

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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 IN THE MATTER OF: :
 :
 George and Dimitri Mallios : Case No.
 Map Amendment @ Square 180 : 09-12
 :
 :
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Monday,
December 7, 2009

The Public Hearing of Case No. 09-12 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairman
- KONRAD SCHLATER, Commissioner
- PETER MAY, Commissioner (NPS)
- MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)

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OFFICE OF ZONING STAFF PRESENT:

DONNA HANOUSEK, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
PAUL GOLDSTEIN

The transcript constitutes the minutes from the Public Hearing held on December 7, 2009.

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P-R-O-C-E-E-D-I-N-G-S

6:33 p.m.

CHAIRMAN HOOD: Good evening, ladies and gentlemen. This is the public hearing of the Zoning Commission for Monday, December 7, 2009.

My name is Anthony Hood. Joining me this evening are Commissioner Konrad Schlater, Commissioner Peter May and Commissioner Michael Turnbull. We're also joined by the Office of Zoning staff, Ms. Donna Hanousek, also the Office of Planning, Mr. Lawson and Mr. Goldstein.

This proceeding is being recorded by a court reporter. It is also webcast live. Accordingly, I must ask you to refrain from any disruptive noises or actions in the hearing room.

The subject of this evening's hearing is Zoning Commission Case No. 09-12. This is a request by George and Dimitri Mallios -- hopefully I pronounced that correctly -- for

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1 approval of a Map Amendment for property
2 located in Square 180, Lot 30.

3 Notice of today's hearing was
4 published in the *D.C. Register* on October 12,
5 2009. And copies of that announcement are
6 available to my left on the wall near the
7 door.

8 This hearing will be conducted in
9 accordance with the provisions of 11 DCMR 3022
10 as follow: preliminary matters; Applicant's
11 case; report of the Office of Planning; report
12 of other government agencies; report of ANC-
13 2B; organizations and persons in support;
14 organizations and person in opposition;
15 rebuttal and closing by the Applicant.

16 The following time constraints will
17 be maintained in this meeting: Applicant, 15
18 minutes; organizations, 5 minutes;
19 individuals, 3 minutes. The Commission
20 intends to adhere to time limits as strictly
21 as possible in order to hear the case in a
22 reasonable period of time.

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1 All persons appearing before the
2 Commission are to fill out two witness cards.

3 When you are finished speaking, please turn
4 your microphone off so that your microphone is
5 no longer picking up sound or background
6 noise.

7 The staff will be available through
8 the hearing to discuss procedural questions.

9 Please turn off all beepers and cell
10 phones at this time so not to disrupt these
11 proceedings.

12 Would all individuals wishing to
13 testify, please rise to take the oath?

14 Ms. Hanousek, would you administer
15 the oath?

16 MS. HANOUSEK: Yes.

17 (Whereupon, the witnesses were
18 sworn.)

19 CHAIRMAN HOOD: At this time, the
20 Commission will consider any preliminary
21 matters.

22 Ms. Hanousek, do we have any

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1 preliminary matters?

2 MS. HANOUSEK: Just that the
3 maintenance affidavit has been received and is
4 in order.

5 CHAIRMAN HOOD: Okay. Thank you very
6 much.

7 There's nothing else, Ms. Brown. You
8 may proceed.

9 MS. BROWN: Thank you very much, Mr.
10 Chairman.

11 Good evening, Members of the
12 Commission. I'm Carolyn Brown with the law
13 firm of Holland & Knight.

14 With me tonight is co-counsel, Ed
15 Grandis from the Ed Grandis law firm, and Mr.
16 George Mallios, co-owner of the property to be
17 re-zoned.

18 We will have one witness tonight, Mr.
19 Steve Sher, and expert in zoning and land use.

20 We're very pleased to be here this
21 evening to present our case for the map
22 amendment to re-zone the property at 1622 Q

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1 Street from R5B to C2B. We believe this map
2 amendment will correct an anomaly in the
3 zoning map and make it consistent with the
4 comprehensive plan.

5 We have the full support of the
6 Dupont Circle ANC, the Office of Planning, and
7 in fact we're not aware of any opposition to
8 this case at all. And given this overwhelming
9 support, we will be very short and brief, and
10 hopefully we'll be back in time in our homes
11 for the Ravens' game.

