Government of the District of Columbia
OFFICE OF ZONING

Z.C. CASE NO.: 03-22

As Secretary to the Commission, I herby certify that on NOV 17 2005 copies of this Z.C. Order No. 03-22 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
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ATTESTED BY: Sharon S Schellin
Sharon S. Schellin
Acting Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia
CASE NO. 03-22
EXHIBIT NO. 14

ZONING COMMISSION
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CASE NO.03-22
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 03-22
Case No. 03-22
(Rezoning of Square 1048S)
ORDER DENYING APPLICATION
April 11, 2005

At a properly noticed public meeting held on October 20, 2003, the Zoning Commission for the District of Columbia ("Commission") considered set-down of this application. The application requested the re-zoning of Square 1048S from an M Zone District (General Industry) to an R-5-B Zone District (Residence). Square 1048S, however, is a small, isolated parcel amidst land zoned M and C-M (Commercial-Light Manufacturing). It is located within the Near Southeast Target Area, as designated in the Near Southeast Area Urban Design Framework Plan, and within the area encompassed by the Anacostia Waterfront Initiative. The entire Southeast waterfront area is currently being re-evaluated by planners and developers alike and is in the process of transition.

Due to all these factors, the Commission decided not to set down the application for a public hearing, but to hold the application in abeyance pending a more comprehensive look at the area surrounding the Square by the Office of Planning ("OP"). The Commission asked OP to make recommendations for an area referred to as the "East M Street Target Area," which included Square 1048S and is bounded roughly by 11th Street, S.E. to the west, Water Street, S.E. to the south, Interstate 395 to the north, and Barney Circle and the Sousa Bridge to the east. OP set forth its recommendations for the East M Street Target Area in Zoning Commission Case No. 04-02.

After several unsuccessful attempts to craft a satisfactory and workable zoning plan for the East M Street Target Area, including the zoning for Square 1048S, the Zoning Commission denied set down of this application at its April 11, 2005 meeting.

FINDINGS OF FACT

The Site and the Surrounding Area

1. On approximately June 16, 2003, ADC Builders and the Cohen Companies ("Applicant") filed this application with the Zoning Commission requesting an amendment to the Zoning Map of the District of Columbia changing the current M zoning of Square 1048S to R-5-B zoning.

2. The property address of Square 1048S, which is comprised of one lot (Lot 1), is 1333 M Street, S.E.

3. An M Zone District is a general industrial zone and is the most permissive zone as far as commercial and manufacturing uses are concerned, but it does not permit new residential development.

4. An R-5-B zone district is a residential zone permitting moderate height and density residential development, including row dwellings and multiple dwellings.

5. Square 1048S is a 40,580-square-foot (.93-acre), triangular parcel situated between M Street, S.E. to the north and the right-of-way for Virginia Avenue, S.E. to the south. The Anacostia River is approximately 200 feet south of Square 1048S, with Water Street between the Square and the River. To the immediate west of Square 1048S is a small Federal property, Reservation 129, and to the immediate east is the right-of-way for 14th Street, S.E. and another small Federal parcel, Reservation 299. Also just to the west of Square 1048S are the elevated entrance/exit ramps to the Southeast Freeway/11th Street Bridge, which continue as elevated roadways and slope down to Interstate 395 to the north.

6. At the present time, those parts of Virginia Avenue, S.E. and 14th Street, S.E. bordering Square 1048S are unimproved.

7. Immediately to the north of M Street, S.E. is a railway line and Interstate 395, which runs roughly parallel to the northern boundary of Square 1048S. Continuing northward is L Street, S.E., which constitutes the southern boundary of the nearest residential area, zoned R-5-B and part of the Capitol Hill Neighborhood.

8. Square 1048S is in the center of an M Zone District. Surrounding this M zone on the north, east, and south is land zoned C-M-1. To its west is land zoned C-M-2.

9. The nearest Metro station to Square 1048S is separated from it by the railway line and Interstate 395 to the north.

10. Square 1048S is a former Stewart Petroleum site; it is currently developed with two large oil storage tanks and distribution facilities. The site will require remediation before construction can occur.

11. The Southeast waterfront area planning initiative, entitled the Near Southeast Area Urban Design Framework Plan, places Square 1048S within the Near Southeast Target Area. The Near Southeast Target Area is undergoing transition, with several projects planned or currently being constructed, including the Washington Gas/Maritime Plaza site being developed with office and hotel space, the Southeast Federal Center site, and the new headquarters of the U.S. Department of Transportation.

12. The Square is also within the area of the Anacostia Waterfront Initiative, for which a Memorandum of Understanding was signed by 20 Federal and District agencies. The

agencies have committed themselves to create an active, cohesive, and well-planned Anacostia River waterfront.

13. At some point during the pendency of Case No. 03-22, OP engaged a consultant to study the limited remaining industrially-zoned areas in the District to determine the demand for industrial zones, and potentially, how much land area should be retained in such zones.

The Procedural History

14. The Zoning Commission first considered this application at its meeting held on October 20, 2003. At that meeting, OP recommended changing the zoning of Square 1048S to a CR (commercial/residential) Zone District, instead of the requested R-5-B District. The CR District permits a higher density of development and both residential and commercial uses. The Applicant agreed with OP's recommendation to change the zoning for Square 1048S to CR.

15. At its October 20, 2003 meeting, the Commission held in abeyance the set-down of Case No. 03-22 and requested that OP take a more comprehensive look at the larger area surrounding Square 1048S. OP concentrated on an area surrounding the Square, all of which is within the Near Southeast Target Area, and is roughly bounded by 11th Street, S.E. to the west, Water Street, S.E. to the south, Interstate 395 to the north and Barney Circle and the Sousa Bridge to the east.

