

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 828 **Case No. 96-4Z** **(Text Amendments - Comprehensive Plan Amendments** **Act of 1994, Consistency Case Part 1)** **January 12, 1998**

The Zoning Commission for the District of Columbia initiated this case in response to a petition from the District of Columbia Office of Planning to amend the text of the District of Columbia Municipal Regulations (DCMR). Amendments to the text of the Zoning Regulations 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].

The Office of Planning (OP) filed on May 3, 1996 requested the a petition requesting Zoning Commission as part of the Zoning Consistency Project to identify zoning actions needed to eliminate inconsistencies between zoning and the Comprehensive Plan. The proposal responds to specific references in the Comprehensive Plan Amendment Act of 1994, which require amending portions of the text of the Zoning Regulations.

The proposed amendments address the zoning of D.C. Government facilities, campus plan regulations, and the central employment area boundary. The amendments are proposed to ensure that zoning is not inconsistent with the Comprehensive Plan for the National Capital.

At its regular public meeting on May 23, 1996, the Commission authorized a public hearing on the petition. At that hearing session, the Commission heard the presentation of OP, the testimony of Advisory Neighborhood Commission (ANC) 6B and organizations in support of and in opposition to the proposed amendments.

The Office of Planning by report dated October 28, 1996 and by testimony presented at the public hearing detailed the rationale for the advertised text amendments. OP submitted a supplemental report, which recommended clarifying language to Section 106.5, as advertised. OP noted that it had been alerted to the ambiguous language expressed by citizens.

OP indicated that the revised text was to make clear that the unzoned status of the District of Columbia facilities that were built or substantially planned before May 23, 1990 would only apply to the expansion of facilities or change in use would be subject to zoning.

The Office of Planning also recommended approval of the advertised definition of "Central Area" as being necessary to implement the special regulatory system for D.C. Government buildings in

the Central Area. OP further supported adoption of the advertised text regarding campus plans, with the exception that the following language be substituted for that advertised as Subsection 210.6:

210.6 When a major new building that has been proposed in a campus plan is instead moved off-campus, the previously designated site shall not be designated for or devoted to a different major new building until and unless the Board of Zoning Adjustment has approved an amendment to the campus plan applicable to the site; Provided, that for this purpose a major new building is defined as one specifically identified in the campus plan.

This modification would place the focus on “new buildings” and designated sites,“ rather than on of existing facilities.

The Advisory Neighborhood Commissioner (ANC) for ANC 2A-05 testified in opposition to the proposed amendment and stated that a thorough review of the campus plan provision is not only desirable but essential to the economic well being of the District of Columbia and to the social welfare of those who live and pay taxes here.

Advisory Neighborhood Commission (ANC) 3C by resolution dated November 12, 1996 voted to support the proposed text amendments with modifications. The resolution stated, “We appreciate that buildings and uses by the government are, per se, in the public interest. Nevertheless, governmental uses can sometimes be incompatible and adverse to their immediate public setting. The Council chose, after great controversy, to subject public buildings and uses to zoning review. The proposed regulation reneges on the commitment and therefore should not be adopted in its present form.”

Testimony in support of the proposed amendment with modifications was presented by the Consortium of Universities, Capitol Hill Restoration Society, Bryant School Neighborhood Association, George Washington University and the Northeastern Presbyterian Church.

The salient issues raised at the hearing and through post hearing submission are as follows:

1. The Consortium’s first and major concern was the focus on reuse of buildings in advertised Subsection 210.6. The Consortium concurs with the suggested modification of the text.
2. As to FAR computations, colleges and universities can live with the text as advertised, namely that the school will certify and document that the proposed building or amendment is within the FAR limit for the campus as a whole, updating such computations from the most recently approved campus plan.

The Commission believes with regard to campus plan changes, the amendments would ensure that colleges and universities would be permitted to make changes in their campus plans subject to BZA review and approval.

The Commission finds with regard to District government facilities, the proposed regulations as amended clarify that government facilities established after May 23, 1990 would be subject to Zoning. Pre-existing government uses (including those that were substantially planned as of that date) would remain exempt from zoning. The proposed amendments make it clear that District buildings in the Central area, although exempt from zoning, would continue to be subject to the approval of the National Capital Planning Commission.

The Federation of Citizens Associations of the District of Columbia, the Columbia Plaza Tenants Association and one citizen presented testimony in opposition of the proposed amendments. The salient issues raised at the hearing and found in the record are summarized as follows:

1. Major changes are needed in the regulations governing college campuses. The present campus plan rules allow colleges and universities too much latitude in development.
2. The proposed "de-zoning" of various municipal properties would seem particularly ill-advised at a time when hundreds of District properties are being considered for sale, lease, or other disposition.

