

TESTIMONY OF JACQUES B. DEPUY, ESQUIRE,
GREENSTEIN DELORME & LUCHS, WITH RESPECT TO
RESIDENTIAL RECREATION SPACE REQUIREMENTS; ZONING
COMMISSION CASE NO. 05-02

In conjunction with our review, on behalf of our clients, of the proposed text amendment and the Office of Planning report in Z C. Case No 05-02, we were asked by several clients to explain the rationale for the residential recreation space requirements. In addition, we were asked whether they were based on any detailed analysis and study. Neither OP's "set-down" or final reports provided any answers to these questions. In fact, the OP "set-down" report indicated only that the RRS provisions were added to the Zoning Regulations in the 1970s, that "the issue did not receive much discussion at the time" and "[f]or many years following their adoption, these regulations rarely applied "

Because we thought these were important questions, I asked an associate attorney and a legal assistant in my firm to research the Zoning Commission files from the 1970s. Because the RRS requirements were adopted in conjunction with the CR map and text case in 1974 (Z C Case No 74-8) and the Commercial and Special Purpose zones text and map cases in 1978 (Z.C. Case Nos. 78-1 and 78-2) and because the files in these cases included approximately 1600 pages of testimony, hundreds of documents and twelve (12) thick jackets of file materials, this effort took two people approximately twelve (12) hours. A summary of their findings is set forth below

ZONING COMMISSION
District of Columbia
ZONING COMMISSION
CASE NO. 05-02
District of Columbia
CASE NO. 05-02
EXHIBIT NO. 16
EXHIBIT NO. 16

1 Most significantly, the residential recreation space proposals generated (a) very little interest by witnesses and, relative to the amount of discussion of other topics, (b) an exceedingly small amount of discussion among Zoning Commission members.

2. Notwithstanding the meager amount of interest by witnesses, the 1978 case transcript revealed, surprisingly, that most of the testimony that specifically pertained to RRS requirements from public witnesses, including from community organizations, expressed opposition to or concerns with these proposed requirements

3 There were no written studies or reports by any consultants, by the Office of Planning and Management or by any public witnesses that were prepared and submitted for the record that pertained to residential recreation space requirements

4 The Office of Planning and Management conceded in the 1978 Commercial zones map and text case that the only actual experience with residential recreation space in the CR zone pertained to one building - - at the Westbridge at 26th and Pennsylvania Avenues - - and such experience had led the architect of that completed project "to recommend some change in (the RRS provisions)." See testimony of J. Kirkwood White, Zoning Commission Case No. 78-1, p. 2-52, attached as Exhibit "A"

5 The Office of Planning and Management, in response to a question from Zoning Commission member Parsons asking "[w]hat is the benefit to the city?" of the residential recreation space, responded that "the purpose of it is for the tenant of the building " (See Exhibit

"A", p. 2-53).¹ In further colloquy between OPM representatives and Zoning Commission members, the Office of Planning and Management stated that the residential recreation space was all to be provided outdoors and perhaps entirely at the roof level OPM's examples of residential recreation space facilities were a rooftop tennis court, rooftop swimming pool or rooftop "lounge " (See Exhibit "A", p 2-52.)

6 Of those community groups which commented on the residential recreation space in the 1978 zoning case, a majority opposed the requirements. Concerns included noise and lights caused by roof-top use and that the requirements were "too burdensome" and would result in only upper-income development. The Dupont Circle ANC, which testified that it thought the "general thrust" of the RRS requirements was "good", nevertheless questioned the possible impact the requirements might have on lot occupancy requirements and suggested that further studies should be made prior to implementation Likewise, the Committee of 100 and ANC 3C both testified that residential recreation space should not replace lot occupancy requirements, which the proposed text amendment apparently contemplated.

The 1974 text and map case pertaining to the CR zone included two testimony jackets with over six hundred (600) pages² of testimony Residential recreation space was mentioned only twice – and only in the testimony of a representative of the Office of Planning and Management which recommended the RRS provisions. There were also four (4) case files of

¹ Also see "Commentary" from Office of Planning and Management Report dated June 2, 1978 in regard to the Lot Occupancy and residential recreation space requirements which explains in part that the "replacement of lot occupancy with usable recreation space" is to insure that usable recreation is provided in areas where the "built-up" nature of the environment "limits the amount of space that is available".

