

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

<p>IN THE MATTER OF:</p> <p>Map Amendment at the southeast corner of the intersection of Massachusetts Ave., N.W., I Street, N.W., and Fifth St., N.W.; Square 517, Lot 50</p>	<p>Case No. 00-19</p>
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Thursday,
September 21, 2000

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 00-19 by the
District of Columbia Zoning Commission convened at 7:00 p.m., in
the Office of Zoning Hearing Room at 441 4th Street, Northwest,
Washington, D.C., Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- | | |
|---------------------|------------------|
| ANTHONY J. HOOD | Chairperson |
| CAROL J. MITTEN | Vice Chairperson |
| HERBERT M. FRANKLIN | Commissioner |
| KWASI HOLMAN | Commissioner |

OFFICE OF ZONING STAFF PRESENT:

Gerald Forsburg	Office of Zoning
Nyambi Nyambi	Office of Zoning

OTHER AGENCY STAFF PRESENT:

John Fondersmith, Office of Planning

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

(7:00 p.m.)

CHAIRPERSON HOOD: Good evening, ladies and gentlemen.

This is the public hearing of the Zoning Commission of the District of Columbia for Thursday, September 21, 2000.

My name is Anthony Hood, Chairperson of the Zoning Commission of the District of Columbia. Joining me this evening are Commissioners Herbert Franklin, Kwasi Holman, and Carol Mitten. Commissioner John Parsons is unable to join us this evening. Also joining us is Mr. John Fondersmith, representing the Office of Planning.

I hereby declare this hearing open. Notice of today's hearing was published in the D.C. Register and in The Washington Times on August 4, 2000.

This hearing will be conducted in accordance with the provisions of 11 DCMR 3020. The subject of this evening's hearing is Zoning Commission Case Number 00-19. The applicant and owner of the property, Fidelity Limited Liability Company, represented by the law firm of Wilkes Artis, and the contract purchaser, Development Resources, Inc., have petitioned the Zoning Commission for the District of Columbia to amend, on an emergency basis, the zoning map from HR/SP-2 to DD/C-2-C, for Square 517, Lot 50, located at the southeast corner of Massachusetts Avenue, I Street, and Fifth Street, Northwest.

1 The property is roughly triangular and is comprised
2 of approximately 44,827 square feet of land area and is currently
3 in use as a parking lot. The property is currently zoned HR/SP-2,
4 a medium-high density, hotel residential incentive district. The
5 proposed DD/C-2-C zoning would permit residential hotel, office,
6 retail, and service uses, with required residential use in all new
7 developments.

8 The order of the procedure will be as follows:
9 preliminary matters, applicant's case, report of the Office of
10 Planning, report of other agencies, report of Advisory
11 Neighborhood Commission 2C, parties and persons in support,
12 parties and persons in opposition.

13 The Commission will adhere to this schedule as
14 strictly as possible. Those presenting testimony should be brief
15 and non-repetitive. If you have a prepared statement, please give
16 copies to staff and present only the highlights. Please provide
17 us copies of your statement before summarizing.

18 All persons appearing before the Commission are to
19 fill out two witness cards. These cards are located at each end
20 of the table in front of us. Upon coming forward to speak to the
21 Commission, please give both cards to the Reporter sitting to my
22 right.

23 If these guidelines are followed, an adequate
24 record can be developed in a reasonable length of time. The
25 decision of the Commission in this case must be based exclusively

1 on the public record. To avoid any appearance to the contrary,
2 the Commission requests that persons present not engage the
3 members of the Commission in conversation during any recess or at
4 any time.

5 The staff will be available to discuss procedural
6 questions. Please turn all beepers and cell phones off at this
7 time, so as not to disrupt these proceedings.

8 Would all of the individuals wishing to testify
9 please rise and take the oath?

10 (Whereupon, an oath was administered to those
11 individuals planning to testify.)

12 Staff, do we have any preliminary matters?

13 MR. NYAMBI: There are no preliminary matters at
14 this time, Mr. Chairman.

15 CHAIRPERSON HOOD: Okay. Let me -- I just have one
16 preliminary matter. Is there anyone here in the audience that's
17 in opposition of this proposal in front of us tonight? Is there
18 anyone in support? Okay. So --

19 (Laughter.)

