

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 765

Case No. 93-11

(Text & Map Amendment - Fort Totten Overlay District)

November 14, 1994

On August 21, 1992, the Office of Zoning (OZ) received a petition, as amended on August 25, 1992, from the Upper Northeast Community Coalition (UNCC). The petitioners requested that the properties within the boundary of the Fort Totten Metrorail study area be rezoned from R-5-A, C-M-1 and M to C-2-B, C-3-A and CR.

The purposes of the rezoning proposal were to further implement the goals and the policy objectives of the Comprehensive Plan for the National Capital, and to minimize the adverse impact that some industrial uses had on the neighboring residential areas.

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on February 18, 22 and March 25, 1993. At these hearing sessions, the Zoning Commission considered a proposal of the District of Columbia Office of Planning (OP) and the Upper Northeast Community Coalition (UNCC), pursuant to Section 102 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted under the provisions of 11 DCMR 3021.

At its monthly meeting of October 18, 1993, the Zoning Commission voted to deny the petition. In its denial, the Commission stated the following:

"The Commission is aware that the proposed rezoning is silent on the issue of the relocation of the industrial businesses and further notes that the proposal does not recognize the importance of existing industrial uses as interim uses and the need to provide protection for those businesses."

The Zoning Commission further stated:

"The Commission believes that the economic development element of the Comprehensive Plan which places a high priority on stimulating and facilitating a variety of commercial, retail, and recreational development investments appropriate to selected Metrorail Station areas outside of the Central Employment Area will not be fully realized if the petition is approved."

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At its monthly meeting of October 18, 1993, the Zoning Commission ruled to consider a revised proposal from the OP and determined that the new OP proposal will be identified as Z.C. Case No. 93-11 (Text & Map Amendment - Fort Totten Overlay District). The purpose of the Fort Totten Overlay District (FT) is to allow the existing industrial businesses to remain and expand and to propose land use control policies to further implement the Comprehensive Plan for the National Capital.

On October 18 and November 15, 1993, the Zoning Commission authorized the scheduling of a public hearing in the above mentioned proposal of the Office of Planning.

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on May 12, 1994. The public hearing was conducted in accordance with the provisions of 11 DCMR 3021.

The proposed amendments to the Zoning Regulations and Map were contained in the notice of public hearing, published in the District of Columbia Register on August 5, 1994 (41 DCR 5265). The major elements of the public hearing notice included the following:

1. A rationale for the establishment of the overlay, which was to allow existing industrial businesses to remain and expand and to propose land use control policies to further implement the Comprehensive Plan for the National Capital.
2. A general description of the overlay and the area to which it is to be applied.
3. The purpose of the overlay, which is to encourage a scale of development and mixture of building and land uses as generally required by the Comprehensive Plan, as well as, providing for a long-term transition from industrial uses to mixed residential-commercial development as envisioned in the Comprehensive Plan.
4. A general provision section indicating that the overlay is to be mapped in combination with other zone districts and not instead of the underlying district. Those districts include C-3-A, CR, C-M-1 and M.
5. Height, Bulk and Use Provisions.
6. Special Exception provisions relating to building setback, landscaping, and fencing.

7. Instructions outlining how the zoning map is to be amended to facilitate the new overlay.

The R-5-A District permits matter of right single-family detached and semi-detached dwellings, and with the approval of the Board of Zoning Adjustment, low density development of general residential uses including rowhouses, flats, and apartments to a maximum floor area ratio (FAR) of 0.9, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet.

The C-1 District permits matter of right low density development including office, retail and all forms of residential uses to a maximum height of 40 feet/three stories, a maximum floor area ratio (FAR) of 1.0 and a maximum lot occupancy of sixty percent.

The C-2-B District permits matter of right medium density development, including office, retail, housing, and mixed uses to a maximum height of 65 feet, a maximum floor area ratio (FAR) of 3.5 for residential and 1.5 for other permitted uses, and a maximum lot occupancy of 80 percent for residential uses.

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.

The CR District permits matter of right residential, and certain commercial and nonresidential uses as well as certain light industrial development with the approval of the BZA, to a maximum height of 90 feet, a maximum floor area ratio (FAR) of 6.0 for residential and 3.0 for all other permitted uses, and a maximum lot occupancy of 75 percent for residential uses.

