

Government of the District of Columbia

ZONING COMMISSION

EXPIRED



ZONING COMMISSION ORDER NO. 735
Case No. 88-4
(Map Amendment - Tivoli/Safeway)
May 10, 1993

Pursuant to notice, public hearings before the Zoning Commission for the District of Columbia were held on June 30, October 13, and October 31, 1988. At those hearings, the Zoning Commission considered an application from the District of Columbia Department of Housing and Community Development (DHCD) on behalf of the Redevelopment Land Agency (RLA) requesting to amend the Zoning Map of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearings were conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The application, which was filed on March 2, 1988, requested a change of zoning from R-4 to C-3-A. The properties that are the subject of the application are Lots 7 through 16, 35 through 43, 48 through 52, 55, 59 through 64, 70 through 73, and 804 in Square 2837. The Fourteenth Street Urban Renewal Plan designates Square 2837 as Parcel 29.
2. The site is located in the 14th Street Urban Renewal Plan Area, on the northeast corner of the intersection 14th street and Park Road N.W. and encompasses approximately 98,797 square feet of land area.
3. The applicant seeks the change of zoning to construct a 41,000 square-foot supermarket (Safeway) with 158 parking spaces at the eastern portion of the site, and a retail/office building at the western portion of the site. The office building will include the restored facade of the Tivoli Theatre and will be separated from the supermarket by a parking lot that will serve both uses.
4. 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 18 feet, a maximum lot occupancy of 60 percent, and maximum height limit of three stories/40 feet. Conversions of existing buildings to apartments are permitted for lots with a minimum lot area of 900 square feet per dwelling unit.

5. The C-3-A District permits matter of right development for major retail and office uses to a maximum height of 65 feet, a maximum floor area ratio (FAR) of 4.0 for residential and 2.5 for other permitted uses, and a maximum lot occupancy of 75 percent for residential uses.
6. Parcel 29, is subject to the development controls of the 14th Street Urban Renewal Plan.
7. Because of the Tivoli Theatre's status as a historic landmark, the entire parcel is subject to the development controls as conditioned by the Mayor's Agent for Historic Preservation in Order No. 88-258 dated May 14, 1992.
8. The Acting Deputy Development Administrator of the District of Columbia Department of Housing and Community Development ("DHCD") testified on behalf of the applicant that the requested rezoning is needed to allow development that is consistent with the objectives of the 14th Street Urban Renewal Plan, which designates Parcel 29 as part of a Major Community Service Center (MCSC). He stated that the MCSC calls for development of retail and service commercial facilities, department stores, shopping centers and high density residential uses. He explained that the R-4 District is inappropriate to support any of the uses permitted in the MCSC designation and thus the 14th Street Urban Renewal Plan.
9. He further testified that Park Central Associates Corporation ("Park Central") was granted the exclusive right to develop the parcels within the MCSC. This right was granted after Park Central submitted a comprehensive plan for all of the MCSC disposition sites in the 14th Street Urban Renewal Area in response to a public offering by the Redevelopment Land Agency ("RLA") and a public meeting held by RLA to consider the various responses to that offering. Park Central's proposal for the MSCS, as determined by the RLA Board, is a comprehensive plan for the rejuvenation of this portion of 14th Street. He stated that pursuant to the Exclusive Right Agreement, the development rights for Parcel 29 were subsequently assigned to Parcel 29 Limited Partnership.
10. The Acting Deputy Administrator testified that the proposed development of the site has been delayed due to the historic preservation controversy concerning the Tivoli Theatre. He explained that pursuant to a court settlement with Save The Tivoli, Inc. ("STT"), an organization which had filed a law suit in 1983 to prevent demolition of the Tivoli, the applicant was required to fulfill the requirements of the Advisory Council on Historic Preservation's ("Advisory Council") Section 106 review process. He testified that DHCD

filed a case report regarding the proposed development of the site with the District of Columbia State Historic Preservation Officer ("SHPO") and the Historic Preservation Review Board ("HPRB") as required by the 106 process. He noted that both the HPRB and the SHPO concurred that the proposed development successfully mitigated any potential adverse affects on the landmark building. The applicant explained that a Memorandum of Agreement was executed between DHCD, the SHPO and the Advisory Council setting forth the requirements that must be met to proceed with partial demolition of the Tivoli Theatre structure. He stated that the Agreement provided for retention and reconstruction of the perimeter building along Park Road and 14th Street. He further testified that a hearing was held before the Mayor's Agent in order to determine whether or not the proposed project is deemed to be one of "special merit" as defined by the Act and thus permit the partial demolition of the Tivoli.