² 603 pages total

correspondence, reports and other documents in the 1974 case³ Again, the only mention of recreation space was located within the reports of the Office of Planning and Management

The 1978 Commercial zones text and map case record was larger than the 1974 case file Specifically, in the 1978 proceeding there were five (5) testimony jackets including almost one thousand (1,000) pages⁴ of testimony and eight case files consisting of reports⁵ and other documents The 1978 testimony did include more references to the recreation space than did the 1974 testimony. However, the references to residential recreation space issues were made either by the Office of Planning and Management (through its reading of its own reports) or consisted of opposition or reservations by community groups [Because the subject of residential recreation space did not generate much interest, the majority of comments from the community groups and individuals who testified at the 1978 hearings centered around concerns regarding density (height, FAR, lot occupancy) and the "bonus" program that was originally included in the text amendments (but not adopted)]

I hope this summary is of use and benefit to the Commission in its consideration of this proposed text amendment Thank you for the opportunity to testify.

264582v1

³ approx 3.5 inches of documents

⁴ 982 pages total

⁵ approx. 11 inches of documents

Exhibit "A"

78

was referring to a need for is contained in the report at this point.

I think we have probably used more than our allotted period of time.

DR. LEWIS: You have. You exceeded it. A lot of that was devoted to answering questions. I am mindful that we are behind schedule. If you are ready to wrap-up now -- unless there are other questions from the Commission.

MR. K. WHITE: All right. I commend the rest of this to you to read if you wish. The attached C-3-B economic report as prepared by Mr. John Pershing -- who is here -- and can summarize that report if you wish or leave it here for the record.

I think -- unless any of colleagues have a point or two to add that I forgot -- we will cease on the C-3-B.

DR. LEWIS: All right. Are there any further questions?

•(NO RESPONSE)

MR. PARSONS: I just have one very nit-picking question. Why do you feel that no less than 70 per cent of the total residential open-space shall be outdoors? Why not 100 per cent or 50 per cent? What is the rationale behind that

70 per cent figure?

MR. K. WHITE: The 70 per cent figure was developed in the course of the CR zone. I think if Byron Black were here he might want to recommend some change in that. He has designed the only building that has used it. It the West-bridge over there at 26th and Penn.

The rationale behind it was that you wanted to have a majority -- the ideal is having it all outdoors and useable. It is very difficult because of the roof structure on a roof to cover the entire roof with tennis or a swimming pool and lounge area and so forth. The typical roof structure covers anywhere from 30 per cent or more of the rooftop.

So, in that case the balance -- if you took the very minimum roof structure of about 30 per cent, the balance would be 70 per cent. Now, there are other roofs that can be used in a CR district. You have enough height to -- FAR ratio to use a set-back, for instance, below the top roof as an area for recreation.

Basically it had to do with the amount of top building space you had left after your roof structure.

MR. PARSONS: I guess I misunderstood then. I thought some of this was suppose to be at ground level.

MR. K. WHITE: There is a percentage that is required at the ground level. Does anybody have that at their fingertip? We are talking about the CR.

MR. PARSONS: As the buildings are getting bigger and the roofs are getting bigger, then you are thinking about recreation on the roof and when you are thinking about -- are you thinking about reducing the side yards and having amenities on the roof?

MR. K. WHITE: Yes, that is basically correct. You could put them on the ground or you could put them on the roof or you could put them in a lower level roof in the form of a set-back, or even in a court.

MR. PARSONS: What is the benefit to the City?

MR. K. WHITE: It is landscaped recreation space.

MR. PARSONS: The building gets bigger and nobody sees what is on the roof.

MR. K. WHITE: Well, the purpose of it is for the tenant of the building. Right now there is a lot occupancy requirement. You are not -- all you are required to do is not build on it. You are not required to landscape it, you are not required to put any equipment on it, you are not required to let anybody on it -- you could fence it off or put

trash compactors on it or whathave you.

Whereas, if you follow this requirement, you are actually required to do something. You are required to landscape, to equip, to set up a recreation space.

MR. PARSONS: But only on the roof?

MR. K. WHITE: You can put it on the roof, on the ground, put it partially inside the building but it must be there and must be useable by the tenant. Right now there is no requirement that you provide any recreation space as such. It is simply that you leave a portion of your lot unbuilt on.

MR. PARSONS: Okay. I guess the problem I have -- maybe we should be calling it residential recreation space rather than open-space. Open-space to me is something that is an amenity to the City. It is a garden in the park.

MR. K. WHITE: I see your point. That is a separate thing.

MR. PARSONS: It is clear, open space.

MR. K. WHITE: Right. That is a good point. It should be recreation space because one of the criteria for a bonus would be yards, courts, or areas which are, in fact, open-spaces and which are designed for public use and amenity. I am referring here to -- let us go over to page thirty-one.

It is on page thirty. 'Look down there at the little "i" -- the letter "i" -- paragraph "1". One of the things you can offer to get increased height or bulk is a plaza landscaped and improved open-space which is -- I think -- what you are referring to, Mr. Parsons.

That is an area typically on the ground in front of the building or along side the building where you -- if you are crossing the street, walking down the street you can go in and use it and enjoy it. That is -- where the public uses it and enjoys it. That is a separate concept than the one we are advancing than the other thing which is really for the benefit of the tenant or the owner of the building.

MR. PARSONS: Now I have it. Thank you.

DR. LEWIS: Well, there can be some delightful variations on this. For example, the building I always think about is -- have you ever been to the Ford Foundation Building in New York? It has a center area that runs all the way up. It is very open and a very spacious and enjoyable building. I think -- while it is not generally open to the public, the occupants in that building have a contact with nature, shall we say.

MR. K. WHITE: That is the idea that we are trying

to encourage. One of the concepts -- the enclosed pedestrian space which I do not think is uniformly popular but the idea is -- I guess the examples here in this City are the IMF Building. Now, unfortunately, because of the way the building is managed that is not open to the public.

It does make a very attractive amenity for the users of the building. Take the International Square development which eventually will include a central court, landscaped and open to the public. If, some day in the future, it is covered by an atrium -- in fact, covered in terms of the rain -- but that is the kind of amenity that this bonus system is intended to arrive at.

It will use a single hearing kind of hearing procedure for that.

DR. LEWIS: Right.

MR. GILBERT: Mr. Chairman, I would like to make a further point relating to Mr. Parsons question. I have been interested in some of the public comment we have received about amenities that are not freely and completely available to the public. I think that I must concede and I agree completely and support the idea that an amenity that is available on a restricted basis is different from an amenity that is

available on an open and general basis.

Nevertheless, there are circumstances and residential open-space I think would be one of those where an amenity that might be available on a restricted basis would still be an amenity that would be for the interests of the City. In other words, if we were to succeed and we were to have mixed use buildings in a great many of the areas that do close down at 5:00 in the evening -- those buildings did as a group have a fair quotion of residential open-space, recreation space devoted to the uses of the occupants of the buildings and their guests, we would have a better City as a result because we would have had a more generous distribution of some of the scarce recreation facilities even though some of those would be restricted on a fee or an occupancy basis.

It would seem to me that in evaluating what amenities are given for what -- that would be one of the factors that would be considered -- whether it is open to the general public and, therefore, is an amenity of great and City-wide value or whether it is more restricted and, therefore, maybe of value to the City but perhaps of a lesser value. That is the concept that we have got.

DR. LEWIS: Okay.

MR. PARSONS: I am still confused I guess. It would seem to me -- in the normal competitive market for developing apartments that these types of amenities would be build. Why do we have to give some kind of 5 per cent or 10 per cent bonus -- if you will -- to allow that to happen.

MR. GILBERT: Because they have not been happening, sir.

MR. PARSONS: Well, we have not had any apartment buildings built in the City. They have all been subsidized.

MR. GILBERT: Well, we have had a great many apartment buildings that have been built historically in this City and in other cities. What we are really trying to do is to impose or start to impose some performance standards on those who would propose to use our scarce land.

In other words, if we do not -- if we say -- let us leave it to the market, we are leaving it to the market. If having recreation space is one of the things that an entrepreneur feels will make his property attractive, that will happen. If he feels for one reason or another -- including the fact that in his last project he had a bad experience managing his swimming pool or his tennis court or whatever -- it will not happen. We think these are good things that should happen.

requirement is too onerous and should not be mandatory but should be optional.

DR. LEWIS: Okay. Thank you very much. I would just like to remind the citizens of the announcement made earlier. The Commission will be limiting today's hearing to the C-3 districts. We will be considering C-2 districts on April 10th, C-1 districts on April 17th, the bonus system and commercial district on April 24th. If some of you are listed to testify only on the C-2 districts --

MS. WOOD: I have one question about that. When do you expect to get at the PUD process which is separate? Is that on the same day as C-1?

DR. LEWIS: How do we propose to handle the PUD process? What day? Which one of these?

MR. GILBERT: I think that was to be at the end of the hearing. As you remember, Dr. Lewis, in our discussion of that matter -- to the extent that you could not escape the handling -- handling of the bonus aspects -- you would be handling them along with the other zones but as far as the process itself, I think it was our intention to have it on a scheduled day. I believe we have now slipped a day and there was a day that we had reserved as an additional day. I