

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 745
Case No. 92-17
(Map Amendment @ 1201 K Street, N.W.)
November 15, 1993

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on April 8, and July 15 and 19, 1993. At those hearing sessions the Zoning Commission considered the application of the 12th and K Associates Limited Partnership to amend 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 the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The application, which was filed on November 5, 1992, requested a change of zoning from DD/C-3-C to C-4 for Lot 44 (formerly lots 825 and 827) in Square 284 located at 1201 and 1213 K Street, N.W.
2. Square 284 is split-zoned DD/C-2-C, DD/C-3-C, and C-4, and is bounded by 12th Street to the east, K Street to the south, 13th Street to the west, and L Street to the north.
3. Lot 44 is zoned DD/C-3-C, located in the southeast corner of the square, contains approximately 25,617 square feet of land area, and improved with a nine-story Days Inn Hotel and a four-story commercial building to the west of the hotel.
4. To the west of Lot 44 is a 12-story office/retail building in the C-4 zone district, to the northwest of Lot 44 is a 12-story office building in the C-4 zone district, and to the north of Lot 44 is Strong-John Thomson Elementary School in the DD/C-2-C zone district.
5. The applicant requests a change of zoning for Lot 44 to allow for the demolition of the hotel and commercial building, and to permit the construction of a new high-rise office building.
6. On January 11, 1993, the Zoning Commission authorized a public hearing for the application and determined that in addition to considering the requested map amendment to C-4 for the site, that it would consider a map amendment to C-3-C as an alternative.

7. The C-3-C District permits matter-of-right major business and employment centers of high density development, including office, retail, housing, and mixed uses to a maximum height of 90 feet, a maximum floor area ratio (FAR) of 6.5 for residential and other permitted uses, and a maximum lot occupancy of one hundred percent.
8. The C-4 District is the downtown core comprising the retail and office centers for both the District of Columbia and the metropolitan area, and allows high density development of office, retail, housing and mixed uses to a maximum height of 110 or 130 feet, a maximum lot occupancy of 100 percent, and a maximum FAR of 8.5 or 10.0, with the maximum height and FAR dependant upon the width of adjoining streets.
9. The Downtown Development (DD) District is an overlay District that is mapped in combination with other zone districts. The DD District is intended to facilitate land use and development policies for shopping, arts-related uses, Chinatown, historic preservation, and residential and mixed uses in the downtown area.
10. The District of Columbia Generalized Land Use Element of the Comprehensive Plan of the National Capital, as amended by Council resolution, includes, the subject site in the high density commercial land use category.
11. The subject application indicated that the subject property was included in the C-3-B District under the comprehensive rezoning adopted in 1958. All C-3-B properties were redesignated to C-3-C by text amendment adopted by the Zoning Commission in May 1980.
12. The Hotel/Residential (HR) Incentive Overlay District was applied to the subject site in March, 1981. The HR District gave incentives for hotel or residential construction but did not include mandatory requirements for those uses. The HR District allowed an FAR of up to 8.5, if the additional density over the normal 6.5 FAR was devoted to hotel or residential use. The HR District further allowed the maximum height permitted under the Height of Buildings Act of 1910, 130 feet for the subject site, if the building included a minimum of 2.0 FAR devoted to hotel or residential use.
13. The applicant indicated that the inclusion of the subject site and the surrounding area in the HR overlay allowed a height of 130 feet for most sites up to Massachusetts Avenue.

