

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

IN THE MATTER OF:

Text Amendment to Permit
Retail & Service Uses by
Special Exception in
Special Purposes-2 (SP-2)
Districts 09-11

Thursday,
October 29, 2009

The Public Hearing of the District of Columbia Zoning Commission convened in the Office of Zoning Hearing Room, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

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

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN Secretary
ESTHER BUSHMAN, General Counsel

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
PAUL GOLDSTEIN

This transcript constitutes the minutes from the Public Hearing held on October 29, 2009.

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

2 6:34 p.m.

3 CHAIRMAN HOOD: Okay. Good
4 evening, ladies and gentlemen. This is the
5 Public Hearing of the Zoning Commission of the
6 District of Columbia for Thursday, October 29,
7 2009. My name is Anthony J. Hood. Joining me
8 are Commissioners Schlater and Keating. We
9 will also be joined by -- I'm sorry. Joining
10 me are Commissioner Schlater and also
11 Commissioner Turnbull. We are expecting to be
12 joined by Commissioner May shortly.

13 We are also joined by the Office of
14 Zoning staff, Ms. Sharon Schellin and Ms.
15 Esther Bushman. Also the Office of Planning
16 staff, Ms. Jennifer Steingasser and Mr.
17 Goldstein.

18 This proceeding is being recorded
19 by a Court Reporter and is also webcast live.

20 Accordingly, we must ask you to refrain from
21 any disruptive noises or actions in the
22 hearing room.

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1 The subject of this evening's
2 hearing is Zoning Commission Case No. 09-11.
3 This is a Request by the Office of Planning
4 for Text Amendments to the Zoning Regulations
5 to allow Retail and Service Uses in the SP-2
6 Zone District, south of M Street, N.W. and
7 N.E.

8 Notice of today's hearing was
9 published in the DC Register on August 28,
10 2009 and copies of that announcement are
11 available to my left on the wall near the
12 door.

13 The hearing will be conducted in
14 accordance with the provisions of 11 DCMR 3021
15 as follows: Preliminary matters; presentation
16 by the Office of Planning or Petitioner, in
17 this case, which will be the Office of
18 Planning; reports of the other Government
19 agencies; reports of ANC-2A, 2B, 2F, 6B and
20 6C; organizations and persons in opposition --
21 I mean in support; organizations and persons
22 in opposition.

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1 The following time constraints will
2 be maintained in this hearing: Organizations
3 5 minutes, individuals 3 minutes.

4 All persons appearing who are in
5 the audience know already to fill out to
6 witness cards, so I'll skip over that and the
7 record can speak for itself.

8 When you are finished speaking,
9 please, turn your microphone off.

10 The decision of the Commission in
11 this case must be based exclusively on the
12 public record.

13 The staff will be available
14 throughout the hearing to discuss procedural
15 questions. And I will incorporate the opening
16 statement for the record.

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

20 At this time, the Commission will
21 consider any preliminary matters.

22 Does the staff have any preliminary

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1 matters?

2 MS. SCHELLIN: No, sir.

3 CHAIRMAN HOOD: Okay. Let's go
4 right into it. Let's go to the Office of
5 Planning. And I think if you all can give us
6 about a 5 minute presentation, that will be
7 great.

8 MR. GOLDSTEIN: I will do.

9 CHAIRMAN HOOD: Thank you.

10 MR. GOLDSTEIN: Thank you. And
11 good evening, Mr. Chairman and Members of the
12 Commission. For the record, my name is Paul
13 Goldstein with the Office of Planning.

14 OP recommends approval of Text
15 Amendments to allow by special exception a
16 wider range of principal ground floor and
17 retail and service uses in certain Special
18 Purpose-2 Districts.

19 The proposed amendments would apply
20 exclusively to SP-2 Districts located south of
21 M Street, N.W. and N.E. It would allow by
22 special exception certain uses permitted by

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1 right in C1 neighborhood shopping districts.

2 The motivation for this amendment
3 is the desire to provide greater opportunity
4 for vibrant ground floor retail that is
5 currently permitted in the zones. As written,
6 the SP-2 Zone allows few principal retail
7 uses, such as ticket offices and art
8 galleries.

9 Several accessory uses are
10 permitted in residential buildings and hotels,
11 but subject to conditions that prohibit their
12 visibility and access from the street and to
13 create greater retail flexibility while at the
14 same time being sensitive to the stated goals
15 of the SP Zones, which include being a zone
16 that serves as a transition from commercial to
17 residential areas.

18 The proposal has several
19 components. First, it is geographically
20 limited to SP-2 Districts south of M Street,
21 N.W. and N.E. M Street was selected as a
22 northern boundary in order to capture

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1 properties that are essentially in core
2 commercial and mixed-use areas.

