

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 560

Case No. 87-26

(Map - West End Trading Co.)

January 19, 1988

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on October 22, 1987. At that hearing session, the Zoning Commission considered an application from the West End Trading Co. to amend the Zoning Map of the District of Columbia, pursuant to Section 102 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The application, which was filed on June 23, 1987, requested to change the zoning from R-5-B to C-2-C for Lot 874 (former Lot 24 and a portion of a closed public alley), and Lots 31 through 36 in Square 51 located at 1126 - 1136 Twenty-Second Street, N.W.
2. The subject site is located in the West End neighborhood of the District of Columbia, contains approximately 9,315 square feet of land area, and is currently being used as a surface commercial parking lot that will accommodate thirty-six (36) cars, pursuant to Board of Zoning Adjustment (BZA) Order No. 14199 dated April 23, 1985. That order will expire on April 23, 1988.
3. The applicant does not propose to develop the site at this time.
4. 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.
5. The C-2-C District permits matter-of-right high density development, including office, retail, housing, and mixed uses to a maximum height of ninety feet, a maximum FAR of 6.0 for residential and 2.0 for other

permitted uses, and a maximum lot occupancy of eighty percent.

6. The District of Columbia Generalized Land Use Element Map of the Comprehensive Plan for the National Capital includes the subject site in the mixed-use medium density commercial and high density residential land use category.
7. The West End area is located between Georgetown and Rock Creek Park to the west, Downtown to the east, the Dupont Circle area to the northeast and the Foggy Bottom area to the south. West End is developed with hotels, office buildings, parking lots and garages, apartment buildings, and some single-family dwellings.
8. To the north of the subject site is C-2-C zoning with CR zoning beyond; to the east is C-2-C zoning with R-5-D and C-3-C beyond; to the south is C-2-C with R-5-D beyond; and to the south west and west are R-5-D and C-2-C with R-5-B beyond.
9. The applicant, through testimony presented at the public hearing, indicated that the entire northern half of Square 51 is owned by the applicant. The lots have been assembled over several years. The applicant testified that in light of the common ownership of the lots in the northern half of the square, the site would represent an important development opportunity if it were zoned uniformly. Under the existing zoning pattern in the northern half of the square, there is a section of R-5-B zoned property that is adjacent to a larger C-2-C site, thereby hindering the development of the site.
10. The applicant testified that there are no immediate plans to develop the site and that based on current interest rates and market conditions, development plans are at least one year away. The applicant noted that when developed, the site will be devoted to mixed use. The applicant stated that at this time, the exact type of mixed use that will be placed on the site has not been determined. When proceeding forward with development plans, the applicant will consider the full range of permitted residential uses including dwelling units and hotel units.
11. The applicant testified that a planned unit development for the site is not being considered. The case does not involve a development proposal that exceeds the applicable height or FAR limitations. The applicant is seeking rezoning of a small portion of a larger parcel in order to create a site having uniform zoning and to

preserve the ability to develop the site as a matter-of-right.

12. The applicant stated that the parcel that is the subject of this rezoning request represents only fifteen (15) percent of the property owned by the applicant in the square. The remaining eighty-five (85) percent of the property owned by the applicant in the square is zoned C-2-C. The applicant stated that the rezoning is therefore being sought as the most logical and expeditious way to rectify the existing zoning pattern and to retain the ability to proceed with matter-of-right development of the site.
13. The applicant's land planning expert testified that C-2-C zoned property is located immediately north, south and west of the subject site. The expert noted that the subject property has been zoned R-5-B since 1958. In 1974, when the Zoning Commission considered the entire West End area in Order Nos. 108 and 109, the entire northern half of the subject square, with the exception of the subject site, was rezoned to C-2-B. Thereafter, in 1978, C-2-B parcels with a 6.0 FAR were redesignated C-2-C. In 1981, the Zoning Commission approved a rezoning affecting the southern half of Square 51. Property located at 1118 - 22nd Street was rezoned from R-5-D to C-2-C and property located at 1123 - 23rd Street was rezoned from R-5-B to R-5-D.
14. The applicant's land planning expert testified that a rezoning of the subject property from R-5-B to C-2-C would be fully consistent with several goals and objectives contained in the Comprehensive Plan.
15. The expert testified that several objectives of the Comprehensive Plan would be promoted by a rezoning. Specifically, the goal of Section 1109(1) to promote appropriate commercial development, including centers for retail and office uses would be furthered. In addition, the goal set forth in Section 1109(10) to promote the establishment and growth of mixed-use commercial centers at appropriate Metrorail stations would be promoted. Section 1133(91) which establishes a policy to "plan for mixed-use development of designated Metrorail station areas outside the central employment area at appropriate levels of intensity and use" would also be promoted.
16. The land planning expert stated that a rezoning will promote several goals and objectives contained in the Economic Development Element of the Comprehensive Plan, the Housing Element, the Transportation Element and the Urban Design Element.

