Government of the District of Columbia
OFFICE OF ZONING

MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Alberto P. Bastida, AICP
Secretary to the Zoning Commission

DATE: June 11, 2003

SUBJECT: Publication for the Office of Zoning

Please publish the following in the D.C. Register on June 20, 2003:

1. Z.C. Order Notice of Final Rulemaking and Order No. 02-46 (Z.C. Case No. 02-46).

Received By _____ Date _____

Attachments

ZONING COMMISSION
District of Columbia
Case 02-46
Exhibit 29

441 4th Street, N.W., Suite 210-S, Washington, D.C. 20001
Tel: (202) 727-6311 • Fax: (202) 727-6072
E-Mail: zoning info@dcoz.dcgov.org • Web Site: http://dcoz.dcgov.org/

ZONING COMMISSION
District of Columbia
CASE NO.02-46
EXHIBIT NO.29

RECEIVED
D.C. OFFICE OF ZONING

2003 JUN 11 PM 12: 12

DATE AND TIME RECEIVED
Office of Documents use only

RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION: [ ] EMERGENCY RULES [X] FINAL RULES [ ] PROPOSED RULES [ ] COMBINED

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: ALBERTO BASTIDA

ADDRESS: 441 4th Street, N.W., Suite 210 South

TELEPHONE: 727-0330

TITLE AND DESCRIPTION OF RULES: Amendment to the Zoning Map of the District of Columbia

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Map Amendment – Parcel 0169/0111-3200 Benning Road, N.E.

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: DATE:

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2001 Ed.)).

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.

DATE: 6-10-03 SIGNED: for PHONE: (202) 442-9777

✓	FINAL		CONDITIONAL	NAME: ARABELLA W. TEAL	TITLE: INTERIM CORPORATION COUNSEL

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)
Zoning Commission For The District Of Columbia Title:

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes the issuance of the substance of these rules: Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2001 Ed.)).

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL OF VOTE: 6/9/03

APPROVAL OF ATTEST: Alberto P. Bastida

TITLE: Secretary to the Zoning Commission PHONE: (202) 727-0330

Office of Documents use only: THIS NOTICE PUBLISHED AT: VOL: DCR: DATE:

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Order No. 02-46
Z.C. CASE NO. 02-46
(Map Amendment – Parcel 0169/0111-3200 Benning Road, N.E.)

The Zoning Commission for the District of Columbia, pursuant to its authority under Section 1 of the Zoning Act of 1938 (52 Stat. 797, as amended; D.C. Official Code 2001 Ed. § 6-641.01), hereby gives notice of the adoption of an amendment to the Zoning Map of the District of Columbia in the manner described below. The purpose of this rezoning was to map the site within the M Zone District. No changes have been made to the text of the proposed rules, as published with the Notice of Proposed Rulemaking in the *D.C. Register* on April 11, 2003, at 50 DCR 2878. These final rules will be effective upon publication of this notice in the *D.C. Register.*

The Commission initiated this rulemaking in response to a petition from the District of Columbia Department of Public Works ("DPW"), submitted November 6, 2002. Prior to filing the petition, DPW filed an application for a special exception to expand and renovate the existing Benning Road Solid Waste Transfer Facility, operated by DPW. However, because there was no zoning designation for the subject property, the application was held in abeyance, as discussed in an October 23, 2002, letter from the Director of the Office of Zoning to DPW Office of the General Counsel.

The map amendment will establish a zoning designation for the subject property, which will allow DPW to apply for building permits for the renovation and expansion of the facility. DPW represents that the renovations will improve environmental conditions at the site.

Existing Zoning

The property, owned by the United States Government, with jurisdiction transferred to the District on October 7, 1969, is currently unzoned. Section 106.5 of the Zoning Regulations (Title 11) provides that, with respect to District government uses not located within the Central Area, "any change or expansion in the use of a building, or any new construction or additions to buildings shall be subject to zoning." Therefore, absent a zoning designation, there can be no significant upgrades to the existing DPW facility.

The property is surrounded on three sides by Anacostia Park. The land to the south, across Anacostia Ave., is located within both the M and C-M-1 (low-bulk commercial light manufacturing) Districts.

Description of Map Amendment

The amendment designates Parcel 0169/0111 of Reservation 343 as M, General Industry. The rulemaking also provides that the designation will expire two years from the effective date of the final order establishing such zoning. After that time, the property will revert to unzoned, unless further action is taken by the Zoning Commission.

Relationship to the Comprehensive Plan

The area in which the subject property is located has been identified on the Generalized Land Use Map of the Comprehensive Plan for parks, recreation, and open space. Whereas the existing use is not a precise fit for this identification, the land use map is generalized, intended to reflect the predominant uses in a general area (See Committee of the Whole Report on Bill 12-99). Thus, the land use map designation is not intended to prescribe the only uses that should be permitted in an area. In keeping with this, Section 112 of the Comprehensive Plan states that the Land Use Element is to be given greater weight than other elements, but should be "tempered or defined by one or more of the other elements" and that "District elements of the Plan should be studied and executed in concert with each other and should be interpreted broadly."

Therefore, the Commission, in reaching its decision in this case, looked beyond the Land Use Element to note that the area adjacent to the subject property is within the technical employment land use category, a category that largely accommodates the type of use contemplated. Further, a number of more specific portions of the Comprehensive Plan support limited upgrading and expansion of the current facility on the property. Section 404, Solid Waste Management, encourages the development of safe and effective methods for reducing collecting, recycling, and disposing of solid waste. Section 406, subsection (c) states an objective to '[d]evelop, implement and maintain programs to manage the use, handling, transportation, storage and disposal of harmful chemical, biological, and radioactive material . . .", while subsection (e) states an objective to "[d]evelop a program to safely collect and dispose of household hazardous wastes, including batteries, paints, household cleaners, and other harmful wastes generated by residential properties." Also, section 1812 recommends that the Benning Road facility operate as efficiently as possible, which will be assisted by the facility's renovation. It is also worth noting that nowhere in the Comprehensive Plan is it recommended that such use be discontinued or scaled back at Benning Road. Finally, the Commission considered the Council action in approving funding for the long-term capital improvements that require the rezoning proposed. The Commission surmises that in doing so, the Council must have viewed the continued long-term use of the site for solid waste transfer as consistent with the Comprehensive Plan.

Nevertheless, in order to ensure that the M designation does not lead to subsequent uses of the property that might be inconsistent with the Comprehensive Plan, the Commission has limited the duration of the designation to two years.

Public Hearing

The Commission held a public hearing on this case on February 27, 2003. A notice of public hearing was published in the *D.C. Register* on January 10, 2003.

Mr. Thomas Henderson, Solid Waste Administrator for DPW, testified as to the importance of the Benning Road facility to the District, and that it will soon be one of only two such facilities operating in the District.

At the hearing, it was discussed whether the proposed map designation should expire when the subject property is no longer used as a municipal waste transfer facility. However, the Commission ultimately rejected this proposal, providing instead for the automatic expiration of the map amendment after two years. The Commission recognized the importance of the facility, but was not convinced that the facility should be accommodated indefinitely, given the circumstances in the surrounding area.

The Office of Planning, in its report dated February 17, 2003, and through testimony at the hearing, stated its support for the zoning designation.

Proposed Rulemaking

The Zoning Commission voted to take proposed action at its regularly scheduled meeting held March 10, 2003. A notice of proposed rulemaking was published in the April 11, 2003, edition of the *D.C. Register.*

The chairman for ANC 7D and single member district commissioner for the subject property submitted a letter stating the ANC's support for the proposed map amendment. Because the letter did not establish that the position of the ANC was the result of a vote taken at a public meeting, with a quorum present, it is not entitled to great weight.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 429 of the District of Columbia Charter. NCPC, by report dated April 10, 2003, found that the proposed map amendment would not adversely affect the identified federal interests and would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

The Office of the Corporation Counsel determined that this rulemaking meets its standards of legal sufficiency.

Final Rulemaking

Based upon the above, the Commission finds that the proposed amendment to the Zoning Map is in the best interest of the District of Columbia, consistent with the purpose of the Zoning

Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the District of Columbia.

In consideration of the reasons set forth herein, the Commission hereby **APPROVES** the following amendment to the Zoning Map.

The amendment to the Zoning Map of the District of Columbia is as follows:

> Parcel 0169/0111 of Reservation 343 – zone as M, provided that this designation shall expire two years after the publication in the *D.C. Register* of this final order establishing such a designation, that is, on _____.

Vote of the Zoning Commission taken at its public meeting on March 10, 2003, to **approve** the proposed rulemaking: 5-0-0 (Anthony J. Hood, Peter G. May, Carol J. Mitten, John G. Parsons, and James H. Hannaham to approve)

This order was adopted by the Zoning Commission at its public meeting on June 9, 2003, by a vote of 5-0-0 (John G. Parsons, Anthony J. Hood, Carol J. Mitten, Peter G. May, and James H. Hannaham to adopt).

In accordance with the provisions of 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register*; that is, on _____.

ZONING COMMISSION FOR THE DISTRICT OF COLU
NOTICE OF FINAL RULEMAKING
and
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(Map Amendment – Parcel 0169/0111-3200 Benning Ro)

The full text of this Zoning Commission order is published in the "Final king" section of this edition of the *D.C. Register*.