3 And nearly ever Special Purpose
4 District south of M Street is an SP-2
5 District. The affected areas include SP-2
6 Districts in Foggy Bottom, along 16th Street
7 and Judiciary Square and east of the Capitol.

8 And additionally, nearly every SP-2
9 Zone property below M Street is located in an
10 Historic District and areas subject to
11 Commission of Fine Arts review of both and, as
12 such, designed in appearance of any proposed
13 use would be subject to additional review in
14 addition to Board of Zoning Adjustment review.

15 Second, the proposal would allow
16 only C1 uses listed in Section 701 through
17 701.5 to be located on or below a building's
18 ground floor.

19 The Zoning Regulations consider
20 such uses as neighborhood uses. Such uses
21 would only be permitted if they satisfy the
22 conditions of the special exception test,

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1 meaning that an applicant must show that the
2 use would not adversely affect neighboring
3 properties.

4 And additionally, the proposal
5 introduces additional criteria for the BZA to
6 examine imposed conditions on such aspects as
7 screening and signage.

8 Third, the proposal would impose a
9 parking requirement for any new retailer
10 service uses.

11 And finally, as captured in OP's
12 report, the text amendment would not be
13 inconsistent with the Comprehensive Plan.

14 As such, the Office of Planning
15 recommends that the proposed text amendments
16 be approved. And I'm now available for any
17 questions.

18 CHAIRMAN HOOD: Thank you, Mr.
19 Goldstein for reworking your presentation.
20 Very well done and we greatly appreciate it.
21 And we have been joined by Commissioner May.

22 Okay. Any questions? Commissioner

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1 Schlater?

2 COMMISSIONER SCHLATER: Mr.
3 Goldstein, good evening. A couple questions.
4 Can you -- first, talk to me, what's the
5 thinking about why we are doing this through
6 special exception at BZA versus other methods.
7 We could make it matter-of-right. We could
8 go and you could ask for a use variance, those
9 kind of things.

10 MR. GOLDSTEIN: Thank you for the
11 question. I guess it has two parts. One is
12 the use variance, I'll get to the second
13 question first. It's just a very high burden
14 of relief that is just difficult to meet.

15 The second is we chose special
16 exception to kind of, at least as I think I
17 said in my statement, be sensitive to the
18 historic place for the zone, which was
19 considered as a transition between commercial
20 and residential uses and sort of a way to
21 scale down from commercial to residential.

22 So we have decided because of the

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1 historic nature of the zone, plus the Comp
2 Plan language that we see regarding 16th Street
3 to be very careful about that, among others,
4 we thought that it was best to make it a
5 special exception.

6 COMMISSIONER SCHLATER: So right
7 now in those ground floor -- as a matter-of-
8 right, you could do residential or commercial
9 and then some of those limited retail uses
10 that you laid out before hand?

11 MR. GOLDSTEIN: You could do
12 residential. Commercial office use would be
13 by special exception as well.

14 COMMISSIONER SCHLATER: Okay.

15 MR. GOLDSTEIN: Yeah, you can do
16 some very limited sort of principal retail
17 use, which would be sort of a ticket office,
18 art gallery. And then for residential
19 buildings and hotels, you could have this
20 accessory type of business, which is pretty
21 limited.

22 COMMISSIONER SCHLATER: And you

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1 picked south of M Street, because you think
2 those SP-2 Districts north of M Street are
3 more residential in character? Is that why
4 you chose to draw the line where you did?

5 MR. GOLDSTEIN: Yeah, that's
6 essentially it. Dupont Circle tends to be
7 residential and also there is some Comp Plan
8 language about the commercial encroachment of
9 the residential areas in Dupont Circle.

10 COMMISSIONER SCHLATER: The
11 portions of Dupont Circle that are in the SP-2
12 District seem to be on pretty main drags
13 though, like Massachusetts Avenue. I don't
14 know. It seems like to be in areas where
15 there is other retail already in existence.

16 MS. STEINGASSER: Yes, there is
17 retail there. A lot of the side streets are
18 also SP, N Street, P Street, and they -- in
19 combination with the Dupont Circle Overlay,
20 the idea is to limit the development. The
21 neighborhood was very sensitive to the
22 incursion of non-residential uses, so we just

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1 felt that it was not worth the -- not in the
2 best interest of the neighborhood. Not
3 consistent with the Comp Plan.

4 COMMISSIONER SCHLATER: Okay. In
5 terms of the retail itself, you put in place
6 some sort of parking minimums. I'm trying to
7 understand. Is OP supportive of parking
8 minimums with respect to retail? Is this a
9 special case just because it's an SP District?
10 Where are we here?

11 MS. STEINGASSER: The parking just
12 mimics the office standard. It's no different
13 than the office standard, but we needed to
14 address the change of use that would be in the
15 building. So we set the standard to match
16 that of the existing office use. So there
17 should create no nonconformities. So it
18 should be a neutral action.

