Government of the District of Columbia
OFFICE OF ZONING

Z.C. CASE NO.: 05-20

As Acting Secretary to the Commission, I herby certify that on JUL 14 2006 copies of this Z.C. Notice of Final Rulemaking & Order No. 05-20 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D C. Register*
2. All ANC Chairs
3. All Councilmembers
4. Gottlieb Simon
   ANC
   1350 Pennsylvania Avenue, N.W.
   Washington, D.C. 20004
5. Office of Planning (Ellen McCarthy)
6. Ken Laden, DDOT
7. Bill Crews, Zoning Administrator
8. Office of Attorney General (Alan Bergstein)
9. Jill Stern, Esq.
   General Counsel
   941 North Capitol Street, N.E.
   Suite 9400
   Washington, D.C. 20002

ATTESTED BY: Sharon S. Schellin
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia
CASE NO. 05-20
EXHIBIT NO. 18

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 05-20
Z.C. Case No. 05-20
(Text Amendment - Asphalt Plants)
April 20, 2006

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat 797, as amended; D C. Official Code § 6-641.01 (2001 ed)) ("the Act"), having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Home Rule Act; hereby gives notice of the adoption of amendments to §§ 801, 802, 822 and 823 of the Zoning Regulations (Title 11 DCMR)

The amendments will permit asphalt plants in C-M and M Zone Districts (except for Square 3582, 3584, and 3518) as a special exception, subject to the criteria already established for concrete plants in §§ 802 17 (a) through (h) of the Zoning Regulations. The amendments also permit the relocation of the asphalt plant located at Square 705, lot 802 to a specific site in D.C. Village, provided that the plant meets the requirements of §§ 802.17(a) through (h) The plant needs to be relocated to allow for the construction of a baseball stadium on the property now occupied by the plant.

A Notice of Proposed Rulemaking was published in the *D C Register* ("*DCR*") on December 9, 2005, at 52 *DCR* 10721. The Commission took final action to adopt the amendments at a public meeting on April 20, 2006 This final rulemaking is effective upon publication in the *D C Register*

Set Down Proceeding

The Office of Planning (OP) initiated this rulemaking at the request of the Office of Property Management (OPM) and the District Department of Transportation (DDOT) by filing a report with the Zoning Commission. The OP report requested text amendments to the Zoning Regulations to allow asphalt plants as a permitted use within industrial zone districts, subject to special exception review The OP report further requested an amendment to allow an existing asphalt plant to relocate to a new location within D C. Village

At its July 11, 2005 public meeting, the Zoning Commission agreed to set down the case for a public hearing

Existing Regulations

Asphalt plants are not an expressly permitted use under the current Regulations. A use variance is therefore required to operate or expand the operation of an existing asphalt plant Several asphalt plants currently exist in the District that pre-date the adoption of the current Zoning Regulations

The Zoning Regulations already provide for the special exception review of concrete plants to allow for the orderly and coordinated review of the facilities, and to mitigate their adverse impacts on adjoining properties. Many of the negative effects associated with concrete plants (truck traffic, truck stacking, hours of operation, noise, storage of materials, potential adverse impact on adjoining residential neighborhoods and the supporting roadway systems) are similar to those associated with asphalt plants. The special exception review regulations for concrete facilities are found at §§ 802.17 to 802.20 of the Zoning Regulations.

Description of the Text Amendments

This rulemaking will permit asphalt plants to locate in C-M and M Zone Districts as a special exception, subject to the criteria established for the special exception approval of concrete plants set forth in §§ 802.17 (a) through (h) of the Zoning Regulations. The criteria of §§ 802 17 (a) through (h) are intended to ensure that asphalt plants do not adversely impact park, residential, retail, office, church, school, or institutional uses; do not restrict neighborhood revitalization efforts, and do not overload public streets with industrial traffic. Asphalt plants are not permitted in Squares 3582, 3584, and 3518, although they are mapped in the C-M district.

The rulemaking also permits the asphalt plant located at Square 705, lot 802 to relocate to a specific site in D C. Village as a matter of right, provided that the plant meets the requirements of §§ 802.17(a) through (h).

