

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 625
Case No. 88-27
(4th & "S" Street, N.E. - Map)
July 10, 1989

Pursuant to notice, a public hearing of the zoning Commission for the District of Columbia was held on February 6, and March 16, 1989. At those hearing sessions, the zoning Commission considered an application from Airco Properties, Inc. and the Washington Air Compressor/Rental Company for an amendment to 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 11 DCMR 3022.

FINDINGS OF FACT

1. The application was filed on September 20, 1988 and requested a change of zoning from R-4 to C-M-2 for lots 802 and 803 in Square 3570.
2. The site is located midway along S Street, N.E., between 3rd and 4th Streets, and is composed of two rectangular lots totaling 5,006 square feet with approximately 50 feet of frontage along S Street. The site is currently vacant. At the rear of the site is a 10-foot wide public alley, accessible from Seaton Place, N.E.
3. The R-4 District permits matter-of-right development of residential uses (including detached, semi-detached, and row single-family dwellings and flats) with a minimum lot area of 1,800 square feet, a minimum lot width of eighteen feet, a maximum lot occupancy of sixty percent, and maximum height limit of three stories/forty feet. Conversions of existing buildings to apartments are permitted for lots with a minimum lot area of 900 square feet per dwelling unit.
4. The C-M-2 District permits medium bulk commercial and light manufacturing uses, to a maximum floor area ratio (FAR) of 4.0 and a maximum height limit of sixty feet, with new residential uses prohibited.
5. The District of Columbia generalized land use element

of the Comprehensive Plan for the National Capital includes the subject site in the moderate density residential land use category.

6. The site is located within Square 3570 which is divided by a zone boundary separating a R-4 residential zoning district to the west and industrially zoned area to the east occupied by the applicants' principal business.
7. The area to the west of the site is a moderate density residential community where detached, semi-detached, row dwellings and garden-type apartment buildings predominate. Also to the west, within two blocks of the site, a campus setting are: McKinley High School, Langley Recreation Center, and their related facilities. Penn Career Center is located a block south of the site. To the east of Square 3570 is a railroad facility that has been used by CSX Corporation (formerly Baltimore and Ohio Railroad. Eckington Yards industrial complex is located south of the site. Further, there are other industrial-related businesses, primarily warehousing facilities, that abut the railroad yard.
8. The applicants own and operate the Washington Air Compressor Rental Company on property adjacent to the subject site, lot 804. Lot 804 is zoned C-M-2 and has been owned and operated by the applicants since 1959. The applicants intend to vertically expand the existing warehouse and garage on lot 804, but also expand its current facilities to the adjoining properties, lots 802 and 803.
9. The applicants indicated that the incorporation of Lots 802 and 803 into their business operation will allow the necessary room for their commercial expansions of warehouse and office space, as well as provide for exterior location of the existing two 3,500 gallon underground fuel tanks on Lot 802, and to provide for parking spaces on Lot 803.
10. The applicants indicated that alternative forms of zoning relief would either not allow them to reach their principal business objectives or not be available as a matter of law. The applicants contend that re-zoning is the only viable course of action if the business is to remain in its present location within the District of Columbia.
11. The applicants believed that if they implemented a series of restrictions on future use and construction permitted on the site, in consultation with Advisory Neighborhood Commission (ANC) - 5C, a rezoning C-M-2

which would allow their expansion, would not adversely impact the adjacent residential uses within Square 3570.

12. In order to illustrate one way in which their business objectives could be attained within the context of a C-M-2 zone district and restrained by reappropriate private covenant, the applicants' architects prepared a proposed site plan showing the use of Lots 802 and 803 for accessory parking and underground fuel storage and a two-story addition of approximately 38,000 square feet to the existing warehouse. The applicants believe that under that scheme, new offices could be constructed over the existing garage along the western side of Lot 804.
13. The applicants' land planning expert testified at the public hearing that the unique configuration and history of Square 3570 allowed industrial and residential uses to exist together. The development and use limitations embodied in the proposed covenant would buffer the heavier industrial uses already existing on Lot 804 and the scale of permitted construction would be compatible, in fact of lower scale, than adjacent residential structures. She stated that the exclusion of incompatible C-M-2 matter-of-right uses was a very important guarantee afforded by the covenant proposed by the applicants.
14. The land planner further testified that the site abuts the Production Technical Employment (PTE) area of Eckington Yards as shown on the Generalized Land Use Maps contained by the Comprehensive Plan and that since the maps were soft-edge maps, the site could plausibly be considered part of a transitional zone between industrial and residential. She noted that the applicants' proposed use as limited by covenant confirmed the permanent transitional character of Lots 802 and 803.
15. The District of Columbia Office of Planning (OP), by memorandum dated March 6, 1989 and by testimony presented at the public hearing, recommended that the application be denied and identified the following concerns:
 - a. The future development of the subject site could cause substantial detriment to the adjacent residential community; and
 - b. The issue of adequate buffer which includes landscaping, between the site and the adjacent residential community need to be addressed and dealt with explicitly.