20 Is there anyone -- okay. I'm going to ask, if it's
21 okay with my colleagues, that -- Mr. Glasgow, I see that there's
22 no opposition in the audience. I know you asked for an hour.
23 While we'd love to hear your presentation, if you can highlight it
24 and --

25 MR. GLASGOW: Yes, sir.

1 CHAIRPERSON HOOD: -- give us the expedient
2 version, and I think we can move expeditiously.

3 MR. GLASGOW: I appreciate that, Mr. Chairman.

4 For the record, my name is Norman M. Glasgow, Jr.,
5 of the law firm of Wilkes Artis. Here with me tonight are Mr.
6 Greg Fazakerly and Mr. Cary Majesky, representing the applicants
7 in the project, and Mr. Steve Sher of the law firm of Holland &
8 Knight, LLP, who is going to be the expert land use witness.

9 I have one preliminary matter to enter into the
10 record, and that is the letter of ANC-2C in support of the
11 application. I'll submit that at this time. I don't know whether
12 or not you have that.

13 CHAIRPERSON HOOD: We have it. Colleagues, I think
14 what we need to do first is to -- we do have a copy of it, unless
15 this is something additional. But we can waive our rules by
16 general consensus. I'm sure there are no problems with that.

17 Was there anything else that came in after the
18 filing time?

19 MR. GLASGOW: If you have the ANC letter, that's
20 fine. I just wanted to make sure you had that.

21 Just very briefly, before introducing the
22 witnesses, this case -- at least in very summary fashion -- is one
23 to get rid of a technical anomaly that we have with respect to the
24 regulations when a PUD expires and the reversion of the property
25 to a certain zoning district -- in this case, it was HR/SP-2 --

1 when property that would have been similarly situated pursuant to
2 page 44 of Zoning Commission Order Number 681, which was the
3 downtown development district, would have rezoned the property to
4 DD/C-2-C, and that is the zoning that we're requesting.

5 In our statement, we have attached a copy of Zoning
6 Commission Order Number 681, and at page 44 of that order it says,
7 "Rezone to DD/C-2-C," and under paragraph (c)(6), "In Square 517,
8 all lots except Lot 49." We are Lot 50. We would have been
9 rezoned to DD/C-2-C at that time, had it not been for the PUD.

10 I just want to give that as background. And if
11 there are no preliminary questions, I don't want to delay the
12 Commission in this. I'd like to call Mr. Fazakerly as the first
13 witness, to identify himself for the record, give his statement,
14 and then Mr. Sher will touch on the land use issues.

15 Mr. Fazakerly, would you please proceed with your
16 testimony?

17 MR. FAZAKERLY: Thank you, and good evening. I
18 will make this even briefer.

19 I'm Chairman and CEO of CG Investments, Inc., which
20 is the contract purchaser for this property. I'm also Chairman of
21 DRI's Advisory Board.

22 I express my appreciation to you all to have this
23 meeting this evening. Having been involved in the downtown for
24 well over 12 years now, I do know that this is totally consistent
25 with what was intended for this property, for it to be DD/C-2-C,

1 since that PUD was put on prior to that.

2 We intend to work on a combined lot development,
3 thereby maximizing the amount of residential that can be put on a
4 site, so we can select another site to put the commercial. And,
5 as a matter of fact, we are already in for an application for an
6 October 3rd BZA hearing, so as to make that residential project a
7 reality.

8 And I think that will be just superb for the
9 revitalization of this area, creating a hard edge of neighborhood
10 residential development in that part of town.

11 If it were not for the PUD, I would only say -- and
12 Steve will speak to this -- this would already be zoned DD/C-2-C.

13 I appreciate your attention to this matter. And if I can answer
14 any questions, I think we should move on to Steven Sher.

15 CHAIRPERSON HOOD: What we'll do is come back on
16 the back end if we have questions for all of the panel.

17 MR. GLASGOW: Yes, sir.

18 Mr. Sher?

19 MR. SHER: Good evening, Mr. Chairman, members of
20 the Commission. For the record, my name is Steven E. Sher, the
21 Director of Zoning and Land Use Services, with the law firm of
22 Holland & Knight, LLP, rolls right off the tongue there.

23 You have, I believe, been handed the outline and
24 report that I prepared, and I'm going to sort of throw it away and
25 just talk to a couple of things.