12 I'd like --

13 CHAIRMAN HOOD: We don't have any
14 Ravens' fans.

15 MS. BROWN: No. No Ravens. So --

16 CHAIRMAN HOOD: We have Giant fans up
17 here.

18 Okay. Before you go on, Ms. Brown,
19 let me do this.

20 We know, but this is a formality we
21 have to go through.

22 Any objections to Mr. Sher?

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1 (No audible response.)

2 CHAIRMAN HOOD: Hearing none, okay,
3 you can continue.

4 MS. BROWN: Thank you.

5 I'd like to start with a very brief
6 history and background of the site.

7 The Mallios family has had a long
8 association with this property and a long-term
9 commitment to the Dupont Circle neighborhood.

10 George Mallios' father established Trios
11 Restaurant at the corner of 17th in 1940, and
12 it's been a family business ever since.

13 They purchased the property at Trios
14 Restaurant at 17th and Q in 1950. They then
15 purchased the adjacent property at 1624 Q
16 Street which is being leased to Hank's Oyster
17 Bar. And then finally in 1988, purchased the
18 property that's the subject of this
19 application at 1622 Q Street.

20 The idea was that given the long
21 history of commercial uses that they had seen
22 in this property over the years that this

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1 would be another good opportunity for the
2 family to establish another retail business.
3 I think at one time they were thinking of an
4 ice cream parlor.

5 But lo and behold, when they went and
6 looked at the zoning of the property, it was
7 R5B, not commercial. It was confusing because
8 of the long history of the commercial uses at
9 the property beginning -- we've dated it back
10 at the earliest to 1929 with the meat market,
11 and then later a tailor shop, a dry cleaners
12 and laundry facility, and then lastly an
13 artist's studio. So the purpose of this map
14 amendment is to re-establish the historical
15 uses that have been associated with this
16 property.

17 And I'd like to briefly just direct
18 your attention -- I believe Mr. Sher's report
19 has been distributed to you. And if you look
20 at the fourth page from the back, there's some
21 photographs. And I just want to describe
22 briefly the alterations to this building

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1 because I don't know that we did a very good
2 job of it in our pre-hearing statement. But
3 it was one of six row houses constructed back
4 in roughly about 1877. And the building
5 originally looked like the ones next door with
6 a berm, steps up across the front property,
7 and then more steps up to the front door.

8 Sometime we're guessing in the 1930s
9 or '40s, these alterations were made to the
10 front of it where they got rid of the berm,
11 excavated out the basement level and turned it
12 into a direct entrance from the ground floor
13 from the street. You had a two-story height
14 space where the first floor used to be. So in
15 the front of the building, there is no first
16 floor anymore. It's only in the back of the
17 building. And then you have a second floor --
18 the top floor. The back of the first floor
19 and the top floor are currently used as a
20 residential area. The ground floor area is
21 accessory to that residential unit on the
22 first floor.

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1 So with that explanation, I'm going
2 to turn it over to our first witness, Mr.
3 Sher.

4 MR. SHER: Good evening, Mr. Chairman
5 and Members of the Commission. For the
6 record, my name is Steven E. Sher, the
7 Director of Zoning and Land Use Services with
8 the law firm of Holland & Knight.

9 As Ms. Brown indicated, this property
10 is located on the south side of Q Street
11 between 16th and 17th Streets, N.W. It's known
12 as 1622 Q Street.

13 It's a rectangular lot -- 20.33 feet
14 wide by 100 feet deep. It contains an area a
15 little over 2,000 square feet. It's improved
16 with the existing two-story-plus mezzanine row
17 structure built approximately 1877.

18 If you turn to the third page of the
19 outline, you can see the area in which the
20 subject property is located. And it's
21 characterized by bulk and height and density
22 that's probably beyond what one would normally

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1 expect in an R5B district. Most notably, of
2 course, is the Cairo Hotel at 1615 Q on the
3 north side of the street just east of the
4 subject property. That was the building which
5 frankly inspired the Height Act, and could not
6 be built today because it far exceeds the
7 width of the street.