14. In December 1981, by Z.C. Order No. 358, the Zoning Commission rezoned the adjoining property to the west, a portion of the 1275 K Street development, from HR/C-3-C to C-4. That rezoning was done specifically to accommodate the design and construction of the building now known as 1275 K Street.
15. By Z.C. Order No. 681, dated December 17, 1990, and effective on January 18, 1991, the Zoning Commission rezoned the subject property to include it within the Downtown Development District. The HR overlay was repealed as to the subject site.
16. In October 1989, the owner of the property filed an application requesting consolidated approval of a planned unit development (PUD) and a map amendment to C-4 for the subject site (Z.C. Case No. 89-32C). The proposed development consisted of a 10.5 FAR, 130 foot office building. That application was set for hearing and was heard prior to the adoption of the DD District. The application was denied by Z.C. Order No. 692, dated April 8, 1991, after the decision on the Downtown Development District. The Commission found that the proposed project did not comply with the DD district because the applicant made no effort to locate housing on-site, in as much as that property was located in a mixed use classification of high density commercial and high density residential categories on the Comprehensive Plan Generalized Land Use Map.
17. The applicant indicated that the proposed C-4 zoning in this application permits the same uses that are allowed under the existing DD/C-3-C District. Office, retail and service, residential and institutional uses are permitted as a matter-of-right in both districts. The C-4 District does not require residential, as is now required under the DD/C-3-C District.
18. The applicant further indicated that the maximum height permitted on the subject site is the same under the existing zoning and the proposed C-4 zoning. The proposed C-3-C zoning would reduce the permitted height from 130 feet to ninety feet.
19. The total FAR permitted on the subject site is now 10.0, utilizing 0.5 FAR of transferrable development rights, and would remain at 10.0 under the proposed C-4 zoning. The C-3-C zoning would reduce the total FAR permitted on the site to 6.5.

20. Under the combined lot development provisions of the DD/C-3-C zoning, a 10.0 FAR, 130 foot commercial building could be built on this site, exactly the same development permitted by the proposed C-4 zoning.
21. The applicant indicated that development under the proposed C-4 zoning as a matter-of-right would be entirely compatible with the area in which the subject property is included. The C-4 District permits commercial development in an area being developed with high rise, high density office buildings. The width of K Street is sufficient to permit the 130 foot height, which is consistent with existing development to the northeast, northwest, west, southwest, south and southeast, and with the maximum height permitted density would not change from that which is now permitted under the present zoning and consequently, there would be no adverse impacts on surrounding property
22. The Generalized Land Use Map adopted, as part of the Comprehensive Plan, includes the subject site in the high density commercial land use category. Section 1107(a) (4) establishes that the high density commercial land use category "includes a mix of employment, retail, office, cultural and entertainment centers which serve as the business and retail heart of the district and the metropolitan area." The subject site is also included within the Central Employment Area as defined in the Comprehensive Plan.
23. The Downtown element of the Comprehensive Plan divides the Downtown into ten different sub-areas. The Comprehensive Plan, as adopted, does not define by map or text the boundaries of the individual sub-areas. Section 901(dd), 963 and 964 of the Comprehensive Plan establish the Franklin Square sub-area as the center for office development in Downtown. Sections 901(ee), 965 and 966, establish the Mount Vernon Square sub-area intended to be the primary location for Downtown residential development.
24. The applicant indicated that the subject property properly falls within the Franklin Square sub-area. It is located closer to Franklin Square than to Mount Vernon Square. Further, the Council's action in including all of squares 284, 285 and 286 in the high density commercial land use category, is evidence that the property was intended to developed for commercial (Franklin Square type uses) rather than mixed use (Mount Vernon Square type uses).

