

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :
 :
Text amendments related to the : Case No.
expiration of special exception : 10-08
uses for which a term has been :
established :
 :
-----:

Thursday,
June 24, 2010

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

The Public Hearing of Case No.
10-08 by the District of Columbia Zoning
Commission convened at 6:30 p.m. in the
Office of Zoning Hearing Room at 441 4th
Street, N.W., Washington, D.C., 20001,
Anthony J. Hood, Chairperson, presiding.

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO.null

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ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
KONRAD SCHLATER, Commissioner
PETER MAY, Commissioner (NPS)
MICHAEL G. TURNBULL, FAIA,
Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON

The transcript constitutes the
minutes from the Public Hearing held on June
24, 2010.

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C-O-N-T-E-N-T-S

Proposed Action
Z.C. Case No. 10-08
Text Amendment Related to the Expiration of
Special Exception and Non-Conforming Uses,
and the Effective Date of Special Exception
Uses for Which a Term Has Been Established. . .4
Vote to Approve 10-08 (4-0-1) 13

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

6:36 p.m.

CHAIRPERSON HOOD: Good evening,
ladies and gentlemen. This is Zoning
Commission Case No. 10-08. This is a request
by the Office of Planning for text amendments
to the Zoning Regulations related to
expiration of special exceptions and non-
conforming uses, and the effective date of
special exception uses for which a term has
been established.

Notice of today's hearing was
published in the D.C. Register on May 14th,
2010 and copies of that announcement are
available to the left on the wall near the
door.

The hearing will be conducted in
accordance with the provisions of 11 DCMR
3021 as follows: Preliminary matters,
presentation by the Office of Planning,
reports of other Government agencies, report
of the ANCs or organizations and persons in

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1 support, organizations and persons in
2 opposition.

3 The following time constraints
4 will be maintained in this hearing:
5 Organizations, five minutes; individuals,
6 three minutes.

7 All persons appearing before the
8 Commission are to fill out two witness cards.

9 The decision of the Commission in
10 this case will be based exclusively on the
11 public record. To avoid any appearance to the
12 contrary, the Commission requests that persons
13 present not engage the members of the
14 Commission in conversation during any recess
15 or at any time.

16 Please turn off all beepers and
17 cell phones at this time so not to disrupt
18 these proceedings.

19 At this time the Commission will
20 consider any preliminary matters. Does the
21 staff have any preliminary matters?

22 MS. SCHELLIN: No, sir.

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1 CHAIRPERSON HOOD: Okay. Mr.
2 Lawson, we'll go right to you.

3 MR. LAWSON: Thank you, Mr. Chair.

4 Very briefly, at your April 12th
5 public meeting you set this text amendment
6 down for a public hearing.

7 Briefly, OP's recommending that
8 the following three text amendments be
9 approved: (1) The 2005 to reinforce the
10 non-conforming use provision, a discontinuance
11 provision. This one was requested by the
12 Zoning Administrator; (2) Chapter 31 would
13 provide that all special exception terms begin
14 on the date upon which the order becomes
15 effective. This one was requested by the
16 Office of Zoning; and (3) Also to Chapter 31
17 to codify expiration dates for discontinued
18 and superseded uses permitted by special
19 exception. And again, this one was requested
20 by the Zoning Administrator.

21 All three are administrative in
22 nature and would provide greater definition

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1 and certainty to the administration of the
2 regulations. The proposed changes would not
3 be inconsistent with the Comprehensive Plan.
4 OP has received no comments from a member of
5 the public or from another D.C. agency.

6 And with that, I'll end my
7 testimony and be available for questions.
8 Thank you.

9 CHAIRPERSON HOOD: Thank you, Mr.
10 Lawson, for being succinct and the point.

11 Commissioners, do we have any
12 questions of Mr. Lawson on these
13 recommendations?

14 COMMISSIONER SCHLATER: I just
15 have a question on the expiration of the
16 special exception uses. You say that's an
17 administrative change, but to me it seems like
18 it's changing the way the BZA is going to
19 interpret this moving forward, correct? I
20 mean, it's a shift in terms of a special
21 exception use will no longer be allowed if
22 it's discontinued, correct?

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1 MR. LAWSON: Yes, that's correct.
2 That's one of the things that the Zoning
3 Administrator requested. That was also the
4 way that he had been interpreting the
5 regulations to be worded. It's very clear
6 that the BZA had a very different
7 interpretation of what the regulations said,
8 you're correct. Again it was drafted by the
9 Zoning Administrator to make sure that the
10 wording corresponds to the way that he feels
11 the regulations should be administered, and we
12 agree.