Relationship to the Comprehensive Plan

The amendments are not inconsistent with the Comprehensive Plan

The Land Use Element of the Comprehensive Plan describes the District's current industrial zoned land as "a diminishing resource that must...continue to provide essential jobs and services for District residents, with the understanding that every effort will be made to mitigate or eliminate adverse impacts on surrounding communities .." 10 DCMR § 1100 4 (a) The Land Use Element also recommends relocation of large industrial areas through zoning and other appropriate measures to ensure their continued ability to function, modernize and expand, and to

be contributors to the District's economy, with sufficient buffers to protect and preserve adjacent residential communities 10 DCMR § 1122.2(f)

Authorizing the location of asphalt plants in industrial zone districts, subject to appropriate special exception criteria and review, allows existing asphalt businesses to modernize and expand their facilities in the District, and allows new plants to locate in appropriate locations, but ensures that these facilities do not adversely impact surrounding communities

Public Hearing

The Commission held a public hearing on this case on October 6, 2005

The District Department of Transportation (DDOT) in its memo to the Commission dated September 26, 2005 supported the text amendment to include asphalt plants as a permitted special exception use, and the matter of right relocation of the existing plant at 60 P Street S.E. to the C-M-1 portion of D C Village as proposed The memo stressed DDOT's need for asphalt plants in the District, explaining that asphalt is a perishable product that must be used within 90 minutes of its processing. This time limit can be extended through the use of heated trucks, but use of heated trucks increases the handling price significantly.

Proposed and Emergency Rulemaking

The Zoning Commission took proposed action at a properly noticed special public meeting held on November 21, 2005 The Notice of Proposed Rulemaking was published in the *D C Register* on December 9, 2005 at 52 *DCR* 10721, for a 30-day notice and comment period

The Commission took also emergency action on November 21, 2005 to expeditiously accommodate the relocation of the existing facility at 60 P Street, S E. within the C-M -1 portions of D.C Village in order to minimize the period of time that the plant would be off-line The Notice of Emergency Rulemaking was published in the D C Register on December 9, 2005 at 52 *DCR* 10720, and expired on March 21, 2006

The proposed rulemaking was referred to the National Capital Planning Commission (NCPC) under the terms of § 492 of the District of Columbia Charter By report dated January 5, 2006 NCPC commented that.

- asphalt plants in the C-M-2 Zone District at Square 3518 or in Squares 3582 and 3584 at the intersection of New York and Florida Avenues will adversely affect the federal interests in NCPC's Memorials and Museums Master Plan and will be inconsistent with the Comprehensive Plan for the National Capital Federal Elements

- the Commission should undertake environmental review of the proposal under the DC Environmental Policy Act of 1989, and add a definition to the text for "asphalt plant."

- The text amendment should include a requirement to use evergreen trees to screen the western and southern edges of the D C Village site to protect the vista from the Anacostia Freeway and its viewshed

No other comments were received.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency

Final Action

At its properly noticed April 20, 2006 public meeting, the Commission took final action to approve the proposed text amendments, with changes to the text made in response to the comments made by NCPC in its January 5, 2006 report to exclude Squares 3582, 3584, and 3518 as potential asphalt plant locations. The Commission also made technical corrections to the text to ensure that asphalt plants in M Zone Districts are subject to special exception review

In response to NCPC's comment that permitting asphalt plants at the intersection of Florida and New York Avenues would interfere with federal interests, the Commission is adding text to the amendment that specifically excludes Squares 3582, 3584, and 3518 as eligible locations for asphalt plants. The Commission believes this change addresses the federal interest concerns raised by NCPC. This change is within the scope of the proposed amendment as it was advertised in the public hearing notice, and therefore no new advertisement, hearing, or republication of a notice of proposed rulemaking is required to make this change to the text

In response to NCPC's comment that, "the District should undertake environmental review of the proposal under the [District] Environmental Policy Act of 1989," the Commission believes that it would be premature to invoke the environmental review process now, because its decision to amend the text would not result in the issuance of a license, permit, certificate, or authorization The District of Columbia Environmental Policy Act of 1989, effective October 18, 1989, (D C Law 8-36, D C Official Code § 8-109 01 et seq (2001 ed)) (DC EPA Act) establishes environmental review procedures for the District, and requires the preparation of an environmental impact statement prior to implementation of a "major action " D C Official Code § 8-109 03(a) The regulations implementing the DC EPA clarify when an environmental impact statement is required, stating "[n]o agency shall issue any license, permit, certificate, or authorization until completion of the environmental impact review process by the lead agency " 20 DCMR § 7203 6 The D C Court of Appeals concluded it would be premature to require environmental review when an applicant sought a zoning variance, because the decision to issue the variance would not result in the issuance of a license, permit, certificate, or authorization

