

Government of the District of Columbia  
ZONING COMMISSION



Zoning Commission Order No. 110  
Case No. 74-11  
December 19, 1974

Pursuant to notice, a public hearing of the Zoning Commission was held on November 13, November 29, and November 30, 1974, to consider an application by Graham Building Associates for an amendment of the Zoning Map of the District of Columbia as follows:

Change from C-2 -A and R-4 to C-2 -B, lots  
817, 818, 828, 829, 102, 67-69, 84-87, 827,  
119, 56-63, 823, 65, 66, and 830-833 in  
Square 1045.

FINDINGS OF FACT

1. The site of the proposed amendment to the Zoning Map is located on the south side of Pennsylvania Avenue, between 13th Street and Potomac Avenue, and the north side of Potomac Avenue, between 13th Street and Pennsylvania Avenue, S. E.
2. The area of the site of the proposed amendment of the Zoning Map is approximately 95,308 square feet. The subject site is presently vacant,
3. The subject site is presently zoned C-2 -A (community business center - medium density, floor area ratio of 2.0, 60 feet height limitation, percentage of lot occupancy 60) and R-4 (row dwellings - minimum width of 18 feet, minimum area of 1,800 square feet, percentage of lot occupancy 60, 3 stories and 40 feet height limitation).
4. The proposed amendment of the Zoning Map would change the zoning of the subject site to C-2 -B (community business center - medium high and high density, floor area ratio of 3.5, 90 feet height limit),

5. The area contiguous to the subject site of the proposed amendment is a predominantly residential neighborhood, with row houses as the major housing type with scattered apartments and strip commercial along Pennsylvania Avenue.

6. There are two public housing projects in the immediate area of the proposed zone change. The Potomac Gardens project occupies almost all of Square 1020 and is immediately west of Square 1045. Potomac Gardens consists of 352 units in a mixture of low rise (three story) and medium rise (six story) apartment buildings. The project density is 55 units per acre. The Kentucky Courts project approximately one-third of the area of Square 1041 and contains 163 units.

7. The major commercial concentration in the area is along Pennsylvania Avenue, strip zoned C -2 -A, consisting of small retail and service establishments, and several automobile service stations. The largest single, commercial center is a new Safeway food store on 14th Street, between D and E Streets, occupying almost the entire eastern half of Square 1042. Small retail and service establishments of the "corner store" variety are scattered throughout the area.

8. Schools and related playground space are a significant land use in the neighborhood. They include three elementary schools north of Pennsylvania Avenue (C. Watkins, Buchanan and Payne) and Chamberlain Vocational High School, located directly across Potomac Avenue from the subject site.

9. The case file, transcript and resulting Commission Order No. 67 in Zoning Case No. 71-14 were incorporated by reference into the exclusive record of this case.

10. The subject site is within 500 feet by pedestrian path of the proposed Potomac Avenue Metro Station to be located at 14th and Potomac Avenue, S. E. , designated by the Mass Transportation Plan element of the Comprehensive Plan prepared pursuant to the 1952 Planning Act, as amended, as a "secondary station, " provided "for the convenience of a smaller number of transit riders" and "located in lower density neighborhoods or at points relating only to the potential of transfer from other transportation modes" as distinguished from major stations. The design of the Potomac Avenue Station provides only one access point.

11 , Pennsylvania and Potomac Avenues, S. E. , are public rights of way with widths of 160 feet each. Pennsylvania Avenue is a eight lane roadway, four lanes in each direction with a medium strip of 40 feet wide and is designated as a principal arterial highway in the Comprehensive Plan prepared pursuant to the 1952 Planning Act, as amended. Potomac Avenue is a four lane roadway, two lanes in each direction.

12. The property along the entire length of Pennsylvania Avenue from the Library of Congress to Barney Circle is privately owned and is zoned C -2 -A. Pennsylvania Avenue is the principal commercial street on Capitol Hill.

13. Within 500 to 1000 feet of the subject property there is a mixture of zoning classifications and uses consisting of the C-2 -A along Pennsylvania Avenue, as aforesaid, C-M-1 (low bulk commercial - light manufacturing, floor area ratio of 3.0, 3 stories and 40 feet height limit), R -5 -B (medium density apartment house, percentage of lot occupancy 60, floor area ratio 1.8, 60 feet height limit), and R-4.