19 COMMISSIONER SCHLATER: Should be a
20 neutral action.

21 MS. STEINGASSER: Right. We didn't
22 raise it or lower it. So to be able to

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1 convert space from office to retail should
2 have no impact on the parking.

3 COMMISSIONER SCHLATER: Okay. I
4 get it.

5 COMMISSIONER TURNBULL: What's --
6 I'm sorry. What's driving the necessity to do
7 this? Are there -- will you see a lot of
8 projects that are -- I mean, I can remember --
9 I don't know if the AIA Headquarters, they had
10 an issue with their bookstore, too, didn't
11 they?

12 MR. GOLDSTEIN: Yes, they did.
13 That would be -- there have been a few cases
14 where this has become an issue. On 16th Street
15 there was the Hilton Hotel that instead of
16 just getting a special exception, decided to
17 try to fit the zone line.

18 COMMISSIONER TURNBULL: Oh, yeah,
19 that's right. Right.

20 MR. GOLDSTEIN: The AIA building.
21 Our sense is that there is some demand out
22 there for --

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1 COMMISSIONER TURNBULL: Well, we
2 also had some people from the neighborhood
3 upset about the AIA thing. They felt like
4 they didn't want that to happen, although it
5 made sense.

6 MS. STEINGASSER: Right. They
7 ended up going through a PUD and one of their
8 main objectives of that PUD was to get street
9 fronting retail.

10 COMMISSIONER TURNBULL: Right.

11 MS. STEINGASSER: To get the
12 bookstore and to get their cafe out into the
13 plaza.

14 COMMISSIONER TURNBULL: But didn't
15 they still have to -- you couldn't access that
16 from the outside. You still had to go inside
17 the building?

18 MS. STEINGASSER: That's how it is
19 now. You have to go inside. But they wanted
20 to bring the cafe out as well.

21 COMMISSIONER TURNBULL: Right.
22 Will you still have to do that with this

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1 change allowing commercial?

2 MS. STEINGASSER: No. No, it's to
3 allow -- you could have it straight on the
4 street.

5 COMMISSIONER TURNBULL: Oh, you
6 can?

7 MS. STEINGASSER: Yes.

8 COMMISSIONER TURNBULL: Okay. All
9 right. Thank you.

10 COMMISSIONER MAY: Can I chime in
11 on that, the AIA thing? As I recall, one of
12 the key issues with the neighborhood was they
13 supported the idea of the retail and
14 everything else. What they were objecting to
15 was having to upzone the property as a PUD in
16 order to effect this.

17 COMMISSIONER TURNBULL: Yeah,
18 you're right.

19 COMMISSIONER MAY: This puts the
20 issue to bed for them.

21 COMMISSIONER TURNBULL: Yeah.

22 COMMISSIONER MAY: In fact, I think

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1 that they were -- the opponents of the PUD
2 were advocating that the case go before BZA as
3 a variance. And I got the impression they
4 would have supported that, so --

5 COMMISSIONER TURNBULL: Right.
6 You're right.

7 CHAIRMAN HOOD: Do you have any
8 questions? Let me just ask Mr. Goldstein and
9 I have taken some of this from context, me
10 looking at ANC-2A. And I guess things do
11 change in the city, but I was looking here
12 where they have endorsed what is before us
13 tonight, given the community's goal to create
14 a more vibrant and inviting pedestrian-
15 friendly neighborhood.

16 Most of the time when we hear from
17 this community in this particular area, I
18 believe and maybe you can help me understand,
19 has there been a shift or something has
20 changed down there? I thought it was too much
21 of that was the problem and they wanted to cut
22 it off?

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1 Now, I'm seeing us going in another
2 direction, at least from what I see when I
3 look at the -- which I congratulate the Office
4 of Planning. Obviously, you all made a
5 presentation and I'm just wondering what has
6 changed from what I've witnessed in the past?

7 MR. GOLDSTEIN: Yeah, I guess I
8 don't know what went into the decision. We're
9 certainly encouraged by the fact that they are
10 supportive of it. And that a letter was
11 terrific talking about vibrant retail, street
12 fronting retail. So they are happy to see it.

13 COMMISSIONER MAY: Okay. Are there
14 any projects pending that are going to rely on
15 this zoning relief that are going to benefit
16 from this?

