

List of Pot Store Applicants

Photo by James St. John. ABCA has released the list of applicants seeking a medical marijuana retailer's license. This initial group includes stores that were previously operating under I-71

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February 15, 2024 · 10:00 am



Photo by [James St. John](#).

ABCA has released the list of applicants seeking a medical marijuana retailer's license. This initial group includes stores that were previously operating under I-71 (i.e. the

Board of Zoning Adjustment
District of Columbia
CASE NO.21107
EXHIBIT NO.19A

APPENDIX
AG

DeLorean 88 LLC_0901

“gifting” stores), which were given first dibs for the new licenses.

There are eight establishments seeking a license to be located in Georgetown. That list includes (the third column is the proposed location and the fourth column is the previous location the store operated in, if any):

DeLorean 88 LLC	DeLorean	1432 Wisconsin Avenue NW	1526 U Street NW	2E	Delivery
KRS LLC	Georgetown Supply	1251 Wisconsin Avenue NW	1432 Wisconsin Avenue NW	2E	Delivery
UpnSmoke IV, LLC	UpnSmoke IV	3289 M Street NW		2E	Delivery
Luxury Soil LLC	Luxury Soil LLC	1620 Wisconsin Avenue NW		2E	Delivery
DC Capital Connect	DC Capital Connect	1263 Wisconsin Avenue NW	3212 O Street NW	2E	N/A
M&Y Import LLC	Herbal Harvest	1263 Wisconsin Avenue NW, #2	1251 Wisconsin Avenue NW	2E	N/A
Funky Piece Georgetown Corp	Funky Pharmacy	2801 M Street NW, Basement		2E	Delivery
FAT MUNCHIEZ DC LLC		1671 Wisconsin Avenue NW		2E	None

Being on this list merely means an application was submitted. It is not an indication that ABCA has cleared the applicant for placarding. So far only two have reached that point (UpnSmoke and Georgetown Supply). They are both in the process of hammering out a settlement agreement with the ANC.

Not all of the remaining applicants will be able to get a license, at least for the locations identified in the application. 1432 Wisconsin Ave. (“Delorean”) is too close to Hyde-Addison to receive a license. 1263 Wisconsin (both “DC Capital Connect” and “Funky Pharmacy” identified this location) is too close to where Georgetown Supply is set to occupy. So those two applications should be rejected. 1671 Wisconsin Ave. (“Fat Munchiez”) is too close to 1620 Wisconsin Ave. (“Luxury Soil”). Since Luxury

DeLorean 88 LLC_0902

Soil put in its application first, it will get priority and will block Fat Munchiez.

So, at least initially, there will only be three applications that can move forward. More applicants may arise later, but it appears that we will have substantially fewer pot shops than we have now.

Of course that reduction depends on the city shutting down the I-71 shops that did not apply for a retailer's license. Recent legislation from the council clarified that ABCA has that authority. As ANC commissioner, I will be encouraging that they use it poste haste.

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
One Judiciary Square
441 4th Street, NW
Washington, DC 20001

Appeal by DeLorean 88, LLC

BZA Appeal No. 21107

PRE-HEARING STATEMENT OF
THE DISTRICT OF COLUMBIA OFFICE OF ZONING

NOW COMES, the District of Columbia Office of Zoning (“OZ” or “Appellee”) in response to DeLorean 88, LLC’s (“Appellant”) appeal, and it states as follows:

OZ contends that its correction of a digitization error on the now digital zoning map which affected a zone boundary line near the intersection of P Street NW and Wisconsin Avenue NW should be upheld because:

- OZ is the District agency authorized to maintain the zoning map, which includes making technical corrections to digitization errors at any time without prior notice or a hearing, as indicated by the zoning map’s legal disclaimer;
- OZ’s determination that the zoning boundary line coincides with the property lot line is supported by its review of historic zoning maps and the Zoning Regulations, 11-A DCMR § 206.3, which intends for zone boundary lines to coincide with property lot lines; and
- The Board lacks authority to rule on the equitable principles raised by the Appellant.

I. INTRODUCTION

Appellant appeals an email determination dated November 9, 2023 (“OZ Email”), sent by OZ Director Sara Bardin regarding the correction of a zoning boundary line abutting the property located at Lot 0854 in Square 1244 (“Property”). Appellant contends that the OZ Email unlawfully amended the Property’s zoning without proper notice and a hearing. Appellant contends that the zoning boundary line encroaches on the Property, and that the Property should therefore be split-

zoned R-3/GT (formerly R-20) and MU-4. Appellant also contends that OZ is bound by principles of equity to retain the erroneous zoning boundary line, and that it was improperly denied a license by the Alcoholic Beverage and Cannabis Board (“ABC”A”) as a result of the correction. In fact, the OZ Email did not illegally change the Property’s zoning but instead corrected a digitization error that resulted in a slightly misdrawn zoning boundary line. OZ’s investigation into multiple historic zoning maps confirms that the Property has never been split-zoned and is zoned R-3/GT only. As a result, Appellant’s claims are without merit and its appeal should be denied.

II. BACKGROUND

On November 9, 2023, Director Bardin received an inquiry from ANC 2E Commissioner Christopher Mathews regarding a potential mapping issue involving the zoning boundary line in question. OZ conducted an investigation, determined there was a digitization error affecting the zoning boundary line, and corrected the error that day. Director Bardin then sent the OZ Email to Commissioner Mathews confirming that the zoning map had been updated to reflect the correction. A timeline of events related to the OZ Email is attached hereto as **Exhibit A**.

III. ARGUMENT

For the reasons below, the Board should uphold the zoning boundary line’s current location on the zoning map, which reflects the Property’s location within the R-3/GT zone and outside the MU-4 zone.

A. The zoning boundary line was affected by a digitization error.

Upon receiving Commissioner Mathews’ inquiry, OZ staff investigated the zoning boundary line and concluded that it was slightly misdrawn as a result of a digitization error that occurred when the historic paper zoning maps were converted by hand into a modern digital geographic information system (“GIS”), which is now the zoning map. While uncommon, such

errors are known to result from the digitization process; hence, the zoning map (both 2D and 3D versions) includes a disclaimer displayed at all times informing the public of potential errors, and OZ provides a service to certify a property’s zoning status if requested. A copy of the zoning map disclaimer is attached hereto as **Exhibit B**.

B. The zoning boundary line is now correctly shown on the zoning map.

The zoning boundary line’s corrected location is based on OZ’s review of multiple historic zoning maps which all indicate that the zone boundary line lies approximately 78 feet west of the public alley to the east of the Property and runs coincident with the Property’s northeastern lot line. A compilation of the current and historic zoning maps all showing the zoning boundary line as running coincident with the Property’s northeastern lot line is attached hereto as **Exhibit C**.

Appellant requests the Board overturn OZ’s correction and reinstate the erroneous zoning boundary line, which extends as far as 84.29 feet from the eastern alley. In the alternative, Appellant alleges that a 78-foot distance measured from the alley encroaches slightly onto the Property. In its investigation, OZ did find that the distance between the Property’s northeastern lot line and the alley is approximately 77.42 feet based on authoritative GIS real property lot line data provided by the Office of Tax and Revenue and the Office of the Chief Technology Officer. However, OZ’s position is that the zoning boundary line runs coincident with the Property’s lot line, even if the 78-foot distance measured from the alley encroaches slightly onto the Property. OZ’s position that the zoning boundary line runs coincident with the Property’s lot line is supported by both (1) the clearly drawn zoning boundary line (at approximately 78 feet measured from the alley) on the historic paper zoning maps; and (2) the intent of the Zoning Regulations, specifically 11-A DCMR § 206.3, which states that zoning boundaries “are intended to coincide generally with lot lines.”

Further, OZ’s position is that, to the extent the 78-foot distance measured from the alley encroaches slightly onto the Property, it is *de minimis* and does not override the Zoning Regulations’ intent for the zoning boundary line to run coincident with the Property’s lot line. *See* 11-A DCMR § 206.3. For these reasons, OZ determined that the Property’s zone boundary line should be corrected to run coincident with the Property’s lot line. OZ notes that there is no evidence to support the contention that the Property is split-zoned or was ever split-zoned. An excerpt of the relevant zoning regulations is attached hereto as **Exhibit D**.

C. Appellant’s other arguments are baseless or beyond the purview of the Board.

Appellant argues that OZ’s determination required notice and a hearing. However, the OZ Email determination was not a zoning map amendment but rather a correction of a digitization error made in accordance with its 11-A DCMR § 205.1 authority to “maintain” the zoning map, which is no longer a physical document, but rather a digital geographic information system (GIS) based on underlying data sourced from multiple historic paper zoning maps.

Appellant asks that ABCA’s denial of its business license application be reversed since the zoning boundary line error existed on the date of its business license application; however, ABCA’s decisions and its licensing matters are outside the Board’s jurisdiction to review or regulate.

Appellant also invokes the equitable principle of laches or estoppel based on its assertion of a vested right in the Property’s erroneous zoning. However, Appellant is not the owner of the Property and has arguably not demonstrated how the facts in these circumstances meet the legal standard it cites in *Speyer v. Barry*, 588 A.2d 1147, 1154 (D.C. 1991). Regardless, the Board’s authority is limited, under 11-A DCMR § 206.7, to determining the exact location of the zone boundary line. The Board has no authority to rule on the merits of the equitable principles raised

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by the Appellant. Notably, the Appellant concedes that OZ corrected the digitization error shortly after becoming aware of the issue and before the ABCA denial was rendered.

IV. CONCLUSION

The OZ Email’s determination should be upheld based on the evidence and the Zoning Regulations. For the aforementioned reasons, OZ requests that the Board deny this appeal.

Respectfully submitted,

HILLARY LOVICK
LEAD ATTORNEY
OFFICE OF ZONING LEGAL DIVISION

/s/ Dennis Liu
Dennis Liu (DC Bar # 90000711)
Attorney Advisor
Office of Zoning Legal Division
441 4th Street, NW, Suite 200S
Washington, DC 20001
dennis.liu@dc.gov

CERTIFICATE OF SERVICE

I certify that on September 17, 2024, a copy of the foregoing was sent via electronic mail and/or the electronic filing system (IZIS) to:

Sara Bardin, Director
Office of Zoning
441 4th Street, NW, Suite 200S
Washington, DC 20001
sara.bardin@dc.gov

Philip M. Musolino, Esq.
pmusolino@musolinodessel.com

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3219 O Street NW
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Washington, DC 20007
Hyde.Addison@k12.dc.gov

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1200 First Street NE
Washington, DC 20002
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ANC 2E
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ANC 2E03 Commissioner Paul Maysak
3267 P Street NW
Washington, DC 20007
2E03@anc.dc.gov

/s/ Dennis Liu
Dennis Liu

EXHIBIT A

Timeline

- **November 9, 2023:**
 - ANC 2E Commissioner Mathews emails OZ Director Bardin with a question regarding a potential zoning boundary inaccuracy on the zoning map.
 - Director Bardin calls Commissioner Mathews to discuss the issue.
 - OZ staff investigates the zoning boundary line and finds the digitization error. OZ staff corrects the error on the zoning map based on its review of the 1958 Baist Atlases and other historic zoning maps.
 - Director Bardin sends the OZ Email to Commissioner Mathews informing him of the digitization error and the correction to the zoning map.
- **January 9, 2024:** Appellant’s representative, Mr. Sanjeev Preet, meets with Director Bardin at OZ’s offices where he views historic zoning maps with OZ staff.
- **January 9-17, 2024:** Mr. Preet measures the distance between the alley and Property.

EXHIBIT B

Online Zoning Map Disclaimer

DISCLAIMER

“While DCOZ is committed to providing accurate and timely zoning information via the zoning map, DCOZ cannot guarantee the quality, content, accuracy, or completeness of the information, text, graphics, links, and other items contained therein. All data visualizations on the zoning map should be considered approximate. Information provided in the zoning map should not be used as a substitute for legal, accounting, real estate, business, tax, or other professional advice. DCOZ assumes no liability for any errors, omissions, or inaccuracies in the information provided regardless of the cause of such or for any upon any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein. DCOZ retains the right to change any content on its zoning map without prior notice.”

Source: Online Zoning Map for DC, <https://maps.dcoz.dc.gov/zr16/>; *see also* 3D Zoning Map, <https://maps.dcoz.dc.gov/3d/>.

EXHIBIT C

Current and Historic Zoning Maps

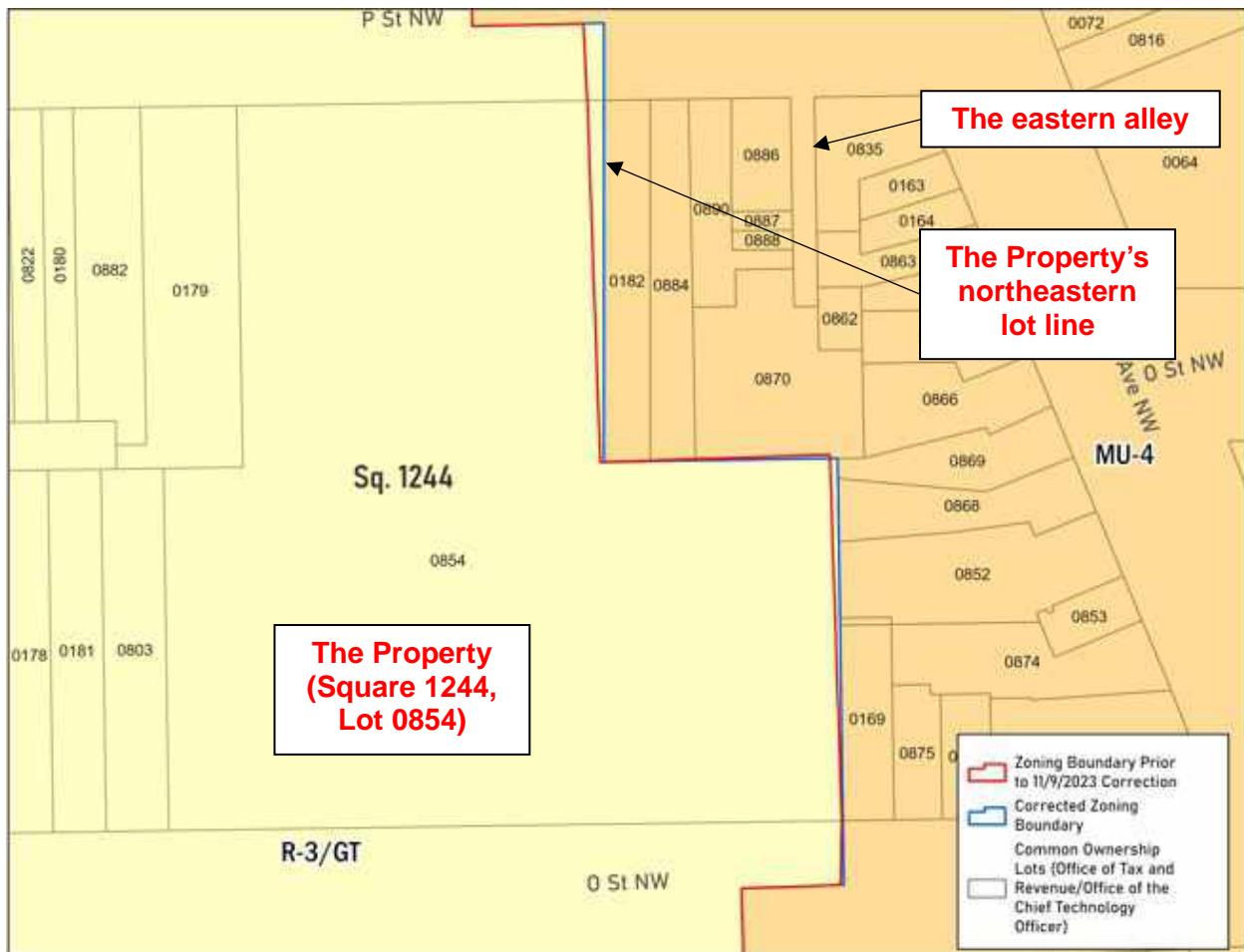


Figure 1: Excerpt from the official zoning map showing the Property.

Red line represents zoning boundary line prior to correction.

Blue line represents zoning boundary line following correction.

EXHIBIT C

**Current and Historic Zoning Maps
(cont'd)**



Figure 2: 1958 Baist Atlas Vol. 3 Plan 4 (on file with OZ).

Red arrow indicates historic zoning boundary line (in red) running coincident with Property's northeastern lot line.

Red circle indicates 78-foot distance between public alley and zoning boundary.

EXHIBIT C

**Current and Historic Zoning Maps
(cont'd)**

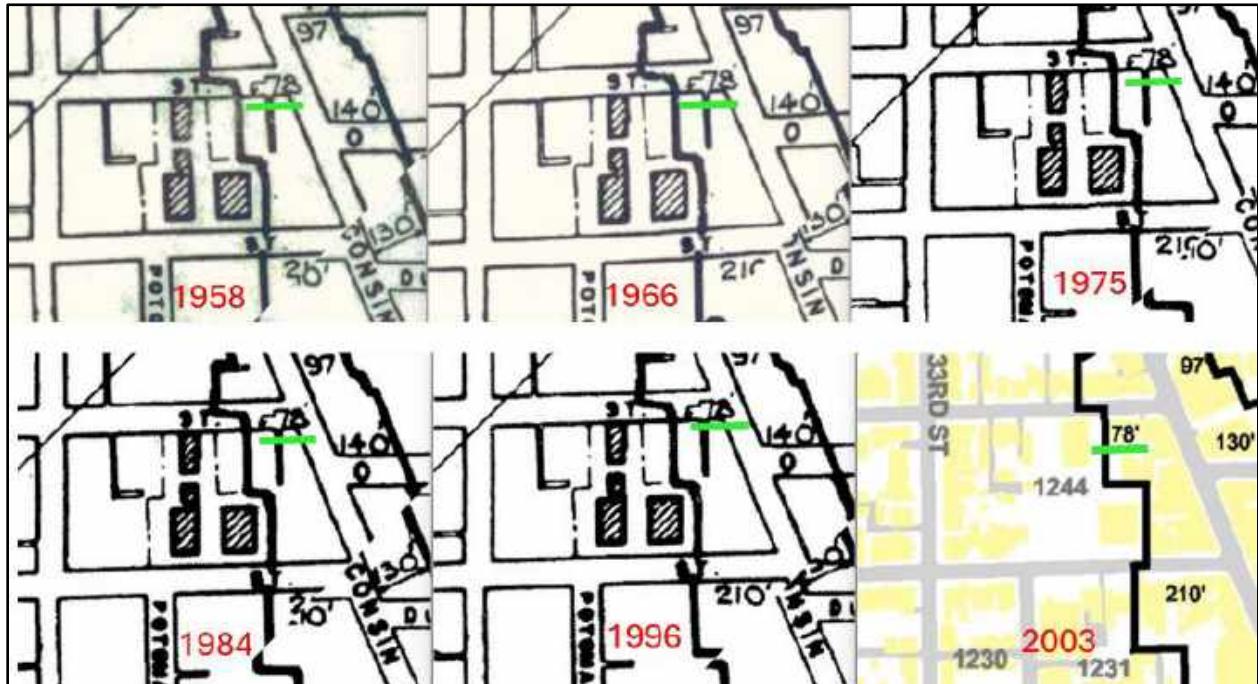


Figure 3: Screenshots of historic zoning maps dating from 1958 to 2003 all showing the 78-foot dimension (underlined in green).

Maps publicly available at maps.dcoz.dc.gov/historiczoning.

EXHIBIT D

Zoning Regulations Excerpt

TITLE 11 – ZONING
SUBTITLE A – AUTHORITY AND APPLICABILITY
CHAPTER 2 – ADMINISTRATIVE AND ZONING REGULATIONS

206 ZONE BOUNDARY LINES

- 206.1 The zone boundaries shall be shown on each section of the Zoning Map.
- 206.2 The scale of the Zoning Map and the dimensions entered on the map shall be shown on each section of the map to serve as guides.
- 206.3 Dimensioned zone boundaries showing on the Zoning Map are intended to coincide generally with lot lines. Where a dimensional boundary line coincides within one foot (1 ft.) or less with a lot line of a lot of record on May 12, 1958, that boundary line shall be construed to be the lot line at that location. [emphasis added]**
- 206.4 Whenever a portion of any zone is indicated as a strip paralleling an opened or unopened street, the width of this strip, unless delimited by lot lines or otherwise dimensioned, shall be assumed to be one hundred feet (100 ft.) measured at a right angle from the nearest street to which it is parallel and adjacent.
- 206.5 In all other cases, the zone boundary lines shall be intended to follow existing lot lines, the center lines of streets, alleys (including any closed streets or alleys not previously zoned), and natural water courses. [emphasis added]**
- 206.6 In the case of tidal water areas, the zone boundary shall be either the mean high water level or the established pierhead lines, whichever gives the greatest control.
- 206.7 In cases of disagreement or uncertainty existing as to the exact location of a zone boundary line, the Board of Zoning Adjustment, upon appeal filed in accordance with Subtitle Y, shall determine the exact location of the boundary. [emphasis added]**

From: Berman, Jonathan (ABC)
To: § 2-534(a)(2)
Cc: § 2-534(a)(2)
Subject: Zoning Changed the Official Map (Hyde Addison)
Date: Thursday, November 9, 2023 12:57:00 PM
Attachments: image001.png
image002.png
image003.png
image004.png

§ 2-534(a)(2),

§ 2-534(a)(2)

§ 2-534(a)(2)

Sincerely,

JONATHAN BERMAN (HE, HIM, HIS) · ASSISTANT GENERAL COUNSEL

D: 202.442.4448 | E: jonathan.berman@dc.gov

ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

2000 14th Street NW, Suite 400 South, Washington DC 20009

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Filing Notice

ABRA has created a dedicated email account for the receipt of all electronic documents that concern legal and adjudication matters before the Alcoholic Beverage Control Board. Please send your Board correspondence, pleadings, filings, motions, Settlement Agreements, Security Plans, etc. to the following address: abra.legal@dc.gov

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From: Mathews, Christopher (SMD 2E02) <2E02@anc.dc.gov>

Sent: Thursday, November 9, 2023 12:42 PM

To: Berman, Jonathan (ABC) <jonathan.berman@dc.gov>

Subject: Fwd: Zoning Map Question

Jonathan,

Please see below. As I suspected, this was a result of a digitalization error. The maps have already been updated. As such, I believe Hyde-Addison still "counts" for the 300 foot rule.

Thank you!

Topher Mathews

[Get Outlook for iOS](#)

From: Bardin, Sara (DCOZ) <sara.bardin@dc.gov>

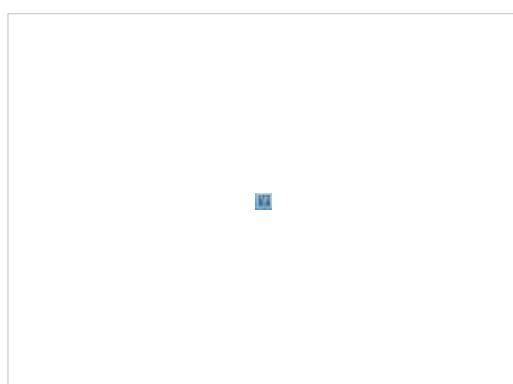
Sent: Thursday, November 9, 2023 12:16 PM

To: Mathews, Christopher (SMD 2E02) <2E02@anc.dc.gov>; Hill, Zelalem (DCOZ) <zelalem.hill@dc.gov>; ATD DCOZ <dc0z@dc.gov>

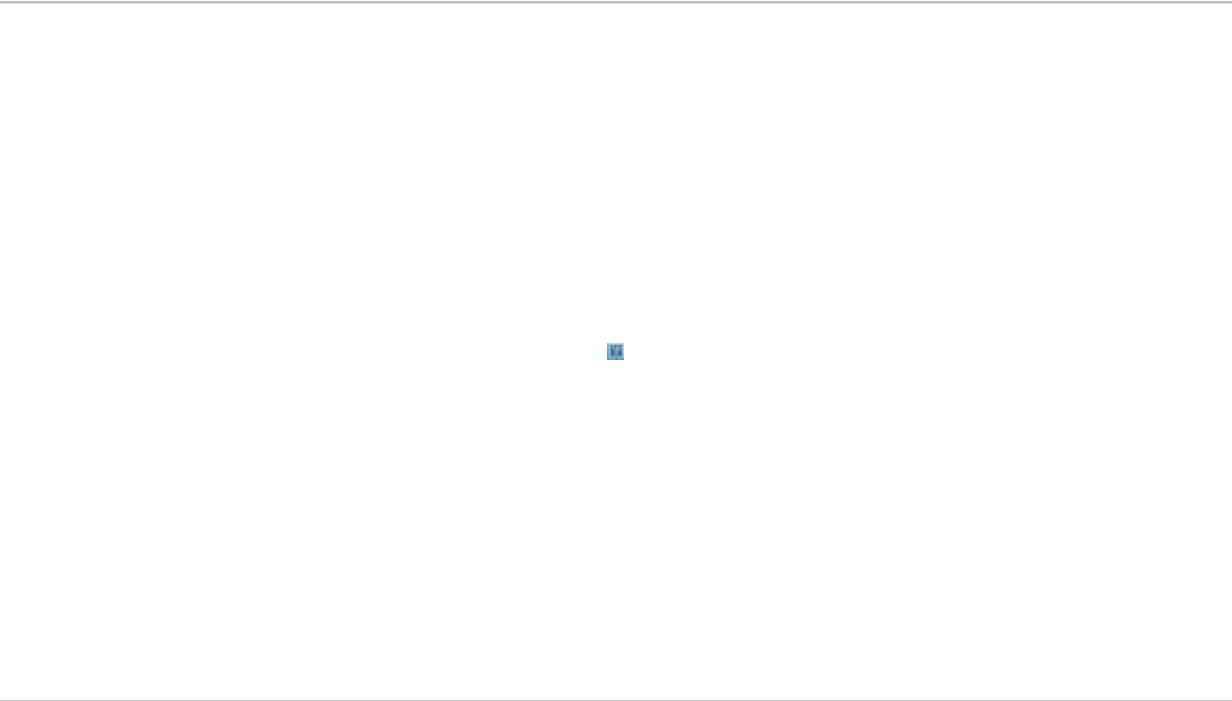
Subject: RE: Zoning Map Question

Hello Commissioner Matthews:

Yes, this appears to be a digitization error. The first screenshot below is from the 1966 map, and there is a clear 78' line from the edge of the alley ROW on this square. This measurement is shown on every map up to 2003 (subsequent maps don't show measurements). The pink line on the second screenshot is a 78-foot line we made in GIS to simulate where the line should be, juxtaposed to the red existing zone boundary.

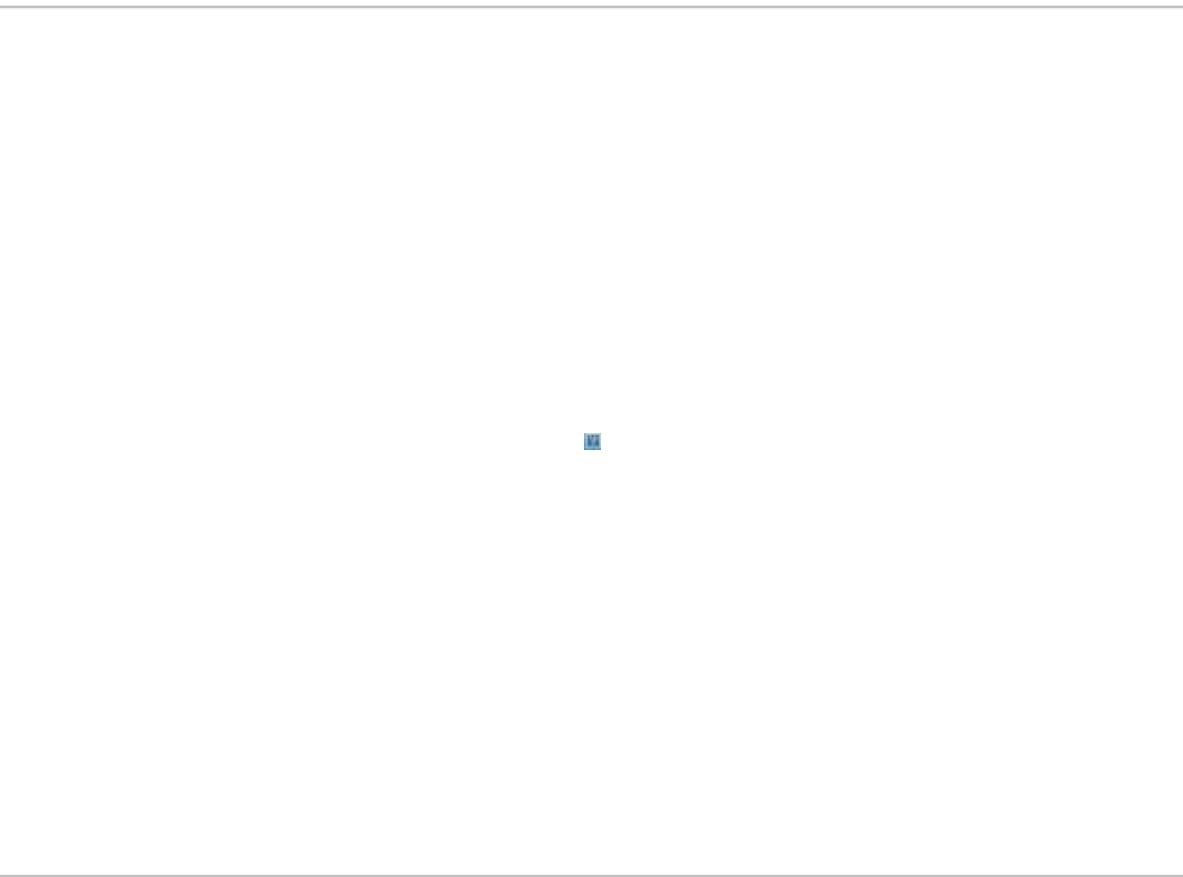


**EXHIBIT
B-1**



W

We have corrected it:



V

Sincerely,

Sara

Sara Bardin
Director

DeLorean 88 LLC_0917



Office of Zoning | District of Columbia Government
www.dcoz.dc.gov | sara.hardin@dc.gov

441 4th Street, NW | Suite 200-S | Washington, DC 20001
(202) 727-5372 (office) | (202) 727-6072 (fax)

From: Mathews, Christopher (SMD 2E02) <2E02@anc.dc.gov>

Sent: Thursday, November 9, 2023 9:19 AM

To: Hill, Zelalem (DCOZ) <zelalem.hill@dc.gov>; ATD DCOZ <dcoz@dc.gov>

Subject: Zoning Map Question

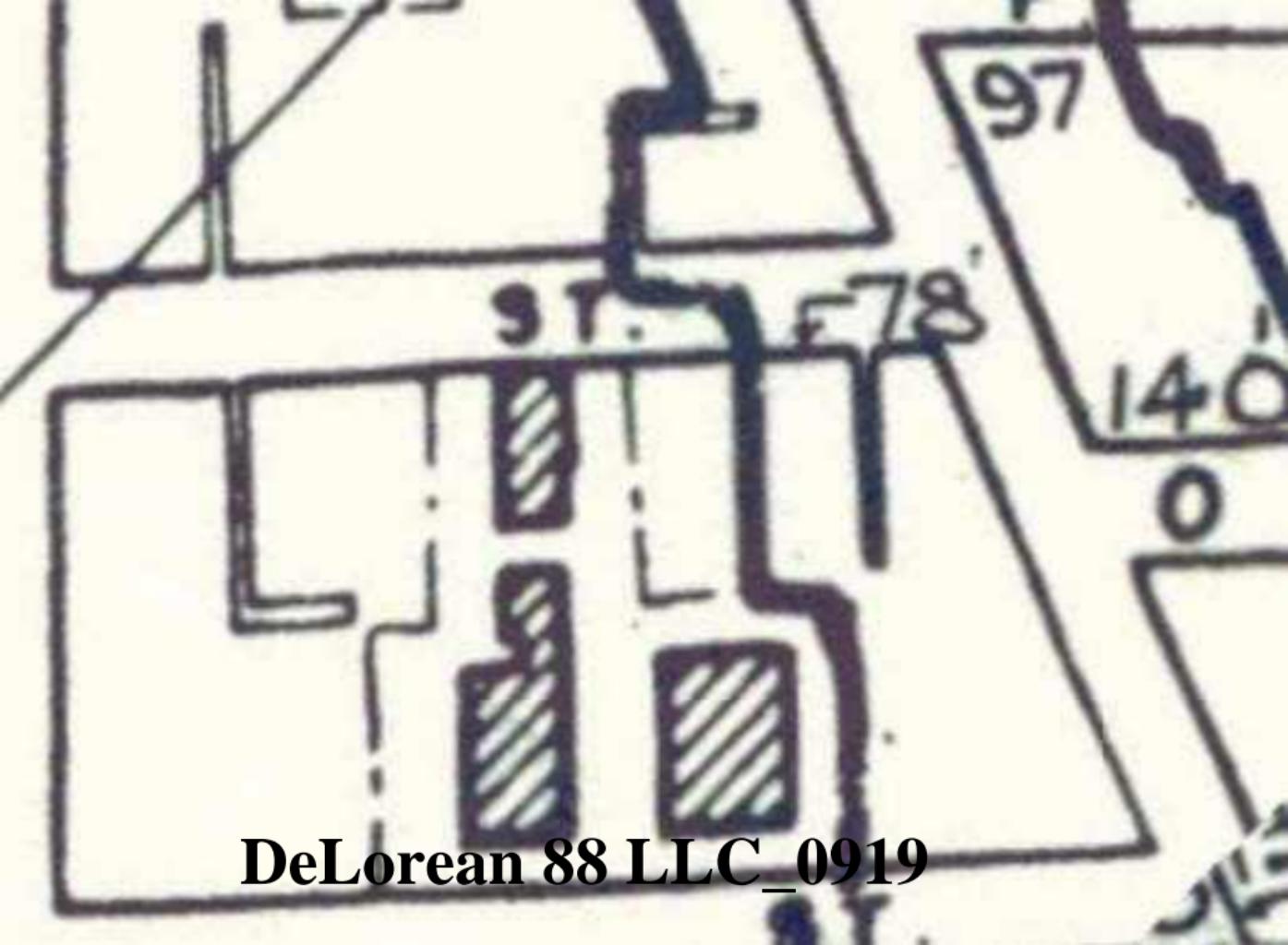
Hello,

I am an ANC Commissioner in Georgetown and I have a question about the official zoning map on the Office of Zoning's website. I believe the map is providing inaccurate information about the zoning borders. Can I speak to someone to provide clarity on how the zones are geographically defined?

Thank you very much!

Topher Mathews
ANC 2E02

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DeLorean 88 LLC_0919

NW

R-3/GT

MU-4

DeLorean 88 LLC_0920

The “Call Your Mother” fight highlights the absurdity of Georgetown’s zoning

ZoningHistoryBy Topher Mathews (Contributor) November 7, 2019 17 : 9-11 minutes



The site where Call Your Mother would go. Image by the author.

This article was first published in Georgetown Metropolitan.

**EXHIBIT
B-2**

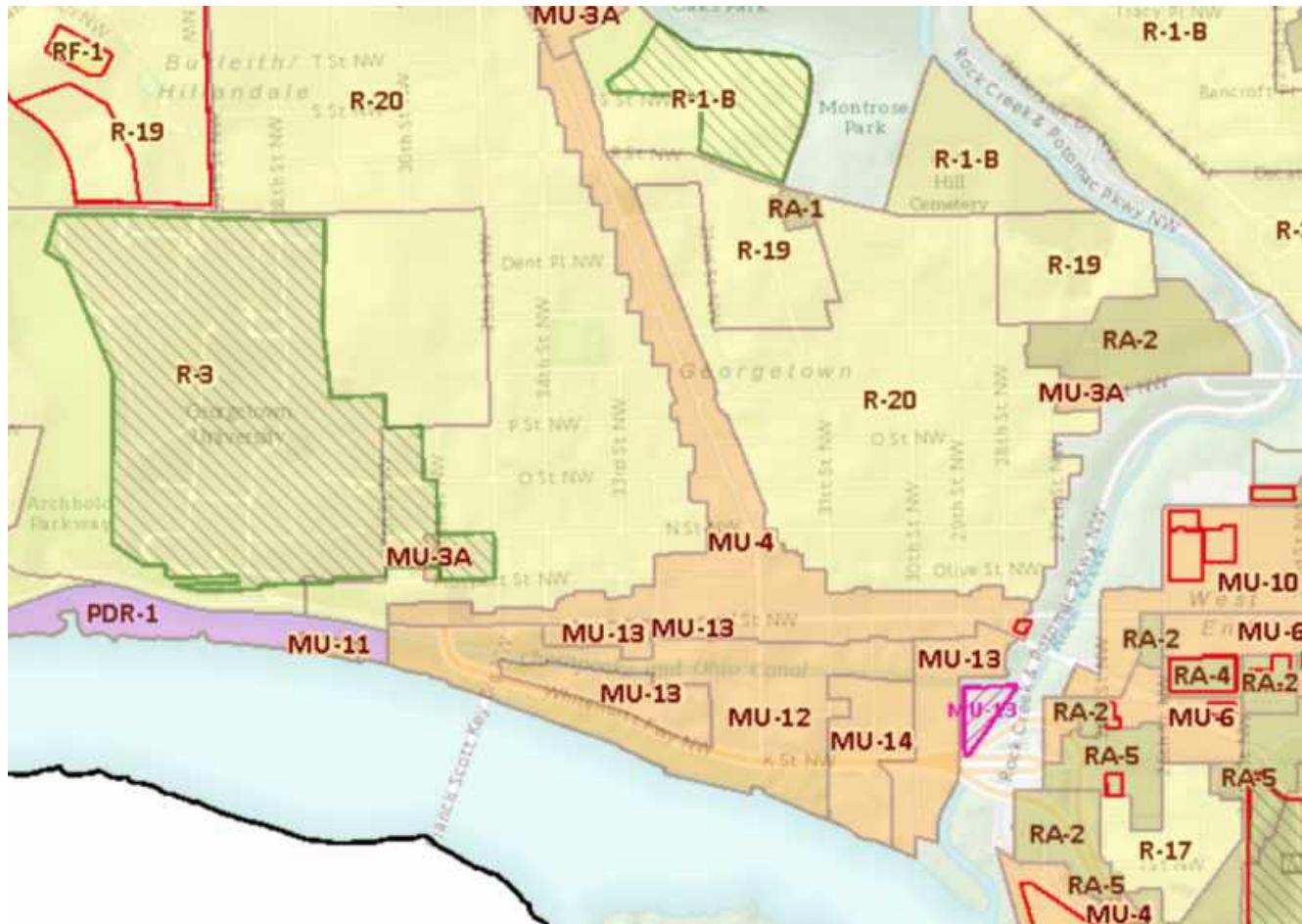
Last week, the owners of the popular bagel shop, Call Your Mother, appeared before the Board of Zoning Adjustment (BZA) to request a variance to operate their shop at 3428 O Street NW, on the corner of O Street and 35th. While the ANC voted to approve the variance, and the Office of Planning also supported it, a group of neighbors, living adjacent or nearby, as well as the ANC commissioner for the location objected to the variance. While the BZA deferred a final decision on the application to December, it's worth taking a moment to consider how absolutely absurd it is that zoning makes such approval necessary in the first place.

Zoning regulates the size and use of properties. Each property is assigned a particular zone, which sets forth, among other things, how tall the building can be, how much of the property area it can cover, and (most important for this discussion) what you can do on the property. For most residential zones, the only thing you're

DeLorean 88 LLC_0922

allowed to do “by right” (i.e. without having to seek additional approval) is to use it as a home. Commercially zoned properties, on the other hand, allow you to do just about any (legal) commercial enterprise on site.

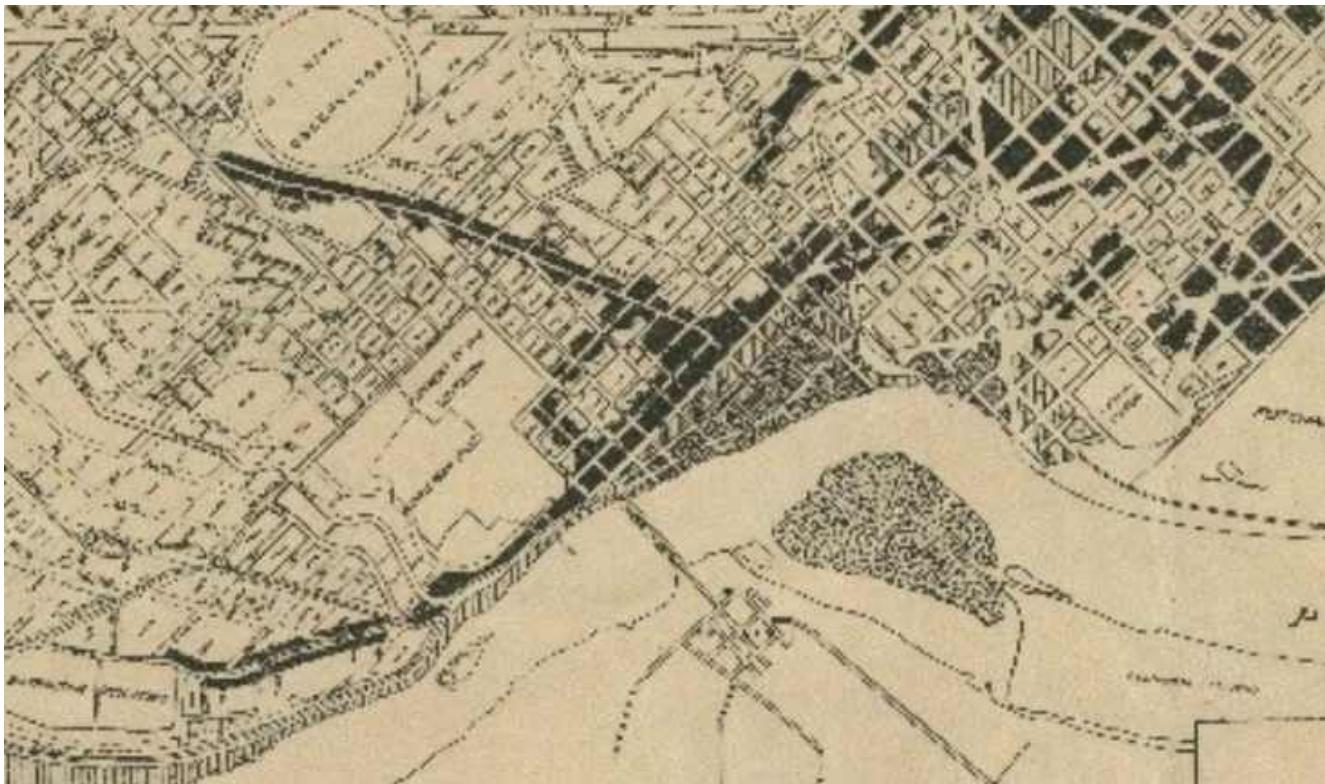
Georgetown is a mix of residential and commercially zoned blocks:



Roughly speaking, the yellow areas are the residentially zoned blocks. For Georgetown that includes R-19 (for blocks with primarily detached homes) and R-20 (blocks primarily full of rowhouses). There are a few more varieties of commercially zones. MU-4 covers most of Wisconsin Ave. and M Street MU-12, 13, and 14 covers south of M Street (this area used to be zoned as “Waterfront”, but that name was changed with the zoning rewrite several years ago).

This map, of course, wasn't around when Georgetown was being built into what it is today. The first significant zoning laws [were adopted in DC in 1920](#). The laws were largely modeled after New York's. From the beginning, though, they did pretty much the same thing the modern zoning laws do: regulate the size of buildings and how they can be used.

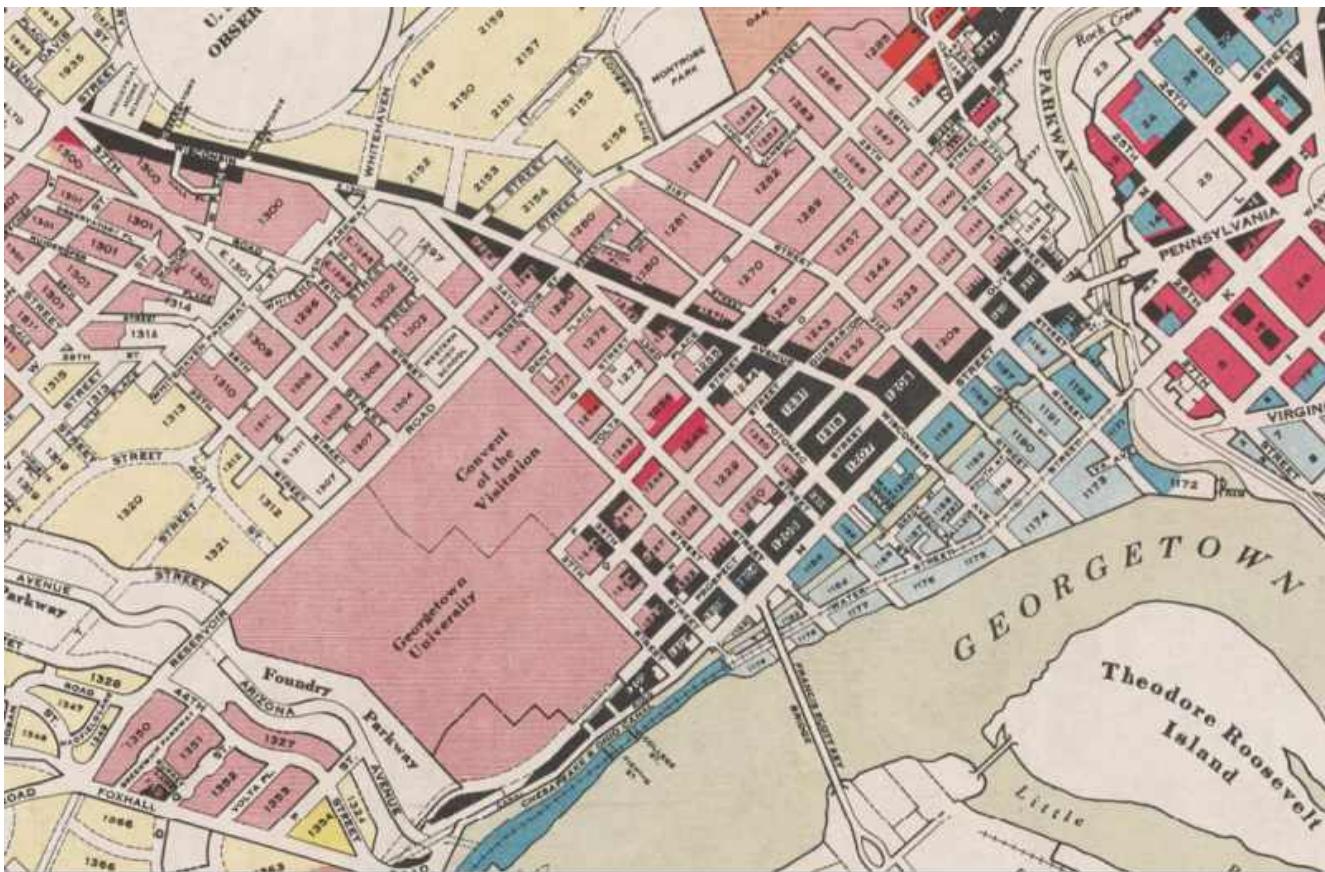
A map was drawn up in 1921 delineating for the first time what blocks would be commercial and what would be residential. Here is the Georgetown portion of the 1921 use map:



The black colored blocks are the commercial blocks, the light colored blocks the residential. As you can see, obviously M and Wisconsin were zoned for commercial from the start. But this map allowed for a substantial amount of commercial into the residential neighborhood. P Street west of Wisconsin was almost entirely zoned for commercial. 36th Street was as well. And a portion of P Street in east Georgetown (the heart of the historic black Herring Hill neighborhood) was also zoned commercial.

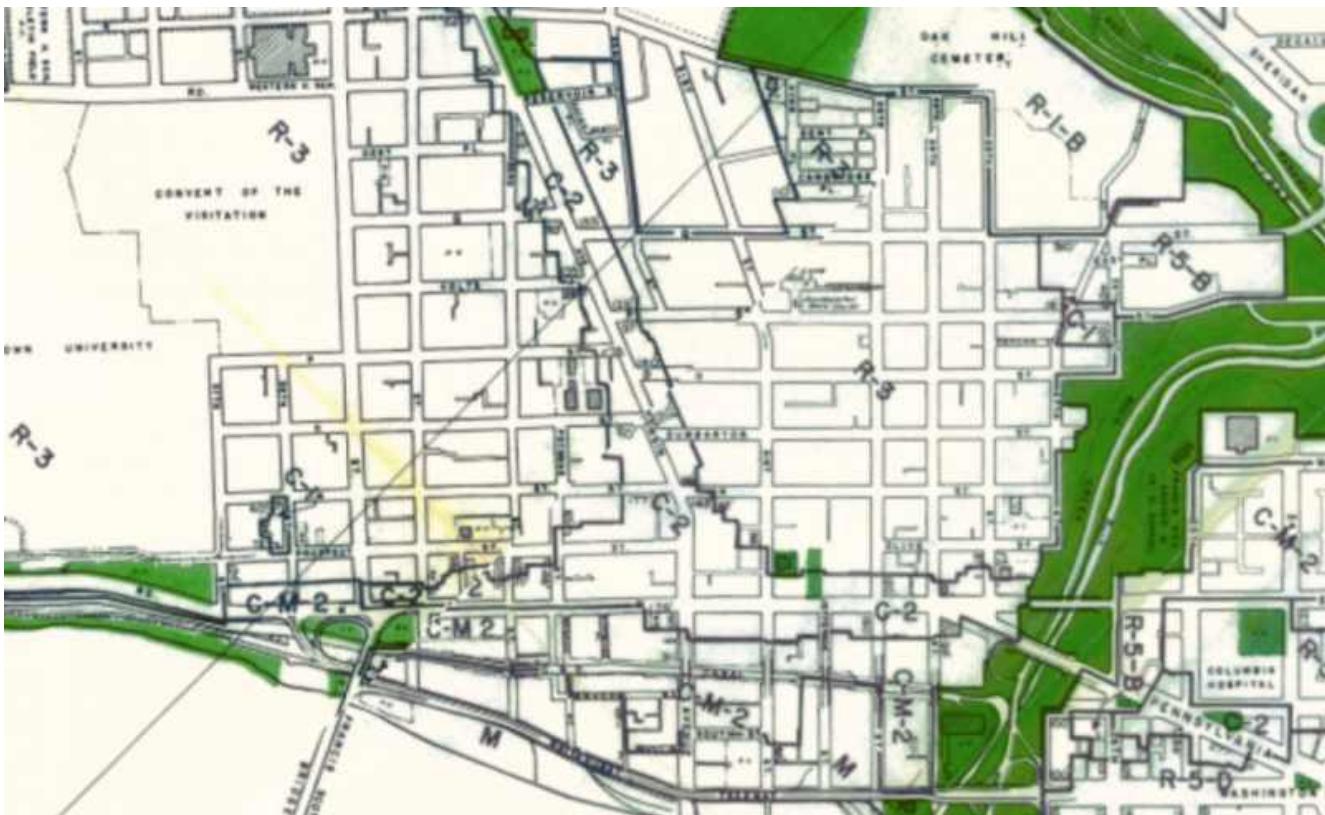
Of course this wasn't a coincidence. It was zoned commercial because it *was* commercial. The map makers were acknowledging that even though one of the stated goals of adopting the zoning laws was to limit the growth of commercial activity in residential neighborhoods, there already was commercial activity in these parts of residential Georgetown.

This acknowledgment carried forward to the first major refinement of the maps in 1936:



In this map, the black still represents commercial. As you can see, several blocks of P west of Wisconsin were shifted to residential (the bright red was a type of residential zoning). But 36th Street and the eastern edge of P Street remained commercial.

And finally in 1958, the Zoning Commission adopted the map that would not face a major rewrite until 2012:



It's not terribly easy to see ([here's an interactive map that is easier to read](#)) but the commercial zones of 36th Street and P Street were scaled back even further. This is essentially the map that we have today (albeit with new names).

There are several things to take away from these maps

Firstly, as mentioned above, they acknowledged that commercial activities took place in the residential streets. But they absolutely did not attempt to reflect *all* the commercial activity around the neighborhood. Sara's and Scheele's markets, for instance, were open and operating throughout this time. But their blocks were zoned residential. *As I've started to document*, there were commercial establishments all throughout the neighborhood. By refusing to document them in the maps, the Zoning Commission essentially made them illegal.

While this act no doubt contributed to the conversion of dozens of these shops, doctor's offices, etc. to residential, some carried on by way of a grandfather clause. In short, as long as it was commercial before the act and it stayed open as commercial, it could remain commercial. Without this weakly tailored exception, we wouldn't have Scheele's, Sara's, Stachowski's, Dent Place Market, Saxby's, Georgetown Hairstyling, Bredice Shoe Repair, Down Dog Yoga, and all the other small shops tucked into the neighborhood.

And that brings us back to Call Your Mother. This block of 35th has been largely commercial since well before the zoning laws were adopted. You can see it in the architecture. The building that Call Your Mother would like to use was constructed in the 19th century specifically to be a grocery store, which is how it was used until the 1970s. The building where Saxby's was a drug store. This was (and is) a commercial strip. Frankly it was an oversight for it to have been not zoned commercial in the first place.

This building is subject to grandfathering, but the grandfathering is pretty flimsy and only permits that particular non-conforming use to continue. In this case, that would mean Call Your Mother could use the grandfathering to sell bagels, but need a variance to toast them first because that is considered “prepared food” and beyond the scope of what was being done before. This illustrates how even the grandfathering is designed to encourage the commercial use to eventually go away. A true grandfather clause would treat the property as if it were zoned commercial, which, again, is what should have been done in the first place.

These old corner markets and barber shops made Georgetown what it is. It was a rejection of the neighborhood’s history to legislate them out of existence.

This is not even getting into the gigantic absurdity of how the zoning laws made Georgetown University—an institution well over 100 years old when the first zoning laws were being adopted—also technically illegal. It was one thing back in 1920 when they had only a handful of zones, but now there are dozens. For the Zoning Commission to keep GU zoned residential in 2012 instead of simply coming up with a new zone for universities shows that the system is all about using arbitrary and absurd fictions to control behavior.

How much do Georgetowners really care about history?

If anything, the zoning laws should have made it *more* difficult to convert old commercial spaces to residential rather than the opposite. Having more shops in the neighborhood would be good thing! It would enhance the livability of the neighborhood and reduce unnecessary driving. Further, the reduced rents these spaces typically demand make neighborhood-serving retail more feasible than it is on high rent streets like M or Wisconsin.

And yet at the BZA hearing, a witness testifying against Call Your Mother spoke favorably of the conversion of old commercial spaces to residential and suggested that it would be better if the first floor of the property were turned into a living room instead of a corner shop. For all the talk of how much Georgetowners love history and want to preserve it, that love is often incredibly skin deep. As soon as preserving something genuinely historic, like a corner commercial building, impinges on parking or a desire not to have people around, the love of history is cast aside.

It’s too late for all those former spots. And it’s probably unrealistic to expect the Zoning Commission to redraw the maps to properly reflect the large numbers of historic commercial buildings throughout the neighborhood. So barring all that, we can only ask that the BZA defend the neighborhood’s history and allow Call Your Mother to open.

There’s no doubt that these neighbors feel genuine anxiety over the impact the store might have. But living in Georgetown is about trade-offs. I’ve noticed that it’s been more difficult to park on his block since Via Umbria and Zannchi opened around the corner. Sure it’s a bit annoying when looking for a spot, but it also means that a fabulous Italian market and Korean restaurant is thriving steps from my house.

There are lots of places in the world with pretty homes and absolutely zero street life. But Georgetown doesn’t and shouldn’t have to be one of them.

Northwest Georgetown December ANC Update

Topher Mathews : 8-10 minutes : 12/3/2023



Welcome to the December Northwest Georgetown ANC update! Happy Holidays!

As noted previously, DC has changed its approach to leaf collection for the fall. Rather than instruct people to collect their leaves at the beginning of the collection season, DPW broke up each ward into four zones and notified each zone just before their collection began. Here in northwest Georgetown, we're in Zone D. **The city just announced that our collection will begin December 11th. So please rake up the leaves in front of your house into the tree boxes by December 10th.** If possible try to rake up the leaves from the street as well. These leaves were leftover through much of the winter last year and created quite a mess. If you're unable to rake up the leaves, please let me know! I've got a rake and can take care of it for you. Email me at 2e02@dc.anc.gov.

I do not believe that the crews will be collecting leaves put in garden bags. For that you will still need to put in a 311 request. Let me know if you need assistance with that. Also, if there's a bag on your block that has been there a while, the resident probably did not put in a 311 request. You can submit one for them, or again, let me know and I'll take care of it.



The Department of Parks and Recreation (DPR) provided an update to the community this month on the planned renovations of Volta Park. The update addressed timing and scope. Here are the highlights:

- The construction was delayed (it was supposed to start this fall) due to extensive archeological work that needed to be performed to ensure the work wouldn't disturb any graves left over from the old cemetery.
- Thankfully this archeological study determined that the work could move forward.
- The bulk of the project is aimed at reducing the erosion and water run-off. And to that end a large French drain will be constructed across the field, ultimately linking with a proper storm drain near Volta Place.
- The grass near the baseball infield will receive brand new sod. The grass further out will be aggressively aerated and re-seeded.
- The backstop will be fixed up but stay as is.
- The dirt areas along the first and third baselines will be replaced with a wood chip surface that will be bound with an adhesive to remain in place.
- The benches will be also fixed up but stay basically as is.
- There will be a new ADA ramp that will go from the upper 34th St. entrance down to the northwest corner. It will be gradual enough that it will appear more like a path and not need hand-railings.

DPR also address the proposed fence, which has drawn complaints from many in the neighborhood. The agency justifies this fence several ways. The first is that it states that while the community largely feels that this is a grass park that happens to have a baseball field in it, the city considers it a baseball field that happens to

have some extra grassy areas. As such, DPR believes that a fence delineating the field from the other grassy area is necessary.

This is especially true, DPR argues, because so many people treat the northwest corner of the park as a de facto dog park. Erecting a fence, in DPR's reasoning, provides a measure of division between the "dog area" and the field. Under DC law, whether leashed or not, dogs are completely prohibited from sports fields. By erecting a fence, DPR argues that it is making it legal to have a dog in the park at all.

The proposed fence would have two 10 foot wide gates that could be open for events such as Volta Park Day. I was disappointed to learn at the meeting that they will otherwise be locked shut. I will push back on this and try to leave (at least one) unlocked to allow for easier passage around the park. At the very least I expect DPR to adopt an idea that came from the crowd to put in one or two small (unlocked) gates.

Opinions remain divided on the fence. Personally I see both sides of the argument and have been encouraging those upset to lodge their complaints directly with DPR. But fence or no fence, we all can agree that the park needs a dramatic rehabilitation and this is the plan the city is going with.

Lastly, DPR offered two options for the grass field in the northwest corner in terms of seeding. It offered a more intense seeding with a longer period of undisturbed growth. But this would mean this area would be off-limits several more months. It wanted input from the community what it would prefer. What do you want? More time for the grass to grow and establish roots or a grass area open as soon as possible? Let me know at 2e02@anc.dc.gov!

Here are some quick updates from around Georgetown from the past month:

- A new fence at the old Aqueduct abutment [has been installed](#).
- New GU [hospital wing now open](#).
- Speaking of GU, Corey Peterson has returned as VP of Community Engagement and Local Government Affairs. This is a huge win for the neighborhood and school alike as Corey is highly regarded by both communities.
- Tatte Bakery is [taking over the old Capital One Bank](#) at Q and Wisconsin.

The future of legal retail cannabis in DC is coming. As I've [discussed previously](#), the city is moving towards allowing more licensed retail shops to sell cannabis. (The city has promised to then move to shut down all the unlicensed shops. All the shops currently open in Georgetown are unlicensed.) One element of the new law I have been focused on is the proximity rules. Specifically, no retail shop can open within 300 feet of a school or recreation center. Additionally, no retail shop can open within 400 feet of [another retail cannabis shop](#).

This seems like a pretty clear cut rule, but I've already found that the ANC needs to stay on top of things to ensure it's correctly followed. Two circumstances I experienced recently demonstrate that. The first involved a commercial property owner that reached out to me about a retail cannabis shop he wanted to open in the former dry cleaners at 1612 Wisconsin Ave. I pointed out to him that that lot is too close to Volta Rec Center¹, and he told me that ABCA (the former ABRA agency, which will be regulating these shops) had given this location a thumb's up. I got on the horn with the General Counsel's office at ABCA and pointed out that Volta

Recreation Center is in fact (drumroll please...) a recreation center. They agreed and pulled the preliminary location approval. The property is now going to become a salon instead.

The second occasion occurred more recently. The same commercial property owner was seeking approval for a license at 1432 Wisconsin Ave. Again he received a preliminary approval for the location from ABCA. This surprised me since this lot literally abuts Hyde-Addison School. Unfortunately the zoning map for the school's lot was screwed up. The school's lot was mistakenly identified as being partially commercial and schools on lots zoned commercial are not "counted" for these purposes. The reason for the map error was due to a glitch when the maps were digitized. As you can see below, the orange commercial zone had bled into Hyde-Addison's lot:

12:16

LTE

maps.dcoz.dc.gov



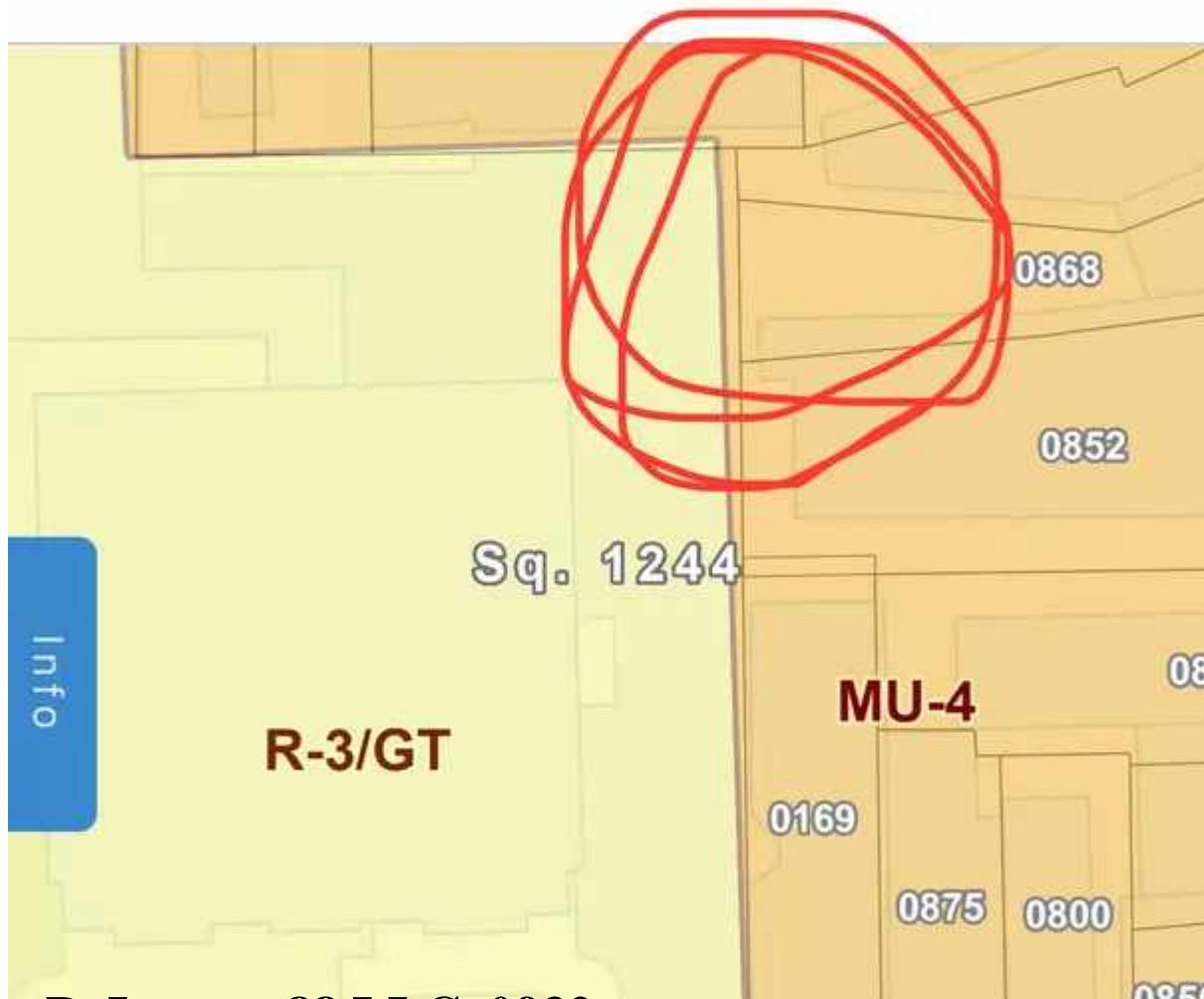
OFFICIAL
Zoning Map

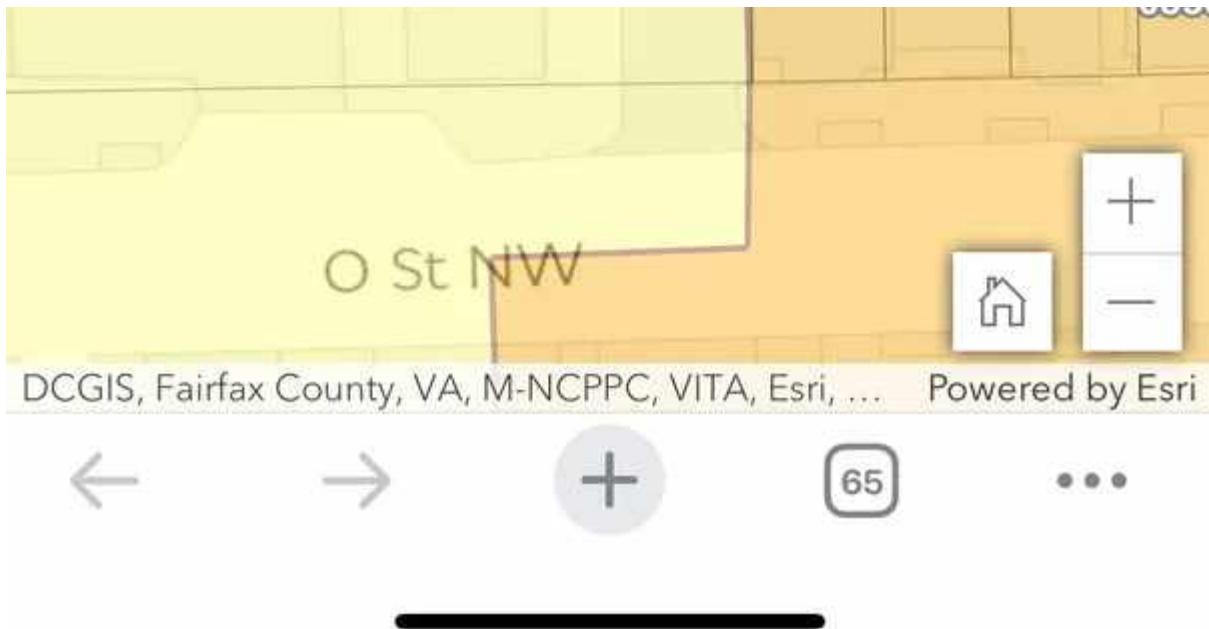
Menu

Refined Search

Address

441 4th Street NW, Washington, DC





It's clear that there was no intention to have Hyde-Addison's lot be commercial. Unfortunately the attorneys at ABCA shrugged their shoulders and said there was nothing they could do. So I got on the horn with the Office of Zoning and was soon speaking to the Director herself, Sara Bardin. She was immensely helpful and immediately recognized the issue. She had her team look into it and within an hour the map was fixed:

BS

Bardin, Sara (DCOZ)

1:36 PM

To Hill, Zelalem (DCOZ), ATD DCOZ and You

...



It's fixed. They had to update the service:



Sincerely,

Sara

Sara Bardin
Director

As a result the school does "count" and any retail shop looking to open on that stretch of Wisconsin Ave. will be blocked. In fact, the unlicensed shop that had been operating at 1432 Wisconsin Ave. has already closed and moved. (Needless to say, I am not this commercial land owner's favorite person, to say the least....)

Ultimately there will be some licensed cannabis shops in Georgetown, and that's fine. The shop that was previously at 1432 is planning to open at 1253 Wisconsin Ave. instead. But it's important to enforce the proximity laws to the 't'. To paraphrase Bill Clinton, let's have the shops be legal, safe and rare.

DeLorean 88 LLC_0934



And with that, I wish you all a safe and warm holiday season! If you need anything, please do not hesitate to reach me at 2e02@anc.dc.gov!

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The latest news and notes for northwest Georgetown

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From: Berman, Jonathan (ABC)
To: § 2-534(a)(2)
Cc: § 2-534(a)(2)
Subject: Zoning Changed the Official Map (Hyde Addison)
Date: Thursday, November 9, 2023 12:57:00 PM
Attachments: image001.png
image002.png
image003.png
image004.png

§ 2-534(a)(2),

§ 2-534(a)(2)

§ 2-534(a)(2)

Sincerely,

JONATHAN BERMAN (HE, HIM, HIS) · ASSISTANT GENERAL COUNSEL

D: 202.442.4448 | E: jonathan.berman@dc.gov

ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

2000 14th Street NW, Suite 400 South, Washington DC 20009

abc.adc.gov | [Last Call](http://LastCall) | Facebook | Twitter

Filing Notice

ABRA has created a dedicated email account for the receipt of all electronic documents that concern legal and adjudication matters before the Alcoholic Beverage Control Board. Please send your Board correspondence, pleadings, filings, motions, Settlement Agreements, Security Plans, etc. to the following address: abra.legal@dc.gov

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From: Mathews, Christopher (SMD 2E02) <2E02@anc.dc.gov>

Sent: Thursday, November 9, 2023 12:42 PM

To: Berman, Jonathan (ABC) <jonathan.berman@dc.gov>

Subject: Fwd: Zoning Map Question

Jonathan,

Please see below. As I suspected, this was a result of a digitalization error. The maps have already been updated. As such, I believe Hyde-Addison still "counts" for the 300 foot rule.

Thank you!

Topher Mathews

[Get Outlook for iOS](#)

From: Bardin, Sara (DCOZ) <sara.bardin@dc.gov>

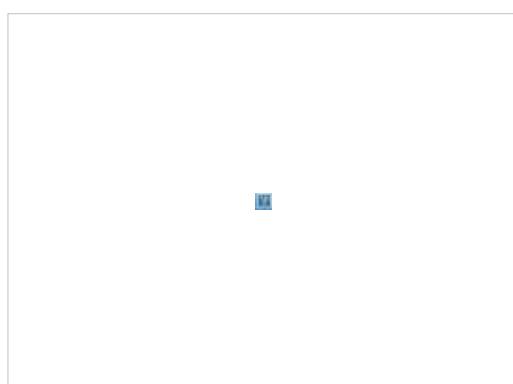
Sent: Thursday, November 9, 2023 12:16 PM

To: Mathews, Christopher (SMD 2E02) <2E02@anc.dc.gov>; Hill, Zelalem (DCOZ) <zelalem.hill@dc.gov>; ATD DCOZ <dcoz@dc.gov>

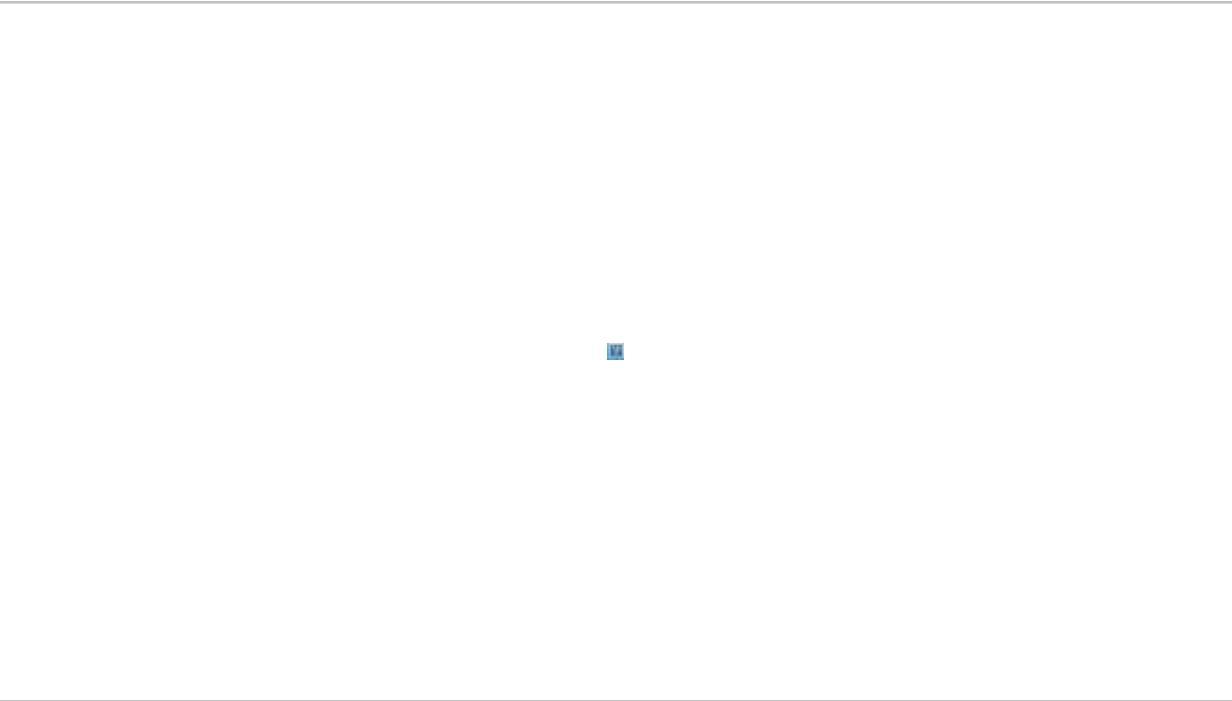
Subject: RE: Zoning Map Question

Hello Commissioner Matthews:

Yes, this appears to be a digitization error. The first screenshot below is from the 1966 map, and there is a clear 78' line from the edge of the alley ROW on this square. This measurement is shown on every map up to 2003 (subsequent maps don't show measurements). The pink line on the second screenshot is a 78-foot line we made in GIS to simulate where the line should be, juxtaposed to the red existing zone boundary.

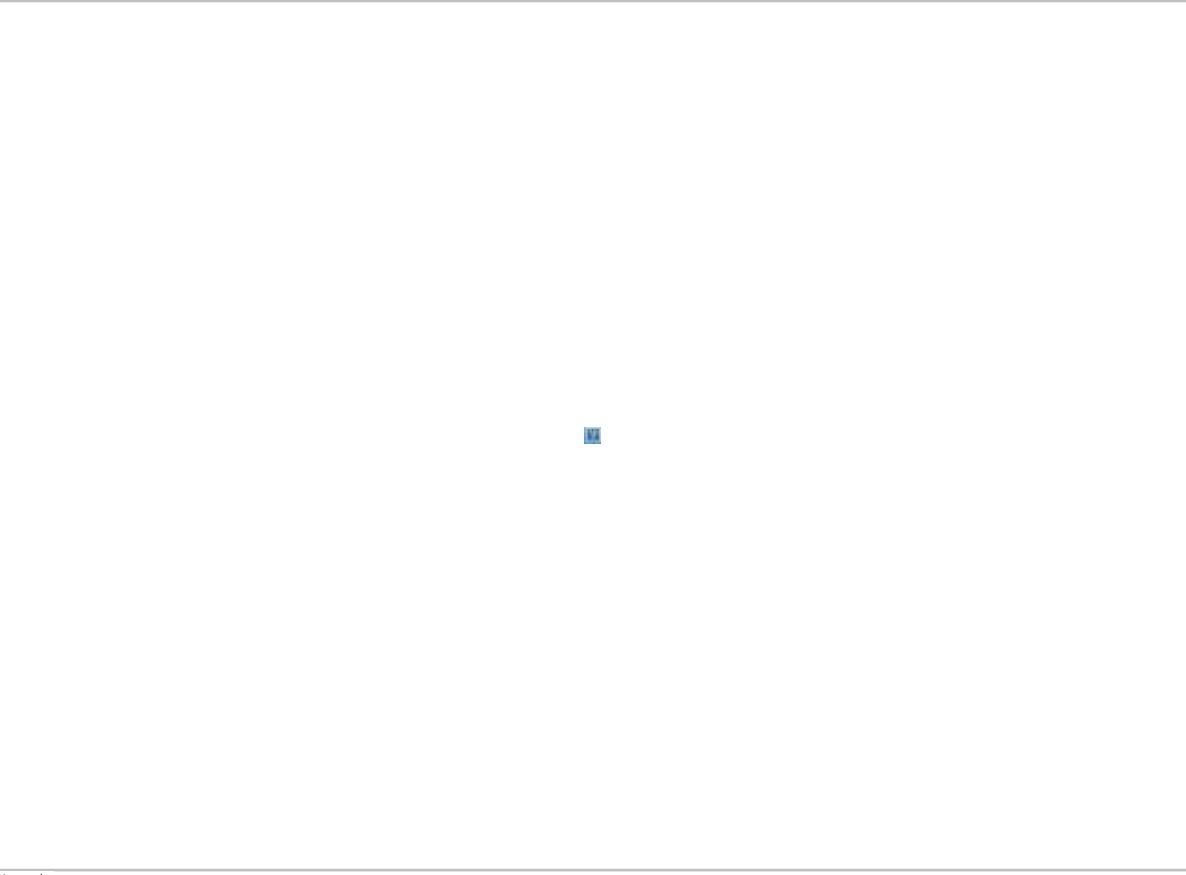


**EXHIBIT
B-3**



11

We have corrected it:



11

Sincerely,

Sara

Sara Bardin
Director

DeLorean 88 LLC_0937



Office of Zoning | District of Columbia Government
www.dcoz.dc.gov | sara.hardin@dc.gov

441 4th Street, NW | Suite 200-S | Washington, DC 20001
(202) 727-5372 (office) | (202) 727-6072 (fax)

From: Mathews, Christopher (SMD 2E02) <2E02@anc.dc.gov>
Sent: Thursday, November 9, 2023 9:19 AM
To: Hill, Zelalem (DCOZ) <zelalem.hill@dc.gov>; ATD DCOZ <dcoz@dc.gov>
Subject: Zoning Map Question

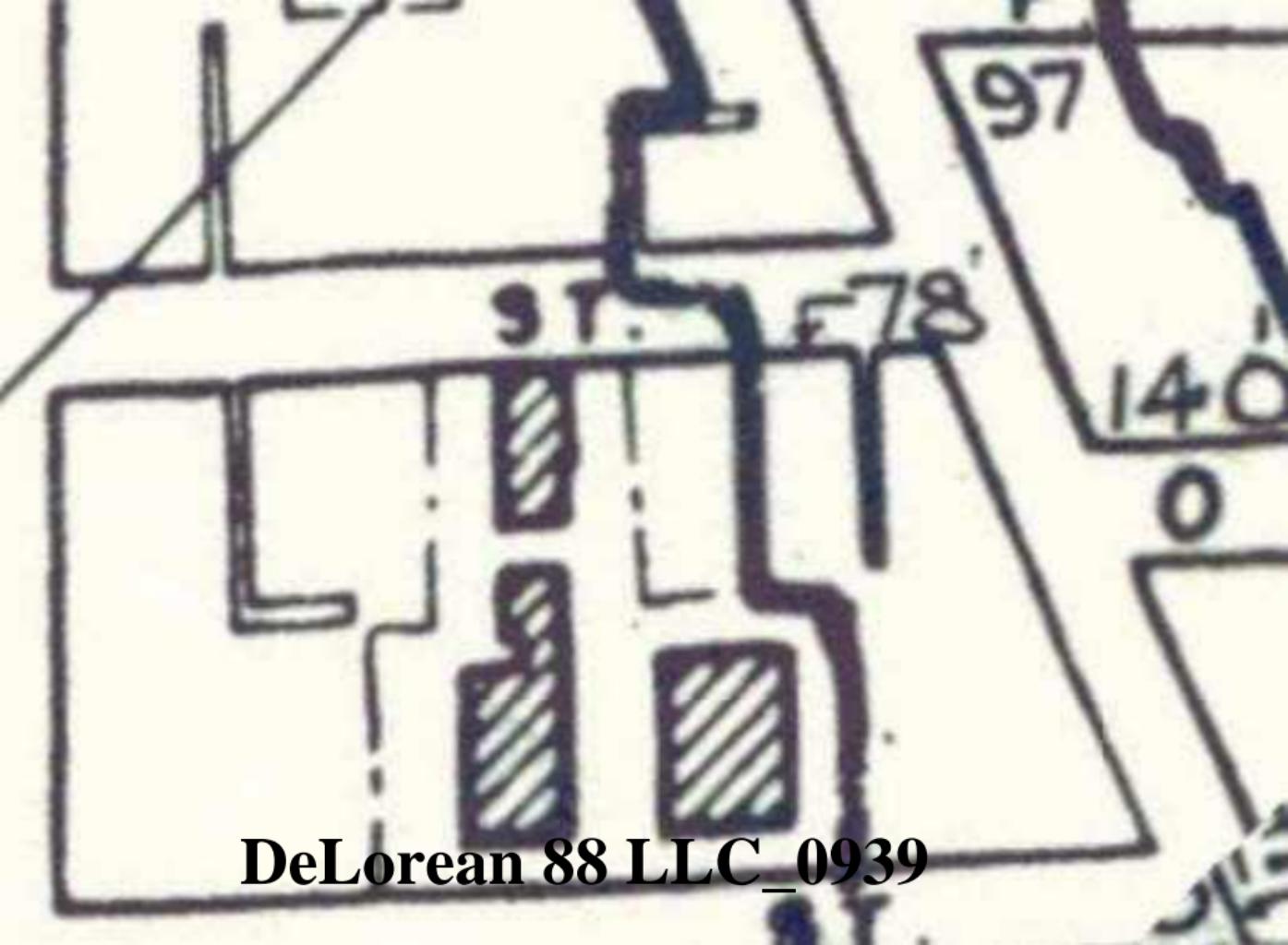
Hello,

I am an ANC Commissioner in Georgetown and I have a question about the official zoning map on the Office of Zoning's website. I believe the map is providing inaccurate information about the zoning borders. Can I speak to someone to provide clarity on how the zones are geographically defined?

Thank you very much!

Topher Mathews
ANC 2E02

Get [Outlook for iOS](#)



DeLorean 88 LLC_0939

NW

R-3/GT

MU-4

DeLorean 88 LLC_0940

December 13, 2023

DeLorean 88, LLC
413 East Capitol St SE – Ground Floor
Washington, DC 20003

RE: Retailer License
ABCA-126807

Dear Applicant:

Thank you for submitting your application for a medical cannabis retailer license. We regret to inform you that your application has been denied as it does not meet the requirements set by the **DC Official Code 7-1671.06A**. This application is denied due to the following issue:

- Proximity of the proposed location to schools or recreation centers (within 300 feet of Hyde-Addison Elementary School)

Please be aware that if an applicant receives a written denial decision from the ABC Board, they have 15 days from the date of receipt to submit a written appeal to the ABC Board requesting reconsideration of the denial decision. Along with the appeal, the applicant may provide relevant documentation or evidence that challenges the findings of fact or conclusions of law in the written denial decision. If an appeal is submitted, the ABC Board is required to hold a hearing and provide a decision within 30 days.

If the applicant decides not to appeal the written denial decision or if the ABC Board renders a decision on an appeal, the ABC Board will notify the unlicensed establishment that it must close within 30 days of receipt of the denial. Failure to comply with this decision may result in penalties under **D.C. Official Code § 47-2844(a2) (1B)**.

If you have questions or need further assistance, do not hesitate to contact me.

Sincerely,

Emoni Boone

Emoni Boone
emoni.boone@.gov

EXHIBIT
C-1

ALCOHOLIC BEVERAGE & CANNABIS ADMINISTRATION
2000 14TH ST NW, SUITE 400, WASHINGTON, DC 20009 | ABCA.DC.GOV

DeLorean 88 LLC_0942

Re: DeLorean 88 LLC (License No. ABCA-126807) - Motion for Reconsideration

From Phil Musolino <PMusolino@musolinodessel.com>

Date Fri 12/29/2023 2:11 PM

To Jenkins, Martha (ABCA) <Martha.Jenkins@dc.gov>; Legal, Abra (ABCA) <abca.legal@dc.gov>; ABCA Cannabis Licensing (ABCA) <abca.cannabisLicensing@dc.gov>; Boone, Emoni (ABCA) <Emoni.Boone@dc.gov>; Gordy, Sean (ABCA) <Sean.Gordy2@dc.gov>; Berman, Jonathan (ABCA) <jonathan.berman@dc.gov>

Cc Leopold Harris <lharris@musolinodessel.com>

Dear Martha,

Pursuant to 23 DCMR Section 1708 we request access to the ABCA Board's records in the above-referenced matter.

Please let me know when it will be convenient for us to review the documents.

Sincerely,
Phil

Philip Musolino

Musolino & Dessel
1615 L Street, NW
Suite 440
Washington, DC 20036
(202) 466-3883 EXT 103
pmusolino@musolinandoressel.com

EXHIBIT
C-2

DeLorean 88 LLC_0943

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

In the Matter of:)
DeLorean 88, LLC) Case No.: N/A
t/a DeLorean) License No.: ABCA-126807
) Order No.: 2024-021
Applicant for a New)
Medical Cannabis Retailer License)
)
at premises)
1432 Wisconsin Avenue, N.W.)
Washington, D.C. 20007)
)

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Silas Grant, Jr., Member

ALSO PRESENT: DeLorean 88, LLC, t/a TBD, Petitioner

Philip Musolino, Counsel, on behalf of the Petitioner

Martha Jenkins, General Counsel
Alcoholic Beverage and Cannabis Administration

ORDER DENYING MOTION FOR RECONSIDERATION

INTRODUCTION

The Alcoholic Beverage and Cannabis Board (Board) received a motion for reconsideration and supplemental motion from DeLorean 88, LLC, t/a DeLorean, related to the rejection of its Application for a New Retail Medical Cannabis License based on its proximity to Hyde-Addison Elementary School. The Board affirms its determination that the Application must be rejected because the chosen location does not qualify for the commercial zone exception to the 300-foot distance rule.

FINDINGS OF FACT

The following statements represent the Board's findings of fact based on the evidentiary record. In reaching its determination, the Board considered the evidence, the testimony of the

witnesses, the arguments of the parties, and all documents comprising the Board's official file. The Board credits all testimony and evidence identified or cited below unless otherwise stated.

I. Application and Denial

1. DeLorean 88, LLC, t/a DeLorean, (Applicant) has applied for a Medical Cannabis Retailer License at 1432 Wisconsin Avenue, N.W., Washington, D.C. *ABCA License No. 126807.*
2. On December 13, 2023, the Applicant received a notice of denial. *Letter from Emoni Boone, Licensing Specialist*, 1 (Dec. 1, 2023). The letter indicated that the basis of the denial was its location within 300 feet of Hyde-Addison Elementary School under D.C. Official Code § 7-1671.06A. *Id.*¹

II. Information Related to Zoning

3. The Board takes administrative notice that Hyde Addison Elementary School indicates that the school is located at 3219 O Street, N.W., Washington, D.C. 20007. District of Columbia Public Schools, Hyde Addison Elementary School, *available at https://hydeaddisondc.org/* (last visited January 22, 2024).
4. A printout from the Official Zoning Map, dated October 31, 2023, included in the motion, provides that Hyde-Addison is zoned MU-4 and R3/GT. *DeLorean 88, LLC Notice of Appeal and Request for Reconsideration*, at Appendix B-3 (Oct. 31, 2024). The document further indicates that the premises of the school are located at 3246 P Street N.W. *Id.* Nevertheless, this discrepancy in the address of the school provided on its website and in the zoning map does not appear to be in error as the school's property touches both streets; therefore, it is understandable that the map would redirect searches of 3219 O Street, N.W., to 3246 P Street, N.W., as they are functionally the same for the purposes of the zoning map. *Id.* (See Square 1244 0854 on the map touching both O Street, N.W., and P Street, N.W.).
5. It is undisputed that in the October 31, 2023 document, there appeared an odd sliver on the map where the school's zoning lines veers into the MU-4 zone. *Id.* Moreover, it is undisputed that after an inquiry from an Advisory Neighborhood Commission (ANC), the Office of Zoning determined that the sliver was a digitization error that caused the misidentification of the school's zone. *Email from Sara Bardin, Director, District of Columbia Department of Zoning to Christopher Matthews, Commissioner, Advisory Neighborhood Commission 2E* at 1. In explaining its reasoning, the Director of the Department of Zoning stated:

¹ The Board did not consider a February 11, 2021, report by ABCA Investigator Kevin Puente relevant where it concluded that Hyde-Addison elementary school was located in a MU-4 zone based on the same faulty map relied upon by the Applicant. *Memorandum on Towne Wine & Liquor*, ABCA Investigator Kevin Puente, 2 (Feb. 11, 2021). The Board notes that the report only shows that the error has existed since 2021 and that the investigator made no effort to investigate whether the underlying information shown by websites was correct. *Id.* at 2. Moreover, the issuance of prior liquor licenses in a specific location has no bearing on the present matter, which were separate proceedings made before zoning's present determination that an error existed in the map.

Yes, this appears to be a digitization error. The first screenshot below is from the 1966 map, and there is a clear 78' line from the edge of the alley ROW on this square. This measurement is shown on every map up to 2003 (subsequent maps don't show measurements). The pink line on the second screenshot is a 78-foot line we made in GIS to simulate where the line should be, juxtaposed to the red existing zone boundary.

Id. As a result, as of November 9, 2023, the Department of Zoning has officially confirmed that the zoning for Hyde-Addison Elementary School is listed as R3/GT only.²

6. Finally, it is important to note that the online official 2D zoning map and 3D zoning map contains the following similar disclaimers:

Disclaimer

While DCOZ is committed to providing accurate and timely zoning information via the . . . Zoning App, DCOZ *cannot guarantee* the quality, *content, accuracy*, or completeness of the information, text, graphics, links, and other items contained therein. All data visualizations on the . . . Zoning App *should be considered approximate*. Information provided in the zoning map should not be used as a substitute for legal . . . or other professional advice. *DCOZ assumes no liability for any errors, omissions, or inaccuracies in the information provided* regardless of the cause of such or for any upon any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein. *DCOZ retains the right to change any content on its zoning map without prior notice.*

District of Columbia Department of Zoning, 3D Zoning Map, *available at* <https://maps.dcoz.dc.gov/3d/> (last visited January 22, 2024) (see the Disclaimer tab after clicking the HELP button) (emphasis added); District of Columbia Department of Zoning, Official Zoning Map, *available at* <https://maps.dcoz.dc.gov/zr16/> (last visited January 22, 2024) (see the Disclaimer tab after clicking the HELP button) (emphasis added).

7. The Applicant asserts that that the school's P Street building is closed. *DeLorean 88, LLC's Supplemental Memorandum*, at 4. However, pictures shown by the Applicant show that the P Street property is enclosed by a fence and has signs that read "Reserved Parking" and signs directing the public that the main entrance is located at 3219 O Street, N.W.

CONCLUSIONS OF LAW

8. The argument of the Applicant in favor of reconsideration are as follows: (1) the Board should rely on the zoning map at the time of application, which should be deemed MU-4 and R3/GT; (2) the District of Columbia Department of Zoning changed the zoning without an appropriate rulemaking; and (3) a remeasurement of the distance shows the business satisfies the

² The Board is aware of claims that not all zoning maps or documents may reflect this determination, but such documents are not relevant where they do not represent controlling authority, have likely just not been corrected, and the Department of Zoning has spoken conclusively upon a matter under its jurisdiction.

distance requirement under the Department of Zoning's 78 foot test. *DeLorean 88, LLC's Supplemental Memorandum*, at 10-19.³

9. The Board is not persuaded by the motion for several reasons. In particular, the motion for reconsideration cannot be granted because it requires the Board to overrule the District of Columbia Department of Zoning's determination that Hyde-Addison Elementary School is not zoned MU-4 but rather only R3/GT. As noted in *Craig*, the Board has "no authority to review the validity of the coordinate agency's action." *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 588 (D.C. 1998) *citing Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 413 A.2d 152, 154 (D.C. 1980); *see also John G. Uhar v. D.C. Alcoholic Beverage Control Board*, 20-AA-021, 8 (D.C. 2023) *citing Barry Farm Tenants & Allies Ass'n v. D.C. Zoning Comm'n*, 182 A.3d 1214, 1228-29 (D.C. 2018) ("... [T]he Board certainly would lack authority to explicitly invalidate a decision of another agency."). The record in this case shows that the Department of Zoning has determined that the relevant property is not zoned MU-4. *Supra*, at ¶ 5. Moreover, none of the documents provided by the Applicant, including the 3D zoning map and the other documents are sufficiently authoritative to overrule this decision, as the disclaimer indicates that these documents are not controlling or definitive.⁴ *Supra*, at ¶ 6. Therefore, the Board has no authority to establish the zoning of Hyde-Addison Elementary School as an MU-4 zone and must respect the decision of the zoning department. Likewise, in accordance with *Craig*, the Board has no authority to declare that the Department of Zoning should have engaged in rulemaking or improperly followed its regulations. Moreover, in further accordance with *Craig*, to the extent that the Department of Zoning should change its determination based on a remeasurement, such a matter cannot be resolved by the Board, as the Board cannot make the Department of Zoning take any action or determine that it is wrong for not taking consideration of any fact related to a decision under its jurisdiction. As a result, the Applicant's request to overrule the Department of Zoning is in the wrong forum and must be made the Department of Zoning or to the courts to resolve.

10. Finally, although not clearly argued,⁵ the Board rejects the argument that the measurement for 300-foot purposes should be taken at 3219 O Street, N.W., and not take into consideration the P Street, N.W., location of the school that may encompass multiple separate lots when looking at the GIS map. *DeLorean 88, LLC's Supplemental Memorandum*, at 15, Appendix B-1.

³ The Board need not consider the second supplemental motion filed by the Applicant where no leave to file additional motions were requested or granted pursuant to 22-C DCMR § 9717.7. *DeLorean 88, LLC's Second Supplemental Memorandum*, at 1. Nevertheless, even if it the motion were appropriately filed, the Board would not grant the requested relief because the Board cannot waive statutory requirements or overrule any determinations made by the Department of Zoning, even if incorrect, in accordance *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 588 (D.C. 1998). As a result, nothing in the second supplemental changes the need for the Applicant to get the Department of Zoning or the courts to overrule the determination made by the Department of Zoning to achieve its desired result.

⁴ It would also seem that the Applicant would have to provide a comprehensive zoning history of the relevant locations showing how the present zoning determination is or is not supported by records going back to the creation of the zoning system to argue that its initial map is in fact correct.

⁵ The Board did not find this point clearly argued but addresses what it believes the Applicant's argument to be.

11. In accordance with D.C. Official Code § 7-1671.06A(c):

(c) . . . the 300-foot restrictions shall not apply where the main entrance to the preschool, primary or secondary school, or recreation center, or the nearest property line of the school or recreation center, is actually on or occupies ground zoned commercial or industrial according to the official atlases of the Zoning Commission of the District of Columbia.

D.C. Code § 7-1671.06A(c).⁶ The regulations further provide in § 5000 that

5000.1 In establishing the distance between one (1) or more places, (such as the actual distance of a medical cannabis business from a school or recreation center, as defined in the Act), the distance shall be measured linearly by the Board and shall be the shortest distance between the property lines of the places.

5000.2 If a boundary line measured by the Board touches upon any portion of a parcel or lot, the parcel or lot shall be within the area being identified by the Board.

22-C DCMR § 5000.1-.2 (West Supp. 2024).

12. In its motion, the Applicant provides no clear basis for excluding property located on P Street, N.W., to the extent those lots may actually be closer to the business. The mere fact that the school does not occupy or use any buildings is not sufficient to render the property not part of a school, as the usage of specific property is not relevant under § 7-1671.06A(c). *Supra*, at ¶ 7. Moreover, even if this were not the case, from the signage presented, the property appears to still be used for parking, and nothing presented by the Applicant excludes the likelihood that the school uses the property for other purposes such as rear vehicle access to the school grounds, storage, green space, outdoor activities, or even as large curb setback for the school grounds—as all such uses still render the property part of the school.⁷

13. Therefore, the Board finds that the Applicant's selected location is prohibited based on its proximity to the Hyde-Addison Elementary School.

⁶ The Applicant cites *Heyert v. D.C. Alcoholic Beverage Control Board*, 399 A.2d 1309 (D.C. 1979) in its motion; however, fails to include sufficient explanation as to why the case is relevant. The Board notes that *Heyert* involves a somewhat similar statute in the alcohol law that does not include the “nearest property line” language found in D.C. Official Code § 7-1671.06A(c) and the “main entrance” clause does not appear applicable to the present matter. *Heyert v. D.C. Alcoholic Beverage Control Board*, 399 A.2d 1309, 1312 (D.C. 1979) (“b) Said distance shall be measured between the nearest street main entrance to said place of business and the nearest street main entrance to said school, college, university, church, or recreation area by the shortest line between such entrances on, over, or across any public traveled way or public park or parking. This subsection shall not apply where the main entrance to said school, college, university, church or recreation area itself is actually on or occupies ground zoned commercial or industrial according to the official atlases of the Zoning Commission of the District of Columbia.”)

⁷ The Board further notes that the record in this case is not sufficient to determine the current usage of the P Street, N.W., lots, if such a factor was relevant.

ORDER

Therefore, the Board, on this 31st day of January 2024, hereby **DENIES** the motion for reconsideration filed by the Applicant.

IT IS FURTHER ORDERED that, as a courtesy, a copy of this decision shall be provided to the District of Columbia Department of Zoning.

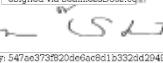
IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision. The omission of any testimony or evidence in the Board's Order indicates that such testimony or evidence was contravened by the evidence or testimony credited by the Board, had no or minimal weight on the Board's findings and conclusions, was irrelevant, was not credible, was not truthful, was repetitious, was too speculative, or was otherwise inappropriate for consideration.

The ABCA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage and Cannabis Board

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac430cb9b99d5f0964b7300031d.docx

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com

Key: 547aa373fb20de6ac801b332dd2949.docx

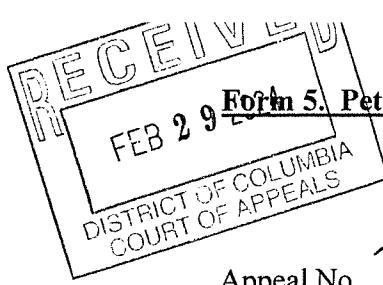
James Short, Member



Silas Grant, Jr., Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage and Cannabis Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001; (202-879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b) (2004).



Form 5. Petition for Review.

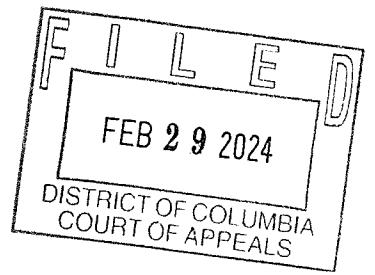
**DISTRICT OF COLUMBIA COURT OF APPEALS
PETITION FOR REVIEW**

Appeal No. 24 AA 188

DeLorean 88 LLC,
Petitioner

Alcoholic Beverage and Cannabis Board,
Respondent (Agency)

Agency License No.: ABCA-126807
ABCA Order No.: 2024-021



I, DeLorean 88 LLC, seek review by the District of Columbia Court of Appeals of the decision or order of Alcoholic Beverage and Cannabis Board(agency) entered on the 31st day of January, 2024. See attached.

Names, addresses, and telephone numbers of all other parties and their counsel who appeared in the agency (use additional pages if necessary)

See attached

Signature of Petitioner or Attorney
(all but natural persons representing
themselves must be represented
by counsel)

Philip M. Musolino (Bar No. 294652)

Printed Name of Petitioner or Attorney

Musolino & Dessel, PLLC

1615 L Street NW, Suite 440

Washington, D.C. 20036

Address

(202) 466-3883

Telephone Number

NOTE: ATTACH A COPY OF THE DECISION/ORDER ISSUED BY THE DISTRICT OF COLUMBIA AGENCY FROM WHICH THE PETITION IS TAKEN.



**DISTRICT OF COLUMBIA
COURT OF APPEALS**

DELOREAN 88 LLC,

Petitioner,

v.

**DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE AND
CANNABIS BOARD,**

Respondent.

Appeal No.:
Agency License No.: ABCA-126807
ABCA Order No.: 2024-021

DELOREAN 88, LLC'S PETITION FOR REVIEW

COMES NOW DeLorean 88 LLC (“DeLorean” and/or “Appellant/Petitioner”), by and through undersigned counsel, and, pursuant to District of Columbia Court of Appeals Rule 15, submits this Petition for Review and seeks review by the District of Columbia Court of Appeals of the Order of the District of Columbia Alcoholic Beverage and Cannabis Board (the “Agency”) entered January 31, 2024, the order is appended hereto as **Exhibit A**. Appellant/Petitioner appeals each prior ruling, including the December 13, 2023 denial. **Exhibit B**. Pursuant to D.C. Official Code § 25-433(d)(1), on February 9, 2024, Appellant/Petitioner timely filed its Motion for Reconsideration. **Exhibit C**. On February 14, 2024, Appellant/Petitioner filed its Motion for Stay. **Exhibit D**. On February 28, 2024, the District of Columbia Alcoholic Beverage and Cannabis Board entered an Order Granting Motion for Stay pending a decision from the District of Columbia Board of Zoning Adjustment. **Exhibit E**, which is scheduled for hearing on September 25, 2024. Order, **Exhibit F**, and *see* District of Columbia Court of Appeals Rule 15(b).

The names, addresses, and telephone numbers of all other parties and their counsel who appeared in the proceeding are as follows:

District of Columbia Alcoholic Beverage and Cannabis Board
Reeves Center
2000 14th Street, NW, Suite 400 S
Washington, D.C. 20009
Tel.: (202) 442-4423

Martha Jenkins
General Counsel
District of Columbia Alcoholic Beverage and Cannabis Board
Reeves Center
2000 14th Street, NW, Suite 400 S
Washington, D.C. 20009
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Assistant General Counsel
District of Columbia Alcoholic Beverage and Cannabis Board
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Donovan Anderson
Chairperson
District of Columbia Alcoholic Beverage and Cannabis Board
Reeves Center
2000 14th Street, NW, Suite 400 S
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James Short, Jr.
Member
District of Columbia Alcoholic Beverage and Cannabis Board
Reeves Center
2000 14th Street, NW, Suite 400 S
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Tel.: (202) 442-4423

Silas Grant, Jr.
Member
District of Columbia Alcoholic Beverage and Cannabis Board
Reeves Center
2000 14th Street, NW, Suite 400 S
Washington, D.C. 20009
Tel.: (202) 442-4423

Respectfully submitted,

/s/ Philip M. Musolino
Philip M. Musolino
D.C. Bar No.: 294652
Musolino & Dessel, PLLC
1615 L Street, N.W., Suite 440
Washington, D.C. 20036
Phone: (202) 466-3883
Email: pmusolino@musolinodessel.com
Counsel for Petitioner DeLorean 88 LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of February 2024, I caused a true and correct copy of the foregoing to be served on the District of Columbia Court of Appeals Clerk of the Court via hand delivery and certified mail, and I sent a copy of the Petition for Review via electronic mail as follows:

District of Columbia Alcoholic Beverage & Cannabis Administration
2000 14th Street, N.W.
4th Floor, Suite 400 South
Washington, D.C. 20009
Email: abra.legal@dc.gov
Email: abca.legal@dc.gov
Email: abca.cannabislicensing@dc.gov
Email: emoni.boone@dc.gov
Email: sean.gordy2@dc.gov
Email: martha.jenkins@dc.gov
Email: jonathan.berman@dc.gov

Office of the Attorney General for the District of Columbia
400 6th Street NW
Washington, D.C. 20001
Email: oag@dc.gov

/s/ Philip M. Musolino
Philip M. Musolino

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

In the Matter of:)))
DeLorean 88, LLC)	Case No.:	N/A
t/a DeLorean)	License No.:	ABCA-126807
)	Order No.:	2024-021
Applicant for a New)		
Medical Cannabis Retailer License)		
at premises)		
1432 Wisconsin Avenue, N.W.)		
Washington, D.C. 20007)		
)		

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Silas Grant, Jr., Member

ALSO PRESENT: DeLorean 88, LLC, t/a TBD, Petitioner

Philip Musolino, Counsel, on behalf of the Petitioner

Martha Jenkins, General Counsel
Alcoholic Beverage and Cannabis Administration

ORDER DENYING MOTION FOR RECONSIDERATION

INTRODUCTION

The Alcoholic Beverage and Cannabis Board (Board) received a motion for reconsideration and supplemental motion from DeLorean 88, LLC, t/a DeLorean, related to the rejection of its Application for a New Retail Medical Cannabis License based on its proximity to Hyde-Addison Elementary School. The Board affirms its determination that the Application must be rejected because the chosen location does not qualify for the commercial zone exception to the 300-foot distance rule.

FINDINGS OF FACT

The following statements represent the Board's findings of fact based on the evidentiary record. In reaching its determination, the Board considered the evidence, the testimony of the

witnesses, the arguments of the parties, and all documents comprising the Board's official file. The Board credits all testimony and evidence identified or cited below unless otherwise stated.

I. Application and Denial

1. DeLorean 88, LLC, t/a DeLorean, (Applicant) has applied for a Medical Cannabis Retailer License at 1432 Wisconsin Avenue, N.W., Washington, D.C. *ABCA License No. 126807.*
2. On December 13, 2023, the Applicant received a notice of denial. *Letter from Emoni Boone, Licensing Specialist*, 1 (Dec. 1, 2023). The letter indicated that the basis of the denial was its location within 300 feet of Hyde-Addison Elementary School under D.C. Official Code § 7-1671.06A. *Id.*¹

II. Information Related to Zoning

3. The Board takes administrative notice that Hyde Addison Elementary School indicates that the school is located at 3219 O Street, N.W., Washington, D.C. 20007. District of Columbia Public Schools, Hyde Addison Elementary School, *available at https://hydeaddisondc.org/* (last visited January 22, 2024).

4. A printout from the Official Zoning Map, dated October 31, 2023, included in the motion, provides that Hyde-Addison is zoned MU-4 and R3/GT. *DeLorean 88, LLC Notice of Appeal and Request for Reconsideration*, at Appendix B-3 (Oct. 31, 2024). The document further indicates that the premises of the school are located at 3246 P Street N.W. *Id.* Nevertheless, this discrepancy in the address of the school provided on its website and in the zoning map does not appear to be in error as the school's property touches both streets; therefore, it is understandable that the map would redirect searches of 3219 O Street, N.W., to 3246 P Street, N.W., as they are functionally the same for the purposes of the zoning map. *Id.* (See Square 1244 0854 on the map touching both O Street, N.W., and P Street, N.W.).

5. It is undisputed that in the October 31, 2023 document, there appeared an odd sliver on the map where the school's zoning lines veers into the MU-4 zone. *Id.* Moreover, it is undisputed that after an inquiry from an Advisory Neighborhood Commission (ANC), the Office of Zoning determined that the sliver was a digitization error that caused the misidentification of the school's zone. *Email from Sara Bardin, Director, District of Columbia Department of Zoning to Christopher Matthews, Commissioner, Advisory Neighborhood Commission 2E* at 1. In explaining its reasoning, the Director of the Department of Zoning stated:

¹ The Board did not consider a February 11, 2021, report by ABCA Investigator Kevin Puente relevant where it concluded that Hyde-Addison elementary school was located in a MU-4 zone based on the same faulty map relied upon by the Applicant. *Memorandum on Towne Wine & Liquor*, ABCA Investigator Kevin Puente, 2 (Feb. 11, 2021). The Board notes that the report only shows that the error has existed since 2021 and that the investigator made no effort to investigate whether the underlying information shown by websites was correct. *Id.* at 2. Moreover, the issuance of prior liquor licenses in a specific location has no bearing on the present matter, which were separate proceedings made before zoning's present determination that an error existed in the map.

Yes, this appears to be a digitization error. The first screenshot below is from the 1966 map, and there is a clear 78' line from the edge of the alley ROW on this square. This measurement is shown on every map up to 2003 (subsequent maps don't show measurements). The pink line on the second screenshot is a 78-foot line we made in GIS to simulate where the line should be, juxtaposed to the red existing zone boundary.

Id. As a result, as of November 9, 2023, the Department of Zoning has officially confirmed that the zoning for Hyde-Addison Elementary School is listed as R3/GT only.²

6. Finally, it is important to note that the online official 2D zoning map and 3D zoning map contains the following similar disclaimers:

Disclaimer

While DCOZ is committed to providing accurate and timely zoning information via the . . . Zoning App, DCOZ *cannot guarantee* the quality, *content, accuracy*, or completeness of the information, text, graphics, links, and other items contained therein. All data visualizations on the . . . Zoning App *should be considered approximate*. Information provided in the zoning map should not be used as a substitute for legal . . . or other professional advice. *DCOZ assumes no liability for any errors, omissions, or inaccuracies in the information provided* regardless of the cause of such or for any upon any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein. *DCOZ retains the right to change any content on its zoning map without prior notice.*

District of Columbia Department of Zoning, 3D Zoning Map, *available at* <https://maps.dcoz.dc.gov/3d/> (last visited January 22, 2024) (see the Disclaimer tab after clicking the HELP button) (emphasis added); District of Columbia Department of Zoning, Official Zoning Map, *available at* <https://maps.dcoz.dc.gov/zr16/> (last visited January 22, 2024) (see the Disclaimer tab after clicking the HELP button) (emphasis added).

7. The Applicant asserts that that the school's P Street building is closed. *DeLorean 88, LLC's Supplemental Memorandum*, at 4. However, pictures shown by the Applicant show that the P Street property is enclosed by a fence and has signs that read "Reserved Parking" and signs directing the public that the main entrance is located at 3219 O Street, N.W.

CONCLUSIONS OF LAW

8. The argument of the Applicant in favor of reconsideration are as follows: (1) the Board should rely on the zoning map at the time of application, which should be deemed MU-4 and R3/GT; (2) the District of Columbia Department of Zoning changed the zoning without an appropriate rulemaking; and (3) a remeasurement of the distance shows the business satisfies the

² The Board is aware of claims that not all zoning maps or documents may reflect this determination, but such documents are not relevant where they do not represent controlling authority, have likely just not been corrected, and the Department of Zoning has spoken conclusively upon a matter under its jurisdiction.

distance requirement under the Department of Zoning's 78 foot test. *DeLorean 88, LLC's Supplemental Memorandum*, at 10-19.³

9. The Board is not persuaded by the motion for several reasons. In particular, the motion for reconsideration cannot be granted because it requires the Board to overrule the District of Columbia Department of Zoning's determination that Hyde-Addison Elementary School is not zoned MU-4 but rather only R3/GT. As noted in *Craig*, the Board has "no authority to review the validity of the coordinate agency's action." *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 588 (D.C. 1998) *citing Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 413 A.2d 152, 154 (D.C. 1980); *see also John G. Uhar v. D.C. Alcoholic Beverage Control Board*, 20-AA-021, 8 (D.C. 2023) *citing Barry Farm Tenants & Allies Ass'n v. D.C. Zoning Comm'n*, 182 A.3d 1214, 1228-29 (D.C. 2018) ("[T]he Board certainly would lack authority to explicitly invalidate a decision of another agency."). The record in this case shows that the Department of Zoning has determined that the relevant property is not zoned MU-4. *Supra*, at ¶ 5. Moreover, none of the documents provided by the Applicant, including the 3D zoning map and the other documents are sufficiently authoritative to overrule this decision, as the disclaimer indicates that these documents are not controlling or definitive.⁴ *Supra*, at ¶ 6. Therefore, the Board has no authority to establish the zoning of Hyde-Addison Elementary School as an MU-4 zone and must respect the decision of the zoning department. Likewise, in accordance with *Craig*, the Board has no authority to declare that the Department of Zoning should have engaged in rulemaking or improperly followed its regulations. Moreover, in further accordance with *Craig*, to the extent that the Department of Zoning should change its determination based on a remeasurement, such a matter cannot be resolved by the Board, as the Board cannot make the Department of Zoning take any action or determine that it is wrong for not taking consideration of any fact related to a decision under its jurisdiction. As a result, the Applicant's request to overrule the Department of Zoning is in the wrong forum and must be made the Department of Zoning or to the courts to resolve.

10. Finally, although not clearly argued,⁵ the Board rejects the argument that the measurement for 300-foot purposes should be taken at 3219 O Street, N.W., and not take into consideration the P Street, N.W., location of the school that may encompass multiple separate lots when looking at the GIS map. *DeLorean 88, LLC's Supplemental Memorandum*, at 15, Appendix B-1.

³ The Board need not consider the second supplemental motion filed by the Applicant where no leave to file additional motions were requested or granted pursuant to 22-C DCMR § 9717.7. *DeLorean 88, LLC's Second Supplemental Memorandum*, at 1. Nevertheless, even if the motion were appropriately filed, the Board would not grant the requested relief because the Board cannot waive statutory requirements or overrule any determinations made by the Department of Zoning, even if incorrect, in accordance *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 588 (D.C. 1998). As a result, nothing in the second supplemental changes the need for the Applicant to get the Department of Zoning or the courts to overrule the determination made by the Department of Zoning to achieve its desired result.

⁴ It would also seem that the Applicant would have to provide a comprehensive zoning history of the relevant locations showing how the present zoning determination is or is not supported by records going back to the creation of the zoning system to argue that its initial map is in fact correct.

⁵ The Board did not find this point clearly argued but addresses what it believes the Applicant's argument to be.

11. In accordance with D.C. Official Code § 7-1671.06A(c):

(c) . . . the 300-foot restrictions shall not apply where the main entrance to the preschool, primary or secondary school, or recreation center, or the nearest property line of the school or recreation center, is actually on or occupies ground zoned commercial or industrial according to the official atlases of the Zoning Commission of the District of Columbia.

D.C. Code § 7-1671.06A(c).⁶ The regulations further provide in § 5000 that

5000.1 In establishing the distance between one (1) or more places, (such as the actual distance of a medical cannabis business from a school or recreation center, as defined in the Act), the distance shall be measured linearly by the Board and shall be the shortest distance between the property lines of the places.

5000.2 If a boundary line measured by the Board touches upon any portion of a parcel or lot, the parcel or lot shall be within the area being identified by the Board.

22-C DCMR § 5000.1-2 (West Supp. 2024).

12. In its motion, the Applicant provides no clear basis for excluding property located on P Street, N.W., to the extent those lots may actually be closer to the business. The mere fact that the school does not occupy or use any buildings is not sufficient to render the property not part of a school, as the usage of specific property is not relevant under § 7-1671.06A(c). *Supra*, at ¶ 7. Moreover, even if this were not the case, from the signage presented, the property appears to still be used for parking, and nothing presented by the Applicant excludes the likelihood that the school uses the property for other purposes such as rear vehicle access to the school grounds, storage, green space, outdoor activities, or even as large curb setback for the school grounds—as all such uses still render the property part of the school.⁷

13. Therefore, the Board finds that the Applicant's selected location is prohibited based on its proximity to the Hyde-Addison Elementary School.

⁶ The Applicant cites *Heyert v. D.C. Alcoholic Beverage Control Board*, 399 A.2d 1309 (D.C