25. The District of Columbia Office of Planning (OP), by memoranda dated July 1 and August 17, 1993 and by testimony presented at the public hearing, recommended C-4 rezoning. OP indicated the following:
- a. The Home Rule Act provides that zoning shall be "not inconsistent" with the Comprehensive Plan for the National Capital. The District of Columbia Generalized Land Use Map and the Downtown Plan Element contain the most directly relevant Comprehensive Plan goals, policies and objectives. The Generalized Land Use Map provides a geographic illustration of the proposed future development pattern of the city, taking into account the various policies of each of the elements of the Plan. The Map is intended to provide clarifying land use and development guidance, which must be interpreted in combination with other goals, policies and themes in the Plan.
 - b. As to the written policies from the Downtown element, the Mt. Vernon Square subarea policies emphasize mixed use development, whereas the Franklin Square subarea policies prescribe an area of predominantly office development. The subject property (1201 K Street, N.W.) is located near the "boundary" between these two subareas, but has usually been considered part of the Mt. Vernon Square subarea. Thus, the Map indicated mixed use development, as did the subarea policies for Mount Vernon Square in the written elements of the Plan.
 - c. In July 1992, the D.C. Council adopted Resolution 9-275, which, among other things, changed the Map's designation in Squares 284, 285 and 286 from High Density Mixed Use to High Density Commercial. The 1201 K Street property is located within Square 284 and is therefore subject to different land use policy guidance than previously existed. The new High Density Commercial designation was the impetus for the instant zoning map application. The Council determined that the predominant development and land use/zoning pattern in the three affected squares should be high-density commercial rather than mixed use. The Council's action was fully informed by substantive testimony on both sides of the issue, i.e., whether to leave the designation as mixed use or change it to high density commercial. Although the Office of Planning at the time indicated its disagreement with this land use map amendment, OP respects the legislature's authority in guiding land use policy decisions.

- d. There is no official statement of rationale for the Council's action, but a letter dated July 6, 1992 from then Council Chairman to the Director of OP states, in part, "what becomes clear is that these squares lie on or very close to the edge between two different land use categories, and the Council in this process will be clarifying for the first time where the Council believes this edge was intended to be located.... In fact, the Council intentionally rejected the use of specific boundaries for these subareas when it enacted the Downtown Element in 1984, because the fact of the matter is that the Comprehensive Plan map is not supposed to be a zoning map. Rather, it is a generalized map that reflects the predominant uses that the District would like to see in general areas." The Council's clear intent regarding Squares 284, 285 and 286 is high density commercial development.
- e. The Office of Planning has reviewed the testimony in this case regarding the critical issues as identified by OP. In OP's opinion, the issues relating to permitted building height and bulk -- both the "stepdown" issue and the design relationship of the subject site to Thomson Elementary School -- were resolved by testimony in the case and further analysis. A rezoning to C-3-C for the purpose of encouraging a PUD application for a C-4-scale building is difficult to justify because the other properties in Square 284, 285 and 286 are zoned for development at 130 feet in height and approximately 10.0 FAR.
- f. In OP's opinion, two facts are critical in reaching a decision in this complex case. First, the Council's legislative intent regarding Squares 284, 285 and 286 is quite clear; namely, that the predominant land use pattern should be high-density commercial rather than high density mixed use. Given this all-commercial land use policy guidance, the decision is between C-3-C and C-4 zoning.
- g. Second, under C-3-C the subject property would be the only property in the three squares limited to 90 feet and 6.5 FAR, within a general environment (existing and permitted) of 130-foot high buildings at, typically, 9.0 to 10.0 FAR. Rezoning to C-3-C would have the appearance of singling out this property for restrictive treatment. However, this factor is only true in the context of the three squares affected by Council's action to amend the Generalized Land Use Map, based in turn on the high-

density commercial development pattern of these three squares as development, rezoning and PUDs have occurred. As far as OP is aware, no other location in the Downtown Development District is affected by this unique combination of circumstances.

26. Advisory Neighborhood Commission (ANC) 2F, by letter dated July 15, 1993 and by testimony presented at the public hearing, indicated that it was evenly split on the matter and therefore, could not reach a position on the case. The ANC stated the following:

"Those who oppose the rezoning argued that such a step would be the wrong signal for Commission to send regarding general policy of residential living in the downtown area. Those who favor the rezoning see 1201 K Street as a special case due largely to the fact that it is associated with an already agreed linkage of funds for the building of community facilities and housing elsewhere in the City."

