

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 562

CASE NO. 87-2

(Vesting of Construction and Occupancy Rights)

January 19, 1988

The Zoning Commission for the District of Columbia initiated this case in order to consider various issues which deal with the vesting of rights to use and develop land in the District of Columbia. The general issue has become of particular importance in light of the statutory requirement that the text and map of the Zoning Regulations not be inconsistent with the Comprehensive Plan, and the adoption in 1985 of the Land Use Element of the Comprehensive Plan. The scope of this final order is limited to the filing requirements for an application for a building permit to operate to vest construction rights.

Hearings in this case were held on June 11, 1987, and January 7, 1988.

During the first hearing, Advisory Neighborhood Commission (ANC) 3C expressed the following concerns about the issue which is the subject of this Order:

The regulations should be clear as to what act constitutes the filing of a building permit application under the proposed regulation: merely the filing of appropriate forms, or the filing of substantially complete and final plans together with the payment of application fees? These different acts can occur on different dates, and this ANC recommends that the latter action constitute the meaning of "application."

Although the notice of public hearing had invited the submission of views about any issues related to the vesting question, the notice had not proposed an amendment which addressed the concern of ANC 3C. For that reason, the Zoning Commission could not adopt such a rule on a permanent basis without giving additional public hearing notice. On October 13, 1987, at its regular monthly meeting, the Commission adopted an emergency rule to amend 11 DCMR 3202.5(a), and to hold a public hearing to consider final rule-making on the amendment.

The Department of Consumer and Regulatory Affairs has reported that the proposed amendment would be "clearer and fairer to enforce than the previous vesting rule."

A concern was expressed in opposition that any alteration in a submitted application would "invite a charge that the 'no substantial change or deviation' clause had been violated." The Commission acknowledges that such a "charge" might some day be forthcoming, considering the variety, and even the occasional absence of merit, which characterize contentions and positions which surface around development issues. But the clause of concern is part of the pre-emergency text of 11 DCMR 3202.5(a), and is not itself proposed as a new amendment. Nor is the clause proposed to apply to the other-than-zoning plans and information which the amendment would require to be filed for purposes of vesting.

The thrust of the views of other representatives of the development community was that the emergency rule was acceptable, but should be clarified.

The Commission is persuaded that 11 DCMR 3202.5(a) should be revised to require that the permit application be complete, and the required fee paid, in order for the filing of the application to vest a right to build pursuant to 11 DCMR 3202.5. The Commission does not believe that the amendment suffers from any lack of clarity.

The Commission notes that its further consideration of other aspects of the vesting issue in this over-all case may lead to the adoption of a rule which would render paragraph 3202.5(a) partly or entirely moot. If this occurs, the Commission will act appropriately as to the paragraph. To that end, the Commission hereby reserves the authority to take further rulemaking action in this case on paragraph 3202.5(a). Nonetheless, the instant amendment is a reasonable measure and can stand on its own in the interim, even if the paragraph is repealed or further amended at a later stage of this case.

Notice of emergency and proposed rulemaking was published in the D.C. Register on October 23, 1987 (11 DCMR 6801). On December 4, 1987, the proposed amendment was transmitted to the National Capital Planning Commission (NCPC) for review and comment as required by D.C. Code sec. 5-417 (1987). By report dated December 10, 1987, NCPC found that the proposed amendment "would not adversely affect the Federal Establishment or other Federal interest 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

interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of amendment of 11 DCMR 3202.5(a) to read as follows:

- (a) The application shall be accompanied by any fee which is required, and by the plans and other information required by §3202.2, which shall be sufficiently complete to permit processing without substantial change or deviation, and by any other plans and information which are required to permit complete review of the entire application under any applicable District of Columbia regulations.

This order was adopted by the Commission at the special public meeting on January 19, 1988, by a vote of 4-0 (Patricia N. Mathews, Lindsley Williams, and John G. Parsons to approve, and George M. White, to approve by proxy; Maybelle T. Bennett, not present, not voting).

In accordance with 11 DCMR section 3028, this order is final and will take effect upon publication in the D.C. Register, that is, on 05 FEB 1988


LINDSLEY WILLIAMS
Chairman
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat