

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL MEETING
1131 MEETING SESSION (6th of 2002)

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THURSDAY
APRIL 25, 2002

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The Special Meeting of the District of Columbia
Zoning Commission convened at 6:00 p.m. in the Office of Zoning
Hearing Room at 441 4th Street, Northwest, Washington, D.C., Carol
J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
JAMES HANNAHAM	Commissioner
PETER G. MAY	Commissioner
	(Architect of the Capital)
JOHN G. PARSONS	Commissioner

COMMISSION STAFF PRESENT:

Alberto P. Bastida, Secretary, ZC
Sharon Sanchez, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.
Patricia Young, Esq.

P-R-O-C-E-E-D-I-N-G-S

6:09 p.m.

CHAIRPERSON MITTEN: Good evening, Ladies and Gentlemen. This is a Special Public Meeting of the Zoning Commission of the District of Columbia for Thursday, April 25, 2002. My name is Carol Mitten. Joining met this evening are Vice-Chairman Anthony J. Hood and Commissioners Peter May, John Parsons and James Hannaham.

We have a single item on the agenda of our special public meeting and then after we take care of that item we'll adjourn and then at 6:30 or as close to that as we can begin our hearing for this evening.

There is an agenda for the special public meeting that should be on the table near the door. Mr. Bastida, before we begin, do we have any preliminary matters?

SECRETARY BASTIDA: No, Madam Chairman, the staff has no preliminary matters.

CHAIRPERSON MITTEN: Thank you. So we'll move to final action in Zoning Commission Case No. 01-13C.

Mr. Bastida, do you have --

SECRETARY BASTIDA: Just that the staff has provided you with all the complaints in the file and request that the Commission take final action. This was approved by the National Capital Planning Commission from the point of view that they determined that it was not adverse impact to the federal

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1 interests.

2 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.

3 Let's begin by taking up -- we had asked the
4 Applicant to revise their conditions to incorporate some of the
5 concerns that had been raised at our March 11th public meeting, and
6 there's a submission by the Applicant and some responses from the
7 parties related to those -- Applicant's responses dated March 18,
8 2002. So, let's go through those first and then we'll talk about
9 any concerns about the order that any of the commissioners might
10 have.

11 So, we have a proposed revision to Condition No. 4,
12 and one of the parties has suggested that in addition to approval
13 by the Department of Public Works, the NCPC be added to that
14 approval list. Mr. Bergstein, would that be normal that such a
15 review of a plan for public space would be sent to NCPC?

16 MR. BERGSTEIN: No, it would not. I wasn't aware
17 of that comment, I'm sorry to say. But the determination of
18 public space permits is solely within the authority of the Mayor
19 which has been delegated to the Department of Public Works.

20 CHAIRPERSON MITTEN: Okay, thank you.

21 COMMISSIONER PARSONS: I think the intent of NCPC
22 was, you know, they've got this major security task force going
23 on, but to look at all security and -- I know when NCPC dealt
24 with this, I felt that it's so far beyond our jurisdiction to try
25 and tell the public space division that when they're giving a

1 permit they ought to go to NCPC, that I don't know how we can do
2 it.

3 CHAIRPERSON MITTEN: All right. Okay. Any
4 concerns about the Applicant's Proposed Condition No. 4? Okay.

5 Proposed Condition No. 6, on page two, what I
6 wanted to suggest was that the second sentence which begins, "The
7 IMF shall either lease the space to a tenant or begin operations
8 of the space itself," leasing the space doesn't necessarily mean
9 occupancy of the space, so what I was going to suggest is that
10 the space - that the beginning of the sentence say, "The space
11 shall either be leased and occupied by a tenant or the IMF shall
12 operate the retail space itself for the designated use" then
13 "within 24 months" and so on, so it will insure that the space is
14 actually being operated for the intended use.

15 COMMISSIONER MAY: I agree, Madam Chair. One of
16 the things I was concerned about was that of being occupied for
17 that intended use.

18 CHAIRPERSON MITTEN: Thank you. Anyone else have
19 any other concerns about Condition No. 6?

20 Condition No. 7, I wanted to suggest the same kind
21 of language modification that would insure the space was being
22 occupied by a lease -- a tenant under lease. Any other concerns
23 about Condition No. 7? Okay.

24 Condition No. 8. The -- I think it was WICA had
25 suggested that the same language that the contribution be

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1 designated for the continuation of the homeless breakfast feeding
2 program at 19th and Pennsylvania Avenue, whereas the language
3 that's proposed is not that directed. Given that we can't -- I
4 think that we can't be certain that - I mean, it's not on the
5 Applicant to insure that that feeding program continues
6 indefinitely since its operated by D.C. Central Kitchen, perhaps
7 what we want to do is add to the end of the sentence, "within one
8 quarter mile of the site or within the boundaries of the ANC2A
9 with preference given to continuation of the homeless breakfast
10 feeding program."

11 COMMISSIONER PARSONS: Well, here again, we're
12 straying outside of our jurisdiction, because we can place on the
13 Applicant the burden of conditioning this contribution, so that
14 it will be devoted to those programs, but we can't direct the
15 D.C. Central Kitchen to (coughing) -- so I think we should say,
16 "this contribution shall be conditioned so that the funds
17 contributed would be devoted to -- or will be devoted to the
18 programs." How's that?

19 CHAIRPERSON MITTEN: Okay. And that the programs
20 be non-specific, in fact, because that's not been specified by
21 the Applicant. Okay. That's good. Any other concerns about 8D?
22

23 All right. And then we have Condition No. 8E, and
24 the WICA had asked that the -- when the paperwork to justify the
25 expenditures would be provided to the public -- Department of

1 Public Works and ANC2A that they also be provided to WICA -- I
2 don't know that that's necessary, there's no action required from
3 anyone on the point, and it would certainly be available from the
4 ANC.

5 Any other concerns about 8E?

6 Okay. Now, does anyone have any concerns about the
7 order itself? One of the issues that caused us some discussion
8 during the hearing, I guess it's a two-prong issue, is the
9 sufficiency of the amenities, and there's a lengthy discussion in
10 the Applicant's proposed findings of fact numbers 108 through
11 119, that addresses this. I guess what I'd like to see is that
12 there be a substantial revision to those findings that would
13 include the notion that the only amenities that the Zoning
14 Commission may consider are those proposed by the Applicant. We
15 cannot impose on the Applicant amenities offered by parties and
16 so on, because it's ultimately the Applicant's burden of proof
17 and they offer whatever they think is sufficient to meet the
18 burden of proof.

19 That would be the first point, and then the second
20 point is that the Applicant is arguing through these -- or laying
21 out an argument through these proposed findings that the rezoning
22 in this case does not engender any, or they're not asking for any
23 relief above the zoning category that they're asking for, and
24 therefore there is no amenity requirement related to that once
25 you meet the threshold for the rezoning, and they also talk at

1 length about the fact that the context in which this property
2 exists, the surrounding properties, are at heights and densities
3 that reflect C4 zoning.

4 But I think we need to recognize the fact that
5 those heights and densities do not arise out of matter of right
6 C4 zoning exclusively. The properties to the east of the subject
7 certainly have matter of right C4 zoning. Properties to the
8 north have the equivalent height and density as a result of
9 transfer development rights, because they're in the receiving
10 zone and transfer development rights do provide an amenity where
11 they originate and that they are fostering certain municipal
12 policies for providing housing, providing historic preservation,
13 and so on, and then the property to the south of the subject had
14 a C4 density as a consequence of a PUD that provided amenities.

15 So, I think it's appropriate to say that there is
16 some form of relief being given because the C4 zoning that sets
17 the context is not matter of right C4 zoning exclusively. So, I
18 think I would like to recommend that those findings 108 through
19 119 be revised to reflect that we do not agree with the
20 Applicant's argument that the amenities in this particular case
21 are not -- there is no zoning relief in excess of the zoning
22 being sought by the Applicant in this case, and that there are no
23 amenities that -- no amenity requirement that arises from that.

24 COMMISSIONER MAY: I would agree, Madam Chair.

25 COMMISSIONER PARSONS: I agree. I wish that I

1 could add something, but you've covered it well.

2 CHAIRPERSON MITTEN: Okay. Any other areas of
3 concern?

4 VICE CHAIRPERSON HOOD: Madam Chair, I think on
5 page 24, 102, I would like to see us just disregard that whole
6 topic, 102 should just be stricken from the record.

7 CHAIRPERSON MITTEN: I would agree with that.
8 Anybody else -- anybody have a disagreement about the way the
9 proposed finding 102?

10 VICE CHAIRPERSON HOOD: Madam Chair, I would also
11 just like to reiterate and call our attention again to Regulation
12 243.3 in the zoning regulations, what I know is a moot point at
13 this point. Just for the record, I just want to say the impact
14 on the project upon the surrounding area and upon the operation
15 of city services and facilities shall not be found to be
16 unacceptable. It shall instead be found to be either favorable,
17 capable or being mitigated or acceptable given the quality of
18 public benefits in the project. I think that -- well, I guess
19 that was just my time to try and put that in. Not that it's
20 going to do any good at this point, but thank you for the
21 opportunity.

22 CHAIRPERSON MITTEN: Okay. One thing that I'd like
23 to have re-examined and maybe we can take some time to look at
24 this again, and this is really just drafting of the order, this
25 is not -- I don't think this bears on the decision necessarily,

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1 but finding of fact number 46 which does lay out the amenities
2 package, I think there are certain items in that list too that I
3 would call out, but I wouldn't necessarily exclude any others,
4 are on page 12, and it's G and H.

5 In G, amenities are meant to relate to the degree
6 of relief being sought, they're not meant to offset any adverse
7 impacts, and I think that G is actually offsetting any potential
8 adverse impact that would arise from traffic, and so perhaps it's
9 not best captured in the list of amenities, and then H is not an
10 amenity in any sense, because it hasn't been established that it
11 actually would be any different circumstance that it would apply
12 under matter of right zoning.

13 So, there may be some others and I think we should
14 give Mr. Bergstein the freedom to revisit that list and make sure
15 everything is appropriately categorized as an amenity, if in fact
16 it is.

17 COMMISSIONER PARSONS: I want to speak about the
18 economic benefits in findings 133 to 138, which try to set the
19 stage for the economic benefits that are accruing from this
20 project beyond matter of right, and I don't think the case has
21 really been made, like most of these paragraphs are in need of
22 real revision or deletion. It just is not -- it's a new stage
23 that they're trying to set here, I think, for us and I don't see
24 that the benefits that they seem to be placed in here are that
25 significant, and I guess I'd ask Mr. Bergstein to look at that as

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1 well.

2 CHAIRPERSON MITTEN: I agree with that, and I think
3 that there's been -- I think maybe we need to be more alert to
4 inclusions like this in the proposed findings and that they don't
5 creep into our orders, because I think there's an expectation
6 that economic benefits are somehow guaranteed to flow if that's
7 being portrayed as some kind of amenity, and yet there is
8 absolutely no control over that, and certainly we wouldn't expect
9 that someone's certificate of occupancy would be, you know,
10 revoked if those benefits did not flow, and I don't think that's
11 really necessary part of the process, so I would agree with that
12 and I would ask Mr. Bergstein to look at that as well.

13 Any other substantive concerns about the order?
14 I'd like to give Mr. Bergstein some flexibility and if he needs
15 to consult with us on some language inclusions or exclusions,
16 that would be fine, but I think substantively --

17 VICE CHAIRPERSON HOOD: Madam Chair, I would like
18 to call everyone's attention to page 37, item number 13. I'm
19 looking at this, actually I wanted to compliment Applicant on
20 this because this is a piece that I've been really trying to
21 push, the DOES and LBOC, but I just wanted to get my colleagues'
22 opinion if we think that this is sufficient? Page 37, number 13.

