

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 900
CASE NO. 91-3C
(Request to Withdraw Application and for Refund of Hearing Fee)

May 10, 1999

This Decision and Order arises out of a request by the Union Station Venture, the applicant, to withdraw its application for approval of a planned unit development and for the refund of the hearing fee paid in this case. The Zoning Regulations do not provide for refund of hearing fees.

PROCEDURAL HISTORY

The procedural history is reflected in the Findings of Fact.

FINDINGS OF FACT

1. Union Station Venture filed an application for a PUD and for a zoning map amendment from M to C-3-C for the square occupied by the former Woodward & Lothrop Service Warehouse at 1st, L and M Streets, N.E. (Square 712, lots 107, 110 and 820) on January 28, 1991.
2. On July 8, 1991, at its regular monthly meeting, the Commission considered the application and voted to schedule a public hearing on September 26, 1991, contingent upon payment of a hearing fee of \$106,091.30, pursuant to 11 DCMR § 3041, and filing of a prehearing submission.
3. The applicant filed the prehearing submission and paid the required hearing fee on August 1, 1991.
4. By letter dated September 6, 1991, the applicant requested a 60 to 90 day postponement of the hearing in light of pending historic preservation issues.
5. At the Zoning Commission's public meeting on September 10, 1991, the presiding officer postponed the hearing pending action by the Historic

- Preservation Review Board (HPRB) on a petition to designate the former Woodward & Lothrop Service Warehouse a historic landmark.
6. By letter dated April 15, 1992, the Zoning Commission asked the applicant to indicate whether it intended to proceed with the application or to withdraw it.
 7. In a letter dated May 4, 1992, the applicant stated that it wished to proceed to hearing on its application.
 8. At its public meeting on May 11, 1992, the Zoning Commission again deferred action until the HPRB reached a decision.
 9. On January 27, 1993, the HPRB issued a written decision in which it designated the former Woodward & Lothrop Warehouse a historic landmark.
 10. On September 26, 1997, the Zoning Commission rezoned the area surrounding the PUD site to C-3-C as a result of a separate proceeding initiated by the Office of Planning.
 11. The applicant did not communicate with the Commission concerning the PUD application for more than four years.
 12. By letter dated October 21, 1997, the applicant withdrew its application for a PUD and for a zoning map amendment from M to C-3-C for Square 712, lots 107, 110 and 820.

CONCLUSIONS OF LAW

1. The Zoning Commission is a statutorily created regulatory agency of the District of Columbia that has only those powers given to it by statute. Stark v. Wickard, 321 U.S. 288, 309 (1944). See, e.g., Spring Valley Wesley Hts. Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment, 644 A.2d 434, 436-37 (D.C. 1994); Davidson v. District of Columbia Bd. of Medicine, 562 A.2d 109, 112 (D.C. 1989).
2. There are no provisions of the Zoning Acts of 1920 and 1938, the District of Columbia Home Rule Act, or any other statute of the District of Columbia that provide the Zoning Commission the authority to refund fees.
3. The authority to refund fees cannot be implied by the Zoning Act. The Chesapeake and Potomac Telephone Co. v. Public Service Commission, et al., 378 A.2d 1085, 1088 (D.C. 1977). Accord, Spring Valley Wesley Hts. Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment, 644 A.2d 434, 436 (D.C. 1994).

Z.C. ORDER NO. 900

CASE NO. 91-3C

PAGE 3

4. There is no appropriation that authorizes payment of a refund of such fees.

DECISION

In accordance with the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **DENIES** the applicant's request for a refund of the hearing fee.

Vote of the Commission taken at the regular public meeting held on Monday, April 12, 1999: 4-0: (John G. Parsons, Jerrily R. Kress, Herbert M. Franklin and Anthony J. Hood to disapprove; Angel F. Clarens, not present, not voting).

This order was adopted by the Zoning Commission at its regular public meeting on May 10, 1999 by a vote of 5-0: (Herbert M. Franklin, Anthony J. Hood, Jerrily R. Kress and Angel F. Clarens to adopt; John G. Parsons to adopt by absentee vote).

In accordance with 11 DCMR § 3028, this order is final and effective upon publication in the DC Register, that is, on ----- JUL 30 1999 -----



Angel F. Clarens
Chairman
Zoning Commission

ZCO-900/VCE