

# Government of the District of Columbia

## ZONING COMMISSION



**ZONING COMMISSION ORDER NO. 797**  
**Case No. 95-7**  
**(Map Amendment - Capitol South Area Rezoning)**  
**June 10, 1996**

The Zoning Commission for the District of Columbia initiated this case in response to a rezoning proposal of the Capitol South area, submitted by the District of Columbia Office of Planning (OP). The proposal is based on a land use and rezoning study completed by the OP. The proposal recommended zoning map amendments for the Capital South Sector of Near Southeast to eliminate inconsistencies between the existing zoning in the city and the Comprehensive Plan, 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 June 2, 1995, OP petitioned the Zoning Commission to rezone the Capitol South Sector of Near Southeast from C-M-1, C-M-2, and C-M-3 to C-3-C. The OP appended the rezoning and land use study of the area to the petition.

The Capitol South area that was the subject of the land use and rezoning study and the rezoning proposal is situated between M Street on the south (opposite the Southeast Federal Center and the Navy Yard), the Southeast Freeway on the north, South Capitol Street on the west, 2nd and 4th Streets, S.E. on the east.

The purpose of this rezoning initiative is to implement the provisions of the Comprehensive Plan for the National Capital that require that zoning not be inconsistent with the Comprehensive Plan. The OP recommended rezoning the Capitol South area from C-M-1, C-M-2 and C-M-3 to C-3-C. The specific areas targeted for the rezoning initiative include, all C-M zoned properties in squares numbered 695, 696, N697, 697, 698, N699, 699, 737 through 742, N743, 766 and 769, and property zoned R-5-B in the southern half of Square 800.

On June 12, 1995, at its regular monthly meeting, the Zoning Commission reviewed the land use and rezoning study and considered the OP report, and authorized the scheduling of a public hearing on Case No. 95-7.

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The Commission indicated in the public hearing of the case that it would 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.

Pursuant to notice, a public hearing was held by the Zoning Commission on November 20, 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 presentation of the OP, the testimony of four expert witnesses presented by the law firm of Wilkes, Artis, Hedrick and Lane, on behalf of property owners in the area.

By memorandum dated November 13, 1995 and through testimony at the hearing the OP presented the land use and rezoning study that triggered the map amendment proposal. The OP indicated that the land use and rezoning study was undertaken in furtherance of the policy guidance of the Comprehensive Plan for the National Capital, and in response to the mission of the OP and the Zoning Commission to eliminate inconsistencies between the existing zoning in the city and the Comprehensive Plan.

The OP testified that the land use and rezoning study is a part of a series of government-initiated rezonings that constitute the "Zoning Consistency Project." The purpose of the Zoning Consistency Project is to recommend changes in the Zoning Map that will make zoning and future developments not inconsistent with the Comprehensive Plan.

The OP pointed out that the Mayor and the Zoning Commission are obligated under the Home Rule Act to eliminate inconsistencies between existing zoning and the Comprehensive Plan. OP is the Mayor's lead agency in this effort and has provided to the Zoning Commission a citywide package of recommended zone changes within the schedule established by the Comprehensive Plan Amendments Act of 1989. (D.C. Law 8-129).

The OP also noted that the critical importance of securing zone changes is to ensure that building permits and occupancy permits allow new uses, conversions and new developments that are consistent with the adopted Comprehensive Plan, and to avoid the establishment of buildings, uses and long-term facilities that are contrary to the intent of the Plan. The OP further noted that zoning changes must occur in a reasonably timely manner in order to ensure real implementation of the land use aspects of the Plan.

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The OP stated that the Generalized Land Use Map designation of the Land Use Element for Capitol South is medium-high density commercial and that the boundary of the medium high-density commercial area was amended by the 1994 amendments to the Comprehensive Plan to include the southern half of Squares 769 and 800 along the north side of M Street, between 2nd and 4th Streets. OP reaffirmed its preliminary recommendation that C-M-1, C-M-2 and C-M-3 (commercial-manufacturing classifications) zoned properties in the area, and the properties zoned R-5-B in the southern half of Square 800 be changed to C-3-C.

The C-M-1 District permits development of low bulk commercial and light manufacturing uses to a maximum floor area ratio (FAR) of 3.0, and a maximum height of three stories/40 feet, with new residential uses prohibited.

The C-M-2 District permits medium bulk commercial and light manufacturing uses, to a maximum floor area ratio (FAR) of 4.0 and a maximum height limit of 60 feet, with new residential uses prohibited.

The C-M-3 District permits high bulk commercial and light manufacturing, to a maximum floor area ratio (FAR) of 6.0 and a maximum height of 90 feet with new residential uses prohibited.

The C-3-C District permits matter of right major business and employment centers of medium/high density development, including office, retail, housing, and mixed uses to a maximum height of 90 feet, a maximum floor area ratio (FAR) of 6.5 for residential and other permitted uses, and a maximum lot occupancy of 100 percent.

Additionally, the OP stated that the Capitol South area is a declining industrial and heavy commercial area that was zoned prior to 1958. OP observed a number of important assets that will encourage future commercial development in the area. The Comprehensive Plan dictates a change in the general land use pattern and zoning from Professional and Technical Employment (PTE) and industrial uses to medium high density office development.

The report also discussed the District's former transfer station in Square 739, now used for the storage of Department of Public Works trucks and equipment. It recommended that the site be zoned on condition that a new location could be found for the site's existing function.

The law firm of Wilkes, Artis, Hedrick and Lane testified on behalf of property owners in the area, in support of the proposal. The testimony in supporting the OP recommended C-3-C zoning, indicated that the Generalized Land Use map of the Comprehensive Plan has designated the area high density commercial since 1958 and that

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C-3-C zoning is more in tune with the general characteristics of the area. The testimony concluded that C-3-C will have, in the long term, a positive impact on development in the area, and is not inconsistent with the Comprehensive Plan.

A traffic and transportation consulting firm, Robert L. Morris, Inc. conducted a study and presented an area traffic analysis of the Capitol South Sector of the Near Southeast that is being targeted for the rezoning. The study analyzed the traffic and the transportation aspects of the area under the existing C-M zones and the proposed C-3-C zone district. The study compared the C-M zones' traffic patterns with the probable C-3-C traffic patterns and determined that there is not a significant difference in terms of traffic impact of C-M or C-3-C development on the area. The report added that C-3-C will be appropriate zoning for the area.

Harps and Harps, Inc., a Land Economist and Real Estate Appraisal firm submitted written testimony into the record of the case. The testimony addressed issues that included, but were not limited to the description of the neighborhood; comparative analysis of existing and proposed zoning classifications, potentials for future development of the area under existing and proposed zoning classifications; and the effects of the proposed zoning change on the stability of land values in the area.

The testimony, after the evaluation of the above factors, stated that the history of similar areas over the past ten years, indicates that office development is more likely to occur with the C-3-C zoning due both to slightly increased FAR and significantly reduced parking requirements. The testimony further indicated that C-3-C would be a logical extension of the Capitol grounds, the Southwest Federal offices and a reasonable location for spin-off development associated with the Southeast Federal Center. In conclusion, the testimony opined that under the Comprehensive Plan, the Capitol South area, as a medium/high density commercial area, has a potential for future development. It is an area where the Comprehensive Plan and general market parameters are in sync and moving in the same direction.

At the request of the Single-Member District (SMD) 6B02 representative, the Commission left the record of the case open, at the close of the hearing session for additional written comments to be submitted into the record of the case.

In a post-hearing submission dated December 26, 1995, the SMD-6B02, pointed out that the OP has not given sufficient reasons to recommend a height of 90 feet for buildings in the area. The letter recommended that 60 feet should be considered the maximum allowable height.

On February 12, 1996, at its regular monthly meeting, the Commission considered the post-hearing submissions, reviewed the testimony gathered in the course of the hearing and discussed the OP Summary Abstract dated December 21, 1995. The summary abstract gave a synopsis of the testimony presented at the hearing and buttressed the OP recommendation that C-3-C is appropriate for the area considering the Comprehensive Plan designation for the area and the current development patterns in the area.

Advisory Neighborhood Commission (ANC) 6B did not testify or submit comments to the record for the Commission to consider. However, the Single-Member District representative (ANC-6B02) submitted written comments into the record for consideration.