14. The Office of Planning and Management presented its report based upon the Potomac Avenue Metro Impact Area study. The Office of Planning and Management recommended that the Commission approve the proposed change of zone. The Potomac Avenue Metro Impact Area report established a study area in order to analyze the impact of changes of zoning at the proposed Metro Station. The boundaries of the study area delineate an area of less than one -half mile radius around the proposed Metro Station. The boundaries of the study coincide with well-defined natural and man-made boundaries: the Southeast Freeway on the south, two major avenues, South Carolina and Massachusetts on the north and major roadways on the east and west - 11th, 17th, 19th Streets at Potomac Avenue. The half mile radius for the study area is a recognized planning boundary to assess the impact of the Metro rail system on areas of the city. The distance of one-half mile is regarded as the maximum distance for pedestrians walking to the station from their destination or point of departure. The basic findings of the Office of Planning and Management report entitled "Potomac Avenue Metro Impact Area, " which the Commission adopts, are:

(A) The area is predominantly residential with row houses, the major housing type, together with several low and medium density apartment buildings.

(B) Commercial development in the area is concentrated along Pennsylvania Avenue which is strip zoned for commercial use and along 14th Street in an area which is currently zoned for industrial uses.

(C) The area is experiencing a loss of population together with an increasing trend toward high income restoration of row houses. As of 1970, the area was predominantly black and the population was predominantly moderate income with a median income of \$7,602 as compared to \$9,583 citywide. Most of the structures in the area need either minor or major repairs.

(D) With respect to community facilities, the area includes three elementary schools and one vocational high school. As of October 1973, all of the schools were operating at under capacity. Recreation facilities were indicated to be inadequate and in need of renovation and expansion.

(E) Outside of the construction of the Potomac Gardens and Kentucky Courts public housing projects and the restoration of row houses, there have been relatively few zoning and land use changes in the area.

(F) The Potomac Avenue Metro Impact Area is appropriate for moderate residential and commercial density increases, on a limited basis, to expand the opportunity for in-town living convenience to the subway system and to increase the amount of commercial available to serve the needs of the residents of the area. Such density increases should be limited to parcels of land immediately adjacent to the Metro Station, and contained within Squares numbered 1044, 1045, 1046, 1064, 1065, in order to preserve the existing low and medium density residential character balance of the study area and of the Capitol Hill - Capitol East areas as a whole.

(G) In the light of the above findings, the Office of Planning and Management report considered three alternative zoning proposals:

(1) leave the present zoning unchanged and widen where appropriate the narrow dimensions of the C -2 -A commercial strip along Pennsylvania Avenue;

(2) change the present zoning to C-2-B with a floor area ratio of 3.5 and a height restriction of 60 feet to be accomplished by:

- (i) a change in the C-2-B text;
- (ii) the creation of a new zone district;
- (iii) a planned unit development;
- (iv) a private covenant;

(3) change the present zoning to C-3-A with a floor area ratio of 3.6 and a 60 feet height limit and C-2-B with a floor area ratio of 6.0 and a 90 feet height limit.

15. The Office of Planning and Management testified, and the Commission finds, that if the change of zone was approved, the new zoning envelope would allow approximately 171,000 gross square feet of commercial space on the subject site and approximately 162,000 gross square feet of residential space.

16. The Department of Highways and Traffic reported, and the Commission finds, that the level of development pursuant to the preliminary site plans submitted by applicant would generate approximately 300 to 350 automobile trips during the peak hour and that this number of trips should not cause significant disruption of traffic in the surrounding street system, but that full development of the zoning envelope (if changed to C-2-B) would create traffic problems.

17. The Department of Environmental Services concluded, and the Commission finds, that the water distribution and sewer systems are adequate to handle any of the three development alternatives discussed in the Office of Planning and Management study entitled "Potomac Avenue Metro Impact Area." The Department of Environmental Services concluded, and the Commission finds, that the proposed alternatives would not have a significant impact on the operational capability for handling solid waste. The Department concluded, and the Commission finds, that the development alternatives discussed in the Office of Planning and Management report would have no adverse environmental consequences.