1 The property is located in Square 517 at the corner
2 of Fifth and I and Massachusetts Avenue, Northwest. It's about
3 44,000 square feet. It's a parking lot now. And if you look at
4 the second-to-the-last attachment, the second-to-the-last page of
5 what I handed to you, you will see the zoning map as it appears in
6 the current zoning atlas. And if you look real hard in the
7 middle, you'll see a circle, and that identifies the subject
8 property.

9 And lo and behold, it looks like it's DD/C-2-C.
10 But by operation of the regulations, it is not. Section 2400.7
11 says that when a PUD expires, the zoning reverts to that which was
12 in effect at the time that the PUD was approved.

13 On page 4, at the bottom, you will see that in
14 February of 1990 the Commission approved the planned unit
15 development on this property, rezoning the site under the PUD to
16 HR/C-3-C. That was combined apartment house and office building
17 development. But that PUD expired in February of 1998, and the
18 zoning reverted to HR/SP-2, that which was in effect at the time
19 the PUD was approved.

20 Notwithstanding, as Mr. Glasgow points out, in
21 Order Number 681, page 44, paragraph (c)(6), it says, "Square 517,
22 except for the Judiciary House Apartment House, is to be DD/C-2-
23 C." It's not. And what we are here for this evening is to
24 basically have that property zoned as if it had not been subject
25 to the PUD at the time that the downtown development district was

1 approved.

2 There's not a whole lot of difference in
3 development standards between HR/SP-2 and DD/C-2-C. HR/SP-2
4 allows an eight and a half FAR for hotel or apartment house; DD/C-
5 2-C allows eight and a half FAR for an apartment house. You get
6 some retail uses that are allowed as a matter of right under C-2-
7 C. Under the HR/SP-2, you could do a hotel as a matter of right.
8 The height is 130 feet, the same either way.

9 What is significant to the project, as Mr.
10 Fazakerly mentioned, are the incentives that the downtown
11 development district overlay offers to an apartment house on this
12 property; and, specifically, the ability to use combined lot
13 development.

14 If the apartment building on the site exceeds the
15 minimum required, which is four and a half FAR of residential,
16 then the excess may be used to satisfy a residential requirement
17 for someplace else, and that imparts an ability to make the whole
18 project work.

19 The comprehensive plan provisions which apply to
20 this site are essentially the same as they were back in 1990 and
21 '91 when the Zoning Commission adopted the downtown development
22 district generalized land use map. It includes the property in
23 the mixed use, high density commercial, high density residential.

24 And if you look at pages 11, 12, and 13, I've gone through the
25 downtown element and some of the Ward 2 plan.

1 The major policies, the residential land use
2 policies, the Mount Vernon Square policies, all talk about
3 residential in mixed use on Mass Avenue, and that's what's going
4 to happen here.

5 The zoning would allow for a reasonable mix of
6 development possibilities on the site, and one of the things that
7 happens under the DD district that doesn't happen under the HR
8 district is that residential is required.

9 Under the HR district, you may build it, but it's a
10 voluntary, it's an incentive, it's not a requirement. Here
11 residential is required. So if you zone this DD/C-2-C and
12 development occurs, you will get residential.

13 The rest of what is here I will just submit for the
14 record. The last attachment is the piece of the generalized land
15 use map, but I don't think we need to spend any time on that.

16 I conclude that the application for rezoning meets
17 the tests under the Zoning Act. But for the existence of the
18 approved PUD in 1991, the property would now be zoned DD/C-2-C.
19 DD/C-2-C will allow new residential development to take advantage
20 of incentives now available to other residential development in
21 that area, and that you should approve the application for
22 rezoning to DD/C-2-C.

23 MR. GLASGOW: Mr. Chairman, that concludes the
24 direct presentation of the applicant.

25 CHAIRPERSON HOOD: Excellent.

1 Colleagues, do you have any questions?

2 COMMISSIONER FRANKLIN: Just one quick one, Mr.
3 Chairman. This strikes me in the nature of a technical
4 correction. Isn't that what it is? We're just -- our regulations
5 probably should be clarified that when a PUD expires the
6 underlying zoning is reinstated.

7 MR. GLASGOW: I guess there are -- that's -- the
8 question is, what is the underlying zoning, given the timeframe?
9 And can you zone a piece of property when there hasn't been a
10 hearing for that zoning? That would probably be -- Mr. Sher, do
11 you see that --

12 COMMISSIONER FRANKLIN: Well, maybe I should
13 correct myself and say, maybe we ought to proceed when we approve
14 a PUD to state what the zoning will be if the PUD expires. Would
15 that be the better way of going?

