Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 555
Case No. 86-19
May 23, 1988
(Fourways - Map Amendment)

FINDINGS OF FACT

1. On July 13, 1987, at its regular monthly meeting the Zoning Commission for the District of Columbia adopted Z.C. Order No. 537, which denied the application of Fourways of Washington, Inc., requesting a zone change from R-5-B to C-2-B, as revised, for Lot 60, in Square 110, located at 1701 - 20th Street, N.W.

2. In making its decision in Z.C. Order No. 537, the Commission determined the following:

   a. The applicant has not met the burden of proof for a change in zoning as it relates to the environment, and public interest, as mandated in the Comprehensive Plan;

   b. 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;

   c. 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;

   d. Zoning to C-2-B would have an adverse impact on the surrounding residential neighborhood; and

   e. Zoning To C-2-B would be inconsistent with the Comprehensive Plan for the National Capital.

3. On September 3, 1987, pursuant to Section 3029.5 of Title 11, DCMR, the Zoning Commission received from the applicant a motion for reconsideration of Z.C. Order No. 537, together with a revised covenant and an alternative proposal for the subject property.

4. At its regular monthly meeting on September 21, 1987, the Zoning Commission considered the applicant's motion, as well as comments from the Dupont Circle Citizens Association, the Residential Action Coalition, Advisory Neighborhood Commission 2B, and the Citizens Coalition Against Commercial Encroachment of Dupont Circle North.

5 Subsequent to consideration, the Zoning Commission authorized a further public hearing for November 5, 1987. The hearing was concluded on December 3, 1987.

6. By pre-hearing submission dated October 15, 1987, the applicant proposed the following:

   a. C-2-B zoning with an amended covenant which was essentially identical to the one which the applicant submitted on June 15, 1987. The covenant was intended to address the concern about possible hotel use of the proposed new structure. The applicant is willing to covenant that the proposed structure will be used solely for residential purposes;

   b. C-2-B zoning with an alternative amended covenant which precludes hotel use of the proposed structure and also limits the range of permitted uses in the Fraser Mansion; and

   c. A split zoning of the property to provide a depth of C-2-B zoning to include the Fraser Mansion, a zoning of R-5-D on the remaining portion of the property to permit the new residential development, and with the controls set forth in the amended covenant.

7. The Office of Planning, by memorandum dated October 29, 1987, and by testimony presented at the public hearing, reiterated its previous position in opposition to the application, and expressed its view that the decision of the Zoning Commission in Order No. 537 remained sound. Furthermore, the Office of Planning recommended that the list of prohibited uses proposed by the applicant to include hotel and massage establishments.

8 Advisory Neighborhood Commission ("ANC") 2B, by letters dated September 14 and October 29, 1987, by a statement dated November 5, 1987, and by testimony presented at the public hearing, reaffirmed its previous position in opposition to the application. Issues of concern included the following:

   a. The applicant in its most recent submissions still fails to state a legitimate basis for the request;

b. The applicant has not adequately addressed the ANC concerns about the apartment building being used as a hotel; and

c. The applicant fails to recognize the significance of long-term stable zone district boundaries.

9 No parties supported the application

10. Eleven persons wrote in support of the applicant's motion for reconsideration.

11. Parties in opposition included Dupont Circle Citizens Association ("DCCA"), Residential Action Coalition ("RAC"), Citizens Coalition Against Commercial Encroachment of Dupont Circle North ("CCACE"), and Daro Realty, Inc. Reiterating their previous position in opposition to the application, the opponents have stated the following concerns:

a. The applicant has never stated how a change in zoning will benefit the public;

b The use of covenants as means of achieving public policy for the use of urban land is basically unworkable, since a covenant is unenforceable for all practical purposes; and

c. The zoning change would be contrary to the Comprehensive Plan. It would constitute spot-zoning which would work to the benefit of the owner and would not be in the public interest.

12. One person appeared at the public hearing in opposition on behalf of the Bay State Tenants Association.

13. At its regular monthly meeting on December 14, 1987, the Zoning Commission again proposed to deny the application.

14. Counsel for the applicants, by letters dated December 14, and 17, 1987, requested the Zoning Commission to reconsider the proposed decision to deny the application. Counsel requested the Commission to grant R-5-C or R-5-D rezoning.

15. By memorandum dated December 21, 1987, to the Director of the Office of Planning, the Executive Director of the Zoning Secretariat informed OP that the Chairman of the Commission reopened the record to allow OP and parties in the case to comment on the applicant's request.

16. The applicant submitted a detailed letter dated January 4, 1988, reiterating its request for R-5-C or R-5-D rezoning.