18. One member of the Zoning Advisory Council, Arthur B. Hatton, recommended approval of the zone change. Mr. Hatton testified, and the Commission finds, that the introduction of C-2-B zoning would allow a moderate increase to the bulk permitted under the present zoning and would increase housing supply and that the Potomac Avenue Metro Station has considerable surplus capacity to handle an increase in the level of development adjacent to it. Member William E. McIntosh testified that the proposed density of approximately 200 dwelling units per net acre is inconsistent with the "General Land Use Objectives; 1970/1985" element of the Comprehensive Plan for the National Capital prepared pursuant to the 1952 Planning Act, as amended, which provides for a predominantly residential density from 60 to 120 dwelling units per acre at this location. Mr. McIntosh abstained from recommending for or against the proposed change of zone.

19. The Office of Planning and Management, in a memorandum to the Executive Secretary dated November 21, 1974, a supplement to the Office's original submission, included a set of computations for all of the land currently held under private ownership and proposed for possible C-2-B zoning in Squares 1044, 1045, 1046, 1064, 1065. The Office of Planning and Management report noted, and the Commission finds, that the area suggested for possible C-2-B zoning covered approximately eight acres within the boundaries of the study area as compared to the approximately 29 acres covered by the "high-medium density residential" category of the NCPC land use objectives. The Office of Planning and Management report noted, and the Commission finds, that if the eight acres suggested for possible C-2-B zoning were developed at 200 dwelling units to the acre, 1600 dwelling units would result, whereas if the area designated by NCPC were developed at the average of 90 dwelling units to the acre, 1800 dwelling units would result,

20. The Office of Planning and Management report concluded, and the Commission finds, that retention of existing R-4 zoning at 48 dwelling units to the acre as a maximum within the boundaries of the Metro Impact Area and the rezoning of Squares 1044, 1045, 1046, 1064, 1065, at a maximum of 200 dwelling units to the acre would yield approximately the same overall residential density as the NCPC designation of a range of 60 to 120 dwelling units to the acre. Consequently, the Commission finds that the proposed zoning change is consistent with the NCPC Comprehensive Plan. The Commission notes a difference of opinion in the method of interpretation of the NCPC land use map between experts of the Planning Commission and the Office of Planning and Management and experts representing the various parties.

21. The National Capital Planning Commission testified that its Comprehensive Plan indicates that Square 1045 and its immediate vicinity should develop in predominantly residential use with typical development in 60 to 120 dwelling units per net acre range. The Planning Commission found that the application indicates that 401 apartments would be built on about 2.2 acres of land and that such a number of units would exceed the residential density range established for this area by about 62 units to the acre. The Commission concluded that the proposed zone change, if approved, would be inconsistent with its Comprehensive Plan. Though the Commission was of the opinion that C-2-B zoning is not necessarily inappropriate for the immediate area around the rapid transit station.

22. There was considerable and vigorous citizen opposition evinced in the public hearing, to this application for zone change .

#### CONCLUSIONS OF LAW

1. The height, bulk and density of the proposed C-2-B zone district is appropriate for this area of the city and would not have an adverse impact on the character of the surrounding neighborhood.

2. The Commission concludes that the designation "predominantly residential" followed by a range of density as in the case of 60 to 120 dwelling units to the acre, as intended to suggest a overall policy rather than a precise density on a lot by lot basis. With this view in mind, the Commission regards a density increase limited specifically to squares immediately adjacent to the Metro Station (Squares 1044, 1045, 1046, 1064, 1065) and the retention of existing low and medium density in the area immediately surrounding these squares as not only meeting the objectives of the NCPC Comprehensive Plan, but also of furthering the objectives of the District of Columbia of neighborhood preservation and moderate density increases limited to the immediate vicinity of the Metro Station.

3. The proposed zone district is appropriate because it would promote health and the general welfare, will prevent undue concentration of population and the overcrowding of land, and will promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, protection of

property, provide recreational opportunities, and promote efficient supply of public services.

4. The proposed zone district is appropriate, taking the present character of the district into consideration, because it would encourage stability of the district or the land values therein.

