

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 782
Case No. 94-14
(Map Amendment @ Blagden Alley)
February 12, 1996

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on January 12, 1995. At that hearing session, the Zoning Commission considered the petition of residents of Blagden Alley and a proposal of the District of Columbia Office of Planning (OP) to amend the Zoning Map of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning (1994). The public hearing was conducted in accordance with the provisions of 11 DCMR 3021.

By petition dated July 24, 1994, a group of residents of the Blagden Alley area requested the Zoning Commission to rezone the interior of Square 368 from residential to a mixed-use zone district. The petition indicated that the interior of the square is a hiding place where various criminal activities are a daily and all-night occurrence. The petition noted that area residents are hopeful that the character of Blagden Alley would change by allowing the opportunity for small-scale commercial uses and residential uses to revitalize the interior of the square.

By memorandum dated October 6, 1994, (preliminary report to the Zoning Commission) OP indicated that community supporters proposed two amendments to the Comprehensive Plan for the National Capital. The two related amendments, as adopted by the City Council, are found in the Ward 2 Objectives for Neighborhood Shopping Areas, and read as follows:

1200.238(3) To allow appropriate mixed use development in the interior portion of Blagden Alley, a residentially-zoned square with historic structures such as carriage houses, unused garages and warehouses that are found to be suitable for adaptive reuse, with appropriate planning and regulatory requirements to safeguard surrounding existing residential uses.

1200.239(7) Return existing carriage houses, unused garages, and warehouses located within historic Blagden Alley to commercial and residential use under appropriate planning and regulatory controls designed to safeguard surrounding existing residential uses.

Z.C. ORDER NO. 782
CASE NO. 94-14
PAGE NO. 2

On October 17, 1994, at its regular monthly meeting, the Zoning Commission authorized a public hearing for the OP proposal which encompassed the Blagden Alley residents' petition. The OP proposal to rezone various properties in Square 368 from R-4 to C-2-A. Square 368 is bounded by 9th, 10th, M and N Streets, N.W., has an interior alley system (known as Blagden Alley) that serves many existing unused carriage houses, garages, and warehouses, and is a part of the proposed Blagden Alley Historic District.

The OP proposal, as contained in the notice of public hearing, included the following rezoning initiatives:

Change from R-4 to C-2-A lots 61, 68-70, 83, 84, 101-116, 126, 137-147, 817, 819, 820, 826, 863, 869 and 882-884, and portions of lots 12, and 821-824.

The R-4 District permits matter of right moderate density development of residential uses including detached, semi-detached and row single-family dwellings and flats with a minimum lot area of 1,800 square feet, a minimum lot width of 18 feet, a maximum lot occupancy of 60 percent, and maximum height limit of three stories/40 feet. Conversions of existing buildings to apartments are permitted for lots with a minimum lot area of 900 square feet per dwelling unit.

The C-2-A District permits matter of right low/moderate density development, including office, retail, service, housing, and mixed uses to a maximum height of 50 feet, a maximum FAR of 2.5 for residential and 1.5 for other permitted uses, and a maximum lot occupancy of 60 percent for residential uses.

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

OP, by memorandum dated December 27, 1995, (final report to the Zoning Commission) and by testimony presented at the public hearing, recommended approval of the proposed map amendments to rezone the lots in Blagden Alley from R-4 to C-2-A, as advertised. OP indicated the following:

"In summary, the potential advantages of C-2-A are three-fold: the use of the upper floor of the two-story buildings would be permitted; some incentive for residential or mixed uses would be improved, and the rezoning would be a straight forward extension of the abutting C-2-A District fronting on 9th

Z.C. ORDER NO. 782
CASE NO. 94-14
PAGE NO. 3

Street. The question of C-2-A use has been extensively discussed by petitioners in the context of potential covenants."

No other government agencies participated in or submitted reports into the record of the case at this time.