The C-M-1 District permits development of low bulk commercial and light manufacturing uses to a maximum floor area ratio (FAR) of 3.0, and a maximum height of three stories/40 feet, with new residential uses prohibited.

The M District permits general industrial uses to a maximum FAR of 6.0 and a maximum height of 90 feet with new residential uses prohibited.

The Zoning Commission indicated that it would also receive testimony at the public hearing and written submissions about, and would consider adoption of, other alternative amendments that were reasonably related to the scope of the amendments that were set forth in the notice of public hearing.

By report dated March 14, 1994, and by testimony presented at the public hearing, OP recommended approval of the overlay subject to some modifications. The modifications include the following:

1. In Section XXX1.1 the zone district C-2-B was inadvertently left out of the advertised text and should be included.
2. In Section XXX1.1 the designation of the Fort Totten Overlay District (FTOD) was changed to FT.
3. In Section XXX1.2 paragraph C, the introductory clause, "to encourage new residential and commercial development" was deleted because it was redundant of purposes (a) and (b).
4. In Section XXX3.5 OP revised the height limit to eighty feet (80'), inclusive of roof structures in the underlying CR District, and
5. Section XXX3.6 was added, which establishes the permitted FAR split between residential and nonresidential uses in the CR District.

OP also indicated that the proposed map amendment to C-3-A, C-2-B and CR as modified by the recommended overlay zone represents overall, a medium to medium-high density of mixed use development potential that is generally consistent with the Comprehensive Plan land use designations as they now exist: Medium Density Mixed Use; Development Opportunity Area and Housing Opportunity Area.

OP further stated that the basic rationale for the proposed overlay zone in combination with the CR zone will allow expansion of existing businesses, as well as, establish screening and buffering standards to protect abutting residential properties.

The District of Columbia Department of Public Works (DPW) by report dated March 17, 1994 indicated its approval of the overlay and stated that it shares the concerns of the citizens regarding the increase in the amount of truck traffic in the area. DPW explored alternative truck routes in the past however, alternative truck routes would require use of National Park Service (NPS) property and the NPS has been opposed to this. DPW is also concerned about the effect of rezoning of the existing District of Columbia Solid Waste Transfer Station. Specifically, DPW is concerned that the proposed overlay zone's flexibility for expansion of existing industrial uses will not adequately provide for needed future expansion or new construction of the District's Transfer Station.

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By memorandum dated June 2, 1994, the DPW submitted the following responses to two questions raised by the Zoning Commission at its May 12, 1994 public hearing.

"Regarding truck route enforcement, Fort Fotten area businesses which generate heavy truck traffic have been requested by the Department of Public Works not to use Taylor Street, N.E. between South Dakota Avenue and the railroad bridge. Most of the citizen complaints regarding heavy truck traffic have come from this section of Taylor Street, N.E. There are no posted restrictions for truck traffic on this section of Taylor Street, and therefore there is not formal enforcement of the truck traffic policy. It is our understanding that the local businesses in question have been cooperating with the Department's request to reduce local resident objections to the truck traffic generated by these businesses."

"At this time, there are no plans to construct Sixth Street, N.E. north from Buchanan Street to Gallatin Street, N.E. If such a street were to be constructed in the future, an environmental impact statement would need to be prepared and budget approval would be required. Also, under certain circumstances, the Council of the District of Columbia would also need to approve construction of the street."

The National Park Service (NPS) by testimony presented at the public hearing stated its concerns about the potential impact of tall buildings on vistas to and from Fort Totten. NPS indicated that Fort Totten is viewed by the public from the surrounding area as a wooded ridge, a "landmark" and a point of orientation. The critical vistas from Fort Totten to other historic locations related to the Civil War are substantially unchanged since the time of that war. NPS recommended a maximum building height of 80 feet inclusive of penthouse, i.e., a zone district permitting a maximum building height of 60 or 65 feet.

Advisory Neighborhood Commission (ANC) 5A, by testimony presented at the hearing and by resolution dated May 12, 1994, supported the original petition submitted by the Upper Northeast Community Coalition in Case No. 92-11 and indicated its strong opposition to the advertised high-density mixed use zoning. ANC 5A also indicated that its preference would be a maximum height of 40 feet, and less dense development that will not create a major influx of traffic and other adverse impacts on the neighborhood. ANC 5A also supported the zoning position of the Buchanan Mews/University Park Neighborhood Association which is discussed later in this order.

