

# Government of the District of Columbia

## ZONING COMMISSION



**ZONING COMMISSION ORDER NO. 777**  
**Case No. 94-5**  
**(Text Amendment - Special Exception Carry-**  
**over Provisions in the SP District)**  
**July 10, 1995**

The Zoning Commission for the District of Columbia initiated this case from a request of the Board of Zoning Adjustment (BZA), to amend the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The proposed amendment will affect the provisions of the Zoning Regulations governing special exceptions in the SP District.

In a memorandum dated March 29, 1994, the Office of Planning (OP) recommended that a public hearing be scheduled to correct the absence of a carry-over provision for special exception uses from the R-5 zones to the SP zones. The OP memorandum also recommended three other technical adjustments to the regulations clarifying or highlighting the sections in the R-1, C-1 and C-2-A zoning districts relating to special exception uses.

In a supplemental report dated June 21, 1994, OP modified the proposed carry-over provisions in the above-mentioned report. The supplemental report recommended a modified approach in which four special exception uses, Sections 211 through 216, allowed in the residential zones (Chapter 2 of 11 DCMR) would explicitly be carried over to the SP zones. This would be accomplished by repeating the text of Sections 211 through 216 in the SP provisions (Chapter 5 of 11 DCMR), as Sections 514 through 517.

The OP also recommended, for public hearing, a new Section 704 as an introductory Subsection to the special exception uses in the C-1 District, and a new Section 724 to accomplish the same in the C-2 District.

Pursuant to notice, a public hearing was held by the Zoning Commission on October 6, 1994 to consider the proposed amendments to the regulations.

At the hearing, the Commission heard the testimony of the Office of Planning (OP) and three witnesses. The Advisory Neighborhood Commissions (ANCs) did not participate in the hearing process, however, ANC-2A and ANC-3D submitted written testimony/reports.

The Office of Planning by memorandum, dated September 26, 1994 and by testimony presented at the hearing indicated that the case derives from a referral to the Zoning Commission by the BZA when the BZA found in a particular case a surprising omission from the SP provisions regarding a particular special exception use -- church programs -- which are allowed as special exception uses in the R-1 through R-5 zones, but are not allowed in SP zones. In conjunction with the Office of Zoning (OZ), OP reviewed the special exception uses and carryover provisions in the R-1 through commercial zones, and recommended four additional special exception uses be carried over for inclusion in SP zone districts, as they too were permitted as special exceptions in more restrictive residential districts. Those uses were clerical and religious group residences, commercial broadcast antennas, and antennae other than commercial broadcast antennae.

By letter dated October 6, 1994, ANC-2A strongly opposed the proposed text amendments for special exception carry-over provisions in the SP District. ANC-2A opposed the proposed provisions, as they related to antennas, and believed they were totally inappropriate. Regarding religious residences, ANC-2A believed that there should be limitations on the number of people permitted to reside in a single dwelling -- just as there are limitations on the number permitted in group homes. Regarding church programs in SP districts, it is the view of ANC-2A that the SP zones are sensitive transitional areas that deserve special considerations. The ANC-2A further indicated that issues related to church housing and church programs have been significant enough to warrant further exploration, and recommended that the Zoning Commission schedule a separate hearing to discuss these issues.

ANC-3D by letter dated October 24, 1994 voted to oppose the proposed amendments. ANC-3D questioned the potential health hazard related to the installation of broadcast antennas in the area, and the number of clerical and religious group residences and church programs in the community.

The testimony in opposition is summarized as follows:

1. Ms. Marija Hugh's concerns dealt with the fundamental cumulative impact of electromagnetic radiation caused by the proliferation of transmitting antennas in the District of Columbia and particularly those in her neighborhood.
2. The Columbia Plaza Tenant's Association believed the proposed text amendments would make it easier for more churches to adversely affect the neighborhood.

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3. The West End Tenants Association was opposed to the proposed amendments for two reasons: (a) "the public debate surrounding health hazards to those such as us who live in an area of highly concentrated communication transmitters, and (b) the aesthetic effects upon the historical downtown".

On November 14, 1994, at its regular monthly meeting, the Zoning Commission discussed the case and the OP Summary Abstract dated November 3, 1994 and took proposed action to approve the proposed amendments.

In regards to the potential health hazard relating to antennas, the Zoning Commission indicated that the scientific community itself has not reached a consensus about the nature or extent of health hazard problems relating to antennas and the Zoning Commission is not the regulatory entity that has direct jurisdiction over or responsibility for antennae's impacts on health.

The Zoning Commission noted in general, that because the uses are permitted as special exceptions in more restrictive districts, the cumulative establishment of uses from most restrictive to least restrictive zone districts in the Zoning Regulations would call for those uses to be allowed as special exceptions in less restrictive districts such as the SP District.

The Zoning Commission further stated it is sensitive to the ANC's concerns and wished the ANC was present at the monthly meeting to hear the discussion.

With respect to clerical and religious group residences and church programs in the SP District, the Commission believes that due to recent church challenges to government regulations, the Zoning Commission may be required to eliminate special exception BZA review altogether, depending on determinations in court decisions.

A notice of proposed rulemaking was referred to the Zoning Administrator (ZA), the OP, the Office of the Corporation Counsel (OCC) for comments, and 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 was no Federal Interest in the case and that the proposed amendments correcting the absence of carry-over provisions for special exception uses from the R-5 zones to the SP zones would not adversely affect the Federal Establishment or other Federal interests in the National Capital or be inconsistent with the Comprehensive Plan for the National Capital.

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By memorandum dated December 14, 1994, the OCC advised the Office of Zoning (OZ) that two (2) provisions of the "church programs" special exception criteria were legally suspect because they attempted to regulate church activities directly rather than the church's use of land. OCC further stated that it would determine that proposed rulemaking is legally sufficient if Subsections 517.2 and 517.4 are deleted.

At its meeting on March 20, 1995, the OZ presented the advice of OCC to the Zoning Commission regarding the objectionable provisions of the proposed rulemaking. The Zoning Commission deleted the two objectionable provisions, and approved the revised proposed rulemaking.

A notice of proposed rulemaking was published in the D.C. Register at 42 DCR 2135 on May 5, 1995. As a result of the publication of the notice of proposed rulemaking, one letter from the Western Presbyterian Church dated May 5, 1995 was received. The letter objected to the proposal to allow special exceptions for church programs in SP districts on two grounds. The letter stated that Western Presbyterian Church had been granted an injunction preventing interference with a feeding program that it was conducting. The Zoning Commission does not believe that the injunction, which is being appealed, prevents it from adopting the zoning changes. Of course, the Zoning Commission understands that the regulations cannot be enforced in violation of the injunction. The Western Presbyterian letter also refers to unspecified changes in the Comprehensive Plan relating to church programs. Presumably, the letter means to refer to Subsection 2(a)(11)(Y)(viii) of D.C. Law 10-193, published in the D.C. Register at 42 DCR 5536, 5584 (Aug. 19, 1994), and 42 DCR 7025 (Oct. 28, 1994), effective November 25, 1994 (see 42 DCR 7649). That provision requires amendment of the Zoning Regulations to permit religious institutions to operate programs at their places of worship as accessory uses unless there is a compelling government interest in restricting those uses. The Zoning Commission has not received proposals for changes in the Zoning Regulations to bring them into consistency with that amendment to the Comprehensive Plan. Although the Zoning Commission will consider such changes with all deliberate speed, it believes that it is advisable to adopt the regulations under consideration immediately. The current regulations will fill an inadvertent gap in the regulations that presents unintended difficulties for the conduct of church programs in SP districts. The Zoning Commission has concluded that it should remove those impediments without waiting for major changes to regulations governing religious programs.

By memorandum dated April 17, 1995, the OCC determined that the revised proposed rulemaking meets the Corporation Counsel's standards of legal sufficiency.

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The Zoning Commission believes that the issues and concerns of the ANCs and the other opposition have been addressed and resolved through the publication of the notice of proposed rulemaking, and through responses it received from the Office of Corporation Counsel.

Having discussed, considered and addressed the issues and concerns of the ANCs, the Commission determined that it has accorded the ANCs the "great weight" to which they are entitled.

The Zoning Commission believes that its decision to approve the text amendment set forth herein is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the findings, conclusions and the reasons set forth in this order, the Zoning Commission hereby orders APPROVAL of the amendments to the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning to correct the provisions of the Zoning Regulations governing Special Exceptions in the SP District. The specific amendments are as follows:

1. Amend the SP provisions to allow the following additional uses as special exceptions to read as follows:

514 ANTENNA, COMMERCIAL BROADCAST (SP)

514.1 Use as an antenna for commercial television and frequency modulation broadcasting to any height and in conjunction with the erection, alteration, or use of buildings for transmission or reception equipment on the same lot or elsewhere, shall be permitted in an SP district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of chapter 31 of this title, subject to the provisions of this section.

514.2 The proposed location, height and other characteristics of the antenna shall not adversely affect the use of neighboring property.

514.3 The antenna shall be mounted in a location which minimizes to the greatest practical degree its visibility from neighboring property and from adjacent public space, or is appropriately screened by landscaping or other techniques so as to soften or minimize the visibility of the antenna.