16. OP suggested that development of the site should be limited to the uses that the applicants proposed for the site which are parking and fuel storage. OP was of the opinion that the existing covenant does not provide sufficient safeguard to ensure that the residential neighborhood will not be impacted upon adversely by any future development of the site.
17. The District of Columbia Fire Department, by memorandum dated January 17, 1989, stated that it has no objection to the proposed project provided that applicable fire prevention and safety regulations were complied with by the applicants. The memorandum further stated that the proposals for the installation and use of underground storage tanks must be submitted to the Fire Department.
18. The District of Columbia Department of Housing and Community Development (DHCD), by memorandum dated January 13, 1989, stated that it has no objection to the applicants' request for a zoning map amendment. However, DHCD indicated the following concerns:
 - a. Sensitive design consideration be given to the rear elevation of the proposed addition which will be visible from the rear yards of houses that front on Seaton Place;
 - b. On-site parking, as proposed and with appropriate screening, be provided for employees, so as to minimize the competition for off-street parking spaces with neighboring residents; and
 - c. All District and Federal fire safety standards and environmental regulations are adhered to, with regard to the provision of underground fuel storage tanks.
19. The District of Columbia Department of Consumer and Regulatory Affairs (DCRA), by memorandum dated January 4, 1989, indicated that DCRA has no objection to the proposed use of the site as underground fuel storage provided that proper permits are obtained.
20. The District of Columbia Office of Business and Economic Development (OBED), by memorandum dated December 22, 1988, supported the applicants' request for a zoning change. OBED stated that the proposed expansion will enhance the company's ability to increase and maintain the District's employment base. OBED also supported the applicants' coordination with ANC-5C in developing a covenant for the subject site.

OBED expressed concerns regarding traffic issues and parking in the area and reiterated other city agencies' concerns about the location of the fuel storage facility.

21. The District of Columbia Department of Public Works (DPW), by memorandum dated March 14, 1989, indicated that it had no objection to the rezoning request. DPW, however, noted that the applicants have been advised to file for a permit to rent public space for parking near the S Street entrance of the Washington Air Compressor Company as well as along 4th Street. Without the permit, the availability of parking spaces for customers and visitors may adversely impact the supply of on-street parking for residents of the community.
22. DPW also expressed concerns that the curb cuts for the driveway of the proposed parking lot could slightly impact the existing on-street parking supply for the residents in the area. Furthermore, DPW recommended that the perimeter of the subject site be landscaped and possibly a fence installed along the property bordering the alley. DPW also recommended that the applicants coordinate a truck traffic route with DPW to minimize commercial traffic impacts on local streets.
23. The District of Columbia Metropolitan Police Department, by letter dated November 30, 1988, recommended that favorable consideration be given to the applicants' request for a zoning map amendment.
24. The District of Columbia Public Schools, by letter dated November 29, 1988, reported that it has no objection to the application.
25. The Advisory Neighborhood Commission (ANC) 5C, by a letter dated January 27, 1989 and by testimony presented at the public hearing, did not object to the proposal. ANC 5C reported that there had been negotiations to develop a covenant agreement between the applicants and the ANC on behalf of the community. The ANC-5C requested that an executed and recorded covenant be included in the Zoning Commission Order if the Commission decides to grant the rezoning request.
26. ANC-5C, by report dated April 12, 1989, identified the following issues and concerns:
 - a. increase traffic flow in the community;
 - b. proximity of industrial and residential uses and its effect on public welfare and safety;