11. The Acting Deputy Administrator concluded that DHCD had no objection to a rezoning to C-2-A, instead of C-3-A, based on the Office of Planning's (OP) recommendation on the case. He asserted that C-2-A zoning would allow the proposed development to proceed.
12. The architect of the proposed project testified for the applicant as an expert in architecture and historic preservation. He testified that the plan for Parcel 29, as approved by the Advisory Council on Historic Preservation and the Historic Preservation Review Board, includes the demolition of the auditorium, stage and stage house portions of the Tivoli and the retention and rehabilitation of the perimeter portion of the structure including restoration of the facades, interior vestibule and lobby. He stated that the project had been designed to retain and enhance the architecturally significant features of the Tivoli while providing a fully integrated plan for the site's development as a commercial center. The architect added that the design elements are a fully integrated plan for the site's development as a commercial center. The architect added that the design elements are fully compatible with each other and with the adjacent commercial and residential neighborhoods.
13. The traffic engineer submitted a report dated April 1988 and stated that there would be no adverse traffic impact from the proposed development of Parcel 29 or from the rezoning request. He stated that all the intersections surrounding Parcel 29 operate at levels of service "C" or better. He indicated that level of service "A" through "D" are all

acceptable standards for the District of Columbia, and concluded that the levels of service would remain unchanged by a rezoning request to C-3-A or C-2-A.

14. The District of Columbia Office of Planning (OP), by report dated June 16, 1988 and by testimony presented at the hearing, recommended approval of a rezoning of the subject site to C-2-A because the proposed map change is a crucial step in the economic development of this prominent location on the 14th Street corridor, as supported by the Comprehensive Plan. OP noted that the site and the surrounding area is depicted on the Comprehensive Plan Generalized Land Use Map for moderate density residential and commercial use. OP further testified that the area is also identified as the Columbia Heights Metrorail Station Development Opportunity Area, Multi-Neighborhood Center and Housing Opportunity Area. OP asserted that rezoning the site to a commercial zone is supported by the economic development initiatives contained within the Plan.
15. OP further noted that Parcel 29 is in a critical location in relationship to fulfilling the requirements of the 14th Street Urban Renewal Plan. OP testified that the proposed rezoning will fulfill the Urban Renewal Plan's mandate which identifies the site as an area designed for a major community service center providing space for needed commercial businesses and public services that will benefit the community. The OP determined that the rezoning of the property to the C-3-A zone district is not inconsistent with the Comprehensive Plan.
16. The District of Columbia Office of Business and Economic Development ("OBED") by memorandum dated April 18, 1988 recommended approval of the proposed rezoning application. OBED noted that commercial development of the site will provide a boost to its Neighborhood Commercial Revitalization Program for the 14th Street commercial corridor.
17. The District of Columbia Fire Department (DCFD) by memorandum dated April 22, 1988 stated no objection to the proposed map amendment for development of this project provided the development complies with the fire protection provisions of the new D.C. Construction Codes as listed in D.C. Law 6-216.
18. The District of Columbia Metropolitan Police Department (MPD) by letter dated May 12, 1988 stated its support for the map amendment.
19. Advisory Neighborhood Commission (ANC) 1A by resolution presented at the hearing indicated their opposition to the development. ANC 1A recommended that the application be denied because the development would be a substantial

encroachment on the residential neighborhood, the project would create a congested traffic pattern bringing with it associated parking and noise problems and that the problem would encourage crime in the area.

20. A number of community members testified in support of the application. A Commissioner for residents of Single Member District 1A-04 testified on behalf of himself and approximately 450 area residents who disagree with the official ANC position opposing the rezoning. He submitted a petition, with 450 names, in support of the application. He stated that the petitioners support the rezoning provided that certain conditions were met by the applicant such as provision of off-site low/moderate income housing, the creation of minority business and job opportunities. He also stated that the petitioners and neighbors strongly wished to see positive development in this economically depressed area.
21. The Vice President for Planning and Neighborhood Development for the Washington Urban League testified on behalf of the Urban League in support of a rezoning of the site to C-2-A as proposed by OP. He noted the Urban League's long term involvement in this community, including the location of its own offices and believed that the subject site, despite its current zoning, has no residential character. He also stressed that retail and food services are sorely needed in the area. He also noted that rezoning the site to C-2-A would provide economic development of the area by bringing revenue to the neighborhood and sorely needed employment opportunities. He concluded that the area is not presently a viable neighborhood and that services are needed to generate revenue and capital which will allow the neighborhood to survive, otherwise the area will remain depressed.
22. Various other citizens of the 14th Street Employment and Economic Development Task Force testified in support of rezoning the site to C-2-A. These individuals voiced frustration about the lack of development at the site for the past 20 years. The citizens stressed the need for improved retail and food services for the area and voiced their desire for commercial development of the site to boost this economically depressed area.
23. Save The Tivoli, (STT), a nonprofit citizens organization dedicated to the preservation and rehabilitation of the Tivoli Theater was admitted as a party opponent in the case. The President of STT, testified in opposition to the proposed rezoning. He asserted that theatre and arts uses would be as consistent with the Urban Renewal Plan's designation for the site as easily as a grocery store. He believes the neighbor-

