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October 15, 2003

The Honorable Carol Mitten, Chairperson
The Honorable Members
Zoning Commission of the District of Columbia
Government of the District of Columbia
One Judiciary Square – Suite 210 South
441 Fourth Street, NW
Washington, DC 20001

D.C. OFFICE OF ZONING
2003 OCT 21 PM 12:51

Re: **Proposed Rules for the Waterfront Open Space Zone District – ZC Case 02-42**

Dear Ms. Mitten and Members of the Commission:

Having reviewed the proposed rulemaking appearing in the ***D. C. Register*** of September 19, 2003 in the above-captioned case (but not having participated in the case at its hearing or otherwise), I offer the following:

- First, I suggest that the Commission's Final Order discuss how the Zoning Regulations are effective over water past the high tide mark, about which the Commission reportedly received sound legal advice during the course of the Case. While the present zoning rules already appear to permit same (at §107.6), I suggest that the Order clarify how its provisions can reach past dry land in light of the Zoning enabling Act's seemingly narrow "land" specification of zoning authority and limits.

- Second, I suggest that the Commission consider if, now or at a later stage, the rules should not provide for one or more counterparts to *"floating home"* to cover businesses and government functions that operate from facilities floating on or located over water.

  The W zones have been mixed use since their inception, and businesses are allowed and encouraged in them to one degree or another. Should not some commercial uses, particularly retail, also be allowed to some extent on water near land (attached to piers or tied to vessels that are so secured) either as a matter-of-right or by Special Exception? One example, technically not before you at this time, is the current fish market that operates from barges tied up along Maine Avenue, SW, even though I understand that area is under Federal ownership and thus is unzoned. I also believe a restaurant operates from a vessel tied up along zoned portions of Water Street, SW at this time. Would it's operation no longer be an allowed use if zoning was applied out from Water Street, SW toward the Washington Channel past the high tide line reflected in the most recent Zoning Map (January 3, 2003, Sheets 10 and 13)?

  Separately, the SW waterfront is where at least one pier now exists from which both DC police and fire departments operate (see Sheet 13). Should those functions be addressed within this case of the one underway now about police uses (ZC 02-28)?

ZONING COMMISSION
District of Columbia
Case 02-42
Exhibit 55

ZONING COMMISSION
District of Columbia
CASE NO.02-42
EXHIBIT NO.55

Thus, Case 02-42 is text case that seems to leave at least one obvious element out for no apparent reason. So, I suggest, adopt what is ready (*floating home*), but extend this case (or initiate a new one) to address floating/over-water *commercial* and possibly floating/over-water governmental uses to have a full set of tools when specific map decisions need to be made "downstream."

- Third, convert the rules for caretaker's residence as an allowed use from requiring a Special Exception to one allowed as a matter of right if basic standards are met. Alternatively, at least allow a smaller caretaker residence (say up to 750 square feet with no more than one bedroom) as an allowed use as matter-of-right if it is accompanied by a single parking space and have a Special Exception process be available to consider situations where a larger caretaker residence (those over whatever size threshold you deem appropriate) is sought. To me, particularly where there are already existing yacht clubs, marinas, or boathouses, there is no need to require an expensive BZA proceeding (counting not just fees, but legal and other case costs) just to produce a small apartment unit that fits within the overall zoning envelope when reasonable criteria (size, parking) are met. Instead, see this as a small way to facilitate the development of housing for a taxpaying resident.

  In addition, take note of the fact that §801.4 provides that "an apartment for the use of a caretaker, watchman, or janitor employed on the premises" (emphasis added) is permitted as a matter of right in a C-M district. This specifies, in a way that I believe would be useful to apply to the Waterfront case, that the caretaker's residence be for a person employed at the same premises.

  Also, but more subtle, take note that the C-M provision is now set out among the *uses* allowed in that zone and is not described there as an *accessory use* (those being handled generically at §801.8). I think the existing C-M language should be reworked to appear as an *accessory use*, which is inherently what it describes, through a rulemaking process with no formal public hearing – I simply wanted to point out the apparent emerging internal inconsistency and suggest a means by which to address this and simultaneously eliminate its one current gender-specific expression (underscored above). Structuring the C-M language as suggested and as is already proposed in Case 02-28 would be fully consistent with the existing provisions of §2500.5 which allows "sleeping or living quarters for domestic employees of the family occupying the main building" on a second story of an *accessory garage* in R-1 districts. Alternatively, these minor drafting issues could be a sidebar to any process considering other floating/over-water uses discussed above, where a formal Notice and public hearing would most likely be needed in any event.

- Fourth, clarify that the Special Exception noted for *"Floating home"* in the Table at § 3101.4 is for **§ 919.4** rather than the more sweeping requirements of all of **§ 919.**

Thank you for your efforts to develop the new open space zone and consideration of these comments and suggestions.

Sincerely,

Lindsley Williams

cc: Office of Planning