

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 776

Case No. 94-22

(Map Amendment - Southwest Urban Renewal Area -
Portion of Subarea C)

October 23, 1995

The Zoning Commission for the District of Columbia initiated this case in response to a proposal of the District of Columbia Office of Planning (OP) 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. Amendments to the Zoning Map are authorized pursuant to the Zoning Act [Act of June 20, 1938, 52 Stat. 797, as amended, D.C. Code Ann. Section 5-413 (1981)].

By memorandum dated December 21, 1994, OP petitioned the Commission to zone unzoned property in the southwest urban renewal area, indicating that the land development controls in Project Area C of the Southwest Urban Renewal Plan for Subarea C will expire on November 30, 1996. The OP proposed amendments to the Zoning Map that would put zoning controls in place for a portion of Project Area C, a subarea of the Southwest Urban Renewal Plan. The memorandum recommended zoning the affected properties which are situated north of the Southwest Freeway in Subarea C of the Southwest Urban Renewal area from unzoned to C-3-C.

The portion of Subarea C that is affected by the rezoning proposal includes those squares numbered 268, 270, 299, 300, 326 through 328, 351, N351, 352, 353, 383 through 387, 409, 410, 433 through 435, 462 through 466, 492 through 495, 534 through 538, 577, 579 through 581, 583, 636, 640, and 641.

On January 9, 1995, at its regular monthly meeting, the Zoning Commission considered the OP report and authorized the scheduling of a public hearing on Case No. 94-22.

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

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Pursuant to notice, a public hearing was held by the Zoning Commission on April 6, 1995 to consider the proposed amendments to the Zoning Map. The hearing session was conducted in accordance with the provisions of 11 DCMR 3021.

At the hearing session, the Commission heard the testimony of the OP, the Single-Member District representative of Advisory Neighborhood Commission 2D02; Joseph P. Kennedy Enterprises Inc.; and the law firm of Wilkes, Artis, Hedrick and Lane, on behalf of owners of properties located within the boundary of the area proposed to be zoned.

The OP, by memorandum dated March 27, 1995, and through testimony at the public hearing reiterated its recommendations in the preliminary report and indicated that all privately owned properties in the area need to have zoning controls in place prior to the expiration dates of land development controls in Subareas C-1 and C, in keeping with the Zoning Regulations requirement that all privately owned land be zoned. The report added that the Zoning Commission adopted zoning for Subarea B of the Southwest Urban Renewal Area two-years ago in Z.C. Case No. 92-7.

The OP further stated that the rezoning of the Southwest Urban Renewal Area C and C-1 would proceed in two-phases. The instant application which precipitated Z.C. Case No. 94-22 constituted the first-phase and would zone a portion of Subarea C in Project Area C of the Urban Renewal Area. The OP recommended C-3-C zoning for the area and offered the following analyses to support that C-3-C is the optimal zone district category for this area.

1. The Urban Renewal Plan designates office and commercial development for this area in three main land use categories -- public (for the federal government buildings generally), first commercial and second commercial (pre-1958 commercial zones). Adopted planning policies in the Land Use Element of the Comprehensive Plan also call for medium-high density commercial use and development and Federal uses in this area.
2. The C-3-C zone is generally considered by OP to be consistent with the medium-high density commercial land use category. C-3-C is a medium-high density commercial zone that permits a maximum FAR of 6.5 for office, retail, hotel and mixed uses, a maximum building height of 90 feet and a maximum lot occupancy of 100 percent.
3. The existing development pattern is predominantly commercial. The predominant use is highrise office buildings, followed by retail and service uses, with the greatest concentration of the latter being in the L'Enfant Plaza Complex. There are two

hotels in the area, plus various other commercial uses as previously described. The area is virtually all commercial in nature and should be zoned commercial.

4. The great majority of buildings (21 buildings) in this area are highrise, defined here as seven stories or more. The predominant height is in the 90-foot range, and some buildings are in excess of this height, although actual heights of the federal buildings are not known, since they are not subject to zoning. Eight buildings are midrise buildings of four to six stories, and there are scattered instances of low-rise buildings. However, some buildings have both lower and higher elements.
5. The 6.5 FAR, 90-foot zoning envelope of C-3-C will accommodate most, possibly all, existing buildings that are subject to zoning, and will allow for redevelopment of a few underbuilt sites. The scale of such new development under C-3-C zoning would be compatible with the existing scale of this employment center and would not appear to create any adverse effects on residential properties which lie south of the physical barrier of the Southwest Freeway. Accessibility via metrorail, bus and automobile is excellent.
6. All public plans call for this area to be a medium-high density employment area, and C-3-C appears to be the optimal zone to achieve this purpose. The next higher density commercial zone, C-4, would clearly be too dense (up to 130 feet, 10.0 FAR) and is not justified by the Comprehensive Plan or the Urban Renewal Plan. C-3-B, the next lower density commercial zone (70 feet/six stories, 4.0 FAR commercial), would create significant amounts of nonconformity and would unduly limit the scale of new development. Two office buildings located north of the freeway have previously been rezoned C-3-C as part of the zoning of Subarea B in 1992.

