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: March 29, 2006

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D C Register* on April 7, 2006

1 Z C Notice of Public Hearing (Case No. 05-26),
2 Z C Notice of Public Hearing (Case No 06-16),
3 Z C Notice of Proposed Rulemaking (Case No 05-21),
4 Z C Notice of Final Rulemaking & Order No 05-12 (Case No 05-12),
5 Z C Order No. 05-33 (Case No 05-33), and
6 Z C Order No 03-12B/03-13B (Case No 03-12B/03-13B)

The final rulemaking is also included on the attached diskette

Attachments

441 4th St N W Suite 200-S Washington D C 20001
Telephone (202) 727-6311 E-Mail Address zoning.info@dcoz.dc.gov Web Site www.dcoz.dc.gov

ZONING COMMISSION
District of Columbia
CASE NO. 05-33
EXHIBIT NO. 6

ZONING COMMISSION ORDER NO. 05-33
Z.C. Case No. 05-33
(Petition from ANC 3D for Changes to ANC Review of Building Permits)
ORDER DISMISSING PETITION
January 9, 2006

On September 15, 2005, the Office of Zoning received a petition ("Petition") from Advisory Neighborhood Commission ("ANC") 3D. The Petition requests that the Zoning Commission modify Chapter 32 of the Zoning Regulations (DCMR Title 11) to require the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") to: 1) prepare a form requesting certain information for use as a building permit application; 2) transmit building permit applications within two days to affected ANCs; 3) wait until after the affected ANCs have weighed in on the building permit applications before approving the permits; and 4) give great weight to the ANC recommendations.

For the reasons stated below, the Zoning Commission dismisses the Petition with prejudice.

The Zoning Commission, like all other administrative agencies "is a creature of statute and may not act in excess of its statutory authority." *Dist. Intown Props, Ltd. v. District of Columbia Dep't of Consumer & Regulatory Affairs,* 680 A.2d 1373, 1379 (D.C. 1996). *Accord President and Directors of Georgetown College v District of Columbia Board of Zoning Adjustment,* 837 A.2d 58, 69 (D.C. 2003).

Section 492 of the Charter provides that the Zoning Commission for the District of Columbia "shall exercise all powers and perform all the duties with respect to zoning in the District as provided by law". D.C. Official Code § 1-621.01 (2001). In exercising such powers, the Commission may "regulate the location, height, bulk, number of stories and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density of population, and the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, or other purposes." D.C. Official Code § 6-641.01 (2001). Nothing in this language suggests that the Zoning Commission may order DCRA to take the actions that would be required under the Petition.

While the Zoning Act established the requirement for a building permit, D.C. Official Code § 6-641.09, the authority "to administer and enforce the statutes, codes and regulations governing the construction, conversion, repair and alteration of buildings in the District of Columbia" was given by the Council in 1982 to what was then known as the Department of Licenses, Inspections and Investigations through Reorganization Plan No. 2 of 1983, effective July 3, 1982. The Council also granted the agency the authority to "administer and enforce the zoning

statutes, codes and regulations governing land use, the height, area and use of buildings, and subdivision of all private land and condominiums." Both of these powers were transferred by the Council to the Department of Consumer and Regulatory Affairs by virtue of Reorganization Plan No. 1 of 1983, effective March 31, 1983).

The Council's ability to establish DCRA and to set forth the agency's duties and responsibilities derived from its exclusive authority under the Charter to:

> [C]reate, abolish, or organize any office, agency, department, or instrumentality of the government of the District and to define the powers, duties, and responsibilities of any such office, agency, department, or instrumentality.

Section 404 of the District of Columbia Home Rule Act; approved December 24, 1973 (87 Stat. 787; D.C. Official Code § 1-204.04(b)).

As to all District agencies, including the Zoning Commission, the Council has established across-the-board requirements with respect to Advisory Neighborhood Commissions through its enactment of the Advisory Neighborhood Commissions Act of 1975 and the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000. While the Zoning Commission may impose greater responsibilities upon itself with respect to ANCs, it may not require other agencies, including DCRA, to do more than these statutes require.

Lastly, the Commission notes that the District of Columbia Administrative Procedures Act leaves it to the discretion of every agency whether to act upon a petition. D.C. Official Code § 2-505(b). Even if the Commission possessed the powers contemplated in the Petition, we do not believe it appropriate to intrude in the internal operations of another agency as the Petition would have us do.

Therefore, the Commission dismisses Case No. 05-33 with prejudice.

The Zoning Commission, by vote of 5-0-0, taken at its public meeting on January 9, 2006, hereby orders dismissal of Case No. 05-33 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to dismiss).

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 _____.