17. The land planning expert testified that a rezoning of the subject parcel will be compatible with the neighborhood because the subject site is surrounded on all sides by properties that are zoned C-2-C. In addition, the expert noted that a rezoning of the site will create a uniform zoning pattern. The uses permitted in the C-2-C District are completely consistent with the overall character of the West End area. The expert noted that office, service, retail, residential, hotel and other permitted C-2-C uses are fully consistent with the existing and permitted uses in the area.
18. The land planning expert noted that the ninety (90) foot height allowed in the C-2-C District is consistent with the development pattern that will occur in the remainder of the square. With the exception of the R-5-B zoning contained in Square 37, which is located immediately west of the subject square, all surrounding squares permit a ninety (90) foot height. The expert commented that the 6.0 FAR permitted by the C-2-C District is the same as that permitted by the adjoining C-2-C zoned property immediately adjacent on the north, south, east and west. The expert therefore concluded that the overall impact of a zone change is therefore not out of character with or inappropriate for the area.
19. The land planning expert testified that a rezoning of the subject site to C-2-C would eliminate the small area designated R-5-B that is completely surrounded by C-2-C zoned property. He stated that the reasons for originally designating the subject site as R-5-B are no longer valid. The C-2-C District is consistent with the surrounding properties in terms of height, bulk and use. A rezoning to C-2-C would not be inconsistent with the Comprehensive Plan and development under the C-2-C zoning district would be consistent with other existing and permitted development in the area. Finally, the expert concluded that the subject property is part of a larger site, the remainder of which is entirely zoned C-2-C. A rezoning will therefore achieve the desirable objective of enabling development of the entire site under the consistent standards of one district.
20. Through written testimony submitted at the hearing, the applicant's architectural consultant testified that the existing split-zoning of the subject site will inhibit the orderly development of the northern half of the square. The expert noted that the applicant has no plans for the development of the site at this time. The applicant is, however, interested in matter-of-right development and does not intend to pursue the development of the site through the PUD

process. The expert noted that under existing zoning, matter-of-right development is greatly complicated by the existing R-5-B zoning adjacent to the larger site.

21. The architectural expert stated that although it is not impossible to develop the site in a cohesive manner, uniform zoning for the entire site would permit more cohesive and desirable development than any proposal under the existing zoning. Specifically, the height, lot occupancy and rear yard requirements associated with the R-5-B District would impair the ability of the applicant to create a unified development scheme. These requirements would make it difficult to integrate the building on the R-5-B zoned lots into the development of the larger C-2-C zoned site.
22. The expert stated that in addition to the height and bulk issues, the restrictions on uses in the residential district would make it impossible to integrate the site into a horizontal mixed use development or to provide underground access to the commercial development from the residentially zoned site. These same restrictions would apply even if the site were rezoned to a higher residential density such as R-5-D.
23. The architectural expert noted that the Zoning Commission has found in at least one previous case, that split-zoning can inhibit appropriate and desired development. Similarly, in this case, after the single ownership and design and land use issues are considered, it is clear that uniform zoning would promote more appropriate development.
24. The applicant's traffic engineer, by report that was submitted at the public hearing and by testimony, concluded that the proposed rezoning would have no adverse impact on traffic in the area. The result of his study was based on the following:
 - a. The immediate effect of the requested rezoning;
 - b. The effect of maximum development as a matter-of-right under the existing zoning; and
 - c. The effect of maximum development under the requested rezoning.

He concluded by noting that the difference in the traffic impact resulting from development under the existing zoning and development under the proposed zoning would be imperceptible.

