

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 310-B  
Case No. 91-7M/79-13  
(PUD Modification & Map Amendment - IMF)  
September 14, 1992

By Z.C. Order No. 310-A dated April 6, 1992, the Zoning Commission for the District of Columbia approved a modification to a previously approved planned unit development (PUD), which was constructed on Lot 49 in Square 120. The modification provides for an addition to the PUD and related change of zoning from R-5-C to C-3-C for Lot 826 and a public alley proposed to be closed in Square 120.

Square 120 is bounded by 19th, 20th, G and H Streets; consists of a public alley and lots 49 and 826; and measures 114,017 square feet in land area. Square 120 is split-zoned R-5-C and C-3-C. Lot 826 is presently zoned R-5-C and Lot 49 is presently zoned C-3-C.

Z.C. Order No. 310-A provides for the implementation of the last phase of a three-phase development in Square 120 for the International Monetary Fund (IMF) headquarters. The PUD has a height of 130 feet and the site measures 114,017 square feet in land area.

Pursuant to 11 DCMR 3028.8, Z.C. Order No. 310-A became final and effective on May 1, 1992.

Pursuant to 11 DCMR 3029.5 and by letter dated May 11, 1992, Advisory Neighborhood Commission (ANC) 2A and the Foggy Bottom Association, by and through counsel, filed a motion for reconsideration of Z.C. Order No. 310-A or, in the alternative, a motion to rehear the case.

The motion for reconsideration challenged the Commission's jurisdiction over the case, under the Foreign Missions Act (FMA), codified at D.C. Code Ann. No. 5-2101, et seq., 1988, which placed such applications at the discretion of the Secretary of State and stated as follows:

"The Secretary of State has the authority to make the provisions of the FMA applicable with respect to an international organization to the same extent that it is applicable with respect to a Foreign Mission if the Secretary determines that such application is necessary."

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On June 8, 1992 at its regular monthly meeting, the Zoning Commission deferred action on the motion for reconsideration and decided to refer the motion to the Office of Corporation Counsel (OCC) for advice on the FMA issue.

By a memorandum dated July 8, 1992, the OCC in response to the referral, recommended that the Commission deny the motion for reconsideration, and indicated the following:

1. The State Department, through the Office of Foreign Missions (OFM) the primary federal instrumentality for effectuating the Foreign Missions Act, was appropriately notified of the PUD application;
2. The OFM declined to apply the land use provisions of the Foreign Missions Act to the IFM application;
3. The OFM deferred to the "primary competence" of the NCPC, another federal agency, the assessment of the land use issues of the PUD application; and
4. The OFM clearly indicated its decision not to "intervene in the matter". As such, the OFM appeared to manifest its consent to the "non-FMA", ordinary PUD review process and, thereby, the jurisdiction of the Zoning Commission (including NCPC review). Moreover, in light of the above record evidence, the case law cited in the Motion for Reconsideration does not suggest that the Zoning Commission forego its jurisdiction over this matter. For these reasons, this office advises the Zoning Commission to deny the motion for reconsideration.

On August 3, 1992, the Commission reconsidered the motion for reconsideration, a letter dated May 21, 1992 from counsel for the applicant in opposition to the motion for reconsideration, and a memorandum dated July 6, 1992 from the Acting Director of the Office of Zoning concurring with the OCC recommendation.

The Commission concurs with the OCC recommendation, and believed that no new issues were raised in the motion, and that it has jurisdiction over the PUD modification in this case.

The Commission further believes that denial of this motion for reconsideration is in the best interest of the District of Columbia, and is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act.

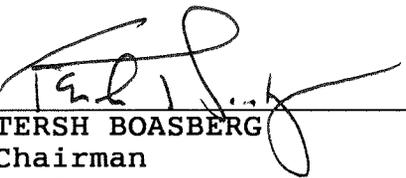
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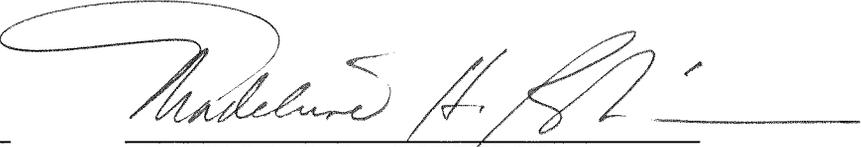
In consideration of the reasons set forth herein, the Commission hereby DENIES the motion for reconsideration.

Vote of the Commission taken at the public meeting on August 3, 1992: 3-0 (Lloyd D. Smith, Tersh Boasberg, to DENY, and John G. Parsons, to DENY by proxy - William L. Ensign and Maybelle Taylor Bennett, not voting having not participated in the case).

This order was adopted by the Zoning Commission at its public meeting on September 14, 1992 by a vote of 3-0: (John G. Parsons, and Tersh Boasberg, to adopt as amended, and Lloyd D. Smith, to adopt by proxy - Maybelle Taylor Bennett, and William L. Ensign, not voting, not having participated in the case).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is on ~~007 22 1992~~.

  
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TERSHER BOASBERG  
Chairman  
Zoning Commission

  
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MADELIENE H. ROBINSON  
Acting Director  
Office of Zoning

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the question of what group should have the authority to establish a liaison committee is a contentious issue in the neighborhood, and that there should be shared authority in the formation and control of the committee.