13 COMMISSIONER SCHLATER: Great.
14 Okay. I mean, I think his interpretation
15 previously wasn't based on the text of the
16 Zoning Regs, so it is a shift in how this is
17 going to work, right? I guess that's all I'm
18 trying to point out. I'm okay with the shift,
19 but it's not as if there was anything in the
20 text previously that would have said a special
21 exception use would have expired after it had
22 been discontinued. Is that correct?

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1 MR. LAWSON: I don't believe that
2 the text was as explicit as that. I believe
3 that's how it had been administered until it
4 was challenged to the BZA.

5 CHAIRPERSON HOOD: Okay. Any
6 other questions from anybody?

7 COMMISSIONER TURNBULL: I guess
8 the only question, and you started talking
9 about grandfathering different uses, or that's
10 what had happened over the past. And I
11 remember the one about the gas station being
12 a deli. I think we've had a couple of those
13 like that. So, now we basically eliminated
14 any grandfathering. Is there any instance
15 that you can think of that's still going could
16 come back to haunt us on this, or is this
17 basically eliminating that aspect of it?

18 MR. LAWSON: It absolutely does
19 not actually eliminate grandfathering. This
20 deals with kind of a specific situation where
21 an approval had been granted. Most
22 grandfathering occurs because the use existed

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1 before the Zoning Regulations did.

2 COMMISSIONER TURNBULL: Right.

3 MR. LAWSON: And that's the
4 typical use of I guess the term
5 "grandfathering." And we see very many cases
6 of those, the most common being a small corner
7 grocery store in what's now a residential
8 neighborhood that doesn't allow the small
9 corner grocery store. Well, that non-
10 conforming retail use is considered
11 grandfathered and it's allowed to continue on
12 in perpetuity. However, if that use --

13 COMMISSIONER TURNBULL: Even if it
14 had gone three years?

15 MR. LAWSON: No, that's what I was
16 just going to say. If that use is
17 discontinued --

18 COMMISSIONER TURNBULL: Okay.

19 MR. LAWSON: -- for more than
20 three years, or obviously if it's replaced by
21 a conforming use, the grandfathering goes
22 away.

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1 This is dealing with a specific
2 circumstance where the Board of Zoning
3 Adjustment had previously granted an approval
4 for a special exception use and then that use
5 went away. So, it's a little bit different --

6 COMMISSIONER TURNBULL: Okay.

7 MR. LAWSON: -- from the typical
8 grandfathering.

9 COMMISSIONER TURNBULL: Okay.

10 Thank you.

11 MR. LAWSON: And much narrower in
12 focus. There will be many fewer properties
13 that would fall into that category.

14 CHAIRPERSON HOOD: Okay. Any
15 other questions or comments?

16 (No response.)

17 CHAIRPERSON HOOD: Okay. Thank
18 you, Mr. Lawson.

19 I didn't see any reports of any
20 other Government agencies or any reports of
21 the ANC. And I call for this, but I don't see
22 anyone in the audience. But let me see. Is

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1 there anyone here, organizations or persons in
2 support?

3 (No response.)

4 CHAIRPERSON HOOD: Organizations
5 or persons in opposition?

6 (No response.)

7 CHAIRPERSON HOOD: Let the record
8 reflect that I don't see anyone here in this
9 case.

10 So with that, the following time
11 -- well, I'm sorry. Like Ms. Schellin said,
12 all I do is read what I got in front of me,
13 and I'm reading the opening statement.

14 Okay. So with that, I guess we
15 can close it. Commissioners, I don't see a
16 reason for not moving forward this evening on
17 a bench decision. I think it's pretty
18 straight forward. Obviously, a lot of folks
19 are in agreement because we don't see anyone
20 here. So with that, I would move approval of
21 Zoning Commission Case 10-08 and ask for a
22 second.

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1 COMMISSIONER MAY: Second.

2 CHAIRPERSON HOOD: Moved and
3 properly seconded. Any further discussion?

4 (No response.)

5 CHAIRPERSON HOOD: Are you ready
6 for the question? All those in favor, aye?

7 (Chorus of ayes.)

8 CHAIRPERSON HOOD: Not hearing any
9 opposition, Ms. Schellin, would you please
10 record the vote?

11 MS. SCHELLIN: Yes, staff records
12 the vote 4 to 0 to 1 to approve Zoning
13 Commission Case No. 10-08 for proposed action.
14 Commissioner Hood moving, Commissioner May
15 seconding, Commissioners Turnbull and Schlater
16 in support. The third mayoral appointee
17 position vacant, not voting.

18 And just to confirm, the record is
19 closed in this case.

20 CHAIRPERSON HOOD: It's closed,
21 yes. Ms. Schellin, do we have anything else
22 before us tonight?

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MS. SCHELLIN: No, sir.

CHAIRPERSON HOOD: Okay. Thank
you very much. Thank everyone for their
participation. This hearing is adjourned.

(Whereupon, the meeting was
adjourned at 6:46 p.m.)

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