

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 386
CASE NO. 80-15
DECEMBER 13, 1982

Pursuant to notice, a public hearing was held by the District of Columbia Zoning Commission on July 19, 1982. At that hearing session the Zoning Commission considered an initiative to amend the Zoning Regulations of the District of Columbia relative to the zoning of property formerly owned by the United States Government, pursuant to Section 9101 of the Zoning Regulations. The hearing was conducted in accordance with the provisions of Chapter 5 of the Rules of Practice and Procedure before the Zoning Commission.

On October 9 and November 13, 1980, the D.C. Office of Planning and Development (OPD), by memorandum dated October 1, 1980 from the Executive Director of the Zoning Secretariat, requested the Zoning Commission to consider amendments to the Zoning Regulations to clarify the application of zoning on property formerly owned by the United States Government. The Zoning Commission declined to schedule a public hearing on the petition at that time and instead requested the OPD to coordinate and conduct further discussions of the issues with the staff of the National Capital Planning Commission (NCPC) and other appropriate agencies. Periodic discussions occurred between the staffs of the OPD and the NCPC for more than one year.

On February 11 and March 11, 1982 the Zoning Commission renewed its interest and reconsidered the recommendation of the Executive Director. On May 24, 1982 and subsequent to referrals to the OPD and the NCPC, the Zoning Commission authorized the scheduling of a public hearing on the case.

Sub-section 2201.1 of the Zoning Regulations presently reads as follows:

"2201.1 Properties owned by the Government of the United States are not included in any zone district. Upon transfer to private ownership, all such properties shall be zoned after public hearing held in the manner prescribed by the Zoning Act of June 20,

1938 (52 Stat. 797), whereas properties acquired by the United States shall become automatically unzoned."

There are some vague areas in the application of Sub-section 2201.1. The first area of concern is whether properties which are acquired by the United States Government, but which are not acquired for a public purpose, are covered by this Sub-section. There are many buildings which have mortgages insured by the United States Government, and which the government may acquire by default and own for a time. The present language of Sub-section 2201.1 appears to state that such temporary ownership by the United States Government would operate to void the previous zoning. This appears to be contrary to the intent of the language of Section 16 of the Zoning Act, which provides "The provisions of this Act, shall not apply to Federal public buildings...".

The Zoning Administrator has in the past considered the Zoning Regulations to be fully applicable to buildings which are owned by the United States Government but are not federal public buildings. As a practical matter, it is not possible for the Zoning Administrator to know each time a building may be owned, however temporarily, by the United States Government. There are a large number of programs operated by a number of United States Government agencies, such as the Economic Development Administration, Small Business Administration, Housing and Urban Development, Federal Housing Administration, Veterans Administration, etc., which are involved in insuring and/or financing private properties. In case of default the United States Government assumes their ownership temporarily and returns them to the private sector as soon as the financial stipulations are satisfied. No permanent ownership and/or use by the United States Government is contemplated. The proposed text amendment in this case would clarify that the Zoning Regulations would remain fully applicable to such properties because the United States Government would not use them for federal public purposes.

The second vague area in the present language of Sub-section 2201.1 relates to how the Zoning Regulations are to be applied to properties once owned by the United States Government which are then transferred to private ownership. Specifically, if the private owner does not apply to the Zoning Commission, what controls are applicable to the property? A clarification in the language in this regard is needed. The proposed amendment states that the property would have to be zoned before a certificate of occupancy can be issued and the property can be used for any purpose.

Additionally, the proposed text amendment covers the issue of maintenance and repairs of buildings and structures once the property has been transferred to private ownership. The

D.C. Code exempts United States Government buildings and activities from the permit requirements. However, federal properties released to private ownership must be brought into conformity with applicable D.C. codes and regulations. Minor repairs and alterations not involving structural changes may be made without filing application for permit, as per D.C. Code Section 107.3.

The Office of Planning and Development (OPD), by memorandum dated July 9, 1982 and by testimony presented at the public hearing, supported the proposal, as advertised.

The National Capital Planning Commission (NCPC), by statement dated July 19, 1982 and by testimony presented at the public hearing, supported the proposal, as advertised.

Advisory Neighborhood Commission (ANC)-3C, by resolution dated June 30, 1982 and by testimony presented at the public hearing, supported the proposal and resolved:

"That ANC-3C supports the proposal of the D.C. Zoning Commission in Case 80-15 regarding the establishment of zoning controls on unzoned property in the District of Columbia. The proposal in this case will finally provide the community a measure of protection from, and control over, potential development of unzoned parcels -- particularly de-Federalized property -- in the City."