#### CONCLUSIONS OF LAW

1. This is the last phase of development first approved by the Commission in 1969. The Phase III addition is in substantial conformance with the approval of the plan for the entire square.
2. Approval of this PUD modification is not inconsistent with the Comprehensive Plan, which was adopted subsequent to the approval and completion of Phase II, including the designation of the site as high density commercial, and the language in the Federal Element.
3. The proposed PUD modification meets the minimum area requirements of Section 2401.1 of the Zoning Regulations.
4. The planned unit development process is an appropriate means of controlling development of the subject site.
5. Approval of this PUD modification application is appropriate, because the application is generally consistent with the present character of the area.
6. The Commission takes note of the position of Advisory Neighborhood Commission 2A, and in its decision has accorded to the ANC the "great weight" consideration to which it is entitled.
7. The approval of the application would promote orderly development in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The proposed application can be approved with conditions which would insure that development would not have an adverse effect on the surrounding area.

#### DECISION

In consideration of the findings of fact and conclusions of law herein, the Zoning Commission for the District of Columbia hereby orders approval of a modification to the previously approved planned unit development and a change of zoning from R-5-C to C-3-C for Lot 826 and the public alley that is proposed to be closed, located in Square 120, subject to the following guidelines, conditions, and standards:

1. The planned unit development modification and the addition (IMF Phase III) approval shall be developed in accordance with the plans prepared by Brinton N. West, a principal of the Kling-Lindquist Partnership, dated March 29, 1991, and marked as Exhibit Nos. 6 and 28 of the record, as modified by the guidelines, conditions, and standards of this order.
2. The use of the addition included in the PUD modification shall be limited to office, and other related uses of the International Monetary Fund (IMF).
3. The floor area ratio (FAR) of Phase III shall not exceed 10.11 and the overall FAR for the entire structure shall not exceed 9.07.
4. The gross floor area of Phase III shall not exceed 280,319 square feet and the overall gross floor area of the entire structure shall not exceed 1,034,854 square feet.
5. The height of the Phase III addition shall not exceed 130 feet and the roof structure shall be compatible with the roof structure of the existing building.
6. No additional underground parking spaces and/or loading berths shall be required.
7. The IMF/applicant shall use its best efforts to ensure that Western Presbyterian Church and ANC-2A establish a liaison committee with substantial representation from the neighborhood surrounding the church's new location to monitor the relocation of the church and its programs within the neighborhood, and report its findings to the ANC.
8. The applicant shall report to the Commission within 90 days in writing, what steps have been taken to ensure the establishment of the liaison committee to monitor the relocation of the church and its programs.
9. The change in zoning from R-5-C to C-3-C for Lot 826 and the public alley that is proposed to be closed in Square 120 shall become effective upon recordation of a covenant as required by Section 2406.12 of the Zoning Regulations.
10. No building permit shall be issued for this planned unit development modification until the applicant has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia, that is satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory

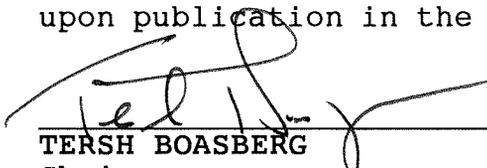
Affairs (DCRA), which covenant shall bind the applicant and all successors in title to construct on and use this property in accordance with this order or amendment thereof by the Zoning Commission.

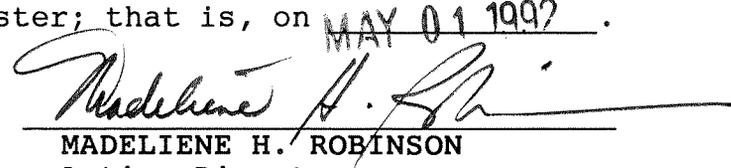
11. The Office of Zoning shall not release the record of this case to the Zoning Division of the DCRA until the applicant has filed a certified copy of said covenant with the records of the Zoning Commission.
12. This modification to the PUD approved by the Commission shall be valid for a period of two years from the effective date of this order. Within that time, application must be filed for the building permit, as specified in 11 DCMR 2407.2 and 2407.3. Construction shall start within three years of the effective date of this order.
13. Pursuant to D.C Code Sec. 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2038, as amended, codified as D.C. Code, Title 1, Chapter 25, (1987 Repl. Ed.), and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Division of DCRA to approve permits, if the applicant fails to comply with any provisions of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at the public meeting on February 10, 1992: 3-0 (Lloyd D. Smith, John G. Parsons, and Tersh Boasberg to approve with conditions - Maybelle Taylor Bennett and William L. Ensign not voting not having participated in the case).

This order was adopted by the Zoning Commission at its public meeting on April 6, 1992, by a vote of 3-0 (John G. Parsons, Tersh Boasberg to approve and Lloyd D. Smith to approve by proxy - Maybelle Taylor Bennett and William L. Ensign not voting not having participated in the case).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on MAY 01 1992.

  
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TERSH BOASBERG  
Chairman  
Zoning Commission

  
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MADELIENE H. ROBINSON  
Acting Director  
Office of Zoning