

MOUNT VERNON TRIANGLE OVERLAY
TESTIMONY FOR JOHN EPTING BEFORE THE ZONING COMMISSION
6/30/05 – 6.30pm

Good evening. My name is John Epting of Pillsbury Winthrop Shaw Pittman LLP. With me is Jeff Utz from Pillsbury Winthrop, Lisa Wiersma of Lowe Enterprises, and Maurice Walters of Torti Gallas. [NCRC is also here]

At this time we would like to submit our written statement to supplement the 2 other statements we have submitted. This statement is based upon the hearing notice and the revised June 2005 Office of Planning Report.

I. General Concerns –

- A. Section 1721 governs Office of Planning review and creates a new level of review and delay.**
- 1. Section 1721.1 would apply to any application for a building permit or certificate of occupancy within the Mount Vernon Triangle District.**
 - 2. There are no specified thresholds or minimum requirements for review.**
 - 3. Under this section, OP has 60 days after receipt of the application to provide the Zoning Administrator with an evaluation of compliance with the MVT.**
 - 4. Then, the Zoning Administrator cannot act for another 15 days. There appears to be no rationale for holding up an approval for 15 *additional* days after OP has determined compliance.**
 - 5. The building permit or certificate of occupancy should be issued when ready.**

II. Preferred Uses and Effective Date of the Regulations

- A. MVT use restrictions apply from the effective date of the proposed regulations.**
- B. Effective Date of the MVT overlay - when the Zoning Administrator publishes a notice in the *D.C. Register* that certificates of occupancy for 3.5 million square feet of new space have been issued within the defined MVT area.**

We note in our statement difficulty in Cleveland Park and elsewhere in keeping up with restaurant linear square footage; what capacity does Zoning Administrator have to do this? What if a large users drops out, are we relieved from the trigger point?

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C. Under Section 1733.2, no less than 50% of the gross floor area of the ground floor must be devoted to the “preferred uses ”

1. As noted in our statement, some of these uses are typical retail and services uses and are not problematic, however, those listed in Sections 1732.2 and 1732.3 are *interim uses* only.
2. No interim uses may be established *or continued* for more than five years after the effective date of the MVT.
 - a. After the trigger, within the Special Entertainment Use Area *only* Section 1732.4 uses are permitted. Our statement (Exhibit D) has a color map indicated where the three areas are located on the Wax Museum site. **The Section 1732.4 use include: restaurants, bookstores, cabarets, and drinking places. All Section 1732.2 and 1732.3 uses must somehow be discontinued *if* they were established.**
 - b. After the trigger, within the Primary Use Subarea any Section 1732.3 uses must be terminated *if* they were established.
 - c. **The Wax site is comprised of both Primary Use and Special Entertainment Use Areas. Therefore, the Wax site is burdened with all of the use restrictions under the overlay.**
 - d. **Section 1732.3 uses, although normally associated with vibrant retail areas, would not be permitted in either area after the trigger date. These include uses such as apartments entered directly from street, banks, and dentists.**
 - e. Special exception relief for one five-year extension period is the only relief allowed.

III. Practical impacts

- A. **Undermining the Overlay’s foundation - the impacts on leasing the Wax Project and other building’s ground floors created by the MVT overlay are significant.**
 1. In an undeveloped market, any restrictions on the type of use for the ground floor are problematic.
 2. **The Wax project is intended to be a catalyst for future development in the area, and it is already subject to numerous use and development restrictions imposed as part of NCRC’s involvement, as noted by the Mount Vernon Triangle Action Agenda (October 2003).**
 3. **Given this reality, why are additional restrictions, particularly on design and use, being proposed?**
- B. **Lease Implications - the trigger provisions are not practicable in the real world given the leasing implications.**

1. **Term of lease - The end trigger date is not ascertainable in advance and therefore the lease term cannot be predicted at the time of entering a lease. The lease term is the most basic aspect of a lease. Tenants, owners and lenders require certainty in leases and in the financing such leases typically secure.**
 2. **Notice - There are issues with providing effective notice to all owners and tenants after meeting this trigger**
- C. **Example – Law Firm - Under the proposed regulations, an owner could lease an entire building, including the ground floor, to a law firm, a permitted use under Section 1732.3. However, the lease for that ground floor would have to be indeterminate in term because of the unknown trigger date.**
1. **No law firm would be willing to lease the space under such conditions.**
 2. **After the trigger date, no Section 1732.2 and 1732.3 uses would be allowed in the Special Entertainment Use Area. In the Priority Use Area, no Section 1732.3 uses are allowed.**
 3. **The impact is that many potential tenants are effectively eliminated in an area of the District with no proven track record.**
 4. **It makes little sense to introduce a potentially far-reaching and disruptive obstacle to an area that will be difficult to lease.**
- D. **Conclusion**
1. **Impact - The likely impact of the trigger provisions will be that no non-preferred user will sign a lease because of the indeterminate lease term. The ground floor is most likely to remain vacant. Therefore, the proposed legislation could well disallow and change to the character of the area and stifle development before it begins.**
 2. **Exempting the Wax site - because of the unique nature of the Wax project, its history and importance to the City, and the complexity of the deal with RLARC, the Wax site should be completely exempt from the MVT overlay.**
 - a. **The entirety of the site is comprised of the “Special Entertainment Use Area” and the “Primary Use Areas” and the project would be jeopardized.**