8 You have the Staed playground and Rec
9 Center diagonally behind it -- the green area
10 to the lower right of the photograph. And
11 then along 17th Street, you've got a variety of
12 building types. And if you turn to the last
13 couple of pages in the outline, you can see
14 what those building types are. The third page
15 from the rear is the building immediately
16 across Q Street to the north directly opposite
17 the subject property. The next page is the
18 Cairo Hotel. And then the last page is the
19 building at 1614 17th Street. Again, a fairly
20 dense and significantly sized building, this
21 one's located about 250 feet from the subject
22 property.

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1 The property is zoned DC R5B, the
2 Dupont Circle overlay not having much of an
3 impact here intending to put special
4 conditions on PUDs and prevent curb cuts on
5 Connecticut Avenue. We don't own on
6 Connecticut, and we're not going to do a PUD.

7 The proposed zoning is DC C2B. The
8 effect of the proposed change would be to
9 allow commercial uses on the property. The
10 maximum permitted height would go from 50 to
11 65 feet, on an increase of 15 feet. Maximum
12 permitted FAR goes from 1.8 to 3.5, an
13 increase of 1.7. And the commercial FAR
14 within that maximum was at 1.5.

15 At the top of page five, you can see
16 the existing zoning of the area taken from the
17 snazzy new zoning map of which the Office of
18 Zoning should be proud. And if you compare
19 that map to the comp plan future land use map
20 which is on page seven, you will see that the
21 land use map has a sort of uniform boundary on
22 the east side of 17th, whereas the zoning map

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1 has a much more irregular boundary. And our
2 property would go on -- if you go back to the
3 map on page five -- the one with the little
4 star on it -- is right on the edge of that
5 boundary between C2B to the west and R5B to
6 the east. And if you literally extended the
7 comp plan map over the zoning map, we would be
8 in that mixed-use area which is a combination
9 of low-density commercial and medium-density
10 residential.

11 We have gone through the
12 comprehensive plan in more detail as did the
13 Office of Planning in its report. And I
14 conclude, as did they, that this proposed
15 change would be not inconsistent not only with
16 the future land use map but with the
17 generality of policies and actions noted in
18 the plan as a whole.

19 Beyond that, the Commission is
20 required to assess the impact on the health,
21 safety and general welfare, potential adverse
22 consequences, creation of favorable

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1 conditions. And in my view, re-zoning this
2 site -- which again is only slightly over
3 2,000 square feet -- is not going to create
4 any adverse consequences. It's too small
5 frankly to do that.

6 The compatibility with the area given
7 great range and variety of heights and
8 densities, re-zoning this property to C2B
9 would not be out of character with that. And
10 remember also that this property is within the
11 Dupont Circle Historic District. So the
12 likelihood that there would be any significant
13 change to the height, bulk or character of
14 that property that would be out of character
15 with the rest of the neighborhood is remote
16 and extremely unlikely in my view.

17 So therefore, I conclude that the
18 application for a re-zoning meets the tests
19 under the Zoning Act, that the change is not
20 inconsistent with the comprehensive plan, and
21 that the application for re-zoning should be
22 approved.

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1 MS. BROWN: Mr. Chairman, that
2 concludes our direct case. We'll entertain
3 any questions that you have.

4 CHAIRMAN HOOD: Okay. Thank you
5 both.

6 Commissioners, do we have any
7 questions?

8 Commissioner May?

9 COMMISSIONER MAY: This is in an
10 historic district, right?

11 MR. SHER: Yes, sir. It is.

12 COMMISSIONER MAY: And is it a
13 contributing structure?

14 MS. BROWN: It's our understanding
15 that it's a contributing structure
16 notwithstanding the changes to the facade
17 because of its scale and the upper second-
18 story configuration is still there. And it's
19 pretty typical that you have retail changes
20 throughout historic districts.

21 COMMISSIONER MAY: Right. I'm dying
22 to know what the potential changes might be to

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1 this structure. But I'll just stay away from
2 that and hope for the best.

3 I just wanted to know if it has that
4 protection of being a contributing structure
5 because ultimately that'll make sure the
6 building stays in roughly the same bulk to
7 begin with, and hopefully will help protect
8 its appearance in the future.

9 All right. That's it.

10 CHAIRMAN HOOD: Any other questions?

11 (No audible response.)

12 CHAIRMAN HOOD: Okay. Do we have
13 anyone here from ANC 2B?

14 (No audible response.)