hood is currently well served by the existing two medium-sized grocery stores in the area and a Peoples Drug Store. He further testified that the proposed rezoning to C-2-A or C-3-A would be an unwarranted commercial intrusion into residential space. He asserted that after the 20-year RLA deed restrictions expire, a five to seven-story office building could be developed on the site.

24. An expert in architecture testified on behalf of STT that the proposed rezoning would be inappropriate without the development controls of an accompanying PUD. The architect testified that he believed the proposed scheme for Parcel 29 would underdevelop the site since the Parcel is located within a block from a proposed metrorail station. He noted, however, that with the proper development controls of the site, he believed that the proposed rezoning would not be inappropriate. The architect stated that he was not familiar with the RLA process or the restrictions typically placed on a developer by the RLA Board.
25. An expert in urban planning also testified on behalf of STT he believed that the proposed rezoning would be a negative intrusion into the residential neighborhood. He further testified that while he recognized the Comprehensive Plan maps are "soft" edged, in his opinion the proposed rezoning would be inconsistent with the Comprehensive Plan because the Generalized Land Use Map of the Comprehensive Plan indicates that only the western third of Parcel 29 is designated for mixed-use. He added that the proposed rezoning would not provide an adequate buffer to the adjacent residential neighborhood. He also believed that "back yard" buffering between residential and commercial uses is preferable to the street buffer proposed by the applicant. He believed that three-story residential uses should be built on the Parcel, fronting on Holmead Place and backing up to commercial development on the western portion of the Parcel. He concluded his testimony by pointing out technical flaws in the feasibility study prepared by Gladstone Associates for DHCD which concluded that there is a need for a supermarket in the area.
26. Various individuals and groups testified in opposition to the rezoning application. The gist of this testimony included that the rezoning would be inconsistent with the Comprehensive Plan since the site is designated as a housing opportunity area, that the proposed development fails to meet community needs, that the development has a negative impact on the surrounding neighborhood, and that the proposed development will increase crime in the area.

27. In rebuttal testimony for the applicant, the Acting Deputy Administrator addressed many of the issues that were raised by STT and persons in opposition. He stressed the vast amount of community participation in the planning process for this area over the past twenty years. He indicated that DHCD also believes that housing is important to the neighborhood and noted that since the approval of the 14th Street Urban Renewal Plans over 1,100 housing units have been provided by DHCD for low and moderate income families in the 14th Street corridor. He added that commercial development is now needed in the area to provide a cornerstone for economic development in the area. The Acting Deputy Administrator further testified that the approved 14th Street Urban Renewal Plan would not permit "row-houses" to be constructed on Parcel 29. He stated that a modification to allow for such a change could take up to three years to accomplish. He concluded his rebuttal testimony by explaining that DHCD applied for a map amendment, rather than a planned unit development, because the RLA process provided development control of the site for 20 years. The Acting Administrator further testified that additional development control of the site will be established by the order from the Mayor's Agent, which will definitely restrict development of Parcel 29 to the plan approved by the Mayor's Agent unless an amendment is granted following a separate public hearing.
28. The design manager for Safeway Stores, Inc. also testified in rebuttal for the applicant. He stated that Safeway has entered into a 20 to 40-year lease to occupy a supermarket on Parcel 29. He testified that Safeway would not consider building less than a 35,000-40,000 square-foot store on the site. He also testified that Safeway's decision to locate a store on the subject site was based on its own internal market analyses. He explained that Safeway has ongoing demographic analysis of all of its market areas. He asserted that the decision to locate a store on Parcel 29 was based on this demographic data and Safeway's past experience with respect to siting a supermarket. The design manager further testified that Safeway is scheduled to close its existing store on Park Road, directly across from Parcel 29, in 1989 irrespective of whether the subject application is approved. He stated that Safeway has rejected redesigning and/or adding onto this store.
29. Counsel for the applicant submitted post-hearing submissions dated January 9, 1989 as requested by the Zoning Commission at its December 12, 1988 decision meeting. The issues addressed in this document include (a) development control of the site; (b) siting of the grocery store on the parcel; (c) the possibility of delivery trucks adversely impacting the adjacent residential neighborhood; (d) the buffering of the

- residential community across Holmead Place; and (e) conformance of the application with the Comprehensive Plan.
30. Counsel for the opposition representing STT, submitted a response dated February 6, 1989 to the post-hearing submission of the DHCD dated January 9, 1989. The STT indicated that the submission fails to address specific concerns of the Zoning Commission regarding the rezoning of Parcel 29.
 31. On February 13, 1989 at its regular monthly meeting, the Zoning Commission considered the case for proposed decision. After discussion, and hearing some comments from the Director of OP, the Zoning Commission determined it would defer proposed action until April 10, 1989 and determined that it would reopen the record to permit the applicant the opportunity to file additional information. The requested information consisted of a revised Memorandum of Agreement between the applicant and the developer of Parcel 29 regarding the future development of the site. The revised agreement provides that development controls of the site will extend in perpetuity to the Commission and to the Mayor's Agent in HP No. 88-258.
 32. Counsel for the opposition submitted a response to the applicant's March 20, 1989 submission indicating that it failed to address the lack of a present binding covenant restricting development of Parcel 29, the developer's ability to alter the proposed development controls, and the adverse impact of commercial rezoning on the surrounding residential neighborhood.
 33. ANC-1A submitted a letter dated April 3, 1989 in response to the applicant's March 20, 1989 submission indicating their disappointment that neither the applicant, the designated developer, nor OP met with them to discuss the development of the proposed Safeway prior to the applicant's submission of March 10, 1989.
 34. On April 10, 1989, the Zoning Commission took proposed action to approve C-3-A zoning. The Commission indicated that final approval of the application would be deferred until: (1) the Zoning Commission received a copy of an order from the Mayor's Agent authorizing partial demolition of the Tivoli Theater; and (2) a covenant was submitted between the RLA and the developer restricting development and use of the site in perpetuity, to the plans submitted into the record of the case.
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35. By memorandum dated November 5, 1992, the Office of Zoning referred a letter from the Department of Housing and Community Development (DHCD) and a copy of the decision and order of the Mayor's Agent dated May 14, 1992 to the Office of Planning for review and comment regarding the appropriateness of the outlined proposed action in light of any rezoning in the area and the Comprehensive Plan, as amended.
36. By memorandum dated February 1, 1993, OP indicated that the Comprehensive Plan Generalized Land Use Map designation for the area has not changed since the Zoning Commission granted preliminary approval.
37. By memorandum dated January 15, 1993, the Office of Zoning (OZ) requested the Office of the Corporation Counsel (OCC) to provide legal advice on the issue of the validity of an amendment to the zoning map conditioned upon recordation of a covenant limiting the use of the rezoned land.
38. By memorandum dated February 4, 1993, the OCC provided the advice requested and such advice was made available to the Commission and is subject to the attorney-client privilege.
39. The Zoning Commission does not concur with the recommendations of OP and ANC-1A but concurs with the recommendations of the petitioners, OBED, FD, MPD and finds that C-3-A zoning is fully consistent with the Comprehensive Plan.
40. The Zoning Commission finds that rezoning the property to C-3-A would be compatible with the existing zoning along the 14th Street corridor. The Commission further finds that the C-3-A zoning would be in harmony with the development called for on the site by the 14th Street Urban Renewal Plan.
41. The Commission finds that the Memorandum of Agreement dated May 14, 1992 between the applicant and the developer of Parcel 29 regarding the development controls of the site will extend in perpetuity to the Commission and the Mayor's Agent as outlined in HP No. 88-258.
42. The Commission believes that the proposed development which is located in a strategic area will facilitate and expedite revitalization of the 14th Street Commercial Area.
43. The Commission finds that the entire parcel is subject to the development controls as conditioned by the Mayor's Agent for Historic Preservation in Order No. 88-258 dated May 14, 1992, and that the controls are sufficient to protect any changes that could be proposed by the owner in the future.