27. Three persons testified in support of the application and C-4 rezoning. The director of the Edwin Mazique Parent-Child Center spoke about the monetary contributions that were made to the center by the applicant. The principal of the Strong-John Thomson Elementary School believed that the shadow that would be cast on the school playground by a building developed under C-4 zoning would not adversely affect the school, but during the summer would help to shade the children from the heat. The executive director of the H Street Community Development Corporation spoke about the affordable housing that it would be able to develop if the application is approved.
28. A petition with many signatures and nine letters were received in support of the application, including one from ANC-2C. City Councilmembers Jack Evans, Linda Cropp, John Ray, Harry Thomas, Sr., Harold Brazil, and Frank Smith, Jr. submitted letters in support of C-4 rezoning. Other issues in support, that were contained in the aforementioned letters, were previously raised herein by others.
29. The Balcor Company and Thirteenth and K Streets Associates Limited Partnership (Balcor) was admitted as a party in the proceedings. By letter and statement dated June 30, 1993 and by testimony presented at the public hearing, Balcor opposed the application for the following reasons:

- a. The Council acted improperly in changing the designation of the subject property on the Generalized Land Use Map from high density mixed use to high density commercial;
- b. The Council did not amend the text of the Comprehensive Plan when it corrected the map, and therefore the Commission's prior determinations that rezoning to C-4 was inconsistent with the Comprehensive Plan cannot be changed;
- c. The subject property is in the Mount Vernon Square sub-area of Downtown and therefore should be retained in a mixed-use zoning classification;
- d. The Zoning Commission should not abandon the concept of residential uses Downtown, since residences are essential to achieving the "living Downtown" goals of the Comprehensive Plan;
- e. Rezoning to C-4 will allow construction of a building which will block the existing windows in the east wall of the 1275 K Street building and will adversely affect the value of that building;
- f. Construction of a building under C-4 will have an adverse effect on the Strong-John Thomson Elementary School across the alley to the north because of the shadows which would be cast;
- g. The development of the subject property under C-3-C will yield greater revenue to the city than a C-4 project;
- h. The benefits to the Mazique Parent-Child Center and the H Street Community Development Corporation are speculative and unenforceable and are not relevant to the Zoning Commission's decision on the proposed map amendment;
- i. A mixed-use or lower commercial building is necessary as a buffer between the subject site and the nearby residential community; and
- j. The property should either remain DD/C-3-C or be rezoned to C-3-C.

30. Four persons testified in opposition to the application. The executive director of the Downtown Cluster of Congregations spoke about the loss of an affordable moderate-priced hotel which is close to downtown, union operated and serves the neighborhood well. A Capitol Hill resident spoke about the need to cater to people who want to reside downtown. A former ANC-2F Commissioner spoke about the endless assaults on the interests of the area's residential community by the development community and its attorneys. The representative of the Committee of 100 on the Federal City spoke about the loss of 3.5 FAR of downtown housing for no credible reason.
31. Nineteen letters were received in opposition to the application, including the Wisteria Mansion Condominiums, the Massachusetts House Tenants' Association, the Bay State Tenants' Association, the Chevy Chase Citizens Association, the Logan Circle Community Association, the Thomas House Resident Council, the Residential Action Coalition, the Residences at Market Square West, and the Baptist Senior Adult Ministries. Other issues in opposition included buying zoning with charitable contributions, spot zoning, increasing social costs and losses (e.g., crime, traffic, environmental pollution, etc.), exacerbating the existing office space glut, height and land use transition, reduced tourist trade, and that the DD Overlay zoning would require the protection of the existing hotel and rezoning to C-4 would not.
32. The Zoning Commission concurs with the recommendation of the Office of Planning and the position of the applicant and others, and finds that the applicant has satisfied the intent and purpose of the Zoning Regulations.
33. In response to the issues raised by the parties and persons in opposition to the application, the Commission finds the following:
 - a. That all parties acknowledged that the Council has voted to approved the Generalized Land Use Maps designating the subject property, along with all other property in three named squares, in the high-density commercial land use category. The Zoning Commission is not the proper forum to challenge whether the Council acted outside its authority, and counsel for the adjoining proper owner indicated that a lawsuit has been filed in the Superior Court of the District of Columbia seeking to overturn the designation. This Commission will not substitute its judgement for or usurp the responsibilities of either the Council or the court.

