

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 627

Case No. 89-12

(Text - Theoretical Building Site Provision)

July 31, 1989

The Zoning Commission for the District of Columbia initiated this case in response to the petition of Brandywine Community Project, Friends of Springland, and Foxhall Community Citizens Association that the Commission initiate a rulemaking case and set an expedited hearing to consider amendment of 11 DCMR 2516, which allows the construction of two or more principal structures on one lot.

At a meeting on April 17, 1989, having considered the petition, as well as the recommendation of the Director of the Office of Planning ("OP"), dated April 13, 1989, that the Zoning Commission adopt an emergency rule, the Commission decided to adopt emergency rulemaking to be effective immediately on that date and for a period not to exceed 120 days, that is through August 14, 1989.

On June 15, 1989, having furnished the required notice, the Commission held a public hearing to consider the adoption of amendments to become effective on or before the expiration of the emergency order. Based upon the testimony at the hearing, and written submissions received before the record closed at noon on June 19, 1989, the Commission met at 7:00 P.M. on June 19, 1989, to consider proposed action in this case.

The Commission determined to promulgate a revised notice of proposed rulemaking, and that notice appeared in the D.C. Register on June 30, 1989. The final action that is effected by this order is based upon consideration of the entire record, including all comments that were received before 12 noon on July 31, 1989.

The Commission is persuaded that the development of two or more structures on one lot in or near a residential zone presents special issues and problems that require consideration at a public hearing.

The District of Columbia has developed at a pace and to an extent that increases the incentive of developers to maximize the use of land that is either vacant or not as

fully developed as the zoning envelope would allow. To a substantial degree, it is in the overall interest of the District of Columbia to increase the opportunity for persons to live in the District.

However, the trend to maximize development potential produces as a corollary a greater potential for negative impact on adjacent dwellings. Thus, the response to an increase in the density of residential buildings cannot reasonably allow only for the increase, but must also allow for appropriate controls and review.

The Commission remains persuaded, after the hearing and upon consideration of the entire record, that the Board of Zoning Adjustment should review multiple building construction on a single lot, that is proposed in or near a residential zone. Thus, as the Commission said in Order No. 617, review by the Board of Zoning Adjustment, pursuant to the special exception process and standards, of the proposed construction of more than one principal structure on a single lot, would provide reasonable protection to the stability of residential neighborhoods; and would not altogether prohibit such construction, but would allow it to proceed, albeit subject to a hearing, rather than as a matter-of-right.

The notice of proposed rulemaking included as an alternative, a proposed rule that would apply the provisions of 11 DCMR 2517 to construction on a site that was subject to a Large Tract Review that was completed before June 15, 1989. The alternative rule would have exempted projects on such sites from the requirement for review by the Board of Zoning Adjustment. Although the Commission had reservations about any such exemption, it proposed the alternative to allow for the submission of comments. Having considered the comments in favor of and in opposition to such an exemption, the Commission has determined not to adopt an exemption for any project in a residential zone district. The Commission believes that the review process adopted by this Order is reasonable, and will have no adverse impact on any reasonable proposed project. The Commission notes that the Board of Zoning Adjustment has procedures that are available to allow for the expedited filing or hearing of applications when there is good cause.

In further response to the comments, the Commission states as follows:

1. The Commission has determined to require a twenty-five foot buffer from a residence zone as the basis for allowing matter of right construction pursuant to 11 DCMR 2517. The requirement of a specific distance provides a desirable level of certainty.

2. The Commission has determined not to provide a general exemption for additions to structures within previously-approved projects. Such an exemption would be too open-ended.
3. Where appropriate, the Commission has clarified and corrected several provisions.
4. The Commission has added an explicit reference to the height of structures as an element that the Board may address pursuant to subsection 2516.11.
5. The Commission has adhered to the decision not to delegate to the Board the obligation that is vested in the Commission to assure that the Zoning Regulations are not inconsistent with the Comprehensive Plan.