Corrected June 22, 1993

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40. The Zoning Commission finds that rezoning the property to C-3-A would be compatible with the existing zoning along the 14th Street corridor. The Commission further finds that the C-3-A zoning would be in harmony with the development called for on the site by the 14th Street Urban Renewal Plan.
41. The Commission finds that the Memorandum of Agreement dated March 7, 1989 between the applicant and the developer of Parcel 29 regarding the development controls of the site will extend in perpetuity to the Commission and the Mayor's Agent as outlined in HP No. 88-258.
42. The Commission believes that the proposed development which is located in a strategic area will facilitate and expedite revitalization of the 14th Street Commercial Area.
43. The Commission finds that the entire parcel is subject to the development controls as conditioned by the Mayor's Agent for Historic Preservation in Order No. 88-258 dated May 14, 1992, and that the controls are sufficient to protect any changes that could be proposed by the owner in the future.

44. The Zoning Commission believes that the rezoning 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.
45. The proposed decision to approve C-3-A zoning was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Governmental and Government Reorganization Act. NCPC by report dated April 1, 1993, found that the proposed zoning map amendment 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.
46. The Zoning Commission has accorded ANC 1B the "great weight" to which it is entitled.

CONCLUSIONS OF LAW

1. Rezoning to C-3-A 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-3-A will promote orderly development in conformity with the entirety of the District of Columbia zone plan as stated in the Zoning Regulations and Map of the District of Columbia.
3. Rezoning to C-3-A is not inconsistent with the 14th Street Urban Renewal Plan.
4. Rezoning to C-3-A is not inconsistent with the District of Columbia Comprehensive Plan.
5. In its decision, the Zoning Commission has accorded ANC 1B the "great weight" consideration to which it is entitled.
6. Pursuant to D.C. Code Sec. 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1987), and this order is conditioned upon full compliance with those provisions. The failure or refusal of applicant to comply with any provisions of D.C. Law 2-38, as amended, shall be a proper basis for the revocation of this order.

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DECISION

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the following amendment to the Zoning Map of the District of Columbia:

AMEND THE ZONING MAP AS FOLLOWS:

From R-4 to C-3-A Lots 7 through 16, 35 through 43, 48 through 52, 55, 59 through 64, 70 through 73, 804 and the proposed closed portion of the public alley in Square 2837, also known as Parcel 29 of the 14th Street Urban Renewal Plan; subject to the following conditions:

1. That the applicant complies with all provisions of the Mayor's Agent's Order of May 14, 1992 authorizing partial demolition of the Tivoli Theatre; and
2. That the Memorandum of Agreement between the Redevelopment Land Agency (RLA) and the Developer, Parcel 29 Limited Partnership is complied with.

Copies of these documents appear as Exhibit No. 159 of the Zoning Commission record in this case, and are incorporated by reference into this order.

Vote of the Zoning Commission taken at the April 12, 1993 monthly meeting: 3-0 (Lloyd D. Smith, John G. Parsons and Maybelle Taylor Bennett to approve C-3-A zoning for the site - Tersh Boasberg and William L. Ensign, not voting, not having participated in the case).

This order was adopted by the Zoning Commission at its monthly meeting on May 10, 1993 by a vote of 3-0 (John G. Parsons and Maybelle Taylor Bennett to adopt; Lloyd D. Smith to adopt by proxy - Tersh Boasberg and William L. Ensign, not voting, not having participated in the case).

In accordance with 11 DCR 3028.8, this order is final and effective upon publication in the D.C. Register; that is, on

_____ MAY 28 1993 .



 MAYBELLE TAYLOR BENNETT
 Chairperson
 Zoning Commission



 MADELIENE H. ROBINSON
 Director
 Office of Zoning

DATE OF APPROVAL: _____.

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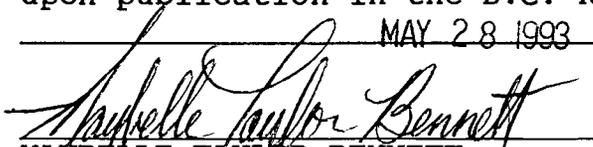
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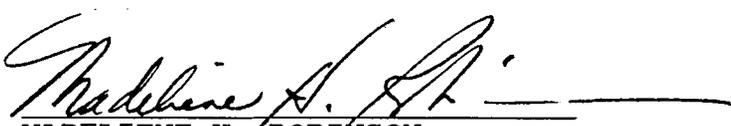
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 MAYBELLE TAYLOR BENNETT
 Chairperson
 Zoning Commission


 MADELIENE H. ROBINSON
 Director
 Office of Zoning

DATE OF APPROVAL: _____.