- b. That it is required to determine that its regulations and maps are "not inconsistent with the Comprehensive Plan." The Plan includes both local and Federal elements, and both text and maps. Most assuredly, as set forth Condition No. 33(a) above, the Council has inciated that the Zoning Commission's prior conclusion about the Generalized Land Use Map was incorrect. The present approved Map, with the complete underlying street grid, leaves no room to reach any conclusion other than that the site is included in a high density commercial category and not mixed-use. The Commission further notes that the maps are part of the Land Use Element, and in the amendments adopted in 1989, the Council stated the following:

"Since the Land Use element integrates the policies and objectives of all other District elements, it should be given greater weight than the other elements."

Since the Commission's previous decision to deny Z.C. Case No. 89-32C (PUD & Map Amendment @ 1201 K St., N.W.) relied heavily on a determination that the site was in a mixed-use land use category; the changed circumstances regarding the Land Use Map represent a substantially different basis on which to judge this application.

- c. That the subject site is more properly considered in the Franklin Square subarea. The Commission further finds the letter, dated July 6, 1992, from the Council Chairman to the Director of the Office Planning, to be very persuasive on this matter. The day prior to the Council's action to approve the maps, the Chairman set forth his view concerning the rationale for the change and noted five arguments supporting the designation of high density commercial for the three squares. If the Council determined that not all of the three squares were in the office-oriented Franklin Square area, the Council could have chosen to split the squares, to designate commercial for only part of the three squares or to exclude the subject corner of the square from the commercial category. It did not do so, and the Commission is persuaded that this site is in the high-density commercial predominantly office Franklin Square subarea. The Commission further notes the letters received from several other Councilmembers, who were on the Council when the Land Use Maps were approved, stating their support and intent for C-4 zoning for the site.

- d. That what is before the Zoning Commission in this proceeding is not a referendum on or a precedent for the continuation or abandonment of the residential goals of the Downtown element of the Comprehensive Plan or the Downtown Development District. The specific zoning of this property is the only point at issue. If the Council had acted earlier to clarify the intent of the Generalized Land Use Map, the DD would likely never have been applied to this site. There is no other site designated for high density commercial on the Land Use Map which has been included in a housing priority area under the DD District.
- e. At the time that the building at 1275 K Street was constructed, the existing zoning permitted a building of 8.5 FAR and 130 feet in height. The present zoning permits a height of 130 feet and an FAR of 10.0. The owner of the 1275 K Street building has no reason to expect that windows which were constructed face-on-line with the subject property could be continued without interruption. The representative of the owner stated that investigations were made at the time of the purchase of the building into the ability to build and the economic impact of building a building on the property line. It is not reasonable for the owner of the subject property to bear the burden associated with the adjoining owner's decision not to set its windows back from the lot line. The Office of Planning did not raise any public policy issues associated with impacts on the adjoining building. With respect to the impact on value, stability of land values generally suggests that properties similarly situated should be treated in the same manner. This site is the only zoned site within the three squares identified by the Council which is not now zoned C-4. In addition, the Commission finds that the testimony of the opposition did not credibly establish that there would be a significant adverse loss to the city, all factors considered, while the applicant's submission and testimony identified the positive economic benefits which would result.
- f. That the height and density standards of the existing DD/C-3 District are exactly the same as those of the proposed C-4 District. The drawings prepared by the applicant's architect indicate that the impact on the school of a building built under the DD/C-3-C standards will not be significantly different from the impact under C-4 standards. Additionally, the Commission has determined that there is not a significant difference in

impact between a ninety foot building allowed under the C-3-C matter-of-right standards and the standards under the proposed C-4 District.