On March 10, 1997, at its regular public meeting, the Commission reviewed and discussed the OP summary abstract dated January 9, 1997 and the evidence in the record of the case. At that public meeting the Zoning Commission proposed action to amend the text of the Zoning Regulations, as discussed.

A notice of proposed rulemaking was published in the D.C. Register on April 25, 1997 (44 DCMR 2473). The notice of proposed rulemaking was referred to the Zoning Administrator (ZA) and OP for comments, and to the Office of Corporation Counsel (OCC) for legal sufficiency review. No comments were received into the record as a result of the publication of the proposed rules.

The proposed decision to approve the text amendment was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated May 1, 1997, found that the proposed text amendment 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 its decision to approve the text amendments set forth in this order is in the best interest of the District of Columbia, is consistent with intent and purpose of the Zoning Regulations and the Zoning Act and is not inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission has accorded "great weight" to the written reports of Advisory Neighborhood Commissions 2A and 3C.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the following amendments to the Zoning Regulations:

1. **Amend existing Subsection 106.4 by deleting the phrase “and used for or intended to be used for a District of Columbia public building or use.”**

2. **Add a new Subsection 106.5 to read as follows:**

106.5 Properties of the District of Columbia government shall be subject to zoning; Provided, that:

- (a) Any governmental land or building uses that were either in existence or were substantially planned, documented and invested in prior to May 23, 1990, shall not be subject to zoning;
- (b) With regard to the properties referenced in Paragraph (a) above, any change or expansion in the use of land or building, or any new construction or additions to buildings shall be subject to zoning; and
- (c) District of Columbia public buildings in the Central Area shall be exempt from zoning but shall continue to require approval of the National Capital Planning Commission, pursuant to Section 5(c) of the Planning Act, 40 U.S.C. 71d(c).

3. **Renumber existing Subsection 106.5 to 106.6 and amend the text to read:**

106.6 Properties acquired by the government of the United States and properties in the Central Area acquired by the government of the District of Columbia which are intended to be used for public building or use shall become automatically unzoned.

4. **Renumber existing Subsections 106.6 through 106.11 to 106.7 through 106.12.**

5. **Add the following definition to Section 199:**

Central Area - the area included within the combined boundaries of the Urban Renewal Plan for the Downtown Urban Renewal Area and the Urban Renewal Plan for the Shaw School Urban Renewal Area, as approved and modified periodically by the National Capital Planning Commission and the Council of the District of Columbia.

6. **Add new Subsections 210.6 through 210.8 to read as follows:**

210.6 When a major new building that has been proposed in a campus plan is instead moved off-campus, the previously designated site shall not be

designated for or devoted to a different major new building until and unless the Board of Zoning Adjustment has approved an amendment to the campus plan applicable to the site; Provided, that for this purpose a major new building is defined as one specifically identified in the campus plan.

210.7 In reviewing and deciding a campus plan application or new building construction pursuant to a campus plan, the Board shall consider, to the extent they are relevant, the policies of the District Elements of the Comprehensive Plan.

210.8 As an integral part of the application requesting approval of new building construction pursuant to a campus plan, the university shall certify and document that the proposed building or amendment is within the floor area ratio limit for the campus as a whole, based upon the computation included in the most recently approved campus plan and the FARs of any other buildings constructed or demolished since the campus plan was adopted.

7. Renumber existing Subsection 210.6 to 210.9.

8. Delete the existing definition of "Central Employment Area" in Section 199 and add a new definition as follows:

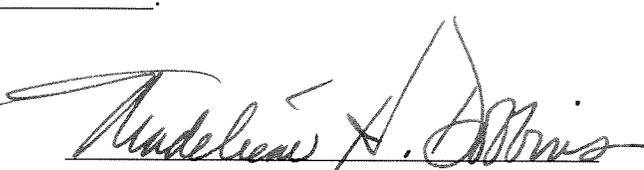
Central Employment Area (CEA) – the core area of the District of Columbia, where the greatest concentration of employment in the city and region is encouraged. The geographic boundaries of the CEA are detailed in the Comprehensive Plan, 10 DCMR 199.

Vote of the Zoning Commission taken at the March 10, 1997 monthly meeting to approve the text of Zoning Case No. 96-4Z, as revised 3-0: (Herbert M. Franklin, John G. Parsons and Jerrily R. Kress to approve; Maybelle Taylor Bennett, not voting, having recused herself).

This order was adopted by the Zoning Commission at its public meeting on January 12, 1998 by a vote of 3-0: (Jerrily R. Kress, Herbert M. Franklin and John G. Parsons to adopt; Maybelle Taylor Bennett, not voting, having recused herself).

In accordance with 11 DCMR 3028, the order is final and effective upon publication in the D.C. Register; that is on FEB 27 1998.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. DOBBINS
Director
Office of Zoning