Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 731
Case No. 91-17
(Recycling Processing Facilities)
February 8, 1993

The Zoning Commission for the District of Columbia initiated this case at the request of the District of Columbia Office of Planning (OP) to amend the text of the District of Columbia Municipal Regulations (DCMR) Title 11, Zoning. This request came before the Zoning Commission because of the absence of applicable regulations governing the location and operation of recycling processing facilities in the District, and the concern of various community groups about the adverse impacts of materials recycling facilities locating in or near their neighborhoods. Materials recycling is not addressed in the current Zoning Regulations as a permitted or prohibited use in any zone district.

Pursuant to notice, a public hearing was held by the Zoning Commission on June 15, 1992. At that hearing session, the Commission considered the OP proposed regulations dated March 31, 1992, to define, regulate, and establish within which zone districts new materials recycling facilities would be able to locate in the District of Columbia as a special exception and as a matter of right. The public hearing was conducted in accordance with the provisions of 11 DCMR 3021.

It is pertinent to note that prior to the March 31, 1992 proposal, the Commission had at several previous meetings discussed a memorandum from the Office of Zoning dated December 4, 1992 about a letter from citizens of Brentwood dated November 29, 1991. The letter requested a Sua Sponte Review of Board of Zoning Adjustment (BZA) Appeal No. 15563, which reversed the decision of the Zoning Administrator (ZA), and granted approval for the establishment and operation of a recycling facility in a C-M-1 District. Within the same period, the Commission also considered the following OP reports on recycling facilities; reports dated November 14 and December 5, 1991, January 3, February 10, and March 6, 1992.

On April 6, 1992, the Zoning Commission at its regular monthly meeting determined that there was sufficient merit to authorize the scheduling of a public hearing to consider the CP proposed regulations to govern the establishment of recycling facilities in the District of Columbia.

At the hearing, the Commission heard the testimony of about 19 witnesses including representatives from law firms, various citizen groups, industrial associations, and individuals. All of the

witnesses testified in favor of the need to recycle municipal waste and the need for appropriate zoning regulations to control recycling and mitigate its impacts on other uses, especially residential neighborhoods. Some of the witnesses presented written testimony that modified the OP proposed regulations which constituted the core of the public hearing notice.

Many District of Columbia agencies including representatives of Single Member Districts (SMDs) 4D03, 5A02, 5B04 and 5B07 and the Department of Public Works (DPW) testified in favor of the regulations. The DPW in a report presented at the hearing, stated the progress the agency has made in recycling, in keeping with the District of Columbia Solid Waste Management and Multi-Material Recycling Act. The DPW report recommended that recycling processing facilities be located in zone districts that are compatible with their purpose, that is as a matter of right in general industrial zones with performance standards and in commercial/light manufacturing zones as a special exception with performance standards. The testimony supported the extensions of the definition of "Recycling Processing Facility" to include facilities which process bulk wastes, furniture, large materials, construction and demolition debris, and white goods.

While the testimony of the representatives of SMDs was in support of the objectives of the amendment, they were critical of the regulations as proposed, charging that the language is too vague to protect nearby communities from negative impacts, is not sufficiently comprehensive in application and was prepared without adequate input of the communities. Specific issues raised by the SMDs include; the need for the regulations to cover waste transfer stations as well as recycling processing facilities, preference for a 250 to 300-foot buffer to better protect communities, the desirability of requiring all proposed recycling facilities, regardless of the zone district involved, to be considered special exceptions, the importance of limiting the hours of operation of all recycling facilities to between 7:00 a.m. and 7:00 p.m., including incoming and outgoing equipment and materials. The importance of requiring facilities to be located at least 250 to 300 feet from schools, even when they are located in nonresidential districts, and the need to provide stringent and effective enforcement mechanisms.

At the close of the hearing, the Commission left the record open for more public written statements to be included in the record, and requested the OP and the DPW to investigate and address the above referenced issues that arose in testimony during the course of the hearing.

At its regularly scheduled monthly meeting on August 3, 1992, the Commission reviewed and discussed OP memoranda dated July 13 and

31, 1992, respectively, and all written materials in the record received before the close of the record. The Commission also waived its rules of practice and procedure to permit the late submission and presentation of the DPW report in response to the Commission's request during the hearing.

