Government of the District of Columbia
OFFICE OF ZONING

MEMORANDUM

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

FROM: Sharon S Schellin
Acting Secretary to the Zoning Commission

DATE: October 19, 2005

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D C Register* on October 28, 2005·

1. Z.C Notice of Public Hearing (Case No 03-12A/03-13A),
2 Z C Order No 02-32A (Case No 02-32);
3. Z.C. Order No. 03-03A (Case No 03-03A),
4 Z C Order No 03-29A (Case No 03-29A),
5 Z.C. Order No 04-23 (Case No. 04-23),
6 Z C Order No 05-13 (Case No. 05-13), and
7 Z C Notice of Final Rulemaking & Z C. Order No. 04-31 (Case No. 04-31)

The Final Rulemaking is also included on the enclosed diskette.

Attachments

[redacted]
CASE NO. 05-13
EXHIBIT NO. 7

ZONING COMMISSION
District of Columbia
CASE NO.05-13
EXHIBIT NO.7

ZONING COMMISSION ORDER No. 05-13
Z.C. Case No. 05-13
(*Sua Sponte* Review of the Board of Zoning Adjustment Order Application No. 17271)
June 20, 2005

This Order arises from the *sua sponte* review by the Zoning Commission of the District of Columbia of the Board of Zoning Adjustment's ("BZA") Order dated April 6, 2005 ("Order"), granting Application No 17271 of JBG/Louisiana Avenue, L.L C ("Applicant") for a height variance For the reasons stated below, the Commission terminates its review of that decision

STATEMENT OF FACTS

1 On April 6, 2005, the BZA issued a written decision and order granting Application No 17271 of JBG/Louisiana Avenue, L L C for a variance from the height limitation in the C-3 District to allow an addition to an existing office building at premises 51 Louisiana Avenue, N.W (Square 631, Lot 17).

2. At a special public meeting held on April 11, 2005, the Zoning Commission timely decided to invoke the authority set forth in 11 DCMR § 3128 1 to "determine to review any final decision or order of the Board." In doing so, the Commission identified two grounds for undertaking the review (1) the record underlying the BZA's decision did not include testimony regarding the security concerns raised by the Capitol Police Board and (2) the Board's conclusion that strict compliance with the Zoning Regulations would result in practical difficulties was not supported in the decision

3 After receipt and review of the record, the Commission, at a special public meeting held on May 16, 2005, authorized the Applicant to submit a memorandum addressing the issues identified by the Commission

4 On June 7, 2005, the Applicant filed its Opposition to *Sua Sponte* Review and Motion to Disqualify Commissioner Kevin Hildebrand

5. At a special public meeting held on June 20, 2005, the Commission considered final action on its *sua sponte* review. Prior to the Commission beginning its deliberation, Commissioner Hildebrand recused himself from further participation in the proceeding[1] This left four Commissioners able to participate

[1] Commission Hildebrand's decision made the Applicant's motion for disqualification moot.

6 Following discussion by the Commission, Chairman Carol J Mitten made a motion to remand the BZA's decision The basis for her motion was that the BZA's conclusion that strict compliance with the Zoning Regulations would result in practical difficulties was not justified in the Order or by the evidence in the record. This motion did not receive a second by another Commissioner

7 Commissioner John G Parsons then made a motion to remand the case to the BZA with instructions to add conditions to its Order requiring certain security measures to the building needed as a result of the additional height granted and the building's proximity to the Capitol grounds Although the motion was seconded, it received only two affirmative votes, which is less than a majority of the full membership of the Commission [2]

8. The Commission then ended its deliberations on the case

CONCLUSIONS OF LAW

Section 4 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat 799, D C Official Code, § 6-641 04), provides that ("[a]ny amendment of the regulations or any of them or of maps or any of them shall require the favorable vote of not less than a majority of the full membership of the Zoning Commission" (restated in the Zoning Regulations at 11 DCMR § 102 12). Similarly, a majority of the full Commission is required to deny or dismiss an application or petition without a hearing. 11 DCMR § 3011 4 Although the Commission's rules are silent as to the number of votes necessary to take final action in other proceedings that do not involve text or map amendments, such as this *sua sponte* review[3], the Commission concludes that the "majority voting of the full Commission" rule of § 4 of the Zoning Act of 1938, 11 DCMR §§ 102 12 and 3011.4, also applies to its *sua sponte* review actions

Having had one motion to remand fail for want of a second[4] and a subsequent motion to remand fail for want of the minimum number of affirmative votes, the Commission concluded that this proceeding had ended *See* e g *Hubbard v District of Columbia Bd of Zoning Adjustment,* 366 A.2d 427, 428 (D C 1976) (failure to achieve number of votes required by BZA rule operated as denial of motion for rehearing) 2 *Rathkopf's The Law of Zoning and Planning* § 32 3 (4th ed. 2004) ("Failure of a zoning measure to pass, due to lack of the required number of affirmative

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[2] The vote as recorded was **2-1-2** (John G Parsons, Gregg Jefferies to grant, Carol J Mitten opposed, Kevin Hildebrand, not voting, and Anthony J Hood, abstained)

[3] Other such proceedings include a PUD without a related map amendment, an air rights development, and a request to extend the time for construction of a PUD

[4] Although the Zoning Commission's procedural rules are silent on the procedures for motion making, the Commission may rely upon *Robert's Rules of Order* for guidance *See* 59 Am Jur 2d, *Parliamentary Law* § 4 (2002) According to that source, all motions require a second. *Robert's Rules of Order Newly Revised (4th ed),* § 4 Handling Motions, p 29 (1970)

votes, even if due to abstentions or tie vote, has been considered a final denial of relief requested by courts for purposes of judicial review ").

Accordingly, it is **ORDERED** that review of the BZA's final decision in BZA Application No 17271, Zoning Commission Case No. 05-13 is **TERMINATED**

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 OCT 2 8 2005