

ZONING COMMISSION
CASE NO. 72-5

FILED MAR 23 1973

STATEMENT OF REASONS

HUGH E. KLINE
CLERK

72-2174

Pursuant to the February 6, 1973, Order of the United States Court of Appeals, the Zoning Commission of the District of Columbia submits the following Statement of Reasons for its promulgation of Zoning Commission Order No. 51 dated October 4, 1972,

By Zoning Commission Order No. 51, the Commission declined to adopt either of the two proposals then pending before it to amend the existing zoning of the Georgetown Waterfront area to more restrictive categories. The proposals are identified in the Notice of Public Hearing as Alternative "A" and Alternate "B" and read as follows:

Alternate A:

Change from C-M-2 to C-2-A all lots fronting on both sides of M Street, N. W. between Wisconsin Avenue on the east and 37th Street on the west and not already zoned C-2-A.

Change from C-M-2 and M to R-4 all lots in the area bounded by M Street, N. W., Rock Creek, the Potomac River and 37th Street extended and not changed to C-2-A in the above.

Alternate B:

Section 6201:4

Notwithstanding other provisions of this Article, property in the Georgetown Waterfront Area, bounded M Street, N. W., Rock Creek, the Potomac River and 37th Street extended, the height of all buildings or structures shall be limited to forty (40) feet in the C-M and M districts for an interim period not to exceed two (2) years beginning _____

After holding public hearings and evaluating the proposals, the characteristics of the existing zoning, the National Capital Planning Commission Comprehensive Plan (NCPC Plan), early drafts of the first phase of the current planning study, prior planning studies, current development plans, environmental effects, and economic, historic and social issues, the Commission determined that neither proposal should be adopted. *

The Commission is in complete agreement with the general need for careful planning for the District of Columbia as a whole and the Georgetown area, including the Waterfront. Accordingly, the Commission supports the decision of the District of Columbia to participate with Federal agencies in financing a planning study of the Georgetown Waterfront. The Commission recognizes the necessity for periodically re-evaluating District zoning classifications especially in light of planning or other considerations. Indeed, we believe the Georgetown Waterfront is in this category, and our Order No. 52, issued simultaneously with Order No. 51, directs our staff to commence a re-examination of zoning for waterfront districts, including Georgetown, and to prepare new zoning proposals for our consideration. Order No. 51 should be read in this light.

* In rejecting the downzoning proposals, the Commission did not find it necessary to consider the legal questions of 1) whether the height restrictions in Alternative "B" could be validly promulgated in light of the statutory provisions for uniformity of zoning districts and, 2) the legality of interim downzoning that would effectively forestall development pending the conclusion of a planning study.

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of legality

The Commission is also aware that the existing zoning precludes new residential uses which may be a desirable addition to permitted land uses in the area and that reductions of height and density, as well as other, perhaps innovative, zoning changes, may be appropriate and should be considered for the waterfront area. We are exploring these concepts in connection with the current examination of zoning classifications in the waterfront area. The Commission believes, however, that during such exploration it would be neither wise nor desirable to freeze all development pending final evaluation.

We have made no prejudgment about any suggestion for zoning changes which might be recommended by staff or others, either inter sese or in relation to existing zoning.

Although the downzoning proposals were debated before the Commission in terms of "planning vs. non-planning," this characterization does not, in the Commission's view, properly or completely delineate the issue. The refusal to freeze development on the Georgetown Waterfront for several years while the current planning study goes forward, should not be construed as a rejection of the planning process. The current planning study, in the Commission's opinion, neither warrants nor justifies freezing all development while it proceeds. The current study is limited to consideration of alternatives within the general land

use objectives of the NCPC Plan for the Waterfront, namely, parkland and low density residential uses; the Commission is already aware of the objectives of the NCPC Plan.

The Commission acted under its emergency powers and halted Waterfront development for a short period, not to exceed one hundred twenty days, so that it could review the entire waterfront situation. This action was taken in response to allegations from responsible parties that "high-rise" office building development was imminent which would consume all developmental potential and destroy the historic characteristics and potential for amenities in the waterfront area. The Commission did not agree with the allegations concerning the magnitude or character of impending development. In reaching this conclusion, the Commission specifically studied and considered the competitive market conditions, the land area susceptible to private development in the foreseeable future, the characteristics of the proposed Georgetown-Miland and Maloney projects, and the unique role of the Fine Arts Commission in Georgetown.

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Pursuant to Section 5-802, D. C. Code, 1967 ed., the National Commission of Fine Arts reports to the Commissioner of the District of Columbia its recommendation on "the historic, architectural features, height, appearance, color, and texture of the materials of exterior construction" of proposed construction

before the District of Columbia may issue any building permit. The Fine Arts Commission is especially charged with recommending design changes that "are necessary and desirable to preserve the historic value of the Georgetown district." Every development in Georgetown is subject to Fine Arts Commission review. The Maloney project had been approved by the Fine Arts Commission after certain recommended changes in the plans had been accomplished and one element of the Georgetown-Inland project, after consultation with the developer, was given preliminary approval.