- g. That it is not persuaded by the arguments of the opposition's real estate expert. A bigger building built on the subject site offsets any theoretical loss on the adjoining site and vice versa. The overall changes in revenue to the city are not dispositive of the questions presented in this case.
- h. That the benefits resulting to the Mazique Parent-Child Center and the H Street Community Development Corporation have no relevance to or bearing on the proper zoning to be applied to the subject property.
- i. That, on balance, rezoning the subject site to C-4 does not preclude hotel development but also does not protect the existing hotel use. The Commission determined that it is more important to rezone the site to C-4, in accordance with the intent of the Council's Resolution.
- j. The nearest residential property to the subject site, as identified by the opposition's witnesses, are separated by substantial distances, and in most cases, by the existing intervening buildings at 1220 Street and 1100 L Street. In any event, the zoning pattern in the area, established as a matter of overall policy by the adoption of the HR Overlay District in 1981 and continued with the adoption of the DD zoning map and text changes in 1991, allows for a maximum height of 130 feet up to the south side of Massachusetts Avenue. There is no reason to buffer nearby residential uses from development at this location.
- k. The zoning alternatives proposed by the opposition for the subject site contradict each other and the opposition's stated objectives. The DD/C-3-C zoning permits 10.0 FAR and 130 feet and would allow the blocking of the windows in the east wall of 1275 K Street. The C-3-C zoning does not require any residential use, and would limit the development of the site to a lower height and density than the zoning on any of the surrounding properties. The Commission finds that designating C-3-C zoning on the subject site would amount to spot zoning, in that it would single out one property for different treatment without a reasonable basis to do so.

34. The proposed decision of the Zoning Commission was 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 October 8, 1993, found that the proposed map amendment would not adversely affect the Federal Establishment or other Federal interests in the National Capital.

CONCLUSIONS OF LAW

1. Rezoning to C-4 is in accordance with the Zoning Act (Act of June 20, 1938, 42 Stat. 797) by furthering the general public welfare and serving to stabilize and improve the area.
2. Rezoning to C-4 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-4 is not inconsistent with the Comprehensive Plan for the National Capital.
4. Rezoning to C-4 will not have an adverse impact on the surrounding neighborhood.
5. Rezoning to C-3-C would constitute spot zoning because it would single out a property for different treatment in terms of height and bulk than all other surrounding properties in the subject square, without a reasonable basis to do so.
6. Since Advisory Neighborhood Commission 2F did not take a position on the subject application, the Zoning Commission could not accord "great weight" consideration to the ANC.
7. The Zoning Commission has not taken into account and does not rely on any proposed contributions to community groups in determining the appropriateness of the proposed rezoning.
8. Pursuant to D.C. Code Section 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the Applicant is required to comply fully with the provisions of D.C. Code, Title I, Chapter 25 (1987), and this order is conditioned upon full compliance with those provisions. The failure or refusal of the 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 Findings of Fact and Conclusions of Law set forth herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of an amendment to the Zoning Map of the District of Columbia as follows:

Change the zoning from DD/C-3-C to C-4 for Lot 44 in Square 284 located at 1201 and 1213 K Street, N.W.

Vote of the Zoning Commission taken at the public meeting held on September 13, 1993: 4-1 (Jerrily R. Kress, William B. Johnson, William L. Ensign and Maybelle Taylor Bennett, approve C-4 - John G. Parsons, opposed).

This order was adopted by the Zoning Commission at its public meeting held on November 15, 1993 by a vote of 4-1: (William B. Johnson, Jerrily R. Kress, William L. Ensign and Maybelle Taylor Bennett, to adopt as amended - John G. Parsons, opposed).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on
DEC 24 1993.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. ROBINSON
Director
Office of Zoning

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