25. The District of Columbia Office of Planning (OP), by memorandum dated October 20, 1987 and by testimony

presented at the public hearing, recommended that the application be approved provided that the applicant enters into a covenant with the Advisory Neighborhood Commission (ANC) to ensure the construction of a housing component on the property.

26. In response to a request from the Commission for further review of the case, exclusive of covenant consideration, OP, by supplemental memorandum dated October 28, 1987, revised its previous recommendation and, in lieu of the covenant, recommended R-5-D rezoning. OP stated the following:

"This recommendation is not inconsistent with the Comprehensive Plan Generalized Land Use Map designation of the site as appropriate for mixed-use development as high density residential/medium density commercial uses. The Comprehensive Plan text emphasizes the city's desire to have residential development in this area. A review of the zoning map shows that there is R-5-D zoned property located within the subject square, which further supports this recommendation. The R-5-D District will allow residential development at a height of 90 feet, and up to 6.0 FAR. This building envelope will provide the applicant with the uniformity of building bulk needed to develop his contiguous land holdings in the square in a cohesive manner."

27. Advisory Neighborhood Commission-2A, by letter dated October 15, 1987, opposed the application. ANC 2A stated the following:
- a. It would be premature to rezone the subject site without a plan for the remainder of the square, since without comprehensive plan for Square 51, redevelopment will be piecemeal and poorly planned.
 - b. The Zoning Commission should wait until plans are available for public review and scrutiny before judging the necessity and merit of a zoning change.
 - c. Since a rezoning will probably trigger a rise in property tax for the lot, the applicant must have plans to develop part or all of the northern half of Square 51 or it would not assume the burden of extra taxation.
 - d. If the subject site remained in R-5 zoning, there would be a greater possibility of true residential development if the property were rezoned. R-5 zoning does not allow for the construction of new

hotels, a use often substituted for residential development in the West End.

- e. The applicant ignored the Comprehensive and Ward Plans' statements that residential development is both appropriate and needed near the central business area, and specifically, in the West End. Rezoning to C-2-C would be inconsistent with the Comprehensive Plan.
 - f. The applicant has demonstrated a lack of interest in housing by demolishing the townhouses than once occupied the subject site.
 - g. A rezoning is premature and unnecessary because the height and density desired by the applicant can be achieved under R-5 zoning.
28. The Residential Action Coalition (RAC), by letter dated October 8, 1987 and by testimony presented at the public hearing, opposed the application because there was no development plan. RAC indicated that a rezoning would undermine the organization's objective of promoting bona fide residential uses in the West End area.
29. Philip J. Brown, by testimony presented at the public hearing, opposed the application. He indicated that the action of the Zoning Commission in 1974, which reduced the commercial FAR of the nearby property he owns, was an example of a policy to discourage office uses in the West End and encourage residential uses. He concluded that a rezoning of the subject property to C-2-C would not further the goal of creating additional housing in the District. Further, he noted that the applicant should not be afforded a "windfall" that would result from a rezoning.
30. As to the concern of the Office of Planning and others regarding the execution of a restrictive covenant, the Commission finds that the applicant has not proffered such an instrument and that the Commission's authority does not clearly allow it to mandate the applicant to do so. The Commission notes the supplemental recommendation of OP, that is, R-5-D rezoning, and does not concur.
31. As to the concern of the ANC that the applicant's request is unnecessary and premature, the Commission finds that the applicant established that a retention of the existing zoning can no longer be justified and will unnecessarily inhibit the development in the northern half of the square. The property is surrounded on all sides by C-2-C zoned property. The applicant established that a continuation of the existing zoning would not serve the City. In addition,

it would be inappropriate to require the applicant to delay the subject request until there is a plan for the square. The southern half of the square is not under the applicant's ownership.

