commission
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: Zoning Commission Case No. 02-42 (Waterfront Open Space Zone – Text)

Dear Ms. Mitten and Members of the Commission:

This letter provides specific proposed text language in keeping with my testimony on behalf of Georgetown University regarding the proposed new Waterfront Open Space (W-0) zone, Case No. 02-42, on March 13, 2003.

In testimony I stated, among other things, that in my opinion:

- The proposed zone district will be useful in helping carry out the city's Anacostia Waterfront Initiative and other waterfront recreation and land use proposals.

- The ability afforded an applicant to apply for a special exception and variances, if needed, in combination with a map amendment case to W-0 is very creative and meritorious. This consolidated process will save the time and resources of the Zoning Commission, the Office of Planning, applicants and the public by avoiding the need for a map amendment, followed by a separate proceeding for the special exception and, potentially, variances.

- Regarding variances, there could very well be situations where a proposed and authorized use in W-0 complies with special exception standards and applicable public policies but the site lacks any unique characteristics resulting in a practical difficulty in using the property. Thus, there would be little basis for the granting of a variance. An example would be the long extent of Anacostia Park, which in most locations is simply grassland sloping down to the Anacostia River. A variance case for a new boathouse, open-air theater or other permitted use would be difficult to make. Yet the Commission may wish to approve the proposed use, based on the record of the case.

ZONING COMMISSION
District of Columbia
Case 02-42
Exhibit 49

ZONING COMMISSION
District of Columbia
CASE NO.02-42
EXHIBIT NO.49

- The planned unit development regulations in 11 DCMR Chapter 24 include regulations that indicate a possible solution. Specifically, §§ 2405.4 and 2405.5 specify that lot occupancy, yards and courts "shall be provided as otherwise prescribed in this title. However, the Zoning Commission shall have the option to approve a [lot occupancy, yard or court] greater or lesser than the normal requirement, depending upon the exact circumstances of the particular project."

- In § 2405.3 comparable flexibility is granted to the Zoning Commission regarding maximum height and FAR, but the potential increase is limited to no more than five percent (5%).

Recommendation

I recommend that the following text be adopted and included in the W-0 zone, analogous to the flexibility in the PUD process:

Add a new section at the end of the area requirements as follows:

938 Zoning Commission Flexibility

938.1 In reviewing and approving special exception uses allowed under § 917 of the W-0 District, the Commission shall use the prescribed requirements for lot occupancy, yards, courts and waterfront setback as guidelines. However, the Commission shall have the option to approve a greater or lesser dimension or amount compared to the normal requirement, depending upon the exact circumstances of the particular project.

938.2 In reviewing and approving special exception uses allowed under § 917 of the W-0 District, the Commission may authorize an increase of not more than five percent (5%) in the maximum height or floor area ratio; Provided, that the increase is essential to the successful functioning of the project.

It is noted that in a special exception application, specific proposed plans will be part of the public hearing process, so that a full evaluation of any flexibility requested or granted will be possible by the Commission, public agencies and the general public.

Respectfully submitted,

Nathan W. Gross, AICP