5. The proposed zone district is in harmony with the intent, purpose and integrity of the comprehensive zone plan as embodied in the Zoning Regulations and Map.

6. All evidence presented by the applicant in reference to any proposed building, height restriction or covenant with surrounding property owners on a height limit is irrelevant to the consideration of whether this proposed change of zone should be approved by the Commission .

#### OPINION

The Zoning Commission has reviewed and given consideration to the factual and legal contentions of all parties in this case, which is a direct successor of, and closely interrelated with, Zoning Commission Case No. 71-14. That case involved the same applicants and, for the most part, the same parties in opposition. As a direct result of the final order in 71-14, and the findings, conclusions and recommendations therein, the instant application was filed. The record herein, which includes the record in 71-14, reflects a general consensus that the subject property should be rezoned to permit a higher level of development than is permitted under the R-4 and C-Z-A zoning classifications. The differences among the parties and witnesses relate to the level of development that should be permitted and to the process that should be utilized in effecting a rezoning, i. e., Article 75 (Planned Unit Development) or Article 91 (map amendment).

The Commission recognizes the good faith efforts of the applicant and the opposition to meet the needs and concerns of all parties. The applicant has scaled down its request for change of zoning and the opposition has manifested a desire to work with the applicant through the planned unit development process to develop the property in a manner that would meet the needs and objections of all concerned to the maximum extent feasible. The Commission notes that the applicant also sought to meet

some of the objections by proffering a covenant that would limit the height and bulk of the development. (A covenant was filed with the Commission subsequently to the public hearing.) As stated in the Conclusions of Law, however, the Commission has given no weight to this proffer, and such may not be considered in deciding an Article 91 map change application.

While there is support for the contention that the planned unit development process might achieve a result more to the liking of the parties in opposition than that obtained by an Article 91 map amendment, the question before the Commission was not which is the better process. The question is whether the subject property should be zoned C-2-B on the basis of the record herein. The Commission recognizes that the development proposals proffered by the applicant are not binding and may not be considered in the decisional process. At best, such proposals are only illustrative of the type of development that may ensue, they are not limiting; the limitations on the height, bulk and density of the development are imposed by the Zoning Regulations. While the Commission would hope that the applicant would proceed in accordance with its proffer, it may not rely thereon. Accordingly, the decision herein is based on the findings and conclusions that the C-2-B zone district is appropriate for the subject property. This decision necessarily entails the recognition that, legally, the site may be developed to the maximum C-2-B envelope, 90 feet and 3.5 floor area ratio. Should this occur, such would be an important factor in future planning and zoning considerations affecting the future development of this area. Additionally, the Commission is of the opinion that even full envelope development of the site would not render this zoning action inconsistent with NCPC's land use objectives for the area. This, of course, is based on the Commission's view that those land use objectives are guidelines to be utilized on an area-wide basis, not lot by lot.

It must be stated that all references herein (and in the Findings of Fact and Conclusions of Law) are to the Comprehensive Plan elements prepared by NCPC and do not refer to the Comprehensive Plan for the National Capital mandated by the Congress in the Home Rule Act. The Commission, of course, recognizes the continuing vitality of the NCPC plan elements as planning guidelines which should be considered in all zoning decisions. But the NCPC elements do not have, nor will they have after January, 2, 1974, the force of law.

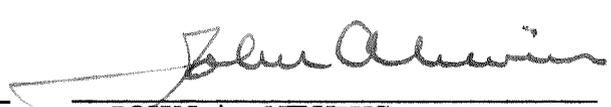
DE CISION

1. The Commission has considered all motions made or filed prior to, during and after the public hearing of this case and all such motions are hereby denied.

2. Based upon the foregoing findings of fact and conclusions of law, the Commission hereby ORDERS ADOPTION of the following amendment to the Zoning Map:

Change from C-2-A and R-4 to C-2-B, lots  
817, 818, 828, 829, 102, 67-69, 84-87, 827,  
119, 56-63, 823, 65, 66, and 830-833 in  
Square 1045.

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WALTER E. WASHINGTON

  
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JOHN A. NEVIUS

  
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STERLING TUCKER

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GEORGE M. WHITE

  
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RICHARD L. STANTON

ATTEST:

  
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Martin Klauber, Secretary