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Mr. John V Cogbill, III
Chairman
National Capital Planning Commission
401 9th Street, NW – North Lobby, Suite 500
Washington, D C. 20004

ZONING COMMISSION
District of Columbia

CASE NO. 05-02 D.C. OFFICE OF ZONING
EXHIBIT NO. 48 RECEIVED
DEC 11 PM 12:11

Re: NCPC Consideration of Zoning Commission Case 05-02 (Residential Recreation Space)

Dear Mr. Chairman and Members of the Commission:

The law firm of Holland & Knight LLP appears regularly before the Board of Zoning Adjustment of the District of Columbia and, in some instances, the Zoning Commission, when owners of land find that they are unable to fulfill the requirements of the zoning regulations and need either a variance from one or more of its provisions or one or more special exceptions

The now required residential recreation space ("RRS") provisions, those now proposed for repeal, date from the 1970s and require, but just for Commercial ("C"), Special Purpose ("SP"), and Commercial-Residential ("CR") zone districts, that when residential uses are established the site must also include some amount of "residential recreation space" and, of that required, at least half must be "outdoors." **The resulting space, of course, is private and is open only to the residential owners and tenants of the property in questions.** As part of our efforts to assist developers, we have had reason to help them seek and earn well-deserved relief from RRS requirements in many, many instances

The provisions were given scant attention when adopted and did not emerge as a problem until the late 1990's when residential investment resumed in a significant way in the District of Columbia, not just in its established residential ("R") zone districts, but citywide, particularly in and around "downtown"

The requirement can be quite significant, with total area requirements ranging as high as twenty percent of the area developed with residential uses, at least half of which had to be outdoors. When and to the extent such private space is provided, it tends to keep residents within the building or property.

The only regulatory relief to the requirements that has been approved since adoption was an amendment to the Downtown Development ("DD") overlay that reduced the requirement to a flat five percent

It is equally important to be aware of the actions of the Board of Zoning Adjustment, a body on which the National Capital Planning Commission has a representative: The Board has approved virtually all requests for relief sought, sometimes eliminating the requirement altogether and sometimes reducing it significantly given the constraints ("practical difficulties") that emerge for the particular situation

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- Loading Zone Access.
 - Report underground loading zone use by hour for four random work days per month. Indicate number of trucks using the loading bays during one hour increments for four random 24 hour periods.
 - Indicate the number of days per month when trucks were double parked on adjacent streets to make deliveries.
- Garage Access
 - Report parking garage access queuing of public streets on four random week days per month, indicating highest number of vehicles queued to enter the parking garage those for four random 24 hour periods.
- Provide a general description of major accomplishments and problems related to TMP implementation and management during the reporting year, and steps taken to address problems.

Signal Optimization

The applicant shall obtain written concurrence from the DDOT Traffic Services Administration for any proposed traffic signal timing optimization prior to obtaining any public space or building permit.

Given this, the Board of Zoning Adjustment suggested and the Zoning Commission agreed to review the provisions and, after a series of hearings and decisions summarized in your Executive Director's Recommendation ("EDR"), concluded that the provisions should be entirely repealed

The Zoning Commission did not take this step casually. It sought input from the all quarters, including the Department of Parks and Recreation, which sought for more public park land and facilities but did not tie it to the zones where the RRS requirement now exists

The Zoning Commission appears to understand that private residential recreation space is not a substitute for public park and recreation facilities, be they federal or local in ownership and operation. Moreover, the Zoning Commission seems to understand that RRS space is somewhat akin to a "gated community" an insular asset at best. By contrast, we feel a thriving community is one where residents mix with others and enjoy not just public parks but a range of other recreational activities such as theatre and other entertainment venues, and dining

The "EDR" presented to the Commission should not be adopted. Instead, we believe that the National Capital Planning Commission should advise the Zoning Commission that if finds no adverse impact on "federal interests." At a minimum, what NCPC "Finds" and "Requests" should be modified prior to being communicated to the Zoning Commission

We do not conclude, as the EDR does, that repeal would be inconsistent with either the present District or Federal elements of the Comprehensive Plan, or the update of District elements that was approved by the Council on the first of two required "readings" December 5, 2006. The portion of that quoted in the EDR is only a small part of the overall document, all of which forms the corpus with which final regulations must be "not inconsistent." in the final analysis; It is premature to judge how this new provision would operate. It is also inappropriate to restrain repeal of provisions that generate only private areas in a small portion of all residential development from being adopted, as proposed by the Zoning Commission

Attached, for your further review, is a transcript of the Zoning Commission's last hearing on the case, at the end of which it proposed the action now before you. Significantly, note Ms. Mitten's observation at page 63 that the Office of Planning had indicated its willingness to support full repeal

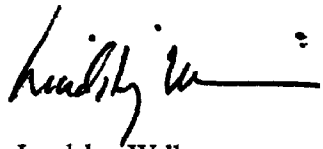
In making this recommendation, we note that this case has been under consideration for some time and that the direction now under consideration was first declared by the Zoning Commission in November 2005. To avoid such situations prospectively, we urge the National Capital Planning Commission to monitor cases that the Zoning Commission is considering, as it has in some recent instances (the "Dorchester" PUD case comes to mind when the NCPC staff alerted the Zoning Commission to a concern they held). This would serve to reduce awkward surprises such as is the case here.

This firm has asked Lindsley Williams, a professional land use planner well known to you, to appear at your meeting, deliver this message, and answer questions you may have. Thank you.

Holland & Knight LLP


Norman M. Glasgow, Jr.


David W. Briggs


Lindsley Williams

Attachment

cc Zoning Commission of the District of Columbia