Concerned Citizens of Brentwood v D.C Board of Zoning Adjustment, 634 A.2d 1234, 1241-1242 (D C 1993) In this case, the Zoning Commission is not issuing a license, permit, certificate, or authorization; it is amending the text of the Zoning Regulations. This decision is even further removed from the decision of whether to issue a license, permit, certificate, or authorization to a particular facility than the decision to grant a variance The Commission therefore believes the DC EPA Act does not require it to undertake an environmental review at this point

In response to NCPC's comment that the Commission should add a definition to the text for "asphalt plant," the Commission responds that asphalt plants already are defined by the proposed amended text The amendment adds the word "asphalt" wherever the word "concrete" is found in the existing 11 DCMR § 802 17, so that section contains the following definition of concrete or asphalt plant, "[a] facility that manufactures, processes, mixes, stores, or distributes concrete or asphalt or materials that are used to make concrete or asphalt " The Commission believes this definition is adequate and addresses the concern expressed by NCPC

NCPC's final comment was the text amendment should include protection of the vista from the Anacostia Freeway and its viewshed to the north by prohibiting visibility of any portion of the asphalt plant facility or equipment from the freeway, to include the use of evergreen trees to screen the western and southern edges of the site The text already includes requirements that an asphalt facility be enclosed by a fence, that the public view side of the facility be landscaped and have an opaque screen, and that evergreen trees a minimum of eight feet in height when planted are planted and maintained in healthy growing conditions in the front, side and rear yards, and the along all public rights of way The Commission believes these requirements fully address the issues raised by the NCPC comment

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and the Zoning Act

In consideration of the reasons set forth herein, the Zoning Commission hereby APPROVES the following amendments to Chapter 8 of the Zoning Regulations, Title 11 DCMR.

1 By amending § 801 7 to add a new § 801 7(m) to read as follows

801 7(m) An asphalt plant located in D C Village on the part of parcel 253/26 west of Shepherd Parkway, S W., and east of the Anacostia Freeway (D C Village site") if the plant was located in Square 705, Lot 802 on November 21, 2005 and was relocated to the D C Village site, provided that the plant

(i) Meets the requirements of 802 17 (a) through (h), and

(ii) Displays no signs visible from the Anacostia Freeway.

2 Subsections 802 17 through 802 20 are amended by inserting the phrase "or asphalt" after the word "concrete" wherever it appears

3. By amending § 802.17 to add a new § 802 17(i) to read as follows

(i) An asphalt facility shall not be located in Squares 3582, 3584, and 3518

4. By amending § 822 to add a new § 822.15 to read as follows·

822.15 An asphalt plant shall be permitted as a special exception in the M District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of §§ 802 17 through 802.20

4 Amending § 823 1(f) by adding the phrase ", other than asphalt" after the phrase "bituminous products refining or manufacture"

Vote of the Zoning Commission taken at its public meeting on November 21, 2005, to **APPROVE** the proposed rulemaking by a vote of **3-0-2** (Anthony J. Hood, John G Parsons, and Gregory N Jeffries to approve, Carol J. Mitten not present, not voting; Michael G Turnbull, not having not participated, not voting)

This Order was **ADOPTED** by the Zoning Commission at its public meeting on April 20, 2006, by a vote of **3-0-2** (Anthony J Hood, John G Parsons, and Gregory N. Jeffries to adopt, Carol J. Mitten not present, not voting, and Michael G Turnbull, not having not participated, not voting)

In accordance with the provisions of 11 DCMR § 3028 9, this Order shall become effective upon publication in *the D C Register*, that is, on JUL 2 1 2006

ANTHONY J. HOOD
VICE CHAIRMAN
ZONING COMMISSION

JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 05-20
Z.C. Case No. 05-20
(Text Amendment - Asphalt Plants)
April 20, 2006

The full text of this Zoning Commission order is published in the "Final Rulemaking" section of this edition of the *D C Register*.

AMT, LLC
CONSULTING ENGINEERS

REVISED:
January 16, 2005
LLC-05 001 01

DESCRIPTION OF:

140,910 Square Foot Part of:
PARCEL 253 / 26
"Blue Plains – D.C. Village"
4901 Shepherd Parkway, S.W.
Ward 8 – ANC 8D,
District of Columbia.