The OP memorandum dated July 13, 1992 addressed the concerns and questions raised by the Commission and representatives of the communities at the hearing about protecting residential neighborhoods from recycling facilities, and the impacts of recycling facilities on C-M and M zone districts if buffer zones of 100 feet and 300 feet are allowed. The memorandum made changes and additions to the proposed regulations. It replaced the term "Recycling Processing Facility" with "Intermediate Materials Recycling Facilities" to be consistent with current terminologies used in the recycling industry, and to conform with the definition of bio-degradable materials and hazardous substances as defined by D.C. Law 8-36 "Environmental Policy Act of 1989 and the rules and regulations prepared thereto". The July 31, 1992 memorandum pointed out the need for a comprehensive approach to implement D.C. Law 7-226, "D.C. Solid Waste Management and Recycling Act of 1988", and added that the enactment of the proposed regulations is a step in that direction. The memorandum also contained a revised version of the proposed regulations.

The DPW, by a memorandum dated August 3, 1992, (Exhibit No. 65) responded to the Commission's request. The report discussed issues that included, but were not limited to, the number of recycling facilities that will be required in the District; parking requirements for employees; setback or buffer zone requirements from residential communities, schools, and other uses; the definition of hazardous waste; zoning regulations' treatment of vehicle queuing; number of risk assessment studies or environmental impact studies done for intermediate materials recycling facilities; whether different environmental standards should be set for recycling facilities versus transfer stations, and construction and demolition materials drop-off centers; the length of time permits shall be in effect; public and employee safety; right of inspection; enforcement of the regulations; and whether permit renewals should be based on strict compliance with the regulations.

At that same meeting, the Commission, after reviewing the post hearing submissions in addition to listening to OP and DPW comments, determined that all issues of contention had not been adequately addressed or resolved, particularly matters relating to setbacks from other uses and whether the facilities shall be enclosed. The Commission was persuaded to postpone further action on the proposed regulations until the Commission, the OP, the DPW and the OZ take a tour of recycling facilities within the Washington Metropolitan area.

The Commission believes that the tour of recycling facilities, and the interviews with the facilities' site personnel helped shed light on many of the communities' concerns in this case.

The Commission further believes that after considering and balancing all issues related to the proposal, its decision is not inconsistent with the intent of the "Solid Waste Management and Recycling Act of 1988", is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital, as amended.

On September 14, 1992 at its regular monthly meeting, the Commission considered a supplemental report from OP dated September 4, 1992 containing a further revision of the proposed regulations. The regulations were prepared in cooperation with the DPW and in consultation with the Department of Consumer and Regulatory Affairs (DCRA). The report embodied the result of further investigation and studies about the Commission's earlier concerns, including observations, and information gathered during the departments' collective tour of materials recycling facilities. The Commission also amended and corrected the proposal and took proposed action to approve the regulations, as amended.

The Commission has determined that the recommended changes to the text of the proposed rulemaking do not alter the intent, meaning, or operation of the rules as proposed.

A notice of proposed rulemaking was published in the District of Columbia Register on November 20, 1992 (39 DCMR 8446). As a result of the publication of that notice and referrals to DPW and the ZA, further comments were received from the DPW, the OP, and the Georgetown University Law Center Institute for Public Representation (IPR).

The proposed action of the Zoning Commission to amend the Zoning Regulations was also 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 January 7, 1993, found that the proposed amendments would not adversely affect the Federal Establishment or other Federal interests nor be inconsistent with the Comprehensive Plan for the National Capital.

The OP, in a comment dated December 23, 1992, expanded the definition of "intermediate materials recycling facility" to add demolition debris to the list of materials not to be processed or stored by such a facility. The expanded definition reads as follows:

> "Intermediate Materials Recycling Facility: a fully enclosed structure used for the receipt, separation, storage, convertion, baling, and/or processing of paper, metal, glass, plastics, tires, bulk waste, and other non-biodegradable recyclable materials for the purpose of reutilization of such materials. Such facility shall not include storage or processing of biodegradable materials, construction and demolition debris, white goods, and hazardous substances, as defined by D.C. Law 8-36, Environmental Policy Act of 1989, and the rules and regulations pursuant thereto. The facility shall be limited in operation to baling, briquetting, crushing, compacting, grinding, shredding, and sorting of acceptable materials."