16 MR. GLASGOW: I think that would be a better way of
17 phrasing it.

18 COMMISSIONER FRANKLIN: Okay. Thank you.

19 MR. SHER: I would only add that, in some cases, it
20 is excruciatingly clear what the sequence of events would result
21 in the zoning to be. In other cases, it's not. In this case, it
22 happens to be. It may be that the Commission wants to consider at
23 some point some clarification or amendment of the PUD regulations,
24 but I think that that's not just a drop-dead certain result as to
25 how that comes out.

1 This one is very, very clear about what the intent
2 was. I can show you other situations where that wouldn't be the
3 case.

4 CHAIRPERSON HOOD: Any other questions?

5 Okay. Well, we'll move right along to the report
6 of the Office of Planning.

7 MR. FONDERSMITH: Thank you, Mr. Chairman. I'm
8 John Fondersmith from the Office of Planning. And, as you say, I
9 don't think we -- we will avoid repeating too much here. You have
10 a map there in front of you. You have the map from the applicant,
11 but the map in front of you that shows the project location and
12 the surrounding area, bearing in mind that this is a '95 flight,
13 so there have been a couple of changes, which I'll note.

14 We go -- in our report, we go through the zoning
15 history, which you've heard here, and the main thing is this
16 existing PUD. And as we say, and I think it's clear also, that if
17 the second -- if the PUD for Lot 50, which is the project site,
18 had not been recently approved, the Zoning Commission, we think
19 it's very clear, would have changed the HR/SP-2 zoning to DD/C-2-
20 C, in December of '90 when the DD district was put on. I mean,
21 this is what has been said here. So we think that's clear.

22 The other point, really -- and we note in the
23 report this issue that Mr. Franklin -- Commissioner Franklin --
24 just raised, but, of course, in this point -- in this case, since
25 the applicant is asking it to be changed back to DD/C-2-C, that

1 really is clear.

2 The other point we want to make in the report is
3 the important role of this square in the downtown housing
4 strategy. It's what we kind of call a hinge location, because, as
5 you know, we've gotten a lot of housing in the Penn Quarter area,
6 and south of Gallery Place essentially.

7 Now we're beginning to finally get the possibility
8 for housing north in the Chinatown and Judiciary Square and moving
9 north of Massachusetts Avenue. And as you can see on this map in
10 front of you, or the aerial photograph, where it says Avalon Bay
11 Project, that's a residential project which is moving ahead.

12 The BZA Tuesday approved some variances and so on
13 for that project that I think clears the way for that. It has
14 gone through the Chinatown design review process. So that's about
15 210 units.

16 And then, over there where it says C-4, where you
17 actually have now the MCI on the left-hand portion of the map, you
18 have the MCI Center, and then the site of Gallery Place. You're
19 going to have 170-some units.

20 So we're beginning to see a kind of concentration
21 of housing in this area. And when you look at the project
22 location there in red, with the possibility -- with this rezoning
23 of considerable number of housing units on that site, you see how
24 important this site is to really building on that critical mass of
25 housing on the north side of downtown and leading the way toward

1 housing in the Mount Vernon Triangle or NOMA, north of
2 Massachusetts Avenue, where there's considerable interest, too.

3 So we are very supportive of this project, not only
4 in itself but for what it can mean to this momentum of getting
5 housing in this area. I think, in addition to moving this housing
6 along, you send a message here and let this move forward, and it
7 will probably spur some other activity. So we recommend it
8 highly.

9 CHAIRPERSON HOOD: Okay. Thank you, Mr.
10 Fondersmith.

11 Colleagues, any questions of Office of Planning?
12 If not, we'll keep moving.

13 Report of other agencies? Do we have any reports
14 under submittals? I didn't see anything.

15 MR. NYAMBI: There are no additional reports at
16 this time.

17 CHAIRPERSON HOOD: Okay. Okay. Report of Advisory
18 Neighborhood Commission 2C? Is there anyone representing Advisory
19 Neighborhood Commission 2C? I will make note that we do have a
20 letter of support from the Advisory Neighborhood Commission 2C for
21 Lot 50 in Square 517 for this project.