16. OP's "more comprehensive look" at the surrounding area became Zoning Commission Case No. 04-02, and the area under study became known as the "East M Street Target Area."

17. OP presented its conclusions at the Zoning Commission meeting held on February 6, 2004. OP no longer recommended CR zoning for Square 1048S, but now recommended W-3 zoning. W-3 is the highest-density waterfront zone, allowing both residential and commercial uses.

18. After some discussion, the Commission, on February 6, 2004, set down for a hearing Case No. 04-02, which included within it Square 1048S. The public notice was to advertise the new zoning for the Square in the alternative, as either W-3 or W-2, a less-dense waterfront district. At the same time, however, the Commission was not satisfied with OP's overall recommendations, and it asked OP to take another look at the East M Street Target Area and present the Commission with more options.

19. The public hearing in Case No. 04-02 was held on June 17, 2004. At the hearing, OP set forth three (3) different scenarios for re-zoning the East M Street Target Area. Also at the hearing, the representative of the Applicant in the instant case, No. 03-22, testified in favor of OP's then-recommendation of re-zoning Square 1048S to W-3, with the Capitol Gateway Overlay (with some minor changes) established over it. During his testimony, the Applicant's representative had the opportunity to address issues relevant to the zoning of the East M Street Target Area, and particularly, those issues relevant to the re-zoning and development of Square 1048S.

20. At the June 17, 2004 hearing, the Commission requested that OP look at this again and provide further information concerning the three (3) scenarios presented at the hearing. This information was submitted prior to the September 13, 2004 Zoning Commission meeting.

21. At its September 13, 2004 meeting, the Commission discussed options for re-zoning the East M Street Target Area, including Square 1048S. The Commission was still not completely satisfied and requested that OP look at this again.

22. At the Zoning Commission meeting in October 25, 2004, OP presented several further ideas for re-zoning to the Commission. The Commission, however, was again not completely satisfied, and after providing OP with more specific guidance, asked that OP develop new scenarios for the Commission to consider.

23. At the Zoning Commission meeting in November 8, 2004, the Commission rejected all of OP's suggested scenarios and attempted to craft its own Square-by-Square zoning proposal for the East M Street Target Area. The Commissioners, however, were not in complete agreement among themselves as to what Squares should be in what zone districts or whether an Overlay should be placed over the area. Also at this meeting, the Chairman recommended, for the first time, amending Chapter 24 of the Zoning Regulations, to add an incentive to develop planned unit developments within areas zoned W-2.

24. On March 17, 2005, the Applicant filed with the Commission a letter requesting expedited action on this application, Case No. 03-22, which, had, at that point, not yet been set down, but had been subsumed within the discussions of Case No. 04-02.

25. On April 1, 2005, OP recommended that Case No. 03-22 be set down for a map amendment for Square 1048S to change the zoning from M to W-2, with R-5-B as an alternative.

26. At its April 11, 2005 meeting, the Commission voted to dismiss case 04-02 and deny the instant application. An Order dismissing the former case has been issued concurrently with this Order.

CONCLUSIONS OF LAW

1. Section 1 of the Zoning Act of 1938 (52 Stat. 797, as amended, D.C. Official Code § 6-641.01 (2001)) establishes the authority of the Zoning Commission to "promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia" through regulation of the structures and uses on its land.

2. Section 3 of the Zoning Act of 1938 (52 Stat. 798, as amended, D.C. Official Code § 6-641.03 (2001)) establishes the authority of the Zoning Commission to amend the zoning maps of the District of Columbia.

3. Square 1048S is an isolated, hard-to-access parcel, generally surrounded on two of three sides by highways and railroad track, and on the third side by the Virginia Avenue right-of-way and the Anacostia River.

4. Square 1048S is set in the midst of land zoned M and C-M, currently suitable for, and used for, commercial and industrial uses. It is not particularly close to any residentially-zoned areas, nor is there any reliable way to predict whether any nearby land will be residentially-zoned in the future.

5. Two of the streets bordering the Square exist only on paper and the nearest Metro station is separated from the Square by the railroad track and Interstate 395, therefore, access to the Square would be difficult.

6. The District of Columbia has, over time, lost much of its industrially-zoned land and the Commission concludes that it would be in the best interests of the District to retain the industrially-zoned land it currently has, at least until a more complete analysis of such land and the demand, or potential demand, for it have been completed.

7. The Commission concludes that, at the present time, it is in the best interests of the District of Columbia to retain Square 1048S as land within the District that is zoned for, and suitable for, manufacturing and industrial uses.

8. The Commission therefore concludes that granting this application, thereby changing the zoning of Square 1048S from M to a lesser-restrictive zone, whether R-5-B, CR, or a W Zone District, is not in the best interests of the District of Columbia.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS DENIAL** of set-down of Case No. 03-22, the application for a map amendment to change the zoning of Square 1048S from M to a lesser-restrictive zone, either R-5-B or W-2.

At the public meeting held on April 11, 2005, the Zoning Commission voted to **DENY** set down by a vote of 3-1-1. (Commissioners Carol J. Mitten, John G. Parsons, and Kevin Hildebrand to deny; Commissioner Gregory Jeffries opposed; and Commissioner Anthony J. Hood abstaining.)

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the D.C. Register, that is, on NOV 18 2005.

CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION

JERRILY R. KRESS
DIRECTOR
OFFICE OF ZONING