

Memorandum

Government of the District of Columbia

TO: Frederick D. Cooke, Jr.
Corporation Counsel, D.C.

THRU: Fred L. Greene, Director
Office of Planning

FROM: Edward L. Curry *ELC*
Executive Director

Department, Office of Planning
Agency, Office: Zoning Secretariat

Date: APR 29 1980

ZONING SECRETARIAT
DISTRICT OF COLUMBIA

APR 29 PM 3:55

SUBJECT: Issues of Uniformity: Z.C. Cases 86-26 and 87-27

The Zoning Commission has directed that I seek your advice about contentions that potential action by the Commission to amend the text and map of the Zoning Regulations in Cases 86-26 and 87-27 would violate the so-called "uniformity" provision of D.C. Code sec. 5-413 (1981).

In Case 87-27, the Commission is considering the adoption of a Macomb-Wisconsin ("M-W") Overlay District and amending the current C-2-A zoning in Squares 1920 and 1920 North to M-W/C-2-A or M-W/C-1. The M-W overlay would limit uses and development in certain ways that would be more restrictive than the restrictions that apply in C-1 or C-2-A regulations. The limitations would apply throughout the entirety of the area of the M-W/C-1 or M-W/C-2-A zone.

The Commission has been confronted with a charge that the proposed overlay "cannot be considered a legitimate new zoning district." The basis for this charge is essentially: (1) that the proposed zone district would be relatively small; and (2) for that reason, its creation would in effect amount to "the transparent use of semantics...."

It is true that the proposed district would be relatively small, but it would be substantially larger in area than are the sites of most planned unit developments ("PUDs"). Through the PUD process, the Zoning Commission regularly adopts "site-specific" use and development conditions and controls, which apply to no other area in the District of Columbia. If there is a sound planning reason which persuades the Commission to adopt the M-W Overlay District, and to map it only in a limited area, it would seem a fully valid exercise of the police power of the Commission. If the limited area of the zone district would operate to invalidate it, notwithstanding that it would otherwise represent a reasonable exercise of the zoning power, perhaps your

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Office should examine the validity of 11 DCMR 2401.1, which allows PUDs in an area as small as 15,000 square feet in a commercial district.

However, the correct answer to the challenge would appear to be found in D.C Code Sec. 5-413, which states, in pertinent part: "[The] Commission may divide the District of Columbia into districts or zones of such ... area as said Zoning Commission may determine...." (Emphasis added.)

A similar challenge, based upon the limited area of the proposed overlay district, has been submitted in Case 86-26. Should you conclude that the limited area proposed is a problem in Case 87-27, you may conclude that it is appropriate to examine the comparable areas proposed as Cleveland Park and Woodley Park Overlay zone districts.

In addition, in Case 86-26, a uniformity challenge was submitted with respect to a recommendation that allowable building height be governed by the height of adjacent buildings. See proposed Sec. 1401.1. However, the preliminary decision of the Commission was not to include such a provision. For that reason, this issue is simply brought to your attention, and need not be addressed at this time.

It is recognized that your Office may deem it more prudent to examine these questions on the basis of a specific proposed rulemaking decision, together with a supporting rationale. However, a preliminary analysis, which need not be written, by June 6, 1988, in advance of the Commission's June 13 meeting, would be helpful to the Commission. Please ask the staff attorney to call me to discuss these cases when he or she receives the assignment.

Attachments

cooke2/BJW28