After reviewing and considering the post-hearing submissions, testimony from the hearing, and the summary abstract, the Commission concurred with the OP that C-3-C is suitable and consistent with the development pattern of the area and the Comprehensive Plan designation for the area, based on the following findings:

1. The Comprehensive Plan designates the area for medium high density commercial use, and a development opportunity area that stimulates development, promotes stability and improves neighborhood quality. C-3-C zoning is usually interpreted to be not inconsistent with the medium-high density commercial designation.
2. The area is near to the U.S. Capitol complex, the Navy Yard, and the Southeast Federal Center, all of which are major employment centers. Public and private agencies or firms needing to do business with the U.S. Congress and/or the Supreme Court might find Capitol South a convenient location.
3. The C-3-C zone is generally considered 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.
4. C-3-C zoning for the area will ensure continuity in the development pattern and actualize the Comprehensive Plan provisions for the area.

Based on the above findings, the Zoning Commission determined that C-3-C is the most appropriate zoning category for the Capitol South area of Near Southeast and that its decision to rezone the affected squares from C-M zone districts to C-3-C is in the best interest of

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the District of Columbia, and is not inconsistent with the Comprehensive Plan for the National Capital. The Zoning Commission also concluded that leaving the site of the transfer station industrially zoned, when rezoning to C-3-C was taking place all around it, would result in an inconsistency with the Comprehensive Plan, and an island housing an incompatible use in the midst of a medium-high density commercial development. Accordingly, the Commission took proposed action to approve the proposal, on February 12, 1996.

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 Governmental Reorganization Act. NCPC by report dated April 4, 1996, 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. Nevertheless, NCPC indicated that vistas along South Capitol Street, especially as seen from the Anacostia Park setting are a Federal concern and urged that in the event of future planned unit development (PUD) applications that special vista studies be conducted along South Capitol Street as part of the Zoning Commission's review process.

After reviewing and considering the report of the NCPC, the Zoning Commission concurs with NCPC's concern regarding the vistas along South Capitol Street, and determined that special vista studies should be conducted along South Capitol Street as part of the Commission's review of any PUD application in the affected area.

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 on March 29, 1996 for a thirty (30) day public notice and comment period. The proposed rulemaking was referred to the Zoning Administrator (ZA) and OP for review and comments.

The Commission did not receive additional comments as a result of the referrals, but received a letter from the law firm of Wilkes, Artis, Hedrick and Lane re-affirming its support for the proposed action published in the notice of proposed rulemaking.

The Commission is of the opinion that all contentious issues raised at the public hearing have been adequately addressed since there were no comments submitted into the record as a result of the proposed rulemaking.

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The Commission believes that its decision to rezone all C-M zoned properties in squares numbered 695, 696, 697, N-677, 698, N-699, 699, 737 through 742, N-743, 766 and 769, and property zoned R-5-B in the southern half of Square 800 to C-3-C will further implement the provisions of the Comprehensive Plan, which requires that zoning not be inconsistent with the Comprehensive Plan.

The Commission also believes that the approval of the zoning change is in the best interest of the District of Columbia, and is not inconsistent with the Comprehensive Plan for the National Capital.

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 rulemaking, 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:**

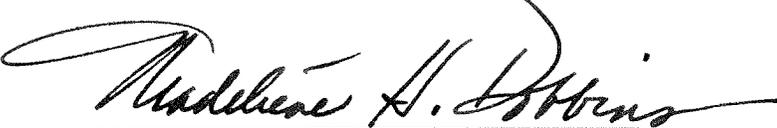
Rezone all C-M-1, C-M-2 and C-M-3 zoned properties in squares numbered 695, 696, N697, 697, 698, N699, 699, 737 through 742, N743, 766 and 769, and property zoned R-5-B in the southern half of Square 800, to C-3-C.

Vote of the Commission taken at the regular monthly meeting on February 12, 1996 3-0: (Maybelle Taylor Bennett, Jerrily R. Kress, to approve, John G. Parsons, to approve by absentee vote; - William L. Ensign, not voting, not present).

This Order was adopted by the Zoning Commission at its regular monthly meeting on June 10, 1996 by a vote of 3-0: (Maybelle Taylor Bennett, John G. Parsons and Jerrily R. Kress, to adopt - William L. Ensign, not voting, not present; Howard R. Croft, not voting, not having participated in the case).

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 JUL 26 1996.

  
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JERRILY R. KRESS  
Chairperson  
Zoning Commission

  
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MADELIENE H. DOBBINS  
Director  
Office of Zoning