32. As to the concern of the ANC and others that the Zoning Commission should not consider this case until plans are available for the applicant's site are available for review, the Commission finds that it has no authority to impose development conditions in a map amendment case such as this. The Commission finds that development plans are irrelevant in the Commission's decision-making process in map amendment cases and that the Commission has no authority to require the applicant to conform to any plans that are presented. The Commission finds that the expressed concerns regarding a lack of development plans stem from a failure to distinguish between the map amendment process and the planned unit development process.
33. As to the concern regarding the applicant intentionally withholding development plans, the Commission finds, based on the applicant's testimony, that there are no immediate plans for the development of the site.
34. As to the concern of the ANC and others that a rezoning would be inconsistent with the Comprehensive Plan, the Commission finds that the C-2-C Zone District is consistent with the mixed-use, high density residential/medium density commercial designation for the site contained in the Generalized Land Use Element Map of the Comprehensive Plan. Additionally, the Commission finds that a rezoning would be consistent with the goals and objectives contained in several elements of the Comprehensive Plan. The Commission also notes that a retention of the existing zoning, which allows for medium density residential use, would be inconsistent with the high density residential/medium density commercial land use designation for the site.
35. As to the concern of the ANC and others that a retention of the existing R-5-B zoning is critical to ensure that housing is ultimately constructed in the square, the Commission finds that there is no guarantee that housing will be developed under the existing zoning. The Commission finds that it is likely that the existing parking lot use will continue. In addition, the range of uses permitted in the R-5-B District include several non-residential uses such as clinics. The Commission also notes that under C-2-C zoning, there is an opportunity for a far greater amount of housing than that permitted under the existing zoning. Specifically, in the R-5-B zone district, a maximum residential FAR of 1.8 is allowed, whereas in the C-2-C

District, a maximum residential FAR of 6.0 is permitted.

36. As to the concern regarding the applicant reaping a windfall profit if the Commission approved the application and the applicant sold the property, the Commission finds that such an issue is not a matter to be considered in deciding this application. The granting of a map amendment which involves an increase in the allowable density may benefit the property owner. The Commission must act on applications that are properly filed before it in accordance with the standards of the Zoning Act and in doing so, must make prudent and balanced decisions that are in the best interests of the District of Columbia as a whole.
37. As to the concerns regarding the housing stock being adversely affected by the rezoning, the Commission finds that rezoning would improve the potential for an increase in the housing stock by rezoning the property to C-2-C.
38. As to the concern of the ANC and others that the subject site formerly contained townhouses which were demolished, the Commission notes that this issue was addressed by the Board of Zoning Adjustment in Application No. 14199 and is not relevant to the applicant's burden of proof in this rezoning case.
39. Pursuant to Z.C. Order No. 424, dated March 12, 1984, in Z.C. Case No. 83-7 (Libyan Chancery-Map Amendment), the Zoning Commission is mindful of rezoning portions of the southern half of Square 51 from R-5-B to R-5-D and from R-5-D to C-2-C.
40. 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. The NCPC, by report dated December 22, 1987, indicated that the proposed action of the Zoning Commission would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. Approval of this application is in 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 C-2-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 C-2-C is compatible with the city-wide goals and programs and is sensitive to environmental protection and energy conservation.
5. Rezoning from R-5-B to C-2-C as set forth herein will not have an adverse impact on the surrounding neighborhood.
6. The Commission takes note of the position of Advisory Neighborhood Commission 2A and in its decision has accorded the ANC the "great weight" to which it is entitled.

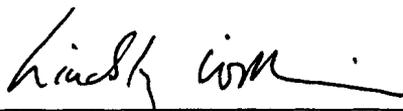
DECISION

In consideration of the findings of fact and conclusions of law herein, the Zoning Commission of the District of Columbia hereby orders APPROVAL of the following: change from R-5-B to C-2-C for Lots 847, 31, 32, 33, 34, 35, and 36 in Square 51, located at 1126-1136 - 22nd Street, N.W.

Vote of the Zoning Commission at its regular public meeting held on December 14, 1987: 4-1 (Patricia N. Mathews, George M. White, John G. Parsons, and Maybelle T. Bennett, to approve C-2-C - Lindsley Williams, opposed).

This order was adopted by the Zoning Commission at a special public meeting held on January 19, 1988 by a vote of 3-1: (Patricia N. Mathews and John G. Parsons, to adopt as amended and Maybelle T. Bennett, to adopt by absentee vote - Lindsley Williams, opposed and George M. White, not present not voting).

In accordance with 11 DCMR 3028, this amendment to the Zoning Map is effective upon publication in this issue of the D.C. Register; that is, on 26 FEB 1988.



LINDSLEY WILLIAMS
Chairman
Zoning Commission



EDWARD L. CURRY
Executive Director
Zoning Secretariat