A notice of proposed rulemaking was published in the D.C. Register on November 12, 1982. There were no comments received resulting from that publication.

The Zoning Secretariat by memorandum dated September 9, 1982, addressed land-use control concerns that were raised regarding property formerly owned by the District of Columbia Government, property acquired for District of Columbia Government use, and controls applicable to private businesses in United States Government buildings. The Zoning Secretariat reported the following:

1. District of Columbia property is zoned, with one area of exemptions. Section 16 of the Zoning Act (D. C. Code, Sec. 5-432) provides for the specific exception of Federal public buildings. The National Capital Planning Act (D. C. Code, Sec. 1-2004) extends that exemption to District "public buildings... within the boundaries of the Central Area." That area has been defined to include the Downtown and Shaw Urban Renewal Areas.
2. Within the "Central Area," review and approval

authority of District buildings is vested in the National Capital Planning Commission. Outside the Central Area, by Commissioners Order dated March 31, 1959, it was determined that "the zoning regulations are not applicable to construction of District and Federal buildings." The policy stated in that order, however, was "of compliance with all District regulations."

3. No certificate of occupancy is issued to private businesses in United States Government buildings. However, business licensing regulations and alcoholic beverage licensing regulations are applicable.

The Zoning Secretariat recommended approval of the advertised proposal, as amended to include "District of Columbia public buildings or uses in the Central Area."

The Central Area generally includes the area of the City bounded on the east (from north to south) by North Capitol Street, New York Avenue, Third Street, Massachusetts Avenue and North Capitol Street; on the south by Louisiana, Constitution, and Pennsylvania Avenues; on the west by Fifteen Street; and on the north by Florida Avenue.

The Commission concurs with the recommendation of the Zoning Secretariat and believes that the proposed amendments to the Zoning Regulations will provide adequate clarity to the issues relative to the zoning of former government property.

The proposed action of the Zoning Commission was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self Government and Governmental Reorganization Act. The NCPC reported that the proposed amendments to the Zoning Regulations would not adversely affect the Federal Establishment and other Federal interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia and are consistent with the intent and purpose of the Zoning Regulations and Zoning Act (Act of June 20, 1938, 52 Stat. 797, as amended). The Commission further believes that, in its decision, it has accorded the ANC the "great weight" to which it is entitled.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of the following amendments to the Zoning Regulations:

Delete the existing Sub-section 2201.1 and replace it with the following new Sub-sections 2201.1 through 2201.3:

2201.1 Properties owned by the Government of the United States and used for or intended to be used for a Federal public building or use and properties owned by the Government of the District of Columbia in the Central Area (as set forth in the D.C. Code, Sec. 1-2004, 1981 Ed.) and used for or intended to be used for a District of Columbia public building or use are not included in any zone district. Such properties shall become automatically unzoned upon acquisition by the Government of the United States or the Government of the District of Columbia.

2201.2 No building permit or certificate of occupancy shall be issued nor proceeding instituted before the Board of Zoning Adjustment nor shall any property in private ownership be used for any purpose until after the Zoning Commission has designated zoning for the property. Zoning shall be designated after public hearing in the manner prescribed by the Zoning Act of June 20, 1938 (D.C. Code, Sect. 5-413 et seq., 1981 Ed.).

2201.3 Nothing in this Section shall prevent:

2201.31 Minor repairs and alterations to buildings and structures for which no building permit is required, as set forth in the District of Columbia Building Code.

2201.32 A caretaker from residing on property formerly owned by the Government of the United States or property in the Central Area formerly owned by the Government of the District of Columbia, for which zoning has not been designated, for the purpose of maintaining and preventing the deterioration of the premises.

Renumber existing Sub-section 2201.2 to 2201.4.

Vote of the Commission at its public meeting on October 18, 1982: 3-0 (Lindsley Williams, John G. Parsons, and Walter B. Lewis, to approve - Maybelle T. Bennett, not voting not having participated in the case and George M. White, not present not voting).

This order was adopted by the Zoning Commission at its public meeting held on December 13, 1982 by a vote of 4-0 (Lindsley Williams, George M. White and Walter B. Lewis to adopt as amended, John G. Parsons, to adopt by absentee vote - Maybelle T. Bennett, not voting not having participated in the case).

In accordance with Section 4.5 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, these amendments to the Zoning Regulations are effective upon publication in the D.C. Register, specifically on JAN 21 1983.

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WALTER B. LEWIS
Chairman
Zoning Commission



STEVEN E. SHER
Executive Director
Zoning Secretariat

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