The IPR by comments dated January 4, 1993, and the DPW by comments dated January 4 and 5, 1993, indicated their preference for including white goods, construction and demolition debris in the definition of intermediate materials recycling facilities or intermediate recyclable materials, as wastes which should not be treated at such recycling facilities. The DPW also suggested that the term "residence" in Subsections 802.3(g) and 821.6(g) be changed to "residential", while the IPR comment further suggested that the days of operation of the facilities be limited to Monday through Saturday.

On February 8, 1993, at its regular monthly meeting, the Commission reviewed and considered all the comments received as a result of the notice of proposed rulemaking. After considering the comments the Commission amended the proposed regulations to incorporate some of the suggestions from the comments.

In consideration of the reasons set forth therein, the Zoning Commission hereby orders **APPROVAL** of the amendments to the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning, to define, regulate, and establish within which zone districts new materials recycling facilities can locate in the District as a matter of right, and as special exceptions. The specific amendments to the Zoning Regulations are as follows:

1. **Add the following definition to Section 199 DCMR 11:**

> Intermediate Materials Recycling Facility: a fully enclosed structure used for the receipt, separation, storage, conversion, baling, and/or processing of paper, metal, glass, plastics, tires, bulk waste, and other non-biodegradable recyclable materials for the purpose of reutilization of such materials. Such facility shall not include storage or processing of biodegradable materials, construction and demolition debris, white goods, and hazardous substances, as defined by D.C. Law

8-36, Environmental Policy Act of 1989, and the rules and regulations pursuant thereto. The facility shall be limited in operation to baling, briquetting, crushing, compacting, grinding, shredding, and sorting of acceptable materials.

2. **Amend the Provisions of the C-M and M zone districts (11 DCMR Chapter 8) as follows:**

Section 802 Uses Subject to Board of Zoning Adjustment Approval (C-M):

802.1 The uses set forth in this section shall be permitted, if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of Chapter 31 of this title, subject to the provisions of this section.

3. **Add the following Subsection:**

802.3 An Intermediate Materials Recycling Facility shall be permitted provided that the following requirements shall be met:

(a) No portion of the facility, including any structure, loading docks and truck bays, storage, transfer equipment, truck parking or other similar processing equipment and operations, shall be located within two hundred feet (200') of a residential property line.

(b) The use shall not have unacceptable adverse impacts on the character of the neighborhood due to noise, traffic, parking, odor or other objectionable conditions. There shall be no truck access or queuing to the site from residential streets. The facility would also be subject to the "Standards of External Effects" (C-M) under Section 804, and in accordance with the D.C. Noise Control Act and standards.

(c) The facility shall be enclosed on all sides by a fence or wall at least ten feet (10') in height. The public view side and the side of the facility facing residential zones shall be landscaped, and shall have an opaque screen, fence or wall, not less then ten feet (10') in height. The site shall be secured from

unauthorized entry and removal of materials when attendants are not present.

(d) The site shall be maintained free of litter, trash, debris, and any other nonrecyclable materials.

(e) The facility shall provide on-site parking and queuing as follows:

(1) Space shall be provided on-site to park each commercial vehicle operated by the facility;

(2) One employee parking space shall be provided for each commercial vehicle operated by the facility;

(3) If the facility serves the public, all parking and queuing space shall be provided on-site to accommodate projected peak demand;

(4) Additional parking, truck maneuvering or queuing space may be required by the Board of Zoning Adjustment after considering the applicant's analysis of such needs and the reports of the Department of Public Works and the Office of Planning; and

(5) No parking, queuing or standing of trucks will be permitted on residential streets.