17. ANC 2B, by letters dated December 21 and 25, 1987, and January 4, 1988, opposed the applicant's proposal for the following reasons:

    a. The filing of the applicant's letters of December 14 and 17, 1987 is untimely and should not be considered without a public hearing;

    b. Spot zoning and the adverse effect the high density would have on the historic Fraser Mansion, and the impermanence of a covenant in the event a tax sale takes place is causing a great deal of concern;

    c. ANC 2B strongly disagrees that the applicant's request is "within the requested" options the Zoning Commission presented to the parties to review, consider and respond to during the hearing, on the applicant's request, for reconsideration of the order to deny on their initial filing;

    d. ANC 2B is concerned that the applicant's actions are attempts to wear the public and the Zoning Commission down; and

    e. ANC 2B believes that the applicant's proposals are sufficiently different from those previously presented that the public should be afforded at least an opportunity to study, present testimony and cross examine.

18. DCCA, by letter dated January 4, 1988, submitted comments in opposition of the applicant's current request and made the following observations:

    a There is no valid reason for the reopening the case to consider the applicant's latest request;

    b. There is no assurance that the proposed structure will be built even with a rezoning; and

    c. The applicant's threat of reorganization proceedings is irrelevant to this case.

19. RAC, by letter dated January 4, 1988, opposed the applicant's proposal and stated its position as follows:

a. RAC stands by its earlier position to oppose any zoning changes in the project;

b. The applicant has failed to use the unlimited opportunities to build its case; and

c. The applicant's request should be denied as untimely in accordance with established practices.

20. (CCACE), by letter dated January 4, 1988, opposed the applicant's proposal for the following reasons:

a. The request for rezoning is not based on adequate presentation and public discussion;

b. The applicant's financial hardship should not stand as basis for expedited consideration of a zoning change;

c. Contrary to the statements in the applicant's letters of December 14 and 17, 1987, neither R-5-C nor R-5-D fall within the zoning densities of C-2-B or C-3-B previously requested;

d. The applicant has not demonstrated the zoning map change is in the public interest;

e. The proposed high density zoning category could threaten the continued existence of the Fraser Mansion;

f. The potential chancery use of the site if the proposed change is approved is causing a great deal of concern to the residents of the area;

g. No evidence has been presented to demonstrate the economic feasibility of the applicant's proposal;

h. Both options, rezoning without a covenant and the possibility of rezoning with a covenant that is in line with apartment building in R-5-D, are strongly opposed by the community; and

j. CCACE believes that a decision to rezone the subject site will be spot zoning and will not be in conformance with the comprehensive plan.

21. Daro Realty, Inc., by a letter dated December 18, 1987 stated the following concerns:

a. The applicant's financial strain cannot be a reason for a rezoning; and

b. The applicants have requested several different zoning classifications, have offered several different covenants, and have changed their minds on numerous occasions leaving doubts about the soundness of their judgement.

22. On January 11, 1988, at its regular monthly meeting, the Zoning Commission considered the applicant's letters requesting a change of zoning from R-5-B to R-5-C or R-5-D, and the reconsideration of Z.C. Order 537, as well as comments from ANC 2B, DCCA, RAC, CCACE, and Daro Realty, and the concerns of the Director of the Office of Planning raised about height and use issues.

23. As to the concerns of the Office of Planning and others that a rezoning is unnecessary and the height and use desired by the applicant can be achieved under the current R-5-B zoning, the Commission finds that the proposed zoning district with the covenant would contribute to the housing stock, and at the same time not have the adverse effect upon the surrounding community which could result from a less restrictive zone category. Furthermore, the Commission notes that the subject site is historic and that it is protected by the District's Historic Preservation regulatory scheme. The Commission also notes that the covenant restricts the height to 65 feet and restricts it to the plans approved by the State Historic Preservation Review Board on November 19, 1986.

24. As to the concerns of ANC 2B and others that the Zoning Commission should not reconsider its previous decision and that the terms of the applicant's proposal cannot be a justification for zoning change, the Commission finds that the alternative of R-5-C zoning, while not explicitly contained in the hearing notice, allows no use or development which would not be allowed in the zone district which was explicitly referenced in the notice.

25. As to the concerns of ANC 2B and others that a rezoning would be inconsistent with the comprehensive plan, the Commission finds that under the existing factual circumstances, and taking the proposed covenants under consideration, the R-5-C zone district would not be inconsistent with the goals and objectives of the comprehensive plan.

26 On February 4, 1988, Counsel for the applicant filed a copy of an amendment to the covenant restricting development of the site subject to the Commission rezoning the site to R-5-C or R-5-D.

27. The proposed action of the Zoning Commission to approve this application was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated February 5, 1988, requested the Zoning Commission to reconsider its proposed order and reopen the case to address more fully the issues of historic preservation including the interaction of the D.C. Historic Preservation law and procedure with the Foreign Mission Act of 1982.

