

## **EXHIBIT B**

### **APPROPRIATENESS OF THE PROPOSED ZONING MAP AMENDMENT AND ANALYSIS OF THE SPOT ZONING ALLEGATION**

#### **PROPOSED ZONING MAP AMENDMENT**

In the Applicant's pre-hearing statement and in OP's report in this case, significant evidence and information has been provided to the Zoning Commission that addresses the appropriateness of the rezoning of a portion of the Sibley Campus to the SP-1 Zone District. We have referred to the PUD and Zoning Map amendment cases that the Zoning Commission has approved for the development of medical office buildings on the Washington Hospital Center Campus (Z.C. Order Nos. 784, 969, and 02-43). Those cases approved the rezoning from R-5-A to SP-1 and SP-2 on land that was included in the Institutional Land Use category on the Generalized Land Use Map, just as the Sibley Campus is mapped.

It is also important to note that the Zoning Commission treats PUD related Zoning Map amendments differently from other types of rezonings. In Zoning Commission Order No. 921, a PUD and Zoning Map amendment case in Ward 3, the Zoning Commission clearly articulated the legal standard for reviewing PUD related Zoning Map amendments.

Paragraph 5 of the Conclusions of Law notes that:

A PUD Map amendment is thus a temporary change to existing zoning, that does not begin until a PUD Covenant is recorded, ceases if the PUD is not built and ends once the PUD use terminates. This being the case, the Commission may grant PUD related map amendments in circumstances where it might reject permanent rezoning.

Paragraph 13 of the Conclusions of Law notes:

A map amendment granted as part of a PUD establishes no precedent for zoning cases involving permanent zoning map amendments. A PUD map amendment is tied to the PUD use. The PUD use is constrained by covenant. Therefore, the merits of such amendments are usually analyzed in the narrow context of the PUD use requested.

Paragraph 6 notes:

A PUD applicant seeking a related map amendment must still demonstrate that public health, safety, and general welfare goals of the zoning regulations would be served by the amendment.

In its September 29, 2006, report, the Office of Planning noted the following:

the physician's office building is considered a compatible use on the hospital campus, and would be designed to provide integrated outpatient services for patients, including lab and radiology clinics, a pharmacy and possibly an optometrist, as well as some deli-type service for patrons and staff of the facility. (p. 3-4).

The SP Zone District's main purpose is to ensure that new development is compatible in use, scale and design with its transitional function. (p. 4).

The proposed uses and restrictions on the property are consistent with the SP-1 Zone District and with the Comprehensive Plan. Similar uses and subsequent rezoning to the SP-1 Zone District in prior applications have been deemed consistent with the Comprehensive Plan, as illustrated in the Applicant's statement. (p. 10).

In evaluating the application for consistency with the Comprehensive Plan, the Office of Planning considered consistency with themes, objectives and policies of the Comprehensive Plan, and the Generalized Land Use Map. (p. 10).

As noted in the Applicant's pre-hearing statement and in testimony presented to the Zoning Commission, granting the requested Zoning Map amendment will permit the development of the medical office building which will allow Sibley Hospital to provide more efficient and effective delivery of health care services and will promote the public health, safety and general welfare of the District of Columbia. As noted above, the Office of Planning agrees with this conclusion. Therefore, the Applicant has satisfied its burden of proof in order for the Zoning Commission to approve the proposed Zoning Map amendment.

### **SPOT ZONING ALLEGATION**

Spot zoning is the "wrenching of a small parcel from its environment for the benefit of a single owner and without the benefit to the public at large or the area affected." Daro Realty, Inc. v. District of Columbia Zoning Comm'n, 581 A.2d 295, 299 (D.C. 1990) (citing Citizens Ass'n of Georgetown v. District of Columbia Zoning Comm'n, 402 A.2d 36, 40 (D.C. 1979)). There is a two-pronged test to determine if a parcel of land has been illegally "wrenched" from its environment: (1) when the Zoning Commission's action "pertain[s] to a single parcel or a limited area-ordinarily for the benefit of a particular property owner or specially interested party," and (2) the Zoning Commission's action is "inconsistent with the city's comprehensive plan, or if there is none, with the character and zoning of the surrounding area, or the purposes of zoning regulation, i.e., the public health, safety, and general welfare." Id.

Here, the proposed application does not result in spot zoning, as the project does not result in “the wrenching of a small parcel from its environment for the benefit of a single owner and without benefit to the public at large or the area affected.”

The first prong of the analysis is not satisfied because the rezoning does not affect a “limited area” and is not for the benefit of a single interested party. The Applicant is requesting to rezone a site that is approximately 2.86 acres in size: a significant size that is difficult to characterize as “limited.” The previous cases where courts have found that the first prong of the analysis was satisfied involved significantly smaller parcels of land. The size of those parcels ranged from 14,000 square feet (Daro) to 3.17 acres (Citizens Ass’n of Georgetown). All but one of the cases involved parcels of land that were less than 2 acres in size. The parcel can hardly be defined as having a “limited area” and its significant size bolsters the fact that the first prong of the test is not satisfied.

Even if the Zoning Commission were to find that the first prong of the test was satisfied, it is clear that the second prong is not. If a rezoning is in harmony with the comprehensive plan, the character of the surrounding property and the purposes of zoning regulations, courts repeatedly have found that it is not spot zoning. See Daro Realty Inc., 581 A.2d at 300 (citing Citizens Ass’n of Georgetown, 402 A.2d at 40). The proposed SP-1 Zone District is entirely consistent with the Institutional Land Use designation for the majority of the Sibley Hospital campus, as well as the hospital and related uses that occupy the site. Moreover, as detailed in the Applicant’s pre-hearing submission and the OP Final Report, the rezoning is consistent with the themes, elements, and policies of the Comprehensive Plan as well as the purposes of the Zoning Regulations.