22 Next? We also have a letter from Downtown Clusters
23 of Congregation. It's from Mr. Terry Lynch, the Executive
24 Director, in support of this project.

25 Parties and persons in support? I asked earlier;

1 there was no one. Well, other than that.

2 (Laughter.)

3 Also, parties and persons in opposition?

4 Okay. Applicant's summary?

5 MR. GLASGOW: Mr. Chairman, the only thing that I
6 would request at this point in time is we have the BZA case coming
7 up. I know we requested emergency action on this application, and
8 the Board was -- helped us a great deal by expediting the hearing,
9 to make sure that we had the hearing, and encouraged us that if
10 the hearing went well that we could hope for emergency action at
11 that time.

12 We would like to get the property rezoned on an
13 emergency basis, so that we -- when we proceed with the Board, we
14 have the DD/C-2-C zoning in place, when we have that here in
15 another week and a half. And so I would request that formally at
16 this point in time and hope the Commission could accommodate that
17 request.

18 CHAIRPERSON HOOD: Okay. Thank you.

19 Okay. Colleagues, we've heard the presentation.
20 We can deliberate. He has asked for a bench decision.

21 COMMISSIONER FRANKLIN: I so move, Mr. Chairman.

22 COMMISSIONER HOLMAN: Second.

23 CHAIRPERSON HOOD: It's been moved and seconded.

24 All those in favor, by the usual sign of voting.

25 (Chorus of ayes.)

1 Any opposition?

2 (No response.)

3 So ordered.

4 Okay. No discussion or anything. That's great.

5 (Laughter.)

6 It's the first time. Now we don't know what to do.

7 We didn't have any discussion.

8 (Laughter.)

9 I'm going to ask for the closing statement.

10 Oh, I'm sorry. Staff, would you record the vote?

11 That's very important.

12 MR. FORSBURG: Staff would record the vote as four
13 to zero to approve, Herbert Franklin moving the motion, and Kwasi
14 Holman seconding the motion, all in favor.

15 CHAIRPERSON HOOD: Okay. You know, I was wondering
16 of the legal mind -- I'm trying to be a lawyer here. I was
17 wondering if -- colleagues, if we could have put this on the
18 consent calendar and did away with this. But that's something
19 that I will probably ask corporation counsel at a later time.

20 MR. GLASGOW: Mr. Chairman, can I just ask one
21 thing?

22 CHAIRPERSON HOOD: Sure.

23 MR. GLASGOW: I had requested that the Commission
24 take emergency action. I assume that that's what happened here
25 tonight; we are rezoned as of now.

1 COMMISSIONER FRANKLIN: That was my intent in
2 making the motion.

3 MR. GLASGOW: Thank you, sir.

4 CHAIRPERSON HOOD: Okay.

5 VICE CHAIRPERSON MITTEN: And just for
6 clarification, not on an emergency basis, because that's
7 temporary.

8 CHAIRPERSON HOOD: Emergency basis, I believe, is
9 -- and we're probably going to need some help here, 120 -- what is
10 it? 120 days?

11 VICE CHAIRPERSON MITTEN: I think that's right.

12 CHAIRPERSON HOOD: We've rezoned it as of -- I
13 think the intent of the motion was --

14 COMMISSIONER FRANKLIN: Right.

15 CHAIRPERSON HOOD: -- now. And that goes back to
16 my first inclination that maybe we could have done it on a consent
17 calendar. But I'm not sure, so that's something we'll bring up at
18 a later date. This is not the forum for that.

19 I don't think we had a proxy from Mr. Parsons, did
20 we?

21 MR. FORSBURG: No. There's no proxy from Mr.
22 Parsons.

23 CHAIRPERSON HOOD: We're not going to make this any
24 longer than what it already has been. So, okay.

25 The record in this case will be kept -- no, the

1 record in this case -- okay. You know, when you do something
2 different, sometimes it takes a while to get used to it.

3 (Laughter.)

4 The Commission will make a decision in this case at

5 --

6 (Laughter.)

7 COMMISSIONER HOLMAN: We've already made our
8 decision.

9 (Laughter.)

10 CHAIRPERSON HOOD: Let me see here. Okay. We've
11 already done that.

12 Okay. Well, without further ado, then, I will just
13 say that this hearing is closed.

14 (Whereupon, at 7:24 p.m., the proceedings in the
15 foregoing matter were concluded.)

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