

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 771  
Case No. 94-3  
(Text Amendment - 11 DCMR 2516.3)

March 20, 1995

The Zoning Commission for the District of Columbia initiated this case in response to a letter from the law firm of Greenstein Delorme and Luchs, P.C., on behalf of the owner of Lot 3 in Square 2224, the applicant in Board of Zoning Adjustment (BZA) Application No. 15858. The letter requested the Board to recommend for consideration by the Zoning Commission a text amendment to Section 2516 of the Zoning Regulations, which governs BZA applications regarding building lot controls.

The BZA specifically requested the Commission to consider modification of 11 DCMR 2516.3 to permit an applicant for a theoretical lot subdivision to seek BZA approval without being required to file some or all of the plans and elevations currently required.

Pursuant to notice, a public hearing was held by the Zoning Commission on September 19, 1994 to consider the proposed amendment to the regulations. The proposal will permit applicants for theoretical lot subdivisions to seek BZA approval without being required to file all or some of the plans and elevations specified in Subsection 2516.3 of the Zoning Regulations.

At the hearing, the Commission heard the testimony of the Office of Planning (OP) and five witnesses, which included Advisory Neighborhood Commission (ANC) 3C. Three witnesses, including the ANC, testified in opposition to the proposed amendment, while the Office of Planning (OP) and two witnesses testified in support.

The Office of Planning by memorandum dated August 31, 1994 (Final report to the Zoning Commission), and by testimony presented at the public hearing indicated that many, probably most, applicants can comply with the requirements as written, whereas occasionally problems may arise. The Office of Planning recommended that the requirements as specified in Subsection 2516.3 be retained, thereby preserving the degree of design review involved, but providing for an optional two-step process.

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By letter dated August 15, 1994, the Commission of Fine Arts (CFA) commented that the only means currently available for CFA to comment on a proposed subdivision is through the design submission process. In this sense, the concept provides an official public forum which permits questions to be aired that not only relate to the design of a development but to the appropriateness of the number of buildings (ergo, the number of lots) comprising the proposed development. This concept design review allows various issues to be explored prior to any commitment to a developer by the city; as such, it provides a safety net.

The CFA also raised concerns about the specifics of the proposed amendment. It questioned the possibility of considering the appropriateness of "final grading plans" without also making mandatory the submission of the building plans, which govern the extent or necessity of grading in the first place. It added that the existing tree canopy and topography are the primary factors in deciding on the appropriate density of a development, the design of the individual buildings proposed, and the type and extent of their footprint. It concluded that it would seem that ruling on a grading plan prior to seeing a building design would be a little like placing the cart before the horse. At the least, the grading and building plans should be considered inseparable.

Those witnesses who testified in support of the proposal stated as follows:

1. The proposed amendment would allow the submission of building plans and elevations in an optional "second stage" BZA application. Applicants, would still have the right to file and have their applications processed at a single public hearing. Most theoretical lot subdivisions are undertaken by a single developer, who would prefer a single-stage case because of less expense in terms of front-end professional fees and time.
2. In those cases where theoretical lots are intended to be developed with homes that are custom-designed, or where other review panels might approve the details of the exterior designs of the improvements thereon, the requirement to submit floor plans and elevations to the BZA prior to final determinations by the Historic Preservation Review Board (HPRB), Commission of Fine Arts (CFA) and the prospective homeowners, is premature and potentially a wasted expense. Applicants could be required to return to the BZA for a second application if the originally approved plans were modified by one of the design review agencies.

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3. The proposed optional, two-stage process would allow for a general, first-stage approval followed by a second-stage application that would provide the more detailed design information.
4. The multiple reviews by other agencies having different jurisdiction are somewhat time-consuming. The property owners and project architect can benefit from conceptual approval by HPRB and preliminary BZA approval, before investing in final plans.

The testimony in opposition is summarized as follows:

1. The proposed amendments could lead to speculative development.
2. If one owner or developer obtained first stage approval and then sold the property to the final developer, the process could be manipulated and abused. The Advisory Neighborhood Commission or other community interests could be forced to renegotiate an agreed-upon development scheme.
3. Let applicants file all requirements at the same time; there is no need to change the existing requirements.

ANC-3C by a resolution dated September 19, 1994 and by testimony indicated as follows:

1. ANC 3C is satisfied with the current theoretical lot regulations and therefore does not advocate the text change advertised in Case 94-3. The proposed change, which would permit bifurcation of applications at the discretion of developers, will enable possible manipulation and abuse of a planning process that was carefully crafted only five years ago.
2. While, the rationale set forth by Greystone Limited Partnership seems reasonable, changing the regulations to allow a two-step approval could not only create a potential for manipulation and abuse, and facilitate or encourage speculative development projects, where one person acquires an old estate, subdivides it theoretically, and then sells it -- just as apparently the YMCA has tried to do in the Palisades. Then, a second party could acquire the land and continue the process without any awareness or knowledge of the issues, promises, meaning and nuances behind any compromises that had been made previously by the first developer. This appears to be what the YMCA has tried to do in the Palisades.
3. Legitimate issues and concerns may be subsumed, and rendered more difficult, in a two-step process. The purpose of the

1989 amendment was to make speculative development of large sites into theoretical lots reviewable as a whole, to obtain all representations and commitments at once, and to discourage the speculative abuses that were occurring.

4. If the Commission is favorable to adopting the proposed, advertised amendment, protections must be added to ensure that any successor-in-interest to the original developer is aware of promises and understandings in connection with the initial theoretical lot approval.

