

# Government of the District of Columbia

## ZONING COMMISSION



ZONING COMMISSION ORDER NO. 537

Case No. 86-19

July 13, 1987

(Fourways - Map Amendment)

Pursuant to notice, public hearings of the District of Columbia Zoning Commission were held February 19, April 28, and May 18, 1987. At those hearing sessions, the Zoning Commission considered an application from Fourways of Washington, Inc., pursuant to the District of Columbia Municipal Regulations (DCMR) Title 11, Zoning, Section 102. The hearings were conducted under the provisions of 11 DCMR, Section 3022, Zoning.

### FINDINGS OF FACT

1. The application, which was filed July 11, 1986, requested an amendment to the zoning map, proposing a change of zoning from R-5-B to C-3-B for lot 60 in Square 110 located at 1701 20th Street, N.W. At its regular monthly meeting held December 8, 1986 the Zoning Commission authorized the scheduling of a public hearing for the application. The applicant later amended the original request of C-3-B rezoning to C-2-B rezoning.
2. The site is located on the northeast corner of the intersection of 20th and R Streets, N.W., and consists of approximately 14,341 square feet of land area. The site is zoned R-5-B and is improved with an historical structure currently used as a restaurant by Fourways, Inc.
3. The R-5-B District permits matter-of-right development of general residential uses, including single-family dwellings, flats, and apartments to a maximum lot occupancy of sixty percent, a maximum floor area ratio (FAR) of 1.8 and a maximum height of sixty feet.
4. The C-2-B District permits matter-of-right medium density development, including office, retail, housing, and mixed uses to a maximum height of sixty-five feet, a maximum FAR of 3.5 for residential and 1.5 for other permitted uses, and a maximum lot occupancy of eighty percent for residential uses.

5. The C-3-B District permits matter-of-right major business and employment centers of medium density development, including office, retail, housing, and mixed uses to a maximum height of seventy feet/six stories, a maximum floor area ratio (FAR) of 5.0 for residential and 4.0 for other permitted uses, and a maximum lot occupancy of one hundred percent.
6. The site is improved with a four-story masonry structure with two cellars, was constructed in 1890 and is a Category II Historic Landmark.
7. The site is in the Dupont Circle area. The uses contiguous to the site to the north and east as well as across R Street to the southeast of the site are residential, consisting of single and multi-family housing. The residential character of the neighborhood is that of three-four story townhouses and apartment buildings. The uses to the immediate west across 20th Street and to the south across R Street are commercial. The commercial uses are typically first floor retail and service providers with offices on the upper levels, fronting on Connecticut Avenue.
8. To the immediate south and west of the site across R Street and 20th Street, respectively, is C-3-B zoning. To the north and east of and contiguous to the site is R-5-B zoning. SP zoning is farther southeast of the site.
9. The applicant, by testimony presented at the public hearing, indicated that the request for a change in zoning would make the commercial nonconforming use of the historic structure compatible with the Comprehensive Plan and surrounding development, and is in the public interest.
10. The applicant contends that the existing historic structure must come before the scrutiny of the Historic Preservation Review Board (HPRB) for any improvements, adjustments, and/or additions to the building regarding design, height, bulk and density issues.
11. The applicant proposes, in addition to a change in zoning, to construct an apartment building to the rear of the main structure, abutting the east property line, and to reconfigure and relocate an underground parking garage.
12. The applicant contends that the existing building has proven to be not commercially suitable for residential uses, having operated as a commercial establishment for approximately fifty years.

13. The applicant, at the public hearing, proffered a draft covenant between the owner of the site and one J. Sherwood Philip and property owners within seventy-five feet of the site. The intent of the covenant is to establish a means of controlling the use and development of the site and to ameliorate concerns of the area residents for a period of thirty (30) years.
14. The applicant, through the traffic expert, contends that the service levels of vehicular circulation and parking in the area would not be adversely impacted from development of the site.
15. The Office of Planning (OP) by memorandum dated February 9 and June 2, 1987, and by testimony presented at the public hearing identified the following concerns:
  - a. a map change without a PUD or private covenant lacks sufficient control over development of the site;
  - b. development plans subject to review by the HPRB are not part of the pre-hearing submission nor before the Zoning Commission;
  - c. development with C-3-B uses and densities would create adverse impacts on adjacent residential properties;
  - d. commercial encroachment into residential areas has long been a major planning issue;
  - e. the applicant is not bound to a specific project as far as zoning is concerned;
  - f. a question of spot zoning could arise if a change of zoning to C-2-B is considered; and
  - g. the delicate balance between residential and commercial uses in the neighborhood should not be altered to the detriment of residential.
16. The Department of Public Works (DPW), by memorandum dated March 27, 1987 and by testimony presented at the public hearing contended that the proposed development could be accommodated on site with minimal increase in traffic. However, the demand for parking would be more than the amount of parking proposed for the combined uses of the site. Therefore, a demand for a total of 62 parking spaces may be warranted.
17. As to the issue of covenants, the Office of Corporation

Counsel (OCC), by memorandum dated April 6, 1987, and June 2, 1987 determined that the applicant's proposed covenant is legally enforceable if signed by the owner and trustees of the subject property. The OCC recommended clearly stating in the covenant the total FAR for the site. OCC recommended further removing the District of Columbia as a beneficiary, using lot numbers of remaining beneficiaries in lieu of "owners within 75 feet", and using the name Fourways, Inc., the record owner, to execute the covenant.

18. The Metropolitan Police Department, by letter dated May 12, 1987, reported that the subject property at one time was the scene of criminal activities and related incidents, very few of which impacted adversely on the community. At present, however, the area has one of the lowest crime rates for the Third District.
19. The Advisory Neighborhood Commission (ANC)-2B, by letters dated January 30 and May 15, 1987, by report dated February 19, 1987 and by testimony presented at the public hearing, opposed the application for the following reasons:
  - a. Square 110 which is zoned R-5-B is exclusively developed with apartment buildings and townhouses;
  - b. the presence of gross non-compatibility that a commercial zone will have on the square;
  - c. that early planners recognized that 20th Street is not suitable for nor could support commercial development;
  - d. the proposal would drastically add to the air and noise pollution problems and significantly alter the residential character of the square;
  - e. the proposal is in direct conflict with the text of the Comprehensive Plan which states in part "... Stablization of the District's neighborhoods must take precedence over commercial development...", and allow for "... protection from concentrations of non-residential uses in residential neighborhoods";
  - f. the applicant would not be bound by any agreements if the rezoning is granted;
  - g. the proposed covenant relates only to the proposed structure, not to its use and is not a proper matter to be considered by the Zoning Commission; and

- h. the applicant has been allowed to continue commercial activity on site as restricted to restaurant and related uses by various Board of Zoning Adjustment actions and should so continue.
- 20. There were no parties in support of record or at the public hearing.
- 21. Three persons testified in support.
- 22. Twenty-nine persons wrote in support of the application.
- 23. Parties in opposition included Dupont Circle Citizens Association ("DCCA"); Residential Action Coalition; Citizens Coalition Against Commercial Encroachment of Dupont Circle North ("CCACE"); Daro Realty, Inc.; and David Burns, 1712 - 19th Street. The major issues of concern included the following:
  - a. a normal sequence in zoning for a non-conforming use to be changed to make that use a matter-of-right is not natural, except when zoning is done in error;
  - b. the BZA process, which the applicant finds cumbersome, is absolutely necessary for the continued protection and stability of the neighborhood;
  - c. any tentative approval given by the HPRB for design concept has no bearing on the question of a change in zoning, before the Zoning Commission;
  - d. the litigation to enforce private covenants imposes undue burdens on the neighborhood, bargaining about terms and constantly demanding enforcement;
  - e. the applicant has not demonstrated a strong rationale for a zone change;
  - f. the neighborhood generally and specifically 20th and R Streets are saturated with parking demands, and congested streets;
  - g. the applicant's claim of financial hardship to justify rezoning does not hold because that situation was of his own making;
  - h. other than J. Philip Sherwood and signatories to

the proposed covenant, no other residents within the seventy-five foot radius of the site has been identified who supports the application;