ANC-4B, by testimony presented at the hearing and by resolution dated May 31, 1994, indicated its opposition to the Fort Totten

Overlay District. ANC 4B indicated that a 65-foot height limit is too high, favored a three-story limit on building heights, and indicated its support for the previous petition submitted by the Upper Northeast Community Coalition in Zoning Case No. 92-11. The ANC-4B is also opposed to any new or expanded solid waste transfer station in the area.

The Buchanan Mews/University Park Association by testimony presented at the public hearing stated its opposition to the CR and C-3-A zones because it believes the zones would allow development that is too dense, and community-based residential facilities (CBRFs). They proposed an overlay zone to be mapped in combination with the M and C-M-1 zones that would provide buffers for residential neighbors of industrial or support uses, and that would prohibit a solid waste transfer station.

Several persons testified at the public hearing in opposition to the proposed overlay. Their reasons for opposing the proposed overlay included, but were not limited to, the following:

- a. Steuart Petroleum Company feels that its property should not be rezoned CR, but should be zoned for its actual use and that the Comprehensive Plan should only serve as a guide to zoning. It urged retention of M and CM zoning south of Fort Circle Park.
- b. Super Concrete and Silver Hill Concrete Companies urged retention of the existing M zoning and stated that a change in zoning will only promote the relocation of industrial businesses out of the city with consequential loss in service, employment and revenue for the District of Columbia.
- c. Thomas Somerville and Genstar Companies stated that they are working cooperatively with their residential neighbors. They fashioned a zoning overlay proposal in conjunction with their neighbors, the Buchanan Mews Citizen's Association. They further stated that north of Fort Circle Park, the Commission could rezone the land near the Metrorail Station to C-3-A and CR. South of Fort Circle Park, the existing M and CM zones should be retained, together with an overlay zone similar to the Langdon Overlay previously adopted.

The Commission concurs, in part, with the position and recommendation of OP, DPW and the NPS. The Commission does not concur with the opposition in terms of phasing out the land uses. The Commission believes that the overlay provisions will allow existing industrial and support uses to be conforming so that owners may make structural alterations and rebuild after a

catastrophe. The Commission also believes that the overlay zone will allow expansion of existing businesses, so that these economically important uses can remain viable during the long transition period to mixed use development.

Regarding the building height and density issue, the Commission does not concur with the opponents and concurs with OP's recommendation of a compromise achieved by reducing the permitted height and bulk in the underlying CR zone. The maximum height would be 80 feet (including penthouse but excluding elevator override), and the maximum FAR would be 5.0. The Commission believes that this reduced height and bulk would partially satisfy the concerns of the community groups and the NPS regarding excessive height and bulk. The Commission believes that proximity to the metrorail station and the area's designation as a development opportunity area provides sufficient rationale for this proposed height and density.

The Commission concurs with the opposition that the overlay zone should be mapped in combination with the M and CM zones south of Fort Circle Park which would provide buffers for residential neighbors of industrial or support uses.

The Commission concurs with the opposition regarding the need to abandon the proposed CR zoning requested south of Fort Circle Park. The Commission believes that the goal of the overlay should be to allow for the peaceful coexistence of residential and industrial uses, not to discourage industrial uses.

The Commission believes that the zoning of the property south of Fort Circle Park should reflect the current industrial use of the property, which will remain on the site for the foreseeable future. The Commission also believes that the companies which are located in the southern sub area are a critical economic component for the District of Columbia and the zoning should be preserved.

The Commission believes that after considering and balancing all of the issues for and against the proposal, the FT Overlay represents a medium to medium-high density of mixed development potential that is generally consistent with the Comprehensive Plan land use designation as it now exists, Medium Density Mixed Use, Development Opportunity Area and Housing Opportunity Area.

The Zoning Commission believes that its proposed decision to approve the FT Overlay is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital, as amended.

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The proposed decision to approve the FT Overlay was referred to the National Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated September 14, 1994, found that the proposed zoning amendments 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.

The Zoning Commission has accorded ANC 4B and 5A the "great weight" consideration to which they are entitled.