The OP noted that a few buildings may have minor degrees of nonconformity under C-3-C zoning. These would be nonconformities of structure rather than use, as far as OP is aware, e.g., if a building exceeds the 90-foot maximum permitted building height, the penalties on nonconforming structures are relatively minor. Structural alterations would continue to be allowed as a matter of right. Buildings could be rebuilt to their present height and bulk as a matter of right after fire or other involuntary damage of up to 75 percent of replacement value. Nevertheless, the insurance industry advised OP and the Zoning Commission in the 1984 text amendment case on nonconformity that a fire of this extent in a modern structure is extremely rare.

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A partner of the partnership that owns the property in Square 536, bounded by 3rd Street, D Street, 4th Street, and Virginia Avenue, S.W., which is not in conformity with C-3-C raised issue with OP that related to previously-acquired development rights under the Urban Renewal Plan. Specifically, Joseph P. Kennedy Enterprises, Inc., indicate that in the late 1980s it pursued the possibility of expanding the Design Center which occupies the property.

By letter dated April 6, 1995, and in response to the Office of Zoning (OZ) referral, the District of Columbia Department of Housing and Community Development (DHCD) supported the adoption of C-3-C zoning to replace the current Urban Renewal land use controls for that sector of the Southwest Urban Renewal Area, Subarea C, that is located north of the Southwest/Southeast Freeway and which is due to expire on November 30, 1996. This area is designated in the Southwest Urban Renewal Plan and Comprehensive Plan for federal uses and medium-high density private commercial development, generally consisting of highrise buildings which are seven or more stories in height and consistent with the controls imposed by a C-3-C zoning classification.

DHCD added that there is only one (1) parcel remaining for disposition within that area located north of the Southwest Freeway within the Southwest Urban Renewal Area, Subarea C. This site (Parcel 69) is located at E and 4th Streets, S.W. and is currently under an Exclusive Rights Agreement (ERA) between the tentative developer and the Redevelopment Land Agency (RLA) for the development of a commercial building which can be constructed as a matter of right if a C-3-C designation is adopted. In summary, the DHCD indicated that C-3-C classification, permitting a 6.5 FAR and 90-foot zoning envelope, appears to be the most appropriate zone to accommodate future development projects at a compatible scale along with existing developments within the subject area.

By a letter dated April 6, 1995, and through testimony at the hearing session, the Single-Member District representative for ANC-2D02 expressed support for the proposal. He stressed that the views presented in the testimony are his and do not represent the views of ANC-2D. Nevertheless, he indicated that at the ANC's January meeting, the ANC voted not to object to the OP proposal. He continued his testimony and indicated that the proposed zoning envelop will accommodate most, if not all, of the existing buildings, and that federal buildings would remain unzoned but compatible with the C-3-C zoning.

By letter dated April 6, 1995, Boston Properties, Inc., a managing agent for two limited partnerships which own previously developed commercial office buildings constructed on properties in Subarea C (Square 463, Lot 24, and Square 495, Lot 107), which are included

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in this case, indicated its support for the OP proposal and urged the Zoning Commission to approve C-3-C zoning for this area.

The law firm of Wilkes, Artis, Hedrick and Lane (WAH&L) testified on behalf of property owners within the boundaries of the Southwest Urban Renewal area. The law firm testified in support of the C-3-C zoning proposed for the area, and submitted a traffic analysis study of the area and the Urban Renewal Plan for the Southwest Urban Renewal Area for Project C put together by the National Capital Planning Commission (NCPC), to assist the Commission in its decision on the zoning initiative.

The Vice President of Joseph P. Kennedy Enterprises, Inc., the owners of the property in Square 536 testified that in the late 1980s it pursued and obtained development rights for possible future expansion of its Design Center which occupies the property through an Urban Renewal Plan amendment by the NCPC. The amendment allowed a 90-foot building with 100 percent lot occupancy. He further testified that in 1990, Joseph P. Kennedy Enterprises paid the Redevelopment Land Agency (RLA) a sum in excess of two million dollars for those extra development rights. Part of the documentation from the Urban Renewal Plan amendment indicates that the development rights as acquired increase permitted development on the property from approximately 667,000 square feet of gross floor area to approximately 820,000 square feet. Of the latter, approximately 750,000 square feet is envisioned to be built space, the remainder being proposed for atrium and loading dock use. He indicated that the proposed expansion is not imminent, but requested that the acquired development rights be preserved.

