

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING¹

Z.C. Case No. 18-10
High Street, LLC
(Zoning Map Amendment @ Lot 976 in Square 5799)
January 13, 2020

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2018 Repl.)), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206, as amended; D.C. Official Code § 2-505 (2013 Repl.)), hereby gives notice of its adoption of the following amendments to the Zoning Map:

- Rezone Lot 976 in Square 5799 (Property from the R-3 zone to the RA-2 zone).

On June 27, 2018, High Street, LLC (Petitioner) filed a petition requesting that the Commission rezone the Property from the R-3 zone to the RA-2 zone pursuant to Chapter 4 of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [Zoning Regulations] to which all references herein are made unless otherwise specified).

The Property's current R-3 zone is intended to allow for attached rowhouses on small lots, while including areas within which row dwellings are mingled with detached dwellings, semi-detached dwellings, and groups of three or more row dwellings. (Subtitle D §§ 300.6 and 300.7.) The R-3 zone permits a maximum height of 40 feet and 3 stories; a lot occupancy of sixty percent (60%) for attached dwellings or places of worship, or forty percent (40%) for all other structures; and minimum lot dimensions ranging between one thousand six hundred and four thousand square feet (1,600-4,000 sq. ft.) of lot area and between sixteen and forty foot (16-40 ft.) minimum lot width depending on building type. (Subtitle D §§ 302 - 304.)

The Property's proposed RA-2 zone is intended for areas developed with predominantly moderate-density residential development. (Subtitle F § 300.3.) The RA-2 zone permits a maximum floor area of 1.8 (2.16 for Inclusionary Zoning developments), a maximum height of fifty feet (f0 ft.) with no story limit, and a maximum lot occupancy of sixty percent (60%). (Subtitle F §§ 302 - 304.)

¹ For Office of Zoning tracking purposes only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 18-10.

Comprehensive Plan (CP) and Small Area Plan (SAP)

Square 5799, including the Property, is designated on the Generalized Policy Map (the “GPM”) of the Comprehensive Plan (Title 10A of the District of Columbia Municipal Regulations, the “CP”) as a Neighborhood Enhancement Area, primarily residential in character with substantial amounts of vacant residentially zoned land in which new development “fits in” and responds to existing character, natural features, and existing/planned infrastructure capacity. New housing is encouraged and must be consistent with the land use designation of the CP’s Future Land Use Map (the “FLUM”). (CP §§ 223.4, 223.5.)

The FLUM designates the Property in the Moderate-Density Residential category, defined as incorporating both row houses and low-rise garden apartment complexes. The CP identifies the R-3 (the Property’s current zone), R-4, and R-5-A zones, and in certain circumstances, the R-5-B zone (the current RA-2 zone, to which the Property is proposed to be rezoned), as appropriate for the Moderate-Density Residential designation, although other zones may apply. (CP § 225.4.)

At its public meeting held on April 8, 2019, the Commission voted to take **PROPOSED ACTION** to authorize a Notice of Proposed Rulemaking to rezone the Property from the R-3 zone to the RA-2 zone.

VOTE (April 8, 2019): 5-0-0 (Anthony J. Hood, Robert E. Miller, Michael G. Turnbull, Peter A. Shapiro, and Peter G. May to **APPROVE**)

National Capital Planning Commission (NCPC)

The Commission referred the proposed map amendment to NCPC for the thirty (30)-day review period required by § 492 of the District Charter on April 11, 2019.

NCPC, through a delegated action dated May 28, 2019, found that the proposed text amendment was exempt from NCPC review under exception 12 of Chapter 8 of NCPC’s submission guidelines because the propose amendment is consistent with the Height Act, would not cause adverse impacts on federal property or other federal interest, and would apply outside the boundary of the L’Enfant City.

Notice of Proposed Rulemaking (NOPR)

A NOPR was published in the *D.C. Register* on October 18, 2019. (66 DCR 13770.) A Corrected NOPR correcting the Square of the Property to Square 5799 (not the initially published erroneous Square 579) was published in the *D.C. Register* on November 15, 2019 at 66 DCR 15274.

NOPR Comments

The Commission received no comments in response to the NOPR.

“Great Weight” to the Recommendations of the Office of Planning (OP)

The Commission must give “great weight” to the recommendation of OP, pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016).)

OP submitted a report dated December 3, 2018 (OP Report), concluding that the proposed rezoning was not inconsistent with the Comprehensive Plan and recommending approval. (Ex. 19.) The Commission found OP’s analysis and recommendation to approve rezoning the Property to the RA-2 zone persuasive and concurred in that judgment.

“Great Weight” to the Written Report of the Advisory Neighborhood Commission (ANC)

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy this great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

ANC 8A submitted a report (ANC Report) stating that at a properly noticed public meeting held on March 5, 2019, it voted to support the proposed rezoning. (Ex. 32.) The ANC Report expressed concerns about the future development of the Property and proposed conditions to address these concerns, which the Petitioner accepted in a Memorandum of Understanding executed with the ANC. Although the Commission concluded that these conditions and the issues raised by the ANC Report were not legally relevant to the rezoning process, the Commission concurred with the ANC Report’s support for the rezoning.

At its public meeting on January 13, 2020, in consideration of the case record and for the reasons stated above, the Commission took **FINAL ACTION** to amend the Zoning Map as follows:

SQUARE	LOT	MAP AMENDMENT
5799	976	R-3 to RA-2

VOTE (January 13, 2020): 5-0-0 (Peter A. Shapiro, Robert E. Miller, Anthony J. Hood, Michael G. Turnbull, and Peter G. May to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on April 24, 2020.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

