

# Government of the District of Columbia

## ZONING COMMISSION



### ZONING COMMISSION ORDER NO. 780-A

Case No. 95-12

(Text Amendment-Downtown Development District, Subsection 1706.13)

October 23, 1995

The Zoning Commission for the District of Columbia initiated this case in response to a petition by the Office of Planning (OP) requesting the Commission to consider and adopt, on an emergency basis, an appropriate amendment to the Zoning Regulations to allow for the development of major mixed use projects under the jurisdiction of the Pennsylvania Avenue Development Corporation (PADC).

By memorandum dated August 1, 1995, the OP requested a waiver of the Commission's rules to file the preliminary report five days late. The Commission granted the request for a waiver, and accepted the OP preliminary report dated August 1, 1995. The OP report requested that the Commission adopt an amendment to the Downtown Development District (DDD) provisions of the Zoning Regulations, on an emergency basis and set the case for hearing so that the amendment could be adopted on a permanent basis.

The OP, in its preliminary report to the Commission, indicated that the proposed amendment would facilitate the development of a major mixed use project under the jurisdiction of the PADC. The project would take advantage of the combined lot development provisions of Chapter 17 of the Zoning Regulations which apply to mixed residential-commercial projects in the DDD. This subsection requires that the residential component of a mixed use project receive a certificate of occupancy at the same time or prior to the issuance of a certificate of occupancy for the commercial component. This would result in the entire commercial component of the project being held off the market for an extended period while the residential component is completed. The amendment would allow the renovation of, addition to and the re-occupancy of the commercial component to occur prior to the occupancy of the residential component, but would require the project to go forward in accordance with the terms of the contract between the property owner and the PADC.

At its public meeting on August 7, 1995, the Zoning Commission adopted the amendment on an emergency basis and authorized the

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scheduling of a public hearing to determine whether the amendment should be adopted on a permanent basis.

By Order No. 780, the Zoning Commission adopted the proposed amendment to Subsection 1706.13 on an emergency basis. In determining that an emergency existed, the Commission reviewed the circumstances surrounding proposed development for Square 457. The development is a large, mixed use project proposed as a combined lot development for the Pennsylvania Quarter subarea of Downtown. It will include major new construction of a large apartment building, an office-retail component, and renovation and expansion of the existing Patrick Henry Office Building. The developer needs to proceed with the renovation and re-occupancy of the Patrick Henry Building prior to the construction of the residential project so that an extended period of rent loss will not jeopardize the entire project. Therefore, the Patrick Henry Office Building will need a certificate of occupancy prior to the issuance of a certificate of occupancy for the residential component of the development.

The Commission noted that the time period for saving the development was short, as the problem was only identified nine days before the Commission's August meeting date, and critical legal and financial milestone date were imminent. The Commission further noted that the best interest of the District of Columbia would be served by facilitating, the production of housing in the downtown; and the proposed apartment building will contain approximately 235 units, with construction to begin by June 28, 1997. The Commission also noted that the apartment building will be one of the largest apartment buildings built in the District in the past 15 years and will be in a location where residential development is difficult to achieve and is accorded a high priority in the city's adopted plans and policies for Downtown.

Pursuant to notice, a public hearing was held by the Commission on October 23, 1995. At that hearing session, the Commission considered the OP petition to permanently amend the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3021.

The amendment proposed for permanent adoption was contained in the notice of public hearing, the emergency and proposed rulemaking, and in Zoning Commission Emergency Order No. 780, all published in the District of Columbia Register on August 25, 1995.

By report dated October 13, 1995 and by testimony at the public hearing, OP recommended final adoption of the text amendment

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previously enacted by the Commission as emergency rulemaking and as advertised for the public hearing in this case.

OP indicated that the amendment is limited to PADC-controlled projects in which a contract with the developer requires construction of the residential component by a date certain. The applicability of the text amendment is limited also to situations where the great majority of the mixed use project is in compliance with the normal operation of Subsection 1706.13.

OP testified that at the time of the adoption of the DDD Regulations, the Commission determined that a three-year lag between the certificate of occupancy for any preferred uses and the main use as an office building is reasonable because the marketing and occupancy of retail uses may lag behind the filling of the office space. However, when it came to the issue of housing, the Commission was concerned that it would be faced with situations where the commercial building would be completed and three years later the developer would come back to the Commission and say the market is not there for housing or housing cannot be built -- but the building is up so there is nothing that can be done about it. Therefore, the Commission took the hard line on concurrent certificates of occupancy for the residential and commercial components for mixed use projects with housing, and allowed for more flexibility with other preferred uses. This amendment would allow certain PADC-controlled mixed use projects with housing to follow a three-year time line, rather than concurrency.