Finally, the Commission does not believe that there is a legal barrier to the application of the rule, as originally adopted on April 17, and as amended and finally adopted by this order, to construction for which no building permit had been issued before April 17, 1989.

The Commission transmitted the proposed rules to the National Capital Planning Commission ("NCPC") on April 26, 1989, and again, as revised, on June 23, 1989. By comments transmitted on June 2, 1989 and July 28, 1989, NCPC reported that the amendments would not have an adverse impact on the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan.

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, are not inconsistent with the Comprehensive Plan for the National Capital, and will appropriately implement and advance the objectives and policies established in the Comprehensive Plan.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of amendments to the Zoning Regulations to require review by the Board of Zoning Adjustment of construction of more than one building on a single lot in or near a residential zone district. The specific amendments to the Zoning Regulations are as follows:

1. Amend the text of the Zoning Regulations by adopting a revised version of 11 DCMR 2516, to read as follows:

- 2516 EXCEPTIONS TO BUILDING LOT CONTROL (Residence Districts)
- 2516.1 If approved by the Board of Zoning Adjustment in accordance with the conditions set forth in section 3108 of this title, two (2) or more principal buildings or structures may be erected on a single subdivided lot, subject to the provisions of this section.
- 2516.2 The provisions of this section shall apply to construction on a lot that is located in, or within twenty-five (25) feet of, a residence district as designated in section 105 of this title.
- 2516.3 In addition to other filing requirements, the applicant shall submit to the Board, with the application, four site plans and two sets of typical floor plans and elevations, grading plans (existing and final), landscaping plans, and plans for all new rights-of-way and easements.
- 2516.4 The number of principal buildings permitted by these regulations shall not be limited; Provided, that the applicant for a permit to build submits satisfactory evidence that all requirements of these regulations (such as use, height, bulk, open spaces around each building, and limitations on structures on alley lots pursuant to section 2507), as provided by sub-sections 3202.2 and 3202.3, shall be complied with.
- 2516.5 If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the following provisions shall apply:
- (a) The front of the building shall be the side upon which the principal entrance is located;
 - (b) Open space in front of the entrance shall be required that is equivalent either to the required rear yard in the district in which the building is located or to the distance between the building restriction line recorded on the records of the Surveyor of the District of Columbia for the subdivided lot and the public space upon which the subdivided lot fronts, whichever is greater;
 - (c) A rear yard shall be required; and
 - (d) If any part of the boundary of a theoretical

lot is located in common with the rear lot line of the subdivided lot of which it is a part, the rear yard of the theoretical lot shall be along the boundary of the subdivided lot.

- 2516.6 In providing for net density pursuant to sub-section 2516.11 of this section, the Board shall require at least the following:
- (a) The area of land that forms a covenanted means of ingress or egress shall not be included in the area of any theoretical lot, or in any yard that is required by this title;
 - (b) Notwithstanding any other provision of this title, each means of vehicular ingress or egress to any principal building shall be twenty-five (25) feet in width, but need not be paved for its entire width;
 - (c) If there are not at least two entrances and/or exits from the means of ingress or egress, a turning area shall be provided with a diameter of not less than sixty (60) feet; and
 - (d) The requirements of paragraphs (b) and (c) of this sub-section may be modified if the Board finds that a lesser width and/or diameter will be compatible with, and will not be likely to have an adverse effect on, the present character and future development of the neighborhood; Provided, the Board shall give specific consideration to the spacing of buildings and the availability of resident, guest, and service parking.
- 2516.7 Where not in conflict with the Act of June 1, 1910, (36 Stat. 452), as amended, the height of a building governed by the provisions of this section, in all districts, shall be measured from the finished grade at the middle of the front of the building.
- 2516.8 The provisions of this section shall also apply to buildings erected under the terms and conditions of section 410 of this title.
- 2516.9 The substantive provisions of this title shall be complied with, and the proposed development shall not be likely to have an adverse effect on the

present character and future development of the neighborhood.