15 CHAIRMAN HOOD: Okay. Not seeing
16 anyone, we'll go to the Office of Planning.

17 Mr. Goldstein?

18 MR. GOLDSTEIN: Good evening, Mr.
19 Chairman, Members of the Commission. My name
20 is Paul Goldstein.

21 The Office of Planning recommends
22 approval of the Zoning Map Amendment from DC

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1 R5B to DC C2B for the property located at 1622
2 Q Street, N.W.

3 And with that, I'm willing to rest on
4 the record. Thank you.

5 CHAIRMAN HOOD: Okay. Thank you.

6 Commissioners, any questions of the
7 Office of Planning?

8 (No audible response.)

9 CHAIRMAN HOOD: Does the Applicant
10 have any questions of the Office of Planning?

11 MS. BROWN: No questions.

12 CHAIRMAN HOOD: Okay. Thank you very
13 much, Mr. Goldstein. Very succinct and to the
14 point. And actually, the Planning report was
15 very well done.

16 Report of other government agencies?

17 (No audible response.)

18 CHAIRMAN HOOD: A report of ANC 2B?

19 We have a letter -- Exhibit 20 --
20 which was faxed. This goes to Chairman Loud,
21 actually BZA. But anyway, it's to us.

22 "At its regular meeting on November

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1 11, 2009, the Dupont Circle Advisory
2 Neighborhood Commission considered the above-
3 referenced matter with eight of nine
4 Commissioners present, a quorum. At a duly-
5 noticed public meeting, the Commission
6 approved the following motion by a vote of
7 seven, zero to one, one abstention." And it
8 has "ANC 2B supports the application for
9 zoning relief," or for in this case a change.

10 Okay. I think we still can consider
11 this. I think the general thrust of it is
12 they knew that this was in front of the Zoning
13 because somebody scratched out Board of Zoning
14 Adjustment.

15 Okay. Anyway. So they will be given
16 great weight unless someone objects.

17 (No audible response.)

18 CHAIRMAN HOOD: Okay. Do we have any
19 organizations or persons here to testify in
20 support?

21 (No audible response.)

22 CHAIRMAN HOOD: Any organizations or

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1 persons here in opposition?

2 (No audible response.)

3 CHAIRMAN HOOD: Ms. Brown, we'll take
4 some closing remarks. You don't have to
5 unless you just want to.

6 MS. BROWN: No, thank you. I'll just
7 briefly say based on the evidence of record,
8 the testimony you've heard tonight that we
9 believe we've met the test for the map
10 amendment. And we would certainly be
11 agreeable to any deliberations from the bench
12 this evening.

13 CHAIRMAN HOOD: Okay.

14 MS. BROWN: Thank you.

15 CHAIRMAN HOOD: Commissioners, I
16 think Ms. Brown is exactly right. I think the
17 record is complete. There's a lot of support
18 for it. And it just makes good zoning sense.

19 And I would be in favor of moving forward
20 tonight unless I hear any objections.

21 (No audible response.)

22 CHAIRMAN HOOD: Not seeing or hearing

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1 anyone move, I would move approval of Zoning
2 Commission Case 09-12, and ask for a second.

3 COMMISSIONER MAY: Second.

4 CHAIRMAN HOOD: Moved and properly
5 seconded.

6 Any further discussion?

7 (No audible response.)

8 CHAIRMAN HOOD: All those in favor.

9 (A CHORUS OF AYES.)

10 CHAIRMAN HOOD: Ms. Hanousek, could
11 you record the vote of those who are present?

12 MS. HANOUSEK: Upon the motion of
13 Chairman Hood, as seconded by Commissioner
14 May, the Zoning Commission approved proposed
15 action in Case 09-12 by a vote of four, zero,
16 one; Commissioners Hood, May, Turnbull and
17 Schlater in support; Commissioner Keating not
18 present, not voting.

19 CHAIRMAN HOOD: Matt, you didn't vote
20 on that, did you? Okay.

21 COURT REPORTER: I didn't get mine
22 in.

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1 CHAIRMAN HOOD: Ms. Hanousek, do we
2 have anything else before us?

3 MS. HANOUSEK: No, sir.

4 CHAIRMAN HOOD: Thank you. With
5 that, this hearing is adjourned. Thank you.

6 (Whereupon, at 6:50 p.m., the hearing
7 was adjourned.)

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