ANC-2F by letters dated September 29, 1994 and January 10, 1995, supported the proposed map amendment as proposed and recommended by the Office of Planning and in conformance with the Comprehensive Plan amendments adopted by the Council on June 21, 1994 in D.C. Bill 10-212.

By letter dated January 12, 1995 and by testimony presented at the public hearing, ANC-2F06 indicated its support for the proposed zoning change. The ANC-2F06 representative stated that commercial activity has brought positive change to Blagden Alley and should be encouraged.

The petitioners, also known as the Blagden Alley Citizens Association presented testimony in support of the proposal, and submitted a video and over 200 letters in the record of the case. The proponents/petitioners testimony to support the proposed rezoning of the Blagden Alley area from R-4 to C-2-A can be summarized as follows:

- The proposed rezoning will provide the incentive necessary for investors of the area to begin development of their properties.
- Strong mixed use development will provide vibrant street and alley scape that is needed in the area.
- The proposal will enhance the quality of life for those working and living in the alley and in the greater neighborhood and the city.
- A change of zoning would encourage legitimate businesses to develop in the alley and bring law-abiding people into the alley, and discourage the criminal activity which has been a part of the alley for years.
- Approval of the petition will increase tax revenues to the District of Columbia.

The Blagden Alley/Naylor Court Historical Society (Society) testified in opposition to the case. The Society believes that the proposed zoning changes are inconsistent with newly adopted language in the Comprehensive Plan for Square 368 in Blagden Alley. In particular, proposed changes include commercial zones on M and

N residential streets and business uses in Blagden Alley that are inappropriate for a residential neighborhood. The Society further believes that residential uses in the alley structures are still preferable to commercial uses, but support was granted for commercial zoning because some of the structures are not reasonably adaptable to residential use.

The opposition generally supported rezoning the interior lots of the Blagden Alley system for commercial and mixed uses, but with limitations generally as indicated below:

1. The C-2-A zoning should not be extended to lots fronting on M or N Streets, as proposed by OP but not originally proposed by petitioners. Residential (R-4) zoning should be retained on these frontages in the interest of maintaining residential character.
2. The mechanism of covenants as proffered by some of the petitioners and property owners to rule out certain C-2-A uses is not an effective system. Enforcement would be private, difficult and expensive.
3. Because of problems with covenants, a "historic overlay" zone should be developed and mapped to limit permitted uses and bring government enforcement to bear on any violations.
4. Residential uses in the alley structure are still preferable to commercial uses, but support was granted for commercial zoning because some of the structures are not adaptable to residential uses.

By post-hearing submission dated March 6, 1995, a member of the Logan Circle Community Association expressed opposition to the proposed rezoning as advertised. Namely, the lots fronting on M Street, N.W. and N Street, N.W., should not be rezoned to commercial C-2-A, but instead left residential as they are now. The Association supported the view of ANC-2F and the Society in opposition to the rezoning of those particular lots, otherwise, the Logan Circle Community Association was in support of the rezoning of the interior of the alley.

By post-hearing submission dated February 6, 1995, the Blagden Alley Community Association informed the Zoning Commission of its adopted position from their January 25, 1995 meeting. These issues included but were not limited to the following:

1. The Association supported C-2-A zoning for the interior of Blagden Alley with the proviso that at least 13 of the 17 affected property owners including Giorgio Furioso, would sign a covenant proposing the restriction of matter

of right uses to those compatible with residential surroundings.

2. The Association voted to support the extension of C-2-A zoning to the empty lots 61 and 863 on M Street, with the proviso that a covenant be entered into on the lots restricting any building to residential uses, and attractive landscaping be provided for any interim use as a parking lot.
3. The Association voted to support the extension of C-2-A zoning to the Lewis Company on N Street, with the proviso that a separate, more restrictive covenant be entered into by the owner limiting use to appropriate uses for a street frontage on a residential block.