(f) All storage of waste or recycled materials shall be in sturdy containers or enclosures which are fully covered, secured, and maintained in good condition. Storage containers for waste or recycled flammable materials shall be approved by the Fire Department. No storage containers outside the facility structure(s) shall be visible above the height of a required fence or wall. Outside storage shall only be permitted for a reasonable period of time and in reasonable quantities to allow for separation, conversion, baling, processing, and/or shipment of processed and nonprocessed materials.

(g) If the facility is located within 500 feet of a residential district, it shall not be in operation between 7:00 p.m. and 7:00 a.m. Hours of operation shall include the arrival and departure of trucks and the delivery and/or removal of materials and equipment. The facility will be administered by on-site personnel during the hours the facility is open. Intermediate Materials Recycling Facilities shall not operate on Sunday.

(h) Intermediate Materials Recycling Facilities shall comply with all environmental permit requirements established by the District of Columbia government.

(i) The Board may impose conditions pertaining to design, screening, buffering, lighting, soundproofing, signs, methods and hours of operation, or any matter necessary to protect adjacent and nearby property, and special consideration will be given to protecting residential property from excessive noise and traffic.

4. **Add "Intermediate Materials Recycling Facility" to list of uses permitted by Special Exception under 11 DCMR 3108:**

Intermediate Materials Recycling Facility in any C-M District Section 802

5. **Add "Intermediate Materials Recycling Facility" to list of uses permitted as a matter of right in Section 821 of the M zone district as follows:**

821.6 An Intermediate Materials Recycling Facility shall be permitted, provided that the following requirements shall be met:

(a) No portion of the facility, including any structure, loading docks and truck bays, storage, transfer equipment, truck parking, or other similar processing equipment and operations, shall be located within two hundred feet (200') of a residential property line.

(b) There shall be no truck access or queuing to the site from residential streets. The facility would also be subject to the

"Standards of External Effects (M)" under Section 825, and in accordance with the D.C. Noise Control Act and standards.

(c) The facility shall be enclosed on all sides by a fence or wall at least ten feet (10') in height. The public view side and/or the side of the facility facing residential zones shall be landscaped and shall have an opaque screen, fence or wall not less than ten feet (10') in height. The site shall be secured from unauthorized entry and removal of materials when attendants are not present.

(d) The site shall be maintained free of litter, trash, debris, and any other nonrecyclable materials.

(e) The facility shall provide on-site parking and queuing as follows:

(1) Space shall be provided on-site to park each commercial vehicle operated by the facility;

(2) One employee parking space shall be provided for each commercial vehicle operated by the facility;

(3) If the facility serves the public, all parking and queuing space shall be provided on-site to accommodate projected peak demand; and

(4) No parking, queuing or standing of trucks will be permitted on residential streets.

(f) All storage of waste or recycled materials shall be in sturdy containers or enclosures which are fully covered, secured, and maintained in good condition. Storage containers for waste or recycled flammable materials shall be approved by the Fire Department. No storage containers outside the facility structure(s) shall be visible above the height of a required fence or wall. Outside storage shall only be permitted for a reasonable period of time and in reasonable

quantities to allow for separation, conversion, baling, processing, and/or shipment of processed and nonprocessed materials.

(g) If the facility is located within 500 feet of a residential district, it shall not be in operation between 7:00 p.m. and 7:00 a.m. Hours of operation shall include the arrival and departure of trucks and the delivery and/or removal of materials and equipment. The facility shall be administered by on-site personnel during the hours the facility is open. Intermediate Materials Recycling Facilities shall not operate on Sunday.

(h) Intermediate Materials Recycling Facilities shall comply with all environmental permit requirements of the District of Columbia government.

Vote of the Zoning Commission at the regular meeting on September 14, 1992: 4-0 (John G. Parsons, Maybelle Taylor Bennett, William L. Ensign and Tersh Boasberg to approve as revised - Lloyd D. Smith, not voting, not having participated in the case).

This order was adopted by the Zoning Commission at its regular meeting on February 8, 1993 by a vote of 4-0: (Maybelle Taylor Bennett, John G. Parsons, Tersh Boasberg and William L. Ensign to adopt as amended - Lloyd D. Smith 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 MAR 19 1993.

TERSH BOASBERG
Chairman
Zoning Commission

MADELIENE H. ROBINSON
Director
Office of Zoning

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