

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL MEETING

+ + + + +

THURSDAY,  
JULY 18, 2002

+ + + + +

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, N.W., Washington, D.C., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairman
PETER MAY	Commissioner
JOHN PARSONS	Commissioner
JAMES HANNAHAM	Commissioner

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COMMISSION STAFF PRESENT:

Alberto P. Bastida, Secretary, Zoning Commission

OFFICE OF ZONING:

Sharon Sanchez

OFFICE OF PLANNING:

Jennifer Steingasser  
Karen Thomas

D.C. CORPORATION COUNSEL

Alan Bergstein, Esq.

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

6:00 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, July 18th, 2002. My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioners Peter May, John Parsons and James Hannaham.

The case that we are discussing this evening -- I think the single item on our agenda -- is proposed action on Zoning Commission case number 01-32TA. Mr. Bastida, did you want to just introduce that case for us? And if not, then I can do it.

SECRETARY BASTIDA: No. Yes, Madame Chairman. Number -- first item is preliminary matters and the staff has no preliminary matters. The proposed action is Zoning Commission case 01-32TA, related to concrete plants. The staff have provided you with all the information in the record and requests an action on this matter. Thank you.

CHAIRPERSON MITTEN: Thank you, Mr. Bastida. I think the easiest way to proceed is just to go through the latest -- the latest filing from the Office of Planning, which is dated July 10, 2002.

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1           And if we could focus on Appendix A, there's  
2 some additional recommendations that Office of Planning  
3 has made and let's just go through those one by one.

4           And in the preface to 802.17, "and asphalt"  
5 is being deleted because that is not -- asphalt plants  
6 are not permitted in the CM District. They're only  
7 permitted in the M District.

8           I'll just keep going and then if people have  
9 anything that they want to add or comment on, just jump  
10 in.

11           I don't -- does anyone have any issues with  
12 802.17(a)? And 802.17(b), what we were striving for was  
13 some similarity with the regulations as it relates to  
14 trash transfer facilities.

15           And in -- I think (b), since we haven't been  
16 able to find a definition of residential streets. And  
17 there is some language in 802.4(f) that I would propose  
18 to substitute, which is, "There shall be no truck access  
19 parking standing or queuing to the facility from any  
20 street or block long portion of a street for which 50  
21 percent or more of the abutting properties on either side  
22 are used for residential purposes." And then it goes  
23 on from there.

24           But I think that that would capture what we  
25 were trying to capture. And I believe everyone has a

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1 copy of the language in 802.4(f).

2 Any concerns about (c)? Any concerns about  
3 (d)? I was going to suggest that we might want to delete  
4 the last five words of (d), "and delivery of material,"  
5 given that we don't have a definition of material and  
6 that the only way that there would be kind of an offensive  
7 delivery of material would be by truck. And we're already  
8 capturing that earlier in (d), that that is probably just  
9 redundant language and it would just cause confusion  
10 rather than any kind of clarification. So I would propose  
11 that we delete "and delivery of material" from (d).

12 In (e) and (f), there's some redundancy  
13 between (e) and (f) because the standards of external  
14 effects do relate to noise, dust and fumes, among other  
15 things.

16 So I would propose that we delete the words  
17 "noise, dust and fumes" from (e), and it would read, "Due  
18 to traffic parking or other objectionable conditions,"  
19 and then in (f) we would pick up "noise, dust and fumes"  
20 under the standards of external effects.

21 In (f), I think the proposals later in the  
22 test, related to deleting (i) and (j), which would be  
23 for the BZA to be seeking compliance with other  
24 regulations that are not related to land use, also would  
25 apply to compliance with the D.C. Noise Control Act and

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1 Standards. So I would propose that (f) just be limited  
2 to, "The facility shall meet the standards of external  
3 effects pursuant to Section 804."

4 In (g), we had -- and when we did the EEF  
5 regulations, we had some additional language that we  
6 included, that I would propose to include at the end of  
7 (g), that says, "Use of barbed or razor wire that is  
8 visible from neighboring property or public space is  
9 prohibited." That will give some leverage to the BZA  
10 when they do the special exception, that they can prohibit  
11 that type of wire.

12 Under (h), I think I'll just ask Mr. Parsons  
13 to handle this one on the record for us. The -- in (h) (2),  
14 it says, "The trees shall be a minimum of six feet to  
15 eight feet in height when planted," and which really  
16 suggests that the minimum is going to be whatever the  
17 lower height is. And Mr. Parsons could you make a  
18 suggestion about what would be an appropriate minimum  
19 height?