The Commission requested Joseph P. Kennedy Enterprises to submit additional information in regard to the development rights it acquired in 1990 relating to Square 536. Consequently, the Commission left the record of the case open until May 3, 1995 to receive the information from Joseph P. Kennedy Enterprises.

By letter dated May 10, 1995, Jackson and Campbell a law firm representing L'Enfant Plaza Properties, Inc., raised a number of concerns about the proposal and an objection to the early termination of the Southwest Urban Renewal Plan. The letter questioned whether the OP conducted any studies before recommending C-3-C zoning for the entire Subarea C. The letter contended that the plan upon which L'Enfant Plaza Properties relied when it developed its properties in the 1960s drew no distinction between Subareas C and C-1, but rather the plan referenced both areas as one composite project. The letter urged the Commission to treat the area accordingly, that any square-specific zoning will inadvertently become disjointed. The letter further stated that as a result of the applicable statutory language of the subject plan and court

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decisions, those persons or entities who invested in projects subject to the plan have certain statutory protections against changes being made to the use of any specific square within the area, and that any decision to treat only a portion of Project C may serve to dilute those statutory protections.

On May 28, 1995, at its regular monthly meeting, the Commission reviewed and discussed all post-hearing submissions, including the additional information submitted by the law firm of Lathan and Watkins, on behalf of Joseph P. Kennedy Enterprises, Inc., regarding the development rights for Square 536 acquired in 1990.

The Commission also discussed and considered the OP Summary Abstract dated May 4, 1995, which highlighted points made by the witnesses at the public hearing. The summary abstract indicated that all public plans call for this area to be a medium-high density employment area, and that C-3-C appears to be the optimal zone to achieve this purpose. OP also noted that no nonconforming uses would be created by C-3-C zoning. Any nonconformities are likely to be structural nonconformities.

The OP summary/abstract and an earlier report affirmed the purchase of future development rights for Square 586 by the Joseph P. Kennedy Enterprises, Inc. Furthermore, the summary abstract reported that the District of Columbia Comprehensive Plan amendments adopted in 1994 provided for text amendments in the area to grandfather the development rights purchased. The specific provision of the Comprehensive Plan that preserved acquired development rights (Section 1109 (iii)) reads as follows:

"(17) Preserve development rights for projects in approved urban renewal plan areas when these areas become subject to zoning, in those instances where property owners purchased additional development rights from the Redevelopment Land Agency, such as the development rights for Square 536 in the Southwest "C" Urban Renewal Area;"

Advisory Neighborhood Commission (ANC) 2D did not testify or submit comments to the record for the Commission to consider. However, the OP indicated in the summary/abstract that the ANC had no objections to the proposed C-3-C. The Single-Member District representative (ANC-2D02) testified that ANC-2D is supportive of the proposal.

After reviewing and considering all post-hearing submissions and clarifying comments from OP and the Office of Zoning (OZ) staff relative to the proposal, the Commission concurred with the OP that C-3-C is the most appropriate zoning category to replace the land use controls that governed the portion of Subarea C of Sector C of the Southwest Urban Renewal Area, based on the following findings:

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1. The Urban Renewal Plan that controlled this area designates office and commercial development for the area. Land Use Elements of the Comprehensive Plan also call for medium-high density commercial use and development and Federal uses.
2. The C-3-C zone is generally consistent with medium-high density commercial land use that permits a maximum floor area ratio (FAR) of 6.5 for office, retail, hotel and mixed uses, a maximum height of 90 feet and lot occupancy of 100 percent.
3. The existing development pattern is predominantly commercial, highrise office buildings, followed by retail and service uses. The area is virtually all commercial in nature.
4. C-3-C zoning for the area will ensure continuity in the development pattern and actualize the Comprehensive Plan provisions for the area.

The Zoning Commission believes that its decision to replace the land development controls which are due to expire in 1996 with C-3-C for the portion of Subarea C of the Southwest Urban Renewal Plan under consideration is in the best interest of the District of Columbia, and is not inconsistent with the Comprehensive Plan for the National Capital. Accordingly, the Commission took proposed action to approve the proposal, on May 23, 1995.

The proposed action of the Commission was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Government Reorganization Act.