25 In reaching its decision, the Commission examined a number of factors including the issues of land use, historic preservation, removal of blight, imminent development, the environment, and the economic vitality of the city. The Commission gave serious consideration to the viewpoint of those who urged that the Georgetown Waterfront should be zoned to restrict development exclusively to low-density residential uses. The Commission, however, recognizes that: the Waterfront has traditionally been a mercantile area and has always been zoned differently from northern Georgetown. Additionally, the existing zoning permits mixed use development (except for residential uses) on the waterfront, which we believe is in the best interest of the city as a whole.

The Commission, of course, is sympathetic with the aims of those who desire to remove the obsolete industrial uses presently on the waterfront, while

preserving the area's historic atmosphere. However, as the Commission reviewed and considered these concerns, it became apparent that these objectives would more likely be obtained by maintaining the existing zoning designations than by adopting either of the downzoning proposals. If either proposal had been adopted, present industrial uses on the waterfront would be permitted to remain as non-conforming uses. The Commission was also concerned that the write-down of land values resulting from a severe downzoning would actually impede replacement of existing industrial structures by more desirable uses. The preservation of historical structures would similarly be inhibited by downzoning the area; such preservation, we were convinced, is more feasible economically and functionally in mixed use developments of the type permitted by the existing zoning than under either proposed lower density, limited use category. The Commission is satisfied that the mixed use development permitted under present zoning has enabled Maloney to preserve the old Dodge Warehouses and Georgetown-Inland to preserve the Duvall Foundry. This demonstrates, in the Commission's view, that the objective of historic preservation and removal of blight is fostered by zoning that allows densities, heights and uses to be deployed in a flexible framework, which neither downzoning proposal would do.

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The Commission is of the view that the proposed projects of Georgetown-Inland and Maloney would constitute attractive assets to the District of Columbia, and believes that they should go forward. These projects display an excellence of design and a sensitivity to the environment through provision of public amenities and preservation of historic structures.*

Additionally, the Commission recognizes that these property owners have made substantial investments in reasonable reliance on existing zoning and that a climate of investment stability is a desirable objective for the District.

The Commission could not ignore the fact that the Waterfront is a "close-in" location which is easily accessible to the center city, as well as to the lively and diverse Georgetown retail and entertainment district, and the riverfront itself. As such, it offers a unique opportunity for development that will attract private investment and jobs and generate increased economic and social vitality for the city generally. Economic development of this type is a salutary objective, which, we believe, will more likely take place under zoning which permits an appropriate mixture of uses than would be permitted under either downzoning proposal.

In declining to accept the downzoning proposals, and thereby permitting the Georgetown-Inland and Maloney projects to go forward, the Commission *non essential* *carefully examined the environmental aspects of its action. In this case, the

* Commissioner Nevius does not share the affirmative view expressed about the design excellence of the Maloney project, but recognizes that the design review function is reposed in the Fine Arts Commission

environmental. issues are somewhat unusual; the Waterfront is not an unspoiled sylvan area being faced with development for the first time. The existing industrial uses on the Waterfront contribute adversely to air, water and noise pollution, generate heavy truck traffic, and detract from the public amenities in, or in prospect for, the area. Moreover, present blighted conditions tend to discourage new and healthier development and historic preservation around them.

An important factor in our consideration was the relationship between zoning and development that respects and complements the significant natural and historical features in that area, e. g., the Potomac River, the C & O Canal, Rock Creek Park, and northern Georgetown itself. In our view, development under existing zoning will not necessarily impact adversely on these values; rather, there was significant evidence that the best aspects of these assets would be enhanced for the benefit of the general public by the developments actually in prospect.

We specifically examined factors such as residual traffic capacity, directional distribution, parking, modifications to the street and highway system, the relationship of development in lower Georgetown to existing traffic and parking congestion in northern Georgetown and the availability of water and sewer capacity. In our view, any possible environmental effect of some additional traffic, automotive pollution, and increased demand upon municipal services, which are associated with

all new development throughout the District, appear to us to be outweighed by
the positive effect upon the environment of eliminating the blighted industrial
uses and of the other benefits we have commented upon. Accordingly, from an
overall viewpoint, the Commission does not believe that environmental considera-
tions require, or even justify, the adoption of the proposed new downzoning
amendments.

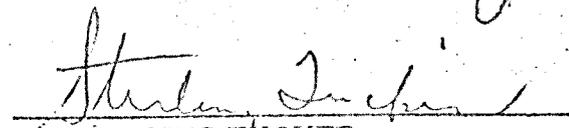
On the basis of its detailed investigation of all aspects of the Waterfront
zoning situation, the majority of this Commission feels that, on balance, the
proposed changes in the existing zoning should not have been adopted.