20 CHAIRPERSON PARSONS: Sure. But I wanted  
21 to ask Jennifer first. Why is it just the side and rear  
22 yards? How about along public space? Do we have some  
23 real reason for not including the front yard?

24 MS. STEINGASSER: No, sir, we do not.

25 CHAIRPERSON PARSONS: What do you think?

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1 You like front yards?

2 MS. STEINGASSER: Yes, sir, we do. I'm  
3 checking to see whether we drew the reference from the  
4 solid waste intermediate recycling facility, but they  
5 don't specify even to this degree. So including the front  
6 yard would be fine.

7 CHAIRPERSON PARSONS: Okay. And I think  
8 eight feet is better. You specify six to eight, you get  
9 six. Eight is easy to measure, you know, a spread, and  
10 certainly would have a better look.

11 CHAIRPERSON MITTEN: All right. So that  
12 would be -- in the preface to (h), we would say,  
13 "Landscaped area of evergreen trees shall be maintained  
14 in all yards," or do you want to delineate them in all  
15 required yards?

16 I can't hear you if you don't turn on your  
17 microphone.

18 SECRETARY BASTIDA: I'm sorry. The front  
19 yard is not a required yard.

20 CHAIRPERSON MITTEN: Okay. Then how should  
21 we capture that? Shall be maintained in the side and  
22 rear yards and along all public rights of way?

23 MR. BERGSTEIN: It sounds like you want it  
24 in the right of way -- you mean, abutting the right of  
25 way? In the front of the facility abutting the right

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1 of way?

2 CHAIRPERSON MITTEN: Well, it would be on  
3 the property.

4 CHAIRPERSON PARSONS: Yeah, it could be in  
5 the rear of the two, the yard --

6 CHAIRPERSON MITTEN: And along all public  
7 rights of way -- and along al public rights of way.

8 And then on two will read, "The trees shall  
9 be a minimum eight feet in height when planted."

10 And then I think we had another question for  
11 Ms. Steingasser, which is in (h) (3). What we didn't quite  
12 understand was the review and approval according to  
13 standards maintained by the DCRA Soils Resources Branch.

14 Is this something that is normally done as part of the  
15 building permit process? Is this something over and  
16 above what would normally be required?

17 MS. THOMAS: I believe that was over, a  
18 little over and above, sort of an additional thing. And  
19 I think probably that would be -- we were trying to be  
20 a little bit more forceful. So if --

21 CHAIRPERSON MITTEN: Okay.

22 MS. THOMAS: -- that should be taken out,  
23 that's fine.

24 CHAIRPERSON MITTEN: Well, the only thing  
25 is that if -- I think we would need, for clarity sake,

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1 to make reference to what other standards, or there are  
2 these standards -- where can an applicant find the  
3 standards? So we're suggesting compliance with  
4 something and it's just -- it's vague.

5 So I think we either need to specify the  
6 standards or we need to delete it. I mean, given that  
7 -- what we may need to do, since we're having a landscaping  
8 plan submitted and we do delineate who referrals should  
9 be made to, is maybe we should make a referral for  
10 recommendations from, among other things, among other  
11 agencies, the Soil Resources Branch of DCRA. We could  
12 add them to the list. What do you think about that?  
13 Anybody got any thoughts about that? How does that sound  
14 to OP?

15 MS. STEINGASSER: I think that's a good  
16 resolution.

17 CHAIRPERSON MITTEN: Okay. Okay. So we  
18 will -- what we can do is modify three to just say,  
19 "Planting locations and soil preparation techniques shall  
20 be shown on a landscape plan," period. And then what  
21 we'll add to old (m), which is new (j), would be, when  
22 among the referrals, that we would add a referral to the  
23 Soil Resources Branch of DCRA. All right.

24 Then OP is proposing that we delete I and  
25 J. Any concerns about (i) and (j)?

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1 COMMISSIONER MAY: I'm sorry. Can we go  
2 back for a second?

3 CHAIRPERSON MITTEN: Sure. I'm sorry.

4 COMMISSIONER MAY: The -- I'm sort of  
5 puzzling over the front yard requirement. And I  
6 understand the logic of the side and rear yards.

7 You don't necessarily know where these  
8 properties will -- what will be the abutting use in these  
9 circumstances. But we are theoretically talking about  
10 concrete plants in an area where the -- where this use  
11 is allowed. And therefore expecting to see some actual  
12 visual clue that it exists is not in itself surprising,  
13 yet we're creating this need for a buffer zone on the  
14 front side, in effect creating a requirement for a front  
15 yard in this circumstance.

16 CHAIRPERSON MITTEN: Right. Right.

17 COMMISSIONER MAY: And I just -- I don't know  
18 if -- I mean, if that is what we're requiring, is that  
19 what we should be saying to start with? Because  
20 otherwise, I mean, you know, how do you determine how  
21 much soil is necessary?

22 CHAIRPERSON MITTEN: Right.

23 COMMISSIONER MAY: Are we going to then leave  
24 that up to the Soil Resources Branch in terms of what  
25 -- how much soil is necessary to support the evergreens?

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1 You know what I mean? It's sort of backing into this  
2 question of a front yard requirement.

3 CHAIRPERSON MITTEN: I think what this --  
4 the language that is proposed gives -- I mean, what we're  
5 trying to do is give guidance to the BZA so when they  
6 get a specific case, and they're evaluating this specific  
7 proposal for a concrete plant in the special exception  
8 process, that they have some guidance from us.

9 And one of the things that we're providing  
10 guidance for is basically, wherever you can see it, and  
11 a lot of places where you can see it, it's across a street,  
12 and across the street is residences. I mean, we know  
13 that.

14 Those are potential locations. That we're  
15 saying, look, you've got to think about that. We're not  
16 saying it has to be an unbroken line of evergreen trees  
17 or anything like that.

18 We're saying there should be some trees and  
19 they should be a certain size tree, and you should be  
20 looking for them in these locations. And then let the  
21 BZA decide what's appropriate given the particular  
22 context.

23 COMMISSIONER MAY: I understand the point.  
24 I'm just not sure what guidance we are effectively given  
25 --

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1 CHAIRPERSON PARSONS: I don't think you have  
2 a copy of the original report. And I'll pass down page  
3 15.

4 COMMISSIONER MAY: Okay.

5 CHAIRPERSON PARSONS: And I guess that's  
6 what I had in mind, not the oaks or whatever, just that  
7 there's a setback. There's a sense of place here, as  
8 opposed to the other photographs that you're probably  
9 more familiar with --

10 COMMISSIONER MAY: Yeah. Well, the one I'm  
11 used to is up on 5th Street, Northeast. That's the one  
12 that I drive by. Okay. Well, I --

13 CHAIRPERSON PARSONS: But you're right. I  
14 mean, it is an industrial zone and we're not making their  
15 neighbors do this. And maybe it's too stringent. I  
16 don't know. Just trying to upgrade the neighborhood.

17 COMMISSIONER MAY: Well, I see the point.  
18 It just -- I don't have a big issue and want to strike  
19 it. It just -- it raised a lot more questions than I  
20 was able to sort of formulate an answer to on the spot.  
21 Anyway, thank you very much for that.

22 CHAIRPERSON MITTEN: Thank you.

23 MR. BERGSTEIN: Madame Chair, I'm sorry, but  
24 are you going to be keeping in the introduction to what  
25 is currently page (h) (3) that calls for the landscape

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1 plan to be submitted to DCRA? Or are you going to take  
2 care of the landscape plan, and what is now section (n),  
3 which does call for a landscape plan to be submitted,  
4 with the application, and just build in that the plan  
5 should show the planting locations and soil preparation  
6 techniques at that time?

7 CHAIRPERSON MITTEN: Well, that's fine. I  
8 mean, I think that's fine. And it's probably better  
9 because then people aren't looking in multiple places.

10 So I think the suggestion -- I mean, Mr.  
11 Bergstein isn't going so far as to make a suggestion,  
12 but I think what he's implying is that it might be better  
13 that when we -- rather than having (h) (3), when we have  
14 the requirement to submit a landscaping and lighting plan  
15 for the facility in old (n) (2), that that's the  
16 appropriate time to say, or the appropriate place to say,  
17 that the landscaping plan shall include planting  
18 locations and soil preparation techniques.