23

24 COMMISSIONER PARSONS: Mine's on page 36.

25 CHAIRPERSON MITTEN: Yeah, mine too.

1 VICE CHAIRPERSON HOOD: Thank you, Mr. Bastida,
2 whatever copy I had --

3 CHAIRPERSON MITTEN: I mean, I think it's great
4 that we're inching towards better results on the DOES agreements,
5 and so I think this is a commendable inclusion. Any other
6 concerns about the order? Any other --

7 COMMISSIONER PARSONS: One small item, it's in the
8 findings under amenities, but it's in the decision on page 35,
9 and it has to do with the park benches, and I think it would be
10 appropriate to give a little more flexibility here on these 48
11 benches, and say that they should -- the IMF shall replace 48
12 benches in parks in the vicinity of the site, rather than specify
13 the exact parks. So, I'd ask that that just be given a little
14 more flexibility there.

15 Is that clear, should I read that again, or --

16 CHAIRPERSON MITTEN: Which one are we on, I'm
17 sorry?

18 COMMISSIONER PARSONS: 8A, page 35.

19 CHAIRPERSON MITTEN: 8A, I'm sorry.

20 COMMISSIONER PARSONS: I'm sorry. The IMF shall
21 replace 48 benches in the parks in the vicinity of the site, and
22 not just have to replace every bench in each park.

23 CHAIRPERSON MITTEN: Yes, yes, yes, that makes
24 sense.

25 All right, anything else?

1 VICE CHAIRPERSON HOOD: Madam Chair, on -- I don't
2 know what page it is on the copies you all have, but on page 24
3 of mine, maybe its 25 of yours, I'm not real clear about this
4 issue about the Homeland Security. I don't believe -- you can
5 refresh my memory, but I don't believe that we asked anything
6 from the Homeland Security, and I think this is insinuating that
7 we asked for something from the Homeland Security, which I don't
8 think we did, and it gives the impression and appearance that
9 apparently Homeland Security didn't have a problem, so they
10 didn't send us anything, and I don't think that was the issue at
11 all.

12 CHAIRPERSON MITTEN: Right, right. I think maybe
13 we just need to delete the first sentence of 103, and modify what
14 comes after, but we left the record open to give the opportunity,
15 but we didn't make a request, you're right.

16 VICE CHAIRPERSON HOOD: Right, a formal request.

17 CHAIRPERSON MITTEN: Yeah. Anything else? Do you
18 have something --

19 COMMISSIONER PARSONS: I'm glad you caught that, we
20 left the record open. We didn't tell them we left the record
21 open, they didn't reply, so there --

22 CHAIRPERSON MITTEN: Okay. So with the proposed
23 modifications and with some discretion left to corporation
24 counsel, I would entertain the motion for approval of the
25 proposed order in the IMF PUD.

1 COMMISSIONER PARSONS: So vote.

2 CHAIRPERSON MITTEN: Second.

3 Any further discussion on the subject? All those
4 in favor please say aye.

5 COMMISSIONER HOOD: Aye.

6 COMMISSIONER HANNAHAM: Aye.

7 COMMISSIONER MAY: Aye.

8 CHAIRPERSON MITTEN: Those opposed please say no.
9 Mr. Bastida.

10 SECRETARY BASTIDA: Madam Chair, the staff would
11 record a vote of five to zero. Mr. Parsons moving, and Ms.
12 Mitten, second it. Mr. Hood, Mr. Hannaham, and Mr. May voting in
13 the affirmative.

14 CHAIRPERSON MITTEN: Thank you, Mr. Bastida. There
15 being no further business, I now declare this Special Public
16 Meeting adjourned. Thank you.

17 (Whereupon, the above-entitled Special Meeting of
18 the Zoning Commission was concluded at 6:29 p.m.)

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