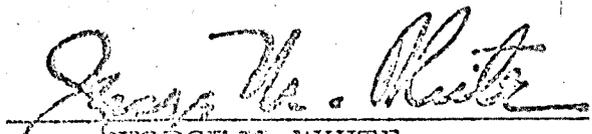
WALTER E. WASHINGTON



JOHN A. NEVIUS



STERLING TUCKER



GEORGE M. WHITE

ATTESTED:



Martin Klauber
Secretary to the Zoning Commission

Date: March 22, 1973

STATEMENT OF REASONS

sent

Pursuant to the February 6, 1973, Order of the United States Court of Appeals, the Zoning Commission of the District of Columbia is submitting its reasons for the promulgation of Zoning Commission Order No. 51, dated October 4, 1972. I voted against the issuance of said order and I hereby submit my reasons for such dissent. I also declined to vote for issuance of Zoning Commission Order No. 52, ordering the issuance of a notice of public hearing to be held within 120 days from the date of Order No. 52 to consider the creation of waterfront zoning districts and certain text amendments,

The reasons for reaching my decision not to vote for the promulgation of Order No. 51, which terminated the Zoning Commission's emergency order and refused to downzone the Georgetown Waterfront, were based upon:

1. A thorough review of all correspondence, past studies, and other material relating to the Georgetown Waterfront found in the official files of National Capital Parks, National Park Service, Department of the Interior,
2. Conclusions drawn from certain presentations concerning the Georgetown Waterfront made by the staff of the National Capital Planning Commission, the D. C. Zoning Commission, and other departments of the Government of the District of Columbia, and conclusions drawn from testimony of non-governmental parties given at Zoning Commission hearings held in August, 1972.

3. My intimate knowledge of the Georgetown Waterfront Area gained from a continuous residency in the Washington Metropolitan Area since 1928.

4. A detailed personal inspection of the Georgetown Waterfront Area made just prior to the aforementioned hearing held August 19, 1972.

My reasons for declining to vote for the promulgation of Order No. 51 were based upon the following considerations and conclusions.

Historical Significance and Character of the Georgetown Waterfront:

Congress has recognized the entire Georgetown area as an historical area worthy of preservation in the "Old Georgetown Act" approved September 22, 1950. This Act declares a Congressional policy "to preserve and protect the places and areas of historic interest, exterior architectural features, and examples of the type of architecture used in the Nation's Capital in its initial years." In addition, the Secretary of the Interior has designated the historic district of Georgetown, which includes the Waterfront Area, as a registered National Historic Landmark under the National Historic Preservation Act of 1966. Congress recognized the importance of the C&O Canal through the Act of January 8, 1971, authorizing establishment and development of the C&O Canal National Historical Park. The Canal, like the Waterfront itself, is a precious historic resource and, in my opinion, must be protected against adverse development. The present obsolete

zoning of the Waterfront Area is also at odds with other, more general, statements of Congressional policy in that areas of historical value are to be preserved whenever possible for public enjoyment. These policies are expressed in the Antiquities Act of 1906, the Historic Sites Act of 1935, and the National Historic Preservation Act of 1966. It is, therefore, clear that both the congress and the public seek to preserve and interpret our historic heritage as represented by the historic Georgetown district.

Conclusions Based on Studies by National Capital Planning Commission

Although "Phase I" of the Georgetown Waterfront Area Study prepared for National Capital Planning Commission and the District of Columbia Department of Highways and Traffic had not been published prior to the hearings in August 1972, the results of "Phase I" of that study were made available in testimony at the hearings. In addition, the results of the "Phase I" portion of this study were further presented to the Zoning Commission prior to its issuance of Orders No. 51 and 52. "Phase I" of the study indicated that development under the present zoning is totally incompatible with the ability of the area to accept the measure of traffic generation which would surely occur if the Georgetown Waterfront were developed to its near capacity under existing zoning. The 90 feet and 60 feet height allowance for office and commercial

development permitted under the M and CM2 zoning, respectively, would be inconsistent with the General Land Use Objectives 1970/1985 element of the Comprehensive Plan for the Nation's Capital adopted by the National Capital Planning Commission on December 11, 1968, and would not only threaten the aesthetic and environmental quality of the Georgetown Area as a unique community near the urban core of the city but inflict permanent and irreversible damage to the historic and environmental integrity of the C&O Canal National Historical Park as well. Development under the current zoning for the Georgetown Waterfront Area would not allow for a reasonable balance between light commercial, and residential development in the future which, in my opinion, would provide a more pleasing and environmentally acceptable waterfront and would, in time, create a high density area from which there would be no foreseeable relief from traffic congestion, now beyond the breaking point for both the through commuter and the neighborhood users of commercial facilities along M Street. Since the Potomac River Freeway alternatives are at an initial planning stage I was unable to measure what, if any, traffic relief a Potomac Freeway system would bring to the Georgetown Waterfront Area below M Street. Georgetown traffic, I have observed, is today, beyond the breaking point and intense development under the present zoning with its generation of automobile and service truck traffic would, it would appear to me, literally freeze the

traffic flow to the north with its accompanying pollution from automobile exhausts and could conceivably set into motion the decline of the Georgetown Waterfront Area as a viable commercial attraction due to such traffic generation. I am aware of President Nixon's desire to provide for a development and preservation plan for the Georgetown Waterfront. In view of the participation of the D. C. Government in the funding of the so-called "Georgetown Waterfront Area Study" it would seem that the District of Columbia would wish to forestall all development along the Georgetown Waterfront until the full results of that study are made available to the Zoning Commission. I concluded, therefore, after having heard the results of the study which were available at that time and the testimony of the NCPC as to the implications of the study material, that there was, indeed, occasion to consider forestalling imminent development until the remaining phases of the waterfront study were made available to the public and the Zoning Commission.

Property Rights - Landowners

I carefully considered the property rights of the landowners along the Georgetown Waterfront and, in particular, the development rights, under the present zoning, of Georgetown Inland and the Maloney Concrete Company. The traditional concept of property ownership is, of course, part of the strength of this great country. However, in today's fast developing world, this traditional

concept might well be weighed against any over-riding and long range significant effects on the public welfare and quality of the environment. It is my opinion that intensive, so-called "high rise" development along waterfronts of the bulk and density allowable under the present zoning of the Georgetown Waterfront Area below M Street would clearly be visual and aesthetic intrusions to one of the last remaining areas along the Potomac River Waterfront having the cultural and historic heritage found in Georgetown. One has but to look southward at the Rosslyn, Virginia, area to understand to what extent intensive office and commercial development can go to degrade what- could otherwise be a charming and impressive gateway to Northern Virginia. I was impressed with the quality of testimony on behalf of Inland Steel and Maloney, however, all testimony at the hearing, including that of Inland and Maloney, seemed to support the continuance of interim zoning. It would seem, then, that the construction of these projects would be the forerunners of additional bulk development which, in addition to creating what would appear to be a serious density problem for the area, might not have sensitivities in design and restraints that should be foremost in any developers' plans for the waterfront area.³

Benefits to the City

One of the prime benefits to the city would seem to be out of increased land taxes generated by developments such as Inland and Maloney proposes. At

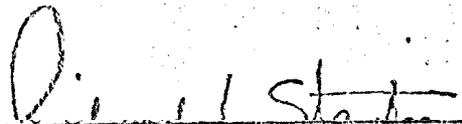
no time during the testimony in the hearing or in other presentations was the matter of offsetting financial burdens on the District of Columbia discussed beyond general observations and assumptions. Additional taxes generated by development under the present zoning might not, necessarily, provide the city with an increased tax base for this area. Since this matter was de-emphasized I gave this aspect of the proposal little weight although in developing reasons for voting on zoning proposals I remain alert and sensitive to the needs of the city and the desires of the public to revitalize the downtown urban core. It is my opinion that revitalization cannot always be measured in terms of increased tax base although this is, of course, a consideration. It seems to me that, notwithstanding a lesser tax base, a way to revitalize the Georgetown Waterfront Area would be to make it a living community with a balanced interplay between light-commercial, specialized shops and residential use so that the Georgetown area is not abandoned at the end of the work day but rather developed for 24-hour use which residential living provides.

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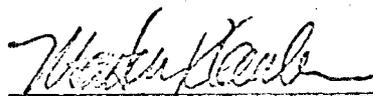
Environmental Considerations

My reasons for declining to vote for Order No. 51 were also based on the anticipated environmental degradation of the Georgetown area which might surely occur by excessive traffic generation and other factors which have already been

discussed. With the exception of a future freeway proposal there appears to be no planned relief to move local or through traffic throughout the Georgetown area. With the exception of the narrow linear ribbon of the C&O Canal, there are no public recreational resources in the waterfront area. In considering the goals of the National Environmental Policy Act of 1969 I feel that any planning proposal in the city, large or small, should begin with a study of all alternatives to the end that whatever job there is at hand be pursued in a manner which least affects the quality of the human environment. Whether or not the NCPC must, as a matter of law, provide environmental impact statements as it advises on future planning and development for the District of Columbia, local public bodies, its businessmen and its citizens, should consider the need to plan within the context of the objectives in the Environmental Policy Act and not overlook the worth of considering such alternatives simply because the Federal law may not, in particular cases, apply to non-federally sponsored projects.


RICHARD L. STANTON

Attested:


Martin Klauber
Secretary to the Zoning Commission

Date: March 22, 1973