By post-hearing submission dated February 14, 1995 the Department of Consumer and Regulatory Affairs (DCRA), Historical Preservation Division, opposed amending the zoning classification for street frontage properties from R-4 to C-2-A and requested that lots 883, 863 and 61 in Square 368 remain R-4, as presently zoned.

By post-hearing submission dated March 3, 1995, Giorgio Furioso indicated that he and several other property owners have agreed to sign a covenant if the Zoning Commission changes their property from R-4 to C-2-A. The letter stated that the covenant would restrict certain uses which would otherwise be permitted as a matter of right but which may not be desirable for future development of the square.

By post-hearing submission dated March 1, 1995, the petitioners re-affirmed their support for the proposal and requested the Zoning Commission to rule favorably on the petition. They further suggested that the interior of the square be zoned C-2-A, Lot 883 be zoned C-2-A and lots 61 and 863 be zoned with covenants to protect the residential character of the neighborhood.

OP, by summary/abstract report to the Zoning Commission dated March 16, 1995 summarized the testimony and evidence presented at the public hearing on January 12, 1995.

On March 20, 1995 at its regular monthly meeting, the Zoning Commission concurred with the revised recommendations of OP, the ANC-2F in part, DCRA and others who supported the proposal and determined that the proposal, as modified, was appropriate. At that time, the Zoning Commission took proposed action to change from R-4 to C-2-A in Square 368, Lots 68-70, 83, 84, 101-116, 137-147, 817, 819, 820, 826, 869, 882 and 884 and portions of Lots 12 and 821-824.

Z.C. ORDER NO. 782
CASE NO. 94-14
PAGE NO. 6

The proposed decision of the Zoning Commission was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated June 29, 1995 found that the proposed 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.

A notice of proposed rulemaking was referred to the Zoning Administrator, OP and OCC, and was published in the D.C. Register on June 16, 1995 (42 DCR 3089) for review and comment. As a result of the referrals and publication, comments were received from Ramona I. Bowden representing the petitioners dated June 29, 1995, July 17, 1995 and July 18, 1995; the Blagden Alley/Naylor Court Historical Society dated July 14, 1994; the Logan Circle Community Association dated July 18, 1995; the Lewis Company dated April 10, 1995, Knut Ringen dated July 18, 1995 and a petition from 51 citizens dated July 18, 1995.

The comments from Ramona Bowden supported the proposal, and stated that it is necessary to rezone the M Street parking lot and the Lewis Building on N Street, as well as the interior buildings of Square 368, and encouraged the Zoning Commission to include lots 61, 863 and 883 along with the interior lots in the rezoning of Square 368.

The comments from Phillip Abraham consisted of additional testimony and a modified covenant regarding his property, lots 61 and 863 in Square 368.

Giorgio Furioso's comments thanked the Commission for voting favorably for the zoning change from R-4 to C-2-A in Square 368 and requested that the Zoning Commission reconsider the two parcels, Lots 863 and 61, which were excluded from C-2-A zoning.

The comments from the Logan Circle Association thanked the Zoning Commission for its decision to rezone the interior of Blagden Alley C-2-A, while leaving the residential frontages along M and N Streets zoned R-4. The Association also requested that the testimony of ANC-2F06 be disqualified because the Commissioner lives in one of the buildings now subject to the zoning change, and believes there is a definite conflict of interest.

The comments from the Lewis Company dated April 10, 1995 indicated that the company was just informed of the Zoning Commission's decision not to include its property, 926 N Street, N.W. in the rezoning of Blagden Alley. The Lewis Company indicated that it did not participate in the hearing because it mistakenly believed one

Z.C. ORDER NO. 782
CASE NO. 94-14
PAGE NO. 7

of the other property owners would be representing its interest. The Lewis Company urged the Zoning Commission to reconsider and include its property in the rezoning to C-2-A.

Knut Ringen's comments dated August 15, 1995, thanked the Commission for adopting the plan as presented by OP.

