Government of the District of Columbia
OFFICE OF ZONING

Z.C. CASE NO.: 05-33

As Secretary to the Commission, I herby certify that on APR - 6 2006 copies of this Z.C. Order No. 05-33 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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

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

ZONING COMMISSION
District of Columbia
CASE NO.05-33
EXHIBIT NO.57

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION



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 APR - 7 2006.

CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION

JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

AVERY® Address Labels Laser 5162®

Mack James, Chair
ANC 1A
P.O Box 73115
Washington, DC 20056

Dee Hunter, Chair
ANC 1B
P O Box 73710
Washington, DC 20056

Alan Roth, Chair
ANC 1C
P.O. Box 21009
Washington, DC 20009

Jack McKay, Chair
ANC 1D
P O. Box 43529
Washington, DC 20010

Vince Micone, Chair
ANC 2A
St. Mary's Court
725 24th Street, NW
Washington, DC 20037

Darren Bowie, Chair
ANC 2B
9 Dupont Circle, NW
Washington, DC 20036

Leroy Thorpe, Jr , Chair
ANC 2C
1704 5th Street,N.W.
Washington, DC 20001

Sandra Perlmutter, Chair
ANC 2D
2122 California Street, NW
Washington, DC 20008

Ed Solomon, Chair
ANC 2E
3265 S Street, NW
Washington, DC 20007

Charles Reed, Chair
ANC 2F
Washington Plaza Hotel
5 Thomas Circle, NW
Washington, DC 20005

Melissa Lane, Chair
ANC 3B
Guy Mason Rec Center
P.O Box 32312
Washington, DC 20007

Nancy MacWood, Chair
ANC 3C
2nd Dist Police Station
2737 Devonshire Place, NW
Washington, DC 20008

Alma Gates, Chair
ANC 3D
P.O Box 40846 - Palisades Station
Washington, DC 20016

Amy B. McVey, Chair
ANC 3E
St Mary's Church
5425 Western Avenue, NW
Washington, DC 20015

Smooth Feed Sheets™ Use template for 5162®

AVERY® Address Labels Laser 5162®

Catherine Wiss, Chair
ANC 3F
Capital Memoral Church
4401-A Connecticut Ave , NW - Box 244
Washington, DC 20008

Robert Gordon, Chair
ANC 3G
Chevy Chase Community Center
P.O. Box 6252 - Northwest Station
Washington, DC 20015

James H Jones, Chair
ANC 4A
7600 Georgia Avenue, NW
Washington, DC 20012

Judi Jones, Chair
ANC 4B
25 Sheridan Street, NW
Washington, DC 20011

Joseph Martin, Vice-Chair
ANC 4C
4230 4th Street, NW
Washington, DC 20011

Keith Jackson, Chair
ANC 4D
143 Kennedy Street, NW
Washington, DC 20011

Joseph L. Bowser, Chair
ANC 5A
1322 Irving Streets, NE
Washington, DC 20017

William C Shelton, Chair
ANC 5B
1355 New York Avenue, NE
Washington, DC 20002

James D. Berry, Jr., Chair
ANC 5C
140 Bates Street, NW
Washington, DC 20001

Joseph V. Fengler, Chair
ANC 6A
P.O Bod 75115
Washington, DC 20013

Scott Cernich, Chair
ANC 6B
921 Pennsylvania Avenue, SE
Washington, DC 20003

Mark Dixon, Chair
ANC 6C
P O. Box 77876
Washington, DC 20013

Andy Litsky, Chair
ANC 6D
65 I Street, SW
Washington, DC 20024

Angela Thompson-Murphy, Chair
ANC 7A
4310 Texas Avenue, SE
Washington, DC 20019

Smooth Feed Sheets™ Use template for 5162®

AVERY® Address Labels Laser 5162®

Raymond Keith, Chair
ANC 7B
2110 Suitland Terrace, SE
Washington, DC 20020

Muriel Chambers, Chair
ANC 7C
1027 46th Street, NE
Washington, DC 20019

Dorothy Douglas, Chair
ANC 7D
P O. Box 64052
Washington, DC 20019

Naomi Robinson, Chair
ANC 7E
5001 Hanna Place, SE, Ste B
Washington, DC 20019

Anthony Muhammad, Chair
ANC 8A
P.O Box 73878
Washington, DC 20056

Jacque Patterson, Chair
ANC 8B
3521 21st Street, SE
Washington, DC 20020

Mary Cuthbert, Chair
ANC 8C
3325 MLK Jr Avenue, SE
Washington, DC 20032

O.V. Johnson, Chair
ANC 8D
632 Elmira Street, SE
Washington, DC 20032

Sandra Seegars, Chair
ANC 8E
P.O. Box 7050
Washington, DC 20032

Smooth Feed Sheets™ Use template for 5162®