After hearing testimony from all participants, the Commission amended or modified the advertised text of the proposed amendment to read as follows:

2516.3 In addition to other filing requirements, the applicant shall submit to the Board, with the application, four (4) site plans, plans for all new rights-of-way and easements, and existing and preliminary grading plans with approximate building footprints; provided, that:

- (a) The applicant shall also submit, either with the original application or at a later time, landscaping plans, final grading plans, and two (2) sets of typical floor plans and elevations; and
- (b) If the applicant elects to submit the plans referenced in paragraph 2516.3(a) at a later date, the Board's original approval shall be conditional, subject to a later public hearing and final decision on the project as a whole.

At the close of the hearing, the Commission left the record of the case open for ANC-3C to produce evidence of manipulation and abuses that occurred prior to the 1989 amendment and for additional written statements to be included in the record of the case.

On November 14, 1994 at its regular monthly meeting, the Commission reviewed and considered the OP final report dated August 31, 1994 and the OP summary abstract of the public hearing dated November 7, 1994. The Commission also discussed and analyzed the comments of the CFA and the testimony heard at the public hearing.

As to the issues and concerns raised by the ANC that the amendment will permit bifurcation of the application process at the discretion of developers, trigger speculative development, and result in possible manipulation and abuse of the planning process, the Commission finds as follows:

1. There is not sufficient evidence in the record of the case to indicate that legitimate issues and concerns may be subsumed and rendered more difficult in a two-step process. To the contrary, the evidence of record indicates that a more flexible two-step process will more clearly identify the issues and concerns by providing preliminary information for a site plan review, and plans as necessary to make an initial decision that provides sufficient information for other agencies like CFA and HPRB to proceed with their reviews. The second-stage would allow final review with detailed plans and other approvals as required. This final review is subject to a public hearing and provides another opportunity to review and identify more specific issues and concerns.
2. The ANC did not submit additional information to the record with examples of possible abuses and manipulation that could occur in a two-step process for the Commission to consider.
3. The Commission is aware and agrees with the ANC recommendation that any successor-in-interest to the original developer in a project should not undermine agreements in connection with the initial theoretical lot approval. The responsibility for enforcement of agreements is with the parties to the agreements. Conditions of approval by the BZA are enforceable by the Department of Consumer and Regulatory Affairs.

With regards to the opposition's argument that applicants file all the requirements at the same time, the Commission believes that the two-step process only provides for an alternative filing procedure that does not supercede or negate the original provisions.

Having discussed, considered and resolved the issues and concerns of the ANC, the Commission determined that it has accorded the ANC the "great weight" to which it is entitled.

After considering and balancing the various views and suggestions offered by the OP, ANC-3C and other participants, the Commission concluded that its decision to approve the proposed amendment as modified is not inconsistent with the intent of the Zoning Regulations and the Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

The Commission concurred with the OP recommendation and determined that the recommended changes to the text of the proposed rules do not alter the intent, meaning, or operation of the rules as advertised, and on November 14, 1994, the Commission took proposed action to approve the proposed rules, as amended.

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A notice of proposed rulemaking was published in the District of Columbia Register on December 30, 1994. The notice of the Commission's proposed action to amend the Zoning Regulations was referred to the Zoning Administrator (ZA), the OP, and the Office of the Corporation (OCC) for comments; and to the National Capital Planning Commission (NCPC), pursuant to the Self-Government and Governmental Reorganization Act.

The NCPC, by a delegated action of its executive director dated December 8, 1994 indicated that there is no federal interest in the case and that the proposed amendment to Subsection 2516.3 of the Zoning Regulations would not affect the federal interest or other federal establishment in the National Capital or be inconsistent with the Comprehensive Plan for the National Capital.

The Commission received no comments as a result of the publication of the notice of proposed rulemaking.

On March 20, 1995, at its regular monthly meeting, the Commission reviewed the NCPC report and all pertinent information in the record of the case. The Commission determined that it is in the best interest of the District of Columbia to include "preliminary landscaping plans" as one of the requirements.

In consideration of the findings, conclusions and the reasons set forth in this order, the Zoning Commission hereby orders APPROVAL of the amendment to the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning, to permit applicants for theoretical lot subdivisions to seek BZA approval without being required to file all or some of the plans and elevations currently specified in Subsection 2516.3 of the Zoning Regulations. The specific amendment to the Zoning Regulations is as follows:

Amend Subsection 2516.3 to read as follows:

- 2516.3 In addition to other filing requirements, the applicant shall submit to the Board, with the application, four (4) site plans, plans for all new rights-of-way and easements, and existing and preliminary grading and landscaping plans with approximate building footprints; provided, that:
- (a) The applicant shall also submit, either with the original application or at a later time, final landscaping and grading plans, and two (2) sets of typical floor plans and elevations; and

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- (b) If the applicant elects to submit the plans referenced in paragraph 2516.3 (a) at a later date, the Board's original approval shall be conditioned, subject to a later public hearing and final decision on the project as a whole.

Vote of the Zoning Commission at the regular meeting on November 14, 1994: 4-1 (William B. Johnson, William L. Ensign and Maybelle Taylor Bennett, to approve, as amended, Jerrily R. Kress to approve by absentee vote - John G. Parsons, opposed by absentee vote).

This order was adopted by the Zoning Commission at its regular meeting on March 20, 1995, by a vote of 4-0: (Maybelle Taylor Bennett, William L. Ensign, and Jerrily R. Kress, to adopt as amended, John G. Parsons, to adopt, by absentee vote).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is on MAY 19 1995.

  
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JERRILY R. KRESS  
Chairperson  
Zoning Commission

  
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MADELIENE H. ROBINSON  
Director  
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