28. By letter dated February 8, 1988, DCCA requested the Commission to reconsider its decision to rezone the property in this case. DCCA believes that consideration of its motion will be useful to the Commission, since it is raising points dealing with new matters which undermine the rationale for rezoning the site on the present record. The new matters are stated as follows:

    a. The February 4, 1988 decision of NCPC, which urges the Commission to re-examine its decision in light of the fact that a chancery may locate as a matter of right in an R-5-C zone supports the argument that DCCA wishes to advance regarding the same issue.

    b. There are new, and potentially conflicting factual developments which warrent exploration at a hearing, including a statement made by the president and general manager of the Fourways to a local newspapte.

    c. There is a possibility of the Fourways site being up for sale.

29. On February 8, 1988, at its regular monthly meeting, the Zoning Commission determined to receive into the record the response of the Corporation Counsel to an earlier request of the Board of Zoning Adjustment for advice on related legal issues.

30. On March 14, 1988, at its regular monthly meeting, the Zoning Commission determined to defer a final action on the case until the response of the Corporation Counsel is received.

31. On April 11, 1988, at its regular monthly meeting, the Zoning Commission considered a letter dated February 16, 1988 from counsel for the applicant opposing the DCCA motion; a letter dated February 29, 1988, from RAC petitioning the Commission to reconsider its decision to approve R-5-C rezoning for the Fourways application; a letter dated March 4, 1988, from ANC 2B supporting

DCCA's position; a letter dated March 7, 1988, from DCCA in reply to the applicant's letter of February 16, 1988; and a letter dated March 9, 1988, from CCACE in response to the applicant's letter of February 16, 1988. The Commission determined to defer a final action on the case until the response of the Corporation Counsel is received.

32. On May 19 and 23, 1988, at a special meeting, the Zoning Commission considered two memoranda dated May 9 and April 18, 1988 from Richard L. Aguglia, Deputy Corporation Counsel, Community Development Division, to Carrie Thornhill, Chairperson of the Board of Zoning Adjustment, advising about the authority of the Board under Foreign Missions Act.

33. In the two memoranda, the Deputy Corporation Counsel advised: (1) in chancery proceedings, the Foreign Missions Board of Zoning Adjustment has the sole authority to determine historic preservation issues; (2) in this determination, the Board is charged with ensuring substantial compliance with District and Federal legislation which govern historic preservation; and (3) the Board is also authorized by the Foreign Missions Act to determine whether the site of a proposed chancery is within an area "determined on the basis of existing uses, which includes offices or institutional uses...," albeit the area is not zoned Diplomatic.

CONCLUSIONS OF LAW

1. Approval of this application is consistent with the Zoning Act (Act of June 20, 1938, 52 Stat, 797) because it will further the general public welfare and will serve to stabilize and improve the area.

2. Rezoning from R-5-B to R-5-C as set forth herein will promote orderly use of the site in conformity with the entirety of the District of Columbia Zoning Plan as embodied in the Zoning Regulations and Map of the District of Columbia.

3. Approval of this application is not inconsistent with the Comprehensive Plan for the National Capital.

4. The rezoning of this site to R-5-C is compatible with the city-wide goals and program and is sensitive to environmental protection and energy conservation.

5. In light of the advice of the Deputy Corporation Counsel, as set forth in Findings of Fact numbered 32 and 33, retention of R-5-B zoning for the site would

not be a reasonably certain way to prevent the location of a chancery on the site through an application pursuant to Foreign Missions Act. Accordingly, the decision to rezone the property to R-5-C is appropriately governed by applicable planning and zoning criteria, rather than by Foreign Missions Act considerations which are inherently speculative.

6. Rezoning from R-5-B to R-5-C as set forth herein will not have an adverse impact on the surrounding neighborhood. In particular, it cannot be concluded to have a significant impact with respect to the prospect for the location of a chancery on the site.

7. The Commission takes note of the restrictive covenant recorded by the applicant.

8. The Commission takes note of the position of Advisory Neighborhood Commission 2B and in its decision has accorded the ANC 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 APPROVAL of the Application which requested for reconsideration of Z.C. Order No. 537 and a zone change from R-5-B to R-5-C, for Lot 60 in Square 110, located at 1701 - 20th Street, N.W.

Vote of the Zoning Commission, taken at the public meeting on January 11, 1988: 3-1 (John G. Parsons, George M. White and Lindsley Williams, to approve R-5-C rezoning; Maybelle T. Bennett to oppose; Patricia N. Mathews, not voting, having recused herself).

This order was adopted by the Zoning Commission at a special public meeting held on May 19 and 23, 1988, by a vote of 3-1 (George M. White, and John G. Parsons, to adopt; and Lindsley Williams, to adopt by absentee vote; Maybelle T. Bennett opposed; and 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 01 JUL 1988.

Maybelle Taylor Bennett

MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission

EDWARD L. CURRY
Executive Director
Zoning Secretariat

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