- i. there were approximately 600 individuals within the neighborhood who oppose the application compared to about twenty-five persons who live outside of the neighborhood who support the rezoning; and
  - j. there are other options for the development of the subject site under the existing zoning without impacting on the light, air and ventilation of adjacent properties, in direct contrast to obtaining an additional 36,000 square feet of space and 7,000 square feet of lot occupancy under the proposed rezoning.
24. The requested change in zoning to C-2-B, even with the proposed covenant, would allow some uses which would have an adverse impact on traffic. Traffic and parking in the area are currently at a level which requires careful scrutiny of any increase in permitted development. Some incremental increase therein, and a corresponding increase in the traffic and parking demands generated by the site, would not be unreasonable. However, the proposed private covenant does not reasonably ensure or guarantee an adequate level or time of control over future uses on the site.
  25. Encroachment into an R-5-B area would be a step toward continuing erosion of the residentially-zoned properties in the Dupont Circle area.
  26. The 1978 rezoning to R-5-B of the area which includes the site was based on the same goal of preventing erosion of the residential area.
  27. There is an evident unwillingness on the part of the applicant to commit by covenant to purely residential use.
  28. The restricted use proposed by the covenant does not flow in perpetuity.
  29. The housing proposed by the applicant can be achieved as a matter-of-right.
  30. The Commission is mindful of and takes note of the issues raised by the large number of area residents and merchants, who are in unanimous opposition to the application, through testimony at the public hearing and of record.

31. The Commission finds that the applicant has not adequately addressed the concerns that are presented by the requested zone change to the C-2-B classification.
32. The Commission would be prepared to consider alternatives to C-2-B zoning of the site. Examples would include leaving a portion of the site in a residential zone category, or rezoning the entire site to a more restrictive classification than C-2-B. However, the current record is not sufficient to support approval of any such alternative. The parties have developed their positions and framed the case on the basis of the C-2-B proposal. The applicant has expressed reservations about the practicality of development of the site if it were to be split zoned.
33. On June 15, 1987, the applicant submitted a request to reopen the record to allow the filing of an amended declaration of covenants dated June 5, 1987. DCCA, CCACE, and ANC 2B opposed the request as filed untimely and not allowing them a reasonable opportunity to address the merits of the applicant's changing positions. At its public meeting on July 13, 1987, the Commission considered the request and the opposition thereto, and through the Chairman, denied the request as untimely.

CONCLUSIONS OF LAW

1. The Commission finds that the applicant has not met the burden of proof for a change in zoning as its relates to the environment, and public interest as mandated in the Comprehensive Plan.
2. Zoning to C-2-B would not be consistent with the purpose and intent of the Zoning Act, and would not further the general public welfare or serve to stabilize or improve the area or promote a favorable distribution of land uses.
3. Zoning to C-2-B would not promote the orderly development in conformity with the entirety of the District of Columbia Zone Plan as embodied in the Zoning Regulations and Maps of the District of Columbia.
4. Zoning to C-2-B will have an adverse impact on the surrounding residential neighborhood.
5. Zoning to C-2-B would be inconsistent with the Comprehensive Plan for the National Capital.
6. The Commission in its decision has accorded the

Advisory Neighborhood Commission 2B the "great weight"  
to which it is entitled.

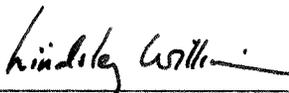
DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the District of Columbia Zoning Commission hereby orders DENIAL of the application which requested a zone change from R-5-B to C-2-B lot 60 in Square 110, located at 1701 - 20th Street, N.W.

Vote of the Zoning Commission taken at the public meeting of June 8, 1987: 4-0 (John G. Parsons, Maybelle T. Bennett, George M. White and Lindsley Williams, to deny; Patricia N. Mathews, not voting, having recused herself).

This Order was adopted by the Zoning Commission at the public meeting held on July 13, 1987, by a vote of 4-0 (John G. Parsons, Maybelle T. Bennett, George M. White and Lindsley Williams, to deny; Patricia N. Mathews, not voting, having recused herself).

In accordance with 11 DCMR, Section 3028, this order is final and effective upon publication in the D.C. Register; that is on 28 AUG 1987.



LINDSLEY WILLIAMS  
Chairman  
Zoning Commission



EDWARD L. CURRY  
Acting Executive Director  
Zoning Secretariat