140,910 Square Feet of the lands known and taxed as "Blue Plains – D C Village," **Parcel 253 / 26,** District of Columbia, as the same is set forth on that certain plat entitled "Plat of Computation on Part of Parcels 253/26 and 262/1 Showing One Theoretical Site," made for DC WASA and recorded November 2, 2000 in **Survey Book 24 at page 65, as D.C. Map No. 10176,** among the Records of the Office of the Surveyor of the District of Columbia, said part of Parcel 253/26 lying between Anacostia Freeway, S W. (Interstate 295) and Shepherd Parkway, S W (an undedicated existing roadway used by the public) and bearing street address # 4901 Shepherd Parkway, S W , said 140,910 square foot part of Parcel 253/26 being more particularly described as follows.

BEGINNING for the same at a point on the easterly line of Anacostia Freeway, S W (Interstate 295, width varies) as now existing and as shown among the abovesaid Records, said point lying also DISTANT the two (2) following courses and distances from the northerlymost corner of the 42-acre Jurisdictional Parcel transferred by the Commissioners of the District of Columbia to the National Park Service on February 9, 1967, per Transfer of Jurisdiction Plat recorded March 2, 1967 in **Subdivision Book 151 at page 130:**

A) **NORTH 26° 45' 18" EAST, 159.76 feet** along Anacostia Freeway, S W as shown on D C Map No 10176, thence still with Anacostia Freeway, S W

B) **NORTH 37° 23' 08" EAST, 48.70 feet** to the **True Place of Beginning;** thence continuing still with the east line of Anacostia Freeway, S W (Interstate 295)

1) **NORTH 37° 23' 08" EAST, 169.81 feet;** thence

2) **NORTH 17° 21' 43" EAST, 232.37 feet;** thence

3) **NORTH 28° 02' 07" EAST, 271.37 feet;** thence departing Anacostia Freeway, S W and running so as to align radially with Shepherd Parkway, S W , as now surveyed and existing

PHONE 202-289-4545 FAX 202-289-5051 E-MAIL amt1@amtengineering com
10 G STREET, N E., SUITE 430, WASHINGTON, D C 20002

4) **SOUTH 73° 00' 53" EAST, 41.06 feet** to the west side of Shepherd Parkway, S W (38 feet wide, nominal, an undedicated existing roadway used by the public), thence following the westerly line of Shepherd Parkway, S W.

5) **277.11 feet** along the **arc** of a curve to the left, having a **radius** of **572.00 feet** and a **chord bearing** and **chord** of **South 03° 06' 23" West, 274.41 feet** to a Point of Reverse Curvature (PRC) near the northeast fence corner of an existing District of Columbia Department of Transportation (DDOT) facility, thence with the DDOT fence along the westerly edge of Shepherd Parkway, S W as existing

6) **116.00 feet** along the **arc** of a curve to the right, having a **radius** of **1163.18 feet** and a **chord bearing** and **chord** of **SOUTH 07° 54' 56" EAST, 115.96 feet** to a Point of Compound Curvature (PCC), thence still with said fence

7) **242.17 feet** along the **arc** of a compound curve to the right, having a **radius** of **677.28 feet** and a **chord bearing** and **chord** of **SOUTH 05° 11' 06" WEST, 240.88 feet** to a second Point of Compound Curvature (PCC); thence still with said DDOT fence

8) **27.46 feet** along the **arc** of a curve to the right, having a **radius** of **435.69 feet** and a **chord bearing** and **chord** of **SOUTH 17° 14' 02" WEST, 27.46 feet** to a fence surrounding an existing fire hydrant, being also the fence of the DDOT facility, thence running with said fence