The comments from George Littman, dated March 6, 1995, consisted of a petition signed by 51 citizens and urged the Commission to rezone lots 61 and 863 in square 368 to C-2-A to accommodate and encourage more shops, coffee houses and cafes in the alley.

On September 11, 1995, the Zoning Commission considered the above comments and draft Z.C. Order No. 782 for final action consideration. The Commission decided to take a revised proposed action to include the lots that were initially advertised for rezoning during the public hearing process, but were not initially approved.

A notice of revised proposed rulemaking was referred to the Zoning Administrator, OP and OCC and was published in the D.C. Register on December 1, 1995 (42 DCR 6632). As a result of the referrals and publication, comments were received from Advisory Neighborhood Commission (ANC) 2F, dated January 1, 1996; ANC 2F05 dated January 3, 1996; Ramona Bowden, representing the petitioners, dated December 28, 1995; the D.C. Department of Consumer and Regulatory Affairs (DCRA) Historic Preservation Division, dated December 28, 1995; and the Blagden Alley/Naylor Court Historical Society, dated December 26, 1995.

In addition to the above referenced letters, the Commission received 18 letters of support and 6 letters of opposition to the revised notice of proposed rulemaking.

The comments from ANC-2F06, ANC-2F05 and Ramona Bowden supported the Commission's revised proposed action.

The comments from DCRA's Historic Preservation Division restated their opposition to the zoning changes for the lots that front on M and N Streets as inconsistent with their historic character.

The comments from the Blagden Alley/Naylor Court Historical Society stated that the covenant for lots 61 and 863 does not restrict development to residential uses, as called for by the Office of Planning; rather it merely restricts the entrances along M Street to residential, thus permitting the majority of development to be commercial, or even transient housing as permitted under C-2-A zoning.

Z.C. ORDER NO. 782
CASE NO. 94-14
PAGE NO. 8

The proposed decision of the Zoning Commission was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by delegated action of the Executive Director dated July 5, 1995 found that the proposed 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 believes that C-2-A zoning would allow the existing surface parking area on M Street, N.W. to be utilized and act as a generator for business activity.

The Zoning Commission believes that having an extremely large vacant building on N Street, N.W. would destroy the validity and safety of the community.

The Zoning Commission believes that C-2-A zoning would be more economically feasible and act as a residential incentive zone for the vacant building on N Street, N.W. if a residential market exists.

The Zoning Commission believes that it is not appropriate to include covenants relating to specific properties as part of this zoning case, however; the Commission notes that nothing precludes the community and the property owners from making private covenants.

The Zoning Commission believes, after weighing and balancing all issues associated with the proposed rezoning initiatives, that the economic viability of the city and the targeted area is better served by the rezoning, as proposed.

The Zoning Commission has accorded ANC-2F the "great weight" consideration to which it is entitled.

The Zoning Commission further believes that its decision in this case 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 reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of amendments to the Zoning Map. The specific amendments to the Zoning Map are as follows:

Change from R-4 to C-2-A in Square 368: Lots 61, 68-70, 83, 84, 101-116, 126, 137-147, 817, 819, 820, 826, 863, 869, 882-884 and portions of Lots 12 and 821-824.

Z.C. ORDER NO. 782
CASE NO. 94-14
PAGE NO. 9

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

Vote of the Zoning Commission taken at the regular monthly meeting on September 11, 1995, 4-0: (Maybelle Taylor Bennett, William L. Ensign, Jerrily R. Kress and John G. Parsons, to approve the revised proposed action to rezone Lots 61, 863 and 883 in Square 368 from R-4 to C-2-A.

This order was adopted as final action by the Zoning Commission at its regular monthly meeting on February 12, 1996 by a vote of 4-0: (Maybelle Taylor Bennett, William L. Ensign and Jerrily R. Kress to adopt as corrected, 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
MAR 29 1996.



JERRILY R. KRESS
Chairperson
Zoning Commission



MADELIENE H. DOBBINS
Director
Office of Zoning

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