17 MS. STEINGASSER: Yes, there is.
18 Yes, there is.

19 COMMISSIONER MAY: And which
20 projects are those?

21 MS. STEINGASSER: It has not yet
22 been filed, but it would be on New York

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1 Avenue. One of the major property owners on
2 New York Avenue at 18th and New York approached
3 the city about doing -- trying to solve the
4 same problem that the AIA had about how to
5 they create an opportunity for ground floor
6 retail, possibly residential -- I mean, a
7 restaurant. And the idea of sending them
8 through a PUD seemed like such an enormous
9 burden, there is no real case to make in the
10 strict context of a variance being, you know,
11 a practical difficulty, exceptional
12 circumstance, uniqueness.

13 Those tests were very difficult to
14 make, that's why we brought this forward.

15 CHAIRMAN HOOD: Any other
16 questions, colleagues? Okay. Report of other
17 Government agencies? I don't think we have
18 any. Report of the -- well, we have two
19 letters in support, unanimously both of them,
20 from ANC-2A and also from ANC-6C.

21 After their briefings, they both
22 voted unanimously to support this text

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1 amendment. Okay.

2 Is there anyone here from the ANC,
3 representing the ANC? Okay. I think I have
4 to call for it, even though I only see Mr.
5 Sher in the audience, but he may be
6 representing, I never know. So okay.

7 Mr. Sher, it seems as though you
8 are the only one present, so if you come up
9 forward to testify? And anyone else who may
10 be behind one of those poles or something, if
11 you can come up and testify?

12 Mr. Sher, we're not sure if you're
13 in support or opposition.

14 MR. SHER: I'm in support.

15 CHAIRMAN HOOD: Okay. You can go
16 right ahead. Thank you.

17 MR. SHER: Mr. Chairman, Members of
18 the Commission, for the record, my name is
19 Steven E. Sher the Director of Zoning and Land
20 Use Services with the Law Firm of Holland and
21 Knight. We, in fact, represent the owners of
22 the United Union Building, United Unions,

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1 Inc., which is at 1750 New York Avenue. And
2 Mrs. Schellin is giving you just some
3 background information about that property.

4 That is the case to which Ms.
5 Steingasser referred that we came and met with
6 OP and the question was did we -- could we get
7 a Zoning Map change? Did we have to do a PUD?

8 And we ultimately decided that the best way
9 to do this was to come to the Commission and
10 OP agreed to sponsor that for which we are
11 appreciative of their attention and assistance
12 in moving this along.

13 We actually filed the BZA case this
14 past Monday. It looks like we're going to
15 have a hearing in January or February. And
16 what we want to do is convert a part of the
17 ground floor of that existing building to
18 retail and service use, hopefully a
19 restaurant, perhaps something else, so you
20 actually have approval to use it. You can't
21 go out and find a tenant, but that's the
22 thought.

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1 We also will need an FAR variance,
2 because we are -- the building was built in
3 1971 when the permitted FAR and SP was 5.5.
4 It is now 3.5. We adding a minimal amount of
5 space, so we need to get some other relief
6 while we are at the BZA.

7 We hope to take advantage of this
8 section if you have adopted it and we would
9 proceed in that manner. So we support the
10 application for text amendment or support the
11 language as proposed by the Office of Planning
12 and would hope that you would see fit to
13 approve same in as rapid a fashion as
14 possible. And I'm done.

15 CHAIRMAN HOOD: Thank you, Mr.
16 Sher. Any questions of Mr. Sher? Okay. We
17 want to thank you, Mr. Sher, for your
18 testimony. Okay, that's it.

19 Ms. Schellin, do we have anything
20 else before us?

21 MS. SCHELLIN: Nothing else.

22 CHAIRMAN HOOD: I think this is

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1 ready. I don't see why we should this off
2 until whenever our next meeting is.

3 I would move that we -- unless
4 someone has something else? I haven't seen
5 them -- any.

6 I would move that we approve Zoning
7 Commission Case 09-11, which is a proposed
8 Zoning Text Amendment to permit retail and
9 service uses by special exception in certain
10 SP-2 Districts and that my motion also
11 incorporates what is in the Office of
12 Planning's report. And ask for a second.

13 COMMISSIONER MAY: Second.

14 CHAIRMAN HOOD: Moved and properly
15 seconded. Any further discussion?

16 All those in favor?

17 ALL: Aye.

18 CHAIRMAN HOOD: Not hearing any
19 opposition to the vote at present, Ms.
20 Schellin, would you record the vote?

21 MS. SCHELLIN: Yes. Staff records
22 the vote 4-0-1 to approve proposed action in

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1 Zoning Commission Case No. 09-11.
2 Commissioner Hood moving, Commissioner May
3 seconding, Commissioners Keat -- excuse me,
4 Commissioners Turnbull and Schlater in
5 support. Commissioner Keating not present,
6 not voting.

7 CHAIRMAN HOOD: Okay. I want to
8 thank Mr. Sher for his participation tonight.
9 And this hearing is adjourned.

10 (Whereupon, the Public Hearing was
11 concluded at 6:51 p.m.)

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