The law firm of Wilkes, Artis, Hedrick and Lane presented testimony at the public hearing in support of the amendment, and requested that the Commission take final action to approve as expeditiously as possible. The law firm indicated that there would be very little applicability of the amendment except for the project in Square 457, and that the project could proceed forward only if the addition to the Patrick Henry Building is constructed within the time frame allowed under the amendment.

By letter dated October 23, 1995, the Pennsylvania Avenue Development Corporation indicated its support for the text amendment. PADC noted that the housing that would be provided by the mixed use development project in Square 457 far exceeds the minimum requirement of the DDD Overlay provisions. PADC further noted that it is not possible to construct the housing before renovating the Patrick Henry Office Building, and that it is not possible to keep the Patrick Henry Office Building off the market until the residences are completed. PADC noted that its contract with the developer would ensure development of the mixed use project within a certain time period. PADC requested the Commission to vote favorably on the amendment.

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There was no additional testimony presented to the Commission at the public hearing held on October 23, 1995, nor were there other submissions to the record of this case.

The emergency and proposed decision of the Commission to approve the amendment was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. By report dated September 28, 1995, NCPC, by delegated action of the Executive Director, concluded that there is no Federal interest in the text amendment.

A notice of emergency and proposed rulemaking was published in the D.C. Register at 42 DCR 4748 on August 25, 1995. The Commission did not receive any comments as a result of the publication of the rulemaking.

The Commission concurs with the position and recommendation of the Office of Planning, the Pennsylvania Avenue Development Corporation, and the law firm of Wilkes, Artis, Hedrick and Lane in this case. After considering its emergency action and all of the issues in this case, the Commission believes the amendment is appropriate for final adoption.

The Commission believes that the amendment is in keeping with the major policy objective of the DDD Overlay of producing housing in the downtown area through Combined Lot Development, and that PADC-controlled projects requiring development contracts to produce mixed use projects with housing components by a date certain are in keeping with that policy objective.

The Commission believes that its decision to approve the amendment 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.

The Commission has not accorded "great weight" to any Advisory Neighborhood Commission (ANC), because no ANC submitted comments or appeared to testify in this case.

The Commission believes that the best interest of the District of Columbia is served by facilitating, whenever possible, the production of downtown housing units.

At the conclusion of the public hearing of the case held on October 23, 1995, the Commission took final action to approve the amendment on a permanent basis.

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In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the amendment to the text of Subsection 1706.13 of the Zoning Regulations. The specific amendment that was adopted by the Zoning Commission as final action at the conclusion of its public hearing of October 23, 1995 is as follows:

Amend 11 DCMR Subsection 1706.13 to read as follows:

1706.13 If a development project includes both required residential uses and nonresidential uses, whether on the same lot or in a combined lot development, no Certificate of Occupancy shall be issued for the nonresidential space until a Certificate of Occupancy has been issued for the residential space; Provided, that:

- (a) A mixed residential-commercial project for which the Pennsylvania Avenue Development Corporation and a private developer have executed a contract requiring commencement of construction of the residential portion of the project by a date certain, may comply with the timing requirements of Paragraph 1708.1(f) instead of the timing requirements of this subsection; and
- (b) At least seventy-five percent (75%) of the commercial development that triggers the residential use requirement shall comply with the timing requirements of this subsection, i.e., Subsection 1706.13.

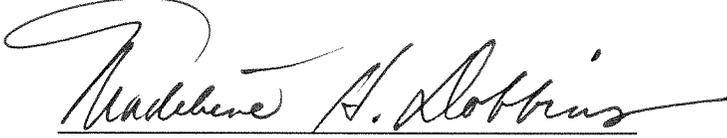
Vote of the Zoning Commission taken at its regular meeting on August 7, 1995 4-0: (John G. Parsons, William L. Ensign, Maybelle Taylor Bennett, to approve as emergency and proposed rulemaking; Jerrily R. Kress to approve by absentee vote).

Vote of the Commission taken at the conclusion of the public hearing on October 23, 1995 4-0: (John G. Parsons, Maybelle Taylor Bennett, William L. Ensign, and Jerrily R. Kress, to approve as final action of the Commission).

NOTICE OF FINAL RULEMAKING  
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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 DEC 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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