A notice of proposed rulemaking was published in the District of Columbia Register on August 5, 1994 (41 DCR 5265). As a result of the publication of that notice, comments were received from the law firm of Linowes and Blocher, representing the Thomas Somerville Company and General Stone Product Co., dated August 25, 1994 and from the law firm of Hunton and Williams representing Super Concrete, Silver Hill Concrete and Opportunity Concrete, dated August 31, 1994.

The comments from Linowes and Blocher stated for the most part, they were generally pleased and supportive of the proposed FT Overlay; however, there were two sections that both Somerville and Genstar urged the Commission to reconsider. Both companies urged the Commission not to impose yard and screening standards on industrial lots that join residential lots unless the residential lot is being used for residential purposes. Secondly, they would like the Commission to take the "D.C. Comprehensive Plan Amendments Act of 1994" into consideration when it finally decides the future zoning policy of the area.

The comments from Super Concrete, Silver Hill Concrete and Opportunity Concrete, recommended that the Zoning Commission amend the text of the Zoning Regulations as proposed in the August 5, 1994 D.C. Register.

On November 14, 1994, the Zoning Commission considered the above-mentioned comments and draft Z.C. Order No. 765 for final action consideration. The Commission reviewed and discussed the post-hearing submissions. The Commission made minor changes to the text of the proposal, considering the post-hearing comments. The Commission also considered the "D.C. Comprehensive Plan Amendments Act of 1994" during its deliberations as requested.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the amendments to the Zoning Regulations and Map to create and map the Fort Totten Overlay District (FT). The specific amendments to the Zoning Regulations and Map are as follows:

1. Adopt a new section to Chapter 15 of DCMR, Title 11, to read as follows:

1561 FORT TOTTEN OVERLAY DISTRICT (FT)

1561.1 The Fort Totten Overlay District (FT) is established to allow existing industrial businesses to remain and expand and to propose land use control policies to further implement the Comprehensive Plan for the National Capital.

1561.2 The FT is applied to the area that is immediately north and south of Fort Circle Park (also known as Fort Drive Park), and shall be mapped in combination with the C-3-A, CR, C-M-1 and M Zone Districts.

(a) North of Fort Circle Park

(1) The zone boundaries of the FT/C-3-A Zone District shall begin at the intersection of First Place and Riggs Road, N.E. and proceed as follows:

West along the centerline of Riggs Road to the north/south alley that is immediately west of and parallel to First Place; south along the centerline of that alley to Ingraham Street; east along the centerline of Ingraham Street to First Place; south along the centerline of First Place to the north property line of Parcel 124/141; east along the north property line of Parcel 124/141 and then continue east along the north property line of Parcel 124/140 (also known as Lot 804 in Square 3700); east along an imaginary line that represents the easterly extension of the north property line of Parcel 124/140; continue east along that imaginary line until it intersects a second imaginary line that represents the westerly extension of the property line between Lots 5 and 808 of Square 3767; continue east along the second imaginary line and the property line between Lots 5 and 808 to the alley in Square 3767; north along the centerline of that alley to Kennedy Street; west, north and then east along the perimeter of an existing R-5-A Zone

District boundary line that encompasses Parcel 137/78 (also known as Lots 3, 4 and 800 in Square 3766) to South Dakota Avenue; north along the centerline of South Dakota Avenue and then northwest-erly along the centerline of the vehicu-lar ramp (which connects Riggs Road and South Dakota Avenue) to Riggs Road; west along the centerline of Riggs Road to the point of origin.

- (2) The zone boundaries of the FT/CR Zone District shall be the boundaries of the existing C-M-1 Zone District that is immediately north of Fort Circle Park and south of the FT/C-3-A Zone District as described in subparagraph 1561.2(a)(1).

(b) South of Fort Circle Park

- (1) The zone boundaries of the FT/M Zone District shall be the identical boundaries of the existing M zone District that is immediately south of and contiguous to Fort Circle Park.
- (2) The zone boundaries of the FT/C-M-1 Zone District shall be the identical boundaries of the existing C-M-1 Zone District that is immediately south of and contiguous to Fort Circle Park.

1561.3 The purposes of the FT are as follows:

- (a) To encourage a scale of development and a mixture of building and land uses as generally required by the Comprehensive Plan;
- (b) To encourage future residential and commercial development by means of the provisions of the underlying CR and C-3-A zones while enabling existing industries, which provide jobs, tax revenues and critical support functions for the development of the District of Columbia to remain; and
- (c) To protect surrounding residential areas from the adverse impacts of existing industrial support uses by means of the buffering standards provided in this overlay district.