- c. adequate landscaping and buffering;
 - d. limitation of future uses and improvements to prevent adverse impacts on health safety and well being of the residents in the area;
 - e. proper division of the land and resolution of disputes;
 - f. impact of increase in personnel on existing public parking spaces; and
 - g. impact of noise from heavy machinery operation.
27. ANC-5C also stated the following recommendation in its report:
- a. other methods for accomplishing the applicants' request be explored with the Board of Zoning Adjustment (BZA) prior to the Zoning Commission decision;
 - b. the revised covenant which the ANC-5C attached and submitted with its report, and to which both parties are in agreement, be incorporated in the Order of the Zoning Commission; and
 - c. damages to neighboring properties caused by the clearing of the subject site be compensated by the applicants.
28. There were no other parties or persons in support of the application.
29. Ward 5 Councilmember Harry Thomas, by letter dated March 13, 1989, supported the requested rezoning.
30. Robert and Loretta Woodward, who were admitted as parties, opposed the rezoning application. As owners of the house adjoining Lot 803, they recounted the problems experienced by them as a result of the applicants' use of the site, which included but was not limited to; noise, lack of security, loitering, vehicles parked close to their home, the loss of a common driveway, and verbal disrespect toward their children.
31. There were no other parties or persons in opposition to the application.
32. The Zoning Secretariat, by memorandum dated March 22, 1989, requested the Zoning Administrator to advise the Zoning Commission of the rules, conditions and the Zoning Administrator's interpretation regarding the following:

- a. the location of an underground gasoline tank in an R-4 zone; and
 - b. the location in an R-4 zone of parking which is accessory to an adjacent conforming principal use in C-M-2 zone.
33. The Zoning Commission did not receive a response from the Zoning Administrator.
 34. The Zoning Commission concurs, in part, with OP, the request of the applicant, and the position of ANC-5C by approving rezoning of one of the subject lots.
 35. The Zoning Commission finds that total rezoning of the subject site is unnecessary. The Commission believes that rezoning of lot 802 in Square 3570 to C-M-2 is appropriate to the character and scale of the neighborhood, and would promote and support the orderly expansion of the site.
 36. The Zoning Commission finds that rezoning lot 803 in Square 3570 is inappropriate, would result in encroachment on the adjacent R-4 uses and would not be beneficial to the community because there would not be an adequate buffer between the existing C-M-2 and R-4 uses.
 37. As to the concerns of OP and ANC-5C that the future use of the land, under C-M-2 zoning, would adversely affect the residential neighborhood, the Commission finds that rezoning lot 802 to C-M-2 and not changing the current R-4 zoning of lot 803 is in line with the development objectives and the issues raised by the OP and ANC-5C.
 38. As to the concerns of OP, DPW, OBED, DHCD, DCFD and others regarding adequate parking, traffic issues and underground storage of fuel tanks, the Commission finds that the permit process would trigger the involvement of the BZA and relevant Government agencies to specifically address the aforementioned concerns.
 39. The proposed action of the Zoning Commission to approve C-M-2 rezoning for lot 802 in Square 3570 was referred to the National Capital Planning Commission (NCPC), pursuant to the terms of the District of Columbia Self Government Reorganization Act. NCPC, by report dated June 8, 1989, 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.

CONCLUSION OF LAW

1. Rezoning lot 802 to C-M-2 as set forth herein is in accordance with the Zoning Act (Act of June 20, 1938, 52 Stat. 797) by furthering the general public welfare and serving to stabilize and improve the area.
2. Rezoning to C-M-2 will not have an adverse impact on surrounding community.
3. Rezoning to C-M-2 will promote orderly development in conformity with the entirety of the District of Columbia Zoning Plan as set forth in the Zoning Regulations and Map of the District of Columbia.
4. Rezoning to C-M-2 would not be inconsistent with the Comprehensive Plan of the National Capital.
5. The Zoning Commission has accorded ANC-5C the "great weight" consideration to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of the following:

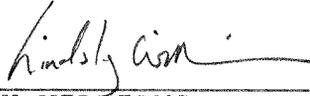
A change of zoning from R-4 to C-M-2 for lot 802 in Square 3570 located on the north side of the 300 block of S Street, N.E.

Vote of the Zoning Commission taken at the regular public meeting on May 8, 1989: 3-0 (Maybelle Taylor Bennett, John G. Parsons, and Lindsley Williams, to approve C-M-2 for lot 802 - Elliott Carroll, not voting not present and Lloyd D. Smith not voting having recused himself from the case.)

This order was adopted by the Zoning Commission at its regular public meeting held on July 10, 1989, by a vote of 4-0 (John G. Parsons, Maybelle Taylor Bennett and Lindsley Williams to adopt; Elliott Carroll, to adopt by proxy - Lloyd D. Smith, not voting having recused himself from the case).

Z.C. ORDER NO. 625
CASE NO. 88-27
PAGE 9

In accordance with the DCMR, Section 3028, this order is
final and effective upon publication in the D.C. Register,
that is on AUG 11 1989.



LINDSLEY WILLIAMS
Chairman
Zoning Commission



EDWARD L. CURRY
Executive Director
Zoning Secretariat

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