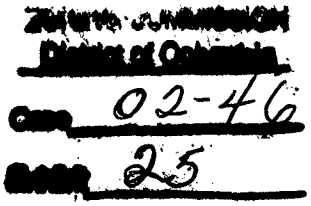
Bastida, Alberto (DCOZ)

From: Miller, Robert (COUNCIL)
Sent: Monday, March 10, 2003 2:15 PM
To: Bastida, Alberto (DCOZ)
Subject: 3200 Benning Road, NE



To: Alberto Bastida
Secretary to the Zoning Commission

From: Robert Miller
Legislative Counsel to DC Council Chairman Linda W. Cropp

Date: March 10, 2003

Re: Request for Council Interpretation Concerning Whether the Zoning of 3200 Benning Road, NE, to the M Zone District
Would be Not Inconsistent with Comprehensive Plan's Designation of the Area as Open Space

I am in receipt of your memorandum to me dated February 28, 2003, requesting on behalf of the Zoning Commission a Council interpretation as to whether a proposed M zoning of a site at 3200 Benning Road, NE, would be not inconsistent with the Comprehensive Plan's land use map designation of the site as parks, recreation and open space.

Let me state at the outset that the Council officially expresses itself only by means of a bill or a resolution adopted by the Council. Occasionally, a majority of the members of the Council will sign a letter. In my view, it is unlikely that the Council would adopt a resolution or sign a letter interpreting whether a proposed zoning in a pending case is or is not inconsistent with the Comprehensive Plan. That type of interpretation is, as you know, the province of the Zoning Commission, which makes its judgment on the advice and comments of others, particularly the Office of Planning comments which are required by statute to be given great weight by the Commission. (The Council does periodically comment on the sufficiency of the progress being made by the District government in implementing the Comprehensive Plan, after the Mayor submits a periodic progress report to the Council; and individual Councilmembers have occasionally offered their own comments on zoning cases). *Therefore, the views expressed herein are my own*, based on my experience as counsel to the Committee of the Whole which has oversight jurisdiction of land use matters before the Council, *and my comments below frankly are not intended to influence any particular outcome of any zoning case.*

Regarding your specific question of whether M zoning at 3200 Benning NE would be not inconsistent with the Comprehensive Plan land use map designation for the area, I would offer only a few general observations. First, the land use map is a generalized map reflecting predominant uses in a general area, not all uses in a specific area. The Council's Committee of the Whole has repeatedly made this type of observation at the time of its adoption of land use map amendments:

"As stated in previous Committee of the Whole reports on the Comprehensive Plan, the required inclusion of a street grid does not affect the required interpretation that the land use policies on the Comprehensive Plan maps are generalized policies that reflect predominant uses that the District expects or encourages in a general area...

"Although the language in Bill 12-99 adopting textual amendments to the May 1995 map includes specific references to streets, blocks, and intersections, the maps are intended to remain generalized. Bill 12-99, like the previous land use enactments, includes these specific descriptions because they are the only way that the legislative body can give sufficient direction to the cartographers who must prepare the revised maps, with which zoning is required under the Home Rule Charter to be not inconsistent." [Excerpt from Committee of the Whole Report on Bill 12-99, "Comprehensive Plan Amendment Act of

ZONING COMMISSION
District of Columbia
CASE NO.02-46
EXHIBIT NO.25

1998" approved December 1, 1998]

My second and related observation is that the particular location that is the subject of the proposed M zoning is situated in an area that appears to be located within the parks, recreation and open space land use category and immediately adjacent to an area that is designated within the production and technical employment ("PTE") land use category. I would assume that the PTE land use designation is often an appropriate category on the existing land use map for industrial-type uses.

Finally, section 112 of the Comprehensive Plan purposely provides some flexibility in interpreting the Comprehensive Plan. The Land Use Element (of which the generalized land use map is a part) is required by the Plan to be given "greater weight" than other elements; in addition, the Land Use Element, like any element, can be "tempered or defined by one or more of the other elements" within the Comprehensive Plan and "District elements of the Plan should be studied and executed in concert with each other and should be interpreted broadly." In this case I understand that policies contained in other Comprehensive Plan elements, including policies pertaining to solid waste management, environmental health and sanitation, and Ward 7 policies in support of environmental protection, also will have relevance in the Commission's determination of zoning consistency.