

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 951
Z.C. Case No. 01-30
(Special Exception at 140 M Street, S.E.
Under the Proposed Buzzard Point Overlay District)

ORDER TO DISMISS THE APPLICATION

December 17, 2001

At its public meeting held on April 8, 1996, the Zoning Commission considered recommendations from the Office of Planning (OP) in a memorandum dated March 29, 1996, to schedule a public hearing on proposed map and text amendments for the Buzzard Point (BP) and Capital Gateway areas. Those amendments proposed to change the underlying zoning for much of the subject area and to adopt a BP Overlay District that would modify the provisions of the underlying zones. Order No. 802, dated July 15, 1996, confirmed the Commission's decision to schedule a public hearing on the OP recommendations.

Part of OP's proposed BP Overlay included regulations to control development on property that fronts on M Street, S.E. As set forth in the notice of public hearing, published in the *D.C. Register* on October 4, 1996, proposed §1604 established standards for the setback of a building from the property line on M Street and a minimum amount of gross floor area on the ground floor to be devoted to retail and service uses. A public hearing on those proposed amendments was conducted on November 21 and 25, 1996, and the record closed on January 27, 1997. The Commission discussed the case but never took action on the proposed amendments.

After determining that the passage of time and changes in the composition of the Commission made it advisable to hold another public hearing on the proposed amendments, the Commission published another notice of public hearing in the *D.C. Register* on June 1, 2001. The second notice of the hearing contained an alternate provision regarding buildings that front on M Street, S.E. The alternate provision, proposed §1603.7, would require proposed buildings that front on M Street to be approved by the Zoning Commission as a special exception, under essentially the same standards proposed for the development if it were to proceed under §1604, the matter-of-right regulations. The public hearing was held on September 20, 2001, and the record was closed, but no action has yet been taken on the proposed amendments.

Section 3202.5 of the Regulations, the "set-down rule," governs the processing of applications for building permits when the Zoning Commission has before it a proceeding to consider an amendment to the zone district classification for a particular property. Square 742 LLC, the owner of Lot 39 in Square 742, known as 140 M Street, S.E., has filed an application for a building permit to construct an office building on the subject property. The application was filed

after April 8, 1996, the date on which the Commission made a decision to hold a hearing on the proposed amendment. Therefore, pursuant to the set-down rule, the plans for the proposed building must comply with the more restrictive of the substantive requirements of the existing C-3-C District and the proposed Buzzard Point Overlay District. In addition, the owner of the lot would ordinarily have to obtain a special exception, as required in the alternative provision. On November 8, 2001, the owner of the property filed such an application with the Zoning Commission. The applicant requested that a public hearing be scheduled on the application at the earliest available date, in that a lead tenant had already been secured for more than half the space in the building.

The Commission, on its own motion, has decided to waive application of the set-down rule with respect to the alternative special exception procedure. The provision requiring a special exception was not a part of the proposal that was set down for public hearing when the case was initiated. The Commission added the alternate text to the rehearing advertisement to invite a public discussion on the merits of using the special exception process to ensure that buildings fronting M Street would exemplify superior architectural design. The Commission also asked the Office of Planning and the Office of the Corporation Counsel to refine certain portions of the text. There are many issues yet to be resolved, not the least of which is whether the Zoning Commission should hear these applications. Because of other considerations unrelated to this provision, the Commission is not likely to take action on the case for several months. The Commission believes that, in the present circumstances, it should not require the proposed development to go through a special exception process that has yet to be fully defined.

The Commission, therefore, hereby **ORDERS** that the special exception application for Lot 39 in Square 742 be **DISMISSED** and finds that the development proposed in the subject application, consistent with the plans filed in the record of this case, can proceed to be processed for compliance with all applicable District of Columbia codes and regulations, including the more restrictive of the substantive requirements of the existing C-3-C District and the proposed Buzzard Point Overlay District as advertised in the *D.C. Register* on June 1, 2001 (48 DCR 5553).

This Order was **ADOPTED** by the Zoning Commission at its special public meeting on December 17, 2001, by a vote of **5-0-0** (Carol J. Mitten, Anthony J. Hood, and James H. Hannaham to adopt; John G. Parsons and Peter G. May to adopt, by absentee ballot).

In accordance with § 3028.9, this order shall become effective upon publication in the *D.C. Register*; that is, on DEC 28 2001.



CAROL J. MITTEN
CHAIRMAN
Zoning Commission



JERRILY R. KRESS, FAIA
DIRECTOR
Office of Zoning