9) **NORTH 68° 04' 41" WEST, 7.85 feet;** thence

10) **SOUTH 22° 41' 53" WEST, 10.00 feet;** thence

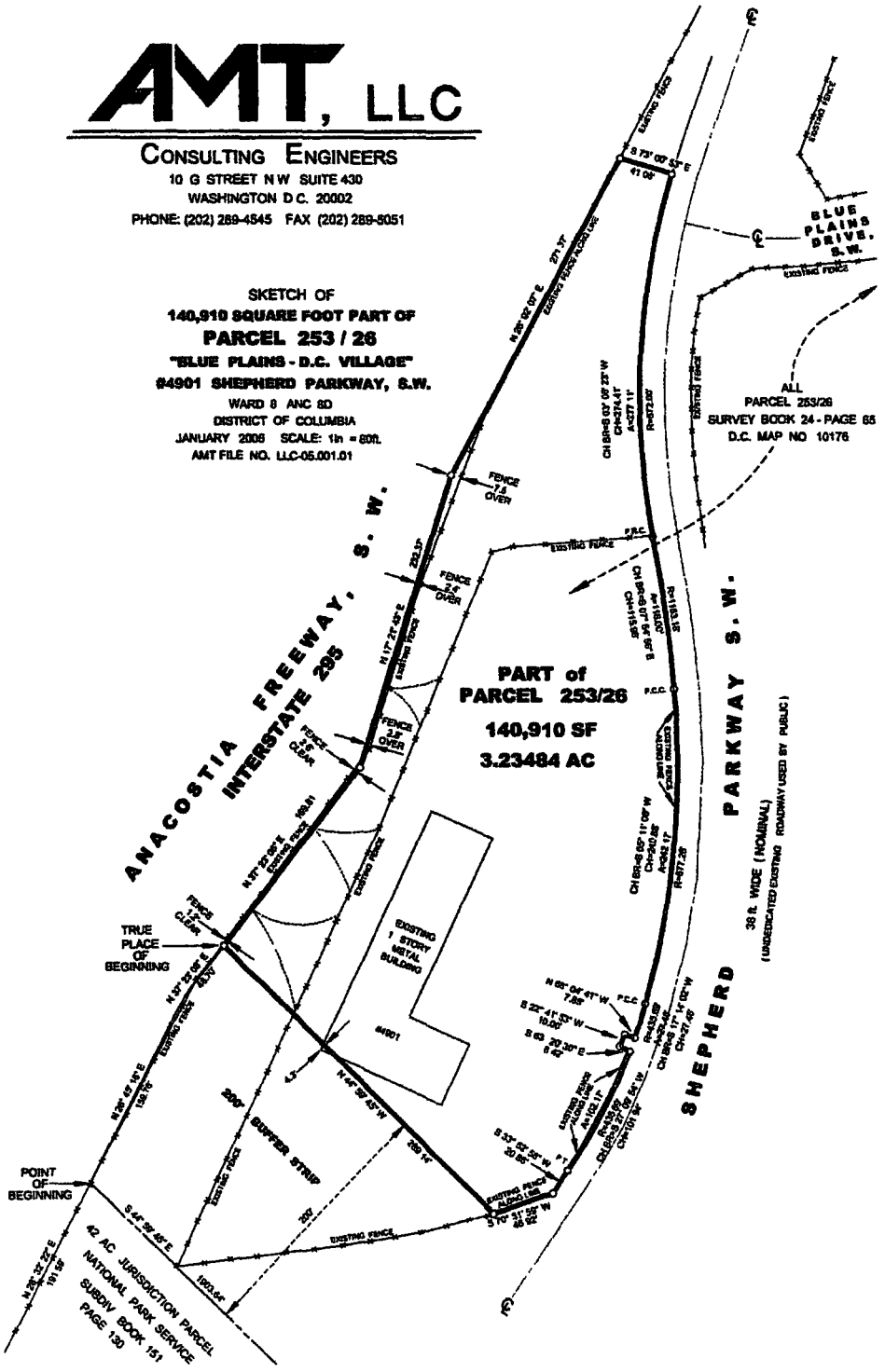
11) **SOUTH 63° 20' 30" EAST, 8.42 feet;** thence departing said fenced hydrant and continuing with the fence enclosing the DDOT facility

12) **102.17 feet** along the **arc** of a non-tangent curve to the right having a **radius** of **435.69 feet** and a **chord bearing** and **chord** of **SOUTH 27° 09' 54" WEST, 101.94 feet** to a Point of Tangency (PT), thence still with said fenced DDOT enclosure

13) **SOUTH 33° 52' 58" WEST, 20.86 feet** to a corner of the DDOT fenced enclosure, thence still with said fence

14) **SOUTH 70° 31' 59" WEST, 46.92 feet;** thence departing said DDOT fence and running so as to create a **200 foot "Buffer"** from the lands under the jurisdiction of National Park Service, per aforesaid plat recorded in **Subdivision Book 151 at page 130**

15) **NORTH 44° 59' 45" WEST, 289.14 feet** to the **True Place of Beginning,** containing **140,910 square feet** or **3.23484 acres** of land

AMT, LLC
CONSULTING ENGINEERS
10 G STREET N W SUITE 430
WASHINGTON D C. 20002
PHONE: (202) 289-4545 FAX (202) 289-5051

SKETCH OF
140,910 SQUARE FOOT PART OF
PARCEL 253 / 26
"BLUE PLAINS - D.C. VILLAGE"
#4901 SHEPHERD PARKWAY, S.W.
WARD 8 ANC 8D
DISTRICT OF COLUMBIA
JANUARY 2006 SCALE: 1in = 80ft.
AMT FILE NO. LLC-05.001.01