2516.10 Before taking final action on an application under this section, the Board shall refer the application to the District of Columbia Office of Planning for coordination review, and report, which coordination, review, and report shall consider the following:

- (a) The relationship of the proposed development to the overall purpose and intent of the Zoning Regulations, and other planning considerations for the area and the District of Columbia as a whole, including the plans, programs, and policies of other departments and agencies of the District government; Provided that the planning considerations that are addressed shall include, but not be limited to the following:
 - (1) Public safety relating to police and fire concerns;
 - (2) The environment, relating to water supply, water pollution, soil erosion, and solid waste management;
 - (3) Public education;
 - (4) Recreation;
 - (5) Parking, loading, and traffic;
 - (6) Urban design; and
 - (7) As appropriate, historic preservation, and visual impacts on adjacent parkland;
- (b) Considerations of site planning; the size, location, and bearing capacity of driveways; deliveries to be made to the site; side and rear yards; density and open space; and the location, design and screening of structures;
- (c) Considerations of traffic to be generated and parking spaces to be provided, and their impacts;
- (d) The impact of the proposed development on neighboring properties; and

(e) The findings, considerations, and recommendations of other District government agencies.

2516.11 The Board may impose conditions with respect to the size and location of driveways; net density; height, design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations.

2. Provide for matter of right review of the construction of more than one building on a single lot that is not located in, or within twenty-five (25) feet of, a residence district, by adopting a new 11 DCMR 2517, to read as follows:

2517 EXCEPTIONS TO BUILDING LOT CONTROL (Other than Residence Districts)

2517.1 This section is designed to permit two (2) or more principal buildings or structures to be erected as a matter of right on a single subdivided lot that is not located in, or within twenty-five (25) feet of, a residence district.

2517.2 The number of principal buildings permitted by these regulations shall not be limited; Provided, that the applicant for a permit to build submits satisfactory evidence that all requirements of these regulations (such as use, height, bulk, and open spaces around each building), as provided by sections 3202.2 and 3202.3 of this title, shall be complied with.

2517.3 If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the front of the building shall be the side upon which the principal entrance is located. Open space in front of the entrance shall be provided equivalent to the required rear yard in the district in which the building is located; but a rear yard shall be required.

2517.4 Where not in conflict with the Act of June 1, 1910, (36 Stat. 452), as amended, the height of a building governed by the provisions of this section, in all districts, shall be measured from the finished grade at the middle of the front of the building.

3. Consistently renumber existing sections 2517 through 2519, and all references thereto in Title 11, as 2518 through 2520, respectively.

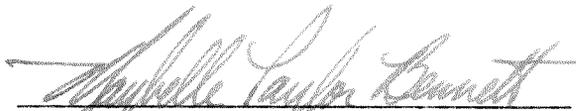
Vote of the Zoning Commission at the June 19, 1989 public meeting: 4-0 (Maybelle Taylor Bennett, William L. Ensign, Lloyd D. Smith and Lindsley Williams to approve; and John G. Parsons not present, not voting).

On a preliminary motion at the special meeting on July 31, 1989, the Commission determined not to adopt an exemption for any project in a residence zone, by a vote of 3-1 (Maybelle Taylor Bennett, Lloyd D. Smith, and Lindsley Williams, in favor of the motion not to adopt an exemption; William L. Ensign, opposed to the motion; and John G. Parsons, not voting not having participated in the case.)

This Order was approved by the Zoning Commission at the public meeting on July 31, 1989, by a vote of 4-0 (Maybelle Taylor Bennett, William L. Ensign, Lloyd D. Smith, and Lindsley Williams, to approve; John G. Parsons, not voting not having participated in the case.

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

AUG 11 1989


MAYBELLE TAYLOR BENNETT
Vice Chairperson
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat