

WECA's Proposed Findings of Fact and Conclusions of Law
(ZC Case No. 08-27)

For: 1/1/09
To: 1/1/09
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**Application No. 08-27, PUD and Map Amendment: Square 170, Lots 38 & 39,
American Institute of Architects and American Architectural Foundation**

HEARING DATE: May 18, 2009

DECISION DATE: [insert date]

PRELIMINARY MATTERS:

The Commission received a request for "Party" status from the West End Citizens Association (WECA). On May 18, 2009, the Commission granted this request.

FINDINGS OF FACT

1. On March 13, 2009, for Square 170, Lots 38 and 39, currently zoned SP-2, the American Institute of Architects and the American Architectural Foundation (collectively "AIA") requested both Consolidated Review and Approval of a Planned Unit Development (PUD) and a Zoning Map Amendment to C-3-C (ZC Case No. 08-27). The request constituted a 33% increase in allowable density (from 6.0 to 8.0 floor area ratio (FAR)) and a 44% increase in allowable height (from 90 to 130 feet). SP-2 zoning without a PUD allows 103,588 square feet (s.f.) of gross floor area (GFA); C-3-C zoning with a PUD allows 316,368 s.f. Currently, the Applicant has 134,187 s.f. in non-residential use; the Application proposed 133,227 s.f. in non-residential use. The request, thus, constituted a 138% increase in GSA from the current 134,187 s.f. to the allowable 316,368 s.f.
2. On April 7, 2009, the West End Citizens Association (WECA) submitted a letter requesting "Party" status.
3. On April 15, 2009, the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) passed a unanimous resolution in opposition to the proposed PUD and the requested Map Amendment and requested that "great weight" be afforded to its resolution.
4. On May 18, 2009, the Zoning Commission granted "Party" status to the WECA. ANC-2A was an automatic "Party."
5. On May 18, 2009, the Zoning Commission held a hearing on Case No. 08-27. Parties in opposition testified to the objectionable precedent of a Map Amendment to 100% commercial zoning in a huge SP-2 zone (see Finding #8 below). In addition, ANC-2A and the WECA testified to the inadequate provision of PUD amenities to the immediately impacted Foggy Bottom-West End community, as required by law (see Finding #10 below).

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6. On June 4, 2009, the National Capital Planning Commission approved ZC Case No. 08-27.
7. AIA's requested minor changes (e.g., for roof structures, ground floor retail accessible from the street, and a multi-purpose space for internal use and outside rental) can all be accommodated through the "flexibility" provisions applicable to a PUD (11 DCMR §2400.2) without a Zoning Map Amendment.
8. AIA's requested Map Amendment for upzoning from SP-2 to C-3-C is in the middle of a large SP-2 zone. Except for Federal properties, all properties south of E Street from 25th to 17th Streets are zoned either SP-2 or R-5-E, i.e., there is no all commercial (C) zoning whatsoever. Included in the same SP-2 area as the AIA (i.e., Lots 170, 171, 172 and 173, running from C to E Streets and from 17th to 18th Streets) are various notable low-scale properties, including the Corcoran Gallery of Art (at 500 17th Street), the American Red Cross (at 430 17th Street), and the Daughters of the American Revolution (DAR) Constitution Hall (at 1776 D Street). These properties could be negatively affected by the AIA's upzoning to C-3-C.
9. AIA's requested modifications would create financial benefits for the AIA. These include: (a) revenue from the new multi-purpose space, floors for rental income to tenants, and increased bookstore revenue; (b) a significant decrease in utility costs over the foreseeable future and a decrease in overall operating costs; and, (c) support for expanded programs which the AIA sees in the uses of the building. These are benefits which directly accrue to the AIA in terms of financial assets and should be the basis of sharing gains with the Foggy Bottom-West End community. In addition, a PUD would result in future opportunities for increased height and density. The AIA presented: (a) no data to support the move of the bookstore, including the expected amount of increased sales revenue; (b) no data on expected income from the new multi-purpose space; (c) no expert witness testimony to support its real estate calculations; and, (d) no expert testimony in HVAC functions to describe the factors used to cost the expected year-to-year changes in its carbon footprint.
10. AIA's PUD amenities proffer is inadequate and inconsistent with DC Law governing all PUDs. The Comprehensive Plan Amendment Act of 2006 provided, "Location of PUD Amenities. Require that a substantial part of the amenities proposed in Planned Unit Developments (PUDs) shall accrue to the community in which the PUD would have an impact" (DC Law 16-300, Policy IM-1.18, 2502.12). Both ANC-2A and the WECA testified that none of AIA's proffered amenities would directly benefit the Foggy Bottom-West End community.

CONCLUSIONS OF LAW AND OPINION

AIA filed an application requesting consolidated review and approval of a PUD and an amendment to the Zoning Map of the District of Columbia pursuant to 11 DCMR Chapter 24. All of AIA's requested modifications and refinements can be approved

under the "flexibility" provisions applicable to a PUD (11 DCMR §2400.2) without a Zoning Map Amendment.

AIA's PUD amenities are inadequate and inconsistent with DC law (DC Law 16-300, Policy IM-1.18, 2502.12) since none (vs. "a substantial part") of the amenities accrue to the Foggy Bottom-West End community.

The Commission is authorized to grant approval where, in the judgment of the Commission based on a showing through substantial evidence, the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject to certain conditions specified in § 210. D.C. Official Code §6-641.07(g)(2)(2001), 11 DCMR § 3104.1.

DECISION

The Commission has afforded "great weight" to the issues and concerns raised in ANC-2A's recommendations, as required by law (Section 13 of the Advisory Neighborhood Commission Act of 1975, effective 10/10/75; D.C. Law 1-21, as amended, now codified at D.C. Code § 1-309.10).

At a public meeting on May 18, 2009, the Commission voted 3-0-2 to preliminarily approve the application.

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **DENIAL** of the proposed PUD and **DENIAL** of the proposed Zoning Map Amendment.

VOTE: __-__-__ ().

BY ORDER OF THE D.C. ZONING COMMISSION

Each concurring member approved the issuance of this order.