NCPC by report dated July 27, 1995, found that the proposed map amendment would not adversely affect the Federal Establishment or other Federal interest in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital, provided that the general building heights established in the Southwest Urban Renewal Plan (adopted April 5, 1956, as amended) are not exceeded through the Planned Unit Development Process.

The Zoning Commission did not accord "great weight" consideration to any Advisory Neighborhood Commission in this case, because no ANC provided a written report with concerns and issues for the Commission to consider.

A notice of proposed rulemaking was published in the D.C. Register at 42 DCR 3901 (July 28, 1995) for a thirty (30) day public notice and comment period. The proposed rulemaking was referred to the Zoning Administrator (ZA), OP, and the Department of Housing and Community Development for review and comments.

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The Commission did not receive additional comments as a result of the referrals. As a result of the publication of the notice of proposed rulemaking, the Commission received a letter dated August 7, 1995, with attached letters in opposition dated April 12 and May 10, 1995 from the law firm of Jackson and Campbell on behalf of L'Enfant Plaza Properties, Inc., renewing the previous request that the Commission favorably resolve the issue of early termination of the Urban Renewal Plan for Project C of the Southwest Urban Renewal Area. The letter added that any contrary course will leave its client, L'Enfant Plaza Properties Inc, one of the pioneer developers of the area, with no other option than to challenge the Commission's action in court.

At its regular monthly meeting on September 11, 1995, the Commission further reviewed and considered the concerns of the law firm of Jackson and Campbell. The Commission was not persuaded to revise its proposed action, however, the Commission did decide to accelerate the zoning of the C-1 portion of the Southwest Urban Renewal area.

The Commission believes that determining the appropriate zoning controls prior to the expiration of the Southwest Urban Renewal Plan for this area is in the best interest of the District of Columbia, and that the proposed C-3-C zoning for the various lots in Subarea C is not inconsistent with the Comprehensive Plan. The Commission noted that the zoning controls would become effective upon expiration of the Southwest Urban Renewal Plan for Subarea C.

The Commission also noted that the existing development pattern of predominantly commercial, followed by retail and service uses will be better accommodated by C-3-C zoning, with its 6.5 FAR and 90-foot height than any other zoning category.

In consideration of the reasons set forth in this order, and in view of the fact that no new issues were raised after the publication of the proposed action, the Zoning Commission for the District of Columbia hereby orders APPROVAL of the amendments to the Zoning Map of the District of Columbia. The specific amendments are as follows:

Amend the Zoning Map as Follows:

Change from unzoned to C-3-C the properties in the portion of Subarea C which include, but are not limited to those squares numbered 268, 270, 299, 300, 326 through 328, 351, N351, 342, 383 through 387, 409, 410, 433 through 435, 462 through 466, 492 through 495, 534 through 538, 577, 579 through 581, 583, 636, 640, and 641.

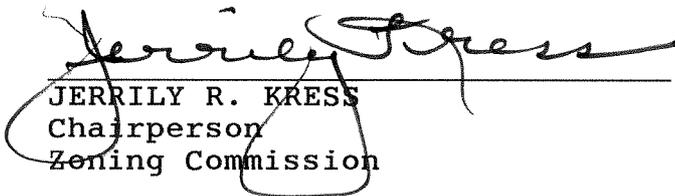
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Vote of the Commission taken at the regular monthly meeting on May 23, 1995: 4-0 (Maybelle Taylor Bennett, William L. Ensign, Jerrily R. Kress, to approve; and John G. Parsons, to approve by absentee vote).

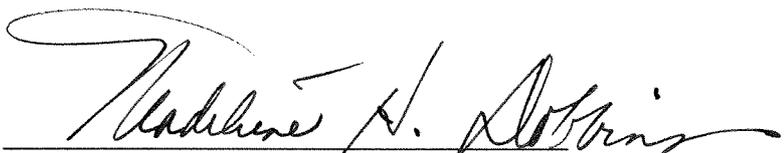
This order was adopted by the Zoning Commission at its regular monthly meeting on October 23, 1995, by a vote of 4-0: (John G. Parsons, Maybelle Taylor Bennett, Jerrily R. Kress and William L. Ensign to adopt).

This amendment to the zoning map is effective upon the expiration of the Southwest Urban Renewal Plan for Subarea C on November 30, 1996.

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is on December 8, 1995.*



JERRILY R. KRESS
Chairperson
Zoning Commission



MADELIENE H. DOBBINS
Director
Office of Zoning

*This Order appears in the December 1, 1995 edition of the D.C. Register which was published on December 8, 1995.

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