ADVISORY NEIGHBORHOOD COMMISSION 3E

TENLEYTOWN • AMERICAN UNIVERSITY PARK • FRIENDSHIP HEIGHTS

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Resolution Opposing The Office of Planning's Petition To Commercially Zone Land Within the Historic Fort Reno Park Area (Zoning Commission Case 06-37)

WHEREAS, the Single Member District Commissioner for ANC 3E04 received notice that the Office of Planning (OP) has asked the Zoning Commission to commercially zone land within the historic National Park Service Fort Reno Park Area. Specifically, OP seeks to rezone Lots 1, 2, 3, 5, 6, 7, 8, 27, 28, and 29, each within Square 1765, from unzoned to C-1 (neighborhood commercial);

WHEREAS, on Map 2 of the Zoning Map, prepared by the Office of Zoning and publicly available on the Office of Zoning's website, the entire Fort Reno Park Area is designated as Square 1759;

WHEREAS, the Zoning Commission has scheduled a hearing to consider this proposal at its November 27, 2006 meeting, so-designated as Case 06-37;

WHEREAS, the Chairperson of ANC 3E received no notice of either OP's proposal to rezone certain land within the Fort Reno Park Area or the Zoning Commission's scheduled hearing on that proposal;

WHEREAS, ANC 3E requested that OP join it in seeking a continuance of the Zoning Commission's hearing so that ANC 3E could fully explore and discuss with its community the serious ramifications of this extraordinary request to commercially zone certain land within the historic Fort Reno Park Area;

WHEREAS, OP refused to agree to such a request; ANC 3E therefore convened a special meeting, with 48 hours notice, as required in 3E by-laws, to pass a resolution that could timely be submitted to the Zoning Commission;

WHEREAS, the 11 lots specified in OP's petition include the two-story red brick structure at the corner of Belt Road, N.W., and Chesapeake Street, N.W., (the red brick building) which, according to OP, was constructed ca. 1932;

WHEREAS, although OP claims, in its petition, that the land in question is owned by the District of Columbia, it offers no proof of this contention. Indeed, when pressed for information regarding this assertion at ANC 3E's November 16th special meeting, the OP representative handling this matter referred to a deed, but conceded that he has never seen it, and does not know where it is located. ANC 3E has asked for a copy of this deed, but has not received any such document.

WHEREAS, OP has failed to provide adequate documentation to support its contention that the District of Columbia actually owns the land it seeks to have rezoned;

WHEREAS, ANC 3E does not have sufficient information about which lots, if any, in the Fort Reno Park Area, were transferred or sold to the District of Columbia, or for what reasons or under what conditions these lots may have been transferred or sold;

WHEREAS, whether the District of Columbia actually owns the 11 lots in question must be resolved before the Zoning Commission properly can consider this zoning request;

WHEREAS, ANC 3E has been informed that the Tenley Historical Society has reviewed records and concluded, based on available information, that the properties in question are part of the Fort Reno reservation, and thus were included in the D.C. and National Register of Historic Sites, and thus are protected from alteration unless reviewed properly by the Historic Preservation Office;

WHEREAS, although OP maintains that the land belongs to the District, it concedes that the land and the brick structure are part of the Fort Reno reservation and thus protected by the Historic Preservation Review Board as an historic site, which designation could have been granted only if the land were part of the federally owned park;

WHEREAS, even if the Zoning Commission were able to determine that the District of Columbia actually owns the land in question, OP's extraordinary request to commercially zone land within the historic Fort Reno Park Area should nevertheless be denied because OP has failed to assert any satisfactory reason why such drastic action is warranted;

WHEREAS, the only reason asserted by OP for the proposed rezoning is to enable the Department of Public Works (DPW) to "locate offices within the existing building [at the corner Belt and Chesapeake] for . . . [the DPW] Street and Alley Cleaning Division;"

WHEREAS, DPW is looking to transfer no more than 12, but more likely as few as six, employees to this building, if the zoning request is granted, according to the OP representative who appeared at ANC 3E's November 16th special meeting. These employees are not new, but are current employees presently working out of other offices in the different wards.

WHEREAS, OP has offered no explanation for the need to move these employees from their current location or–more importantly–why they need to be moved to Fort Reno Park;

WHEREAS, Fort Reno Park is part of the National Park Service and has very serious historical significance; the Southwest corner of the Fort Reno Park Area, apart from one structure, is generally passive recreational space that is an integral and undivided part of Fort Reno Park, a unique pastoral and historic site in Northwest Washington;

WHEREAS, ANC 3E strongly desires to preserve, protect and enhance the integrity of all of the Fort Reno Park Area, including the open space at the Southwest corner;

WHEREAS, the zoning proposed by OP in this matter is inconsistent with the Comprehensive Plan, the Ward 3 Element of the Comprehensive Plan, the Comprehensive Plan Land Use Map, and is directly contrary to the goals of preserving open space and protecting Fort Reno Park and the Fort Reno Park Area for passive and active recreational activities;

WHEREAS, the C-1 zoning proposed by OP would allow as a Matter of Right commercial development, and any commercial development in the Fort Reno Park Area would be unprecedented and entirely inappropriate;

WHEREAS, if, for some compelling reason—which reason has not yet been demonstrated, much less even asserted by the petitioner—these six DPW employees must be relocated to this particular site, there is legal authority to do so without zoning the property;

WHEREAS, in Zoning Commission Order No. 403, Case No. 81-17, the Zoning Commission with input from ANC 3E amended the Zoning Regulations of the District of Columbia regarding "all aspects" of "non-conforming" use of land and structures within the District of Columbia;

WHEREAS, D.C. Code Section 6-641.06(a) contains the statutory legal authority for the treatment of "non-conforming" uses of land and structures within the District;

WHEREAS, Chapter 20 of the District of Columbia Municipal Regulations concerns "Non-conforming Uses and Structures," and Section 106.5 of the District of Columbia Municipal Regulations specifies that District of Columbia properties shall be subject to zoning except any governmental land or building uses that were [in existence] prior to May 23, 1990, unless the District of Columbia intends to effect "any change or expansion in the use of land or buildings or any new construction or additions to buildings;"

WHEREAS, the two-story brick building at the corner of Belt Road, N.W. and Chesapeake Street, N.W., is a "non-conforming" structure due to its location on unzoned land, but was built prior to 1990 and thus, under law, is not subject to zoning

requirements, provided there is no "change or expansion," or "new construction or additions to the building;"

WHEREAS, the stated intent of OP to legally "locate offices within the existing building" for governmental use can be achieved without rezoning by recognizing that "locating offices within the existing building" is permitted under laws applicable to "non-conforming" structures and uses;

WHEREAS, the fact that the building has been vacant for three years does not foreclose this conclusion. Section 2005.1 states that "discontinuance for . . . a period of more than three years shall be construed as *prima facie* evidence of no intention to resume active operation as a nonconforming use," and that in such an instance, subsequent use would require proper zoning. What this provision does is create a rebuttable presumption of no intention to use the land, a presumption that can be overcome with evidence that the District of Columbia intended to use the property.

WHEREAS, ANC 3E continues to agree with the principles expressed in Zoning Commission Order No. 403 that "non-conforming uses" are to be greatly discouraged and hopefully will "wither away over time," but ANC 3E recognizes that permitting this non-conforming use in this particular case is the only available and appropriate way to accommodate OP's stated goal of locating City offices within the building;

THEREFORE BE IT RESOLVED that ANC 3E:

REQUESTS that the Zoning Commission continue the hearing on OP's request to commercially zone land within the Fort Reno Park Area until it can be established with certainty that DC actually owns the land in question. In particular, ANC 3E requests that OP, in conjunction with any appropriate government agencies, provide ANC 3E and the Zoning Commission with the deed of ownership for the lots proposed to be rezoned, as well as any other lots in the Fort Reno Park Area, described as Square 1765 and/or Square 1759, purportedly owned by the District of Columbia;

BE IT FURTHER RESOLVED that should the Zoning Commission not agree to continue the hearing, then ANC 3E:

STRONGLY OPPOSES OP's extraordinary request to commercially zone Lots 1, 2, 3, 5, 6, 7, 8, 27, 28, and 29 (Square 1765)--land within the historic Fort Reno Park Area;

STRONGLY URGES the District of Columbia, and all of its agencies, to the extent it seeks to use the existing building, not to agree to the request of DPW to use the facility for its Street and Alley Cleaning Division, but instead to consult with ANCs 3E and 3F, the Tenleytown Historical Society, the Department of Parks and Recreation and all other interested persons and organizations to find a more suitable use for this building that sits on the edge of an historic National Park Service site in the nation's capital;

DOES NOT OPPOSE the District of Columbia's use of the existing building at the corner of Belt Road, N.W., and Chesapeake Street, N.W., in its current unzoned status for government purposes, to the extent such use is permitted as a "non-conforming" use of land and structures under the "non-conforming use" authority found in the District of Columbia Code and Municipal Regulations and within the restrictions set forth in those statutes and regulations and any related authorities;

ANC 3E approved this resolution at its November 16, 2006, special meeting which was properly noticed and at which a quorum was present. The resolution was approved by a vote of 3-0. Commissioners Lucy Eldridge, Amy McVey and Anne Sullivan were present.

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Lucy Eldridge, ANC 3E