1562 GENERAL PROVISIONS

1562.1 The FT is mapped in combination with the underlying C-3-A, CR, C-M-1 or M zone districts and not instead of the underlying districts.

1562.2 Where there is a conflict between this chapter and the underlying zoning, the more restrictive provisions of this title shall govern.

1563 HEIGHT, BULK AND USE PROVISIONS

1563.1 An existing commercial or industrial use with a valid certificate of occupancy (C of O) as of the effective date of this overlay zone shall be deemed a conforming use.

1563.2 An existing business or industrial use as provided in Subsection 1563.1 shall be permitted to expand pursuant to the height, bulk and other area standards of the underlying zone district;

1563.3 A business or industrial use that expands pursuant to Subsection 1563.2 shall comply with the following yard and screening standards:

(a) If the lot line of the lot being developed coincides with the lot line of a property in a residential zone district, or is separated only by a street or alley from a property in a residential district, where said property is not owned by a business or industrial user, and said property is not being used for residential purposes the following standards shall apply:

(1) A yard of twenty-five feet (25') shall be provided on the portion of the lot adjacent to the residential zone; provided that the following shall be met.

(2) Where there is a street or an alley between the residential lot and the lot subject to this overlay zone, the required yard shall be fifteen feet (15') measured from the lot line;

(3) The yard shall not be used for parking, loading, or accessory uses;

- (4) The yard shall be landscaped with evergreen trees in a healthy growing condition which shall be a minimum of six (6) to eight (8) feet in height when planted; and
 - (5) Planting locations and soil preparation techniques shall be shown on a landscape plan submitted with the building permit application to the Department of Consumer and Regulatory Affairs for review and approval according to standards maintained by the Department's Soil Resources Branch, which may require replacement of heavy or compacted soils with top soil and drainage mechanisms as necessary; and
- (b) A fence or wall shall be erected as a buffer between the residential lot(s) not owned by a business or industrial user that abut a lot affected by this overlay zone, provided that the fence or wall shall be no less than eight feet (8') and no more than ten feet (10') in height, and shall be either a solid, wood, board-on-board fence or a brick or stone wall.
- 1563.4 The maximum height and bulk of a new building for a newly established use in the underlying CR District shall be eighty-feet (80') in height inclusive of roof structure and 5.0 FAR.
- 1563.5 Buildings proposed to have a height in excess of sixty-five (65') feet shall provide special architectural features, roof parapet detailing and design consideration of roof top and penthouse structures to ensure that the views and vistas from the historic fortification of Fort Totten are not degraded or obstructed. The Office of Planning shall review and provide a report with recommendation.
- 1564 SPECIAL EXCEPTIONS
- 1564.1 The Board of Zoning Adjustment, after public hearing, may waive or vary the requirements of this chapter relating to building setback, landscaping, and fencing, as a special exception, provided that the proposed variations in standards are generally consistent with the chapter.
2. Amend the Zoning Map as follows to facilitate the FT:
- A. North of Fort Circle Park
 - 1. Change from C-1 to FT/C-3-A

2. Change from C-M-1 to FT/C-3-A and FT/CR

B. South of Fort Circle Park

1. Change from M to FT/M
2. Change from C-M-1 to FT/C-M-1

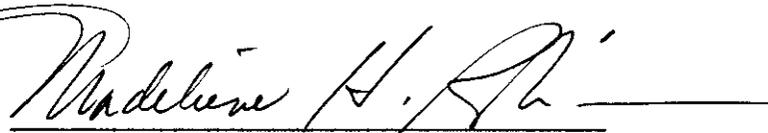
Vote of the Zoning Commission taken at the regular meeting on June 13, 1994 5-0: (William L. Ensign, William B. Johnson, John G. Parsons, and Maybelle Taylor Bennett, to approve and Jerrily R. Kress, to approve by absentee vote).

This order was adopted by the Zoning Commission at its monthly meeting on November 14, 1994 by a vote of 5-0: (William B. Johnson, William L. Ensign, and Maybelle Taylor Bennett, to adopt as amended, John G. Parsons and Jerrily R. Kress, to adopt by absentee vote).

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

MAY 26 1995


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. ROBINSON
Director
Office of Zoning