- 514.4 Each part of a ground-mounted commercial broadcast antenna, including support system and guy wires, shall be removed a minimum of ten feet (10 ft.) from each lot line, or a distance of at least one-sixth of the mounted height of the antenna, whichever is greater.
- 514.5 The proposed height of the tower shall not exceed that which is reasonably necessary to render satisfactory service to all parts of its service area.
- 514.6 No transmission equipment shall be located in a residential district, unless location in the district is necessary for technically satisfactory and reasonably economical transmission.
- 514.7 If review by the Historic Preservation Review Board or Commission of Fine Arts is required, concept review and approval shall occur before review by the Board of Zoning Adjustment.
- 514.8 No height of an antenna tower in excess of that permitted by the Act of June 1, 1910 (36 Stat. 452), as amended, shall be permitted, unless the height is approved by the Mayor.
- 514.9 Before taking final action on an application for use as an antenna tower, the Board shall submit the application to the D.C. Office of Planning for review and report.
- 514.10 The applicant shall have the burden of demonstrating the need for the proposed height, and that full compliance with the matter of right standards would be unduly restrictive, prohibitively costly, or unreasonable.
- 515 **ANTENNA, OTHER THAN COMMERCIAL BROADCAST ANTENNA (SP)**
- 515.1 An antenna, other than a commercial broadcast antenna, which is not permitted or approved pursuant to Section 201 of this title may be permitted as a special exception by the Board of Zoning Adjustment; Provided, that the requirements in this section are met.

- 515.2 The proposed use, location, and related conditions shall be consistent with the purposes set forth in Section 2520 of this title.
- 515.3 If review by the Historic Preservation Review Board or Commission of Fine Arts is required, concept review and approval shall have occurred before review by the Board of Zoning Adjustment.
- 515.4 The Board may impose conditions relating to operation, location, screening, or other requirements as it shall deem necessary to protect adjacent and nearby property, consistent with the general purpose and intent of this section.
- 515.5 The Board may require the removal of any nonconforming antenna as a condition to the approval of an antenna.
- 515.6 The location and other characteristics of the antenna shall be reasonably necessary for the intended use of the antenna.
- 515.7 The present character and future development of the neighborhood shall not be adversely affected.
- 515.8 Before taking final action on an application for use and location of an antenna, the Board shall have referred the application to the Office of Planning for review and report.
- 516 **CLERICAL AND RELIGIOUS GROUP RESIDENCES (SP)**
- 516.1 Use as residences for clerical groups and religious denominations in excess of fifteen (15) persons shall be permitted in an SP district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of chapter 31 of this title, subject to the provisions of this section.
- 516.2 Use as residences for clerical groups and religious denominations shall not adversely affect the use of neighboring property.
- 516.3 The amount and arrangement of parking spaces shall be adequate.

517 CHURCH PROGRAMS (SP)

- 517.1 Use for a program conducted by a church congregation or group of churches shall be permitted in an SP district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of chapter 31 of this title, subject to the provisions of this section.
- 517.2 The part of the church program conducted on the property shall be carried on within the existing church building(s) or structure(s).
- 517.3 The operation of the program shall be such that it is not likely to become objectionable in the Special Purpose district because of noise and traffic.
- 517.4 No signs or display indicating the location of the church program shall be located on the outside of the building or the grounds.
- 517.5 Any authorization by the Board shall be limited to a period of three (3) years, but may be renewed at the discretion of the Board.

2. Create a new Section 704 to read as follows:

704 USES SUBJECT TO BZA APPROVAL: GENERAL (C-1)

- 704.1 The following uses as specified in Sections 706 through 711 shall be permitted in a C-1 district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of chapter 31 of this title.

3. Create a new Section 724 as follows:

724 USES SUBJECT TO BZA APPROVAL: GENERAL (C-2)

- 724.1 The following uses as specified in Sections 726 through 733 shall be permitted in a C-2 district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of chapter 31 of this title.

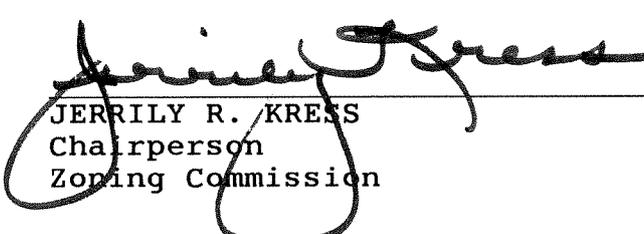
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Vote of the Zoning Commission taken at its monthly meeting on November 14, 1994 5-0: (William L. Ensign, William B. Johnson and Maybelle Taylor Bennett, to approve, Jerrily R. Kress and John G. Parsons, to approve by absentee vote).

Vote of the Zoning Commission taken at its monthly meeting on March 20, 1995 4-0: (John G. Parsons, William L. Ensign, Maybelle Taylor Bennett and Jerrily R. Kress, to approve the text amendments as amended - William B. Johnson, not present, not voting).

This order was adopted by the Zoning Commission at its regular meeting on July 10, 1995 by a vote of 4-0: (Maybelle Taylor Bennett, William L. Ensign, and Jerrily R. Kress to adopt, John G. Parsons, 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 OCT 6 1995.

  
JERRILY R. KRESS  
Chairperson  
Zoning Commission

  
MADELIENE H. ROBINSON  
Director  
Office of Zoning

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