19 Anybody have a problem with moving that  
20 language? Oh. Okay.

21 All right. We're back to (i) and (j).  
22 Anyone have a problem with deleting (i) and (j)? All  
23 right. Old (k) or new (i), as it is, I would suggest  
24 moving that to the list in old (n), the list of things  
25 that the applicant shall provide. Because this is again

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1 just another component of how the facility will function,  
2 and so I think it's more appropriately in the list. And  
3 so it would become (n) (4) or new (n) (4), as the case may  
4 be.

5 Any concern with deleting (l), which is the  
6 restoration requirements? Okay. Moving on to old (m)  
7 or new (j). We have an addition of -- well, let me step  
8 back from that, which is the language that we normally  
9 employ is not that the Board will make referrals directly,  
10 but that the Board utilizes the services of the Office  
11 of Planning for coordination.

12 So what I would suggest is we use language  
13 that we find elsewhere in the ordinance, which would say  
14 something like this: "The Board shall submit the  
15 application to the director of the Office of Planning  
16 for coordination and review, report an impact assessment,  
17 along with reports in writing of all relevant district  
18 departments and agencies, including, but not limited to"  
19 -- now we're back to the language proposed -- "the D.C.  
20 Departments of Public Works, Transportation, Health, the  
21 Soil Resources Branch of DCRA," and so on and so forth,  
22 including the language about the historic districts.  
23 All right?

24 And then the language under (m) (1), which  
25 is that the department shall report to the Board at least

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1 seven days prior to the set date for the hearing on such  
2 application. Even though that was inserted at our  
3 request, what we did discover is that in the procedures  
4 or, I guess, the rules for -- that govern the Board of  
5 Zoning Adjustment -- in 3114.2, that's already stated  
6 that those reports are due within that timeframe. So  
7 I would propose deleting (m)(1) as being redundant with  
8 3114.2.

9 Then we've added a few things to (n). I won't  
10 repeat that. And then I would suggest that the sentence,  
11 if you're looking at the copy that has color, there is  
12 a sentence that's in black that is (n)(1), (2) or (3),  
13 but it's a standalone, that that should be it's own  
14 section, which would be new (1).

15 And I would suggest the following additional  
16 language at the beginning of that sentence, which is,  
17 "In addition to any other conditions the Board deems  
18 necessary to mitigate any adverse impacts of the proposed  
19 use," then, to the language proposed, "the Board may  
20 impose additional" -- so that word "additional" would  
21 be added -- "conditions pertaining to --"

22 And then we would just pick up with the  
23 proposed language, so that it doesn't imply that only  
24 those conditions enumerated in this section are -- may  
25 be imposed.

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1           And then finally, we have a proposed addition  
2 to 801.7. And I would suggest that rather than calling  
3 out concrete plants alone, because they are not the only  
4 use subject to special exception review in CM, that  
5 801.7(j) read, "Any light manufacturing, processing,  
6 fabricating or repair establishment, except those uses  
7 for which special exception approval is required pursuant  
8 to section 802." That way we would be highlighting the  
9 fact that we would expect that any of the uses, any of  
10 the three uses, that require special exception, not just  
11 concrete plants.

12           All right. Any questions about those  
13 proposed modifications to the Appendix A that Office of  
14 Planning has provided?

15           All right. Then I would move approval of  
16 Zoning Commission case number 01-32TA, with the  
17 amendments we discussed in the last 20 minutes.

18           COMMISSIONER MAY: Second.

19           CHAIRPERSON MITTEN: All right. Any  
20 further discussion? All those in favor, please say aye.

21           (Chorus of ayes.)

22           CHAIRPERSON MITTEN: Those opposed, please  
23 say no.

24           (No response.)

25           CHAIRPERSON MITTEN: Who's going to record

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1 the vote for us this evening? Ms. Sanchez.

2 MS. SANCHEZ: Yes. Staff would record the  
3 vote five to zero to zero, Ms. Mitten moving, Mr. May  
4 seconding, and Commissioners Hannaham, Hood and Parsons  
5 in favor of the motion.

6 CHAIRPERSON MITTEN: Thank you. Any  
7 further business for this special public meeting, Mr.  
8 Bastida?

9 SECRETARY BASTIDA: No, Madame Chairman.  
10 The staff has no further business.

11 CHAIRPERSON MITTEN: Thank you. I now  
12 declare this special public meeting adjourned.

13 (Whereupon, the special meeting in the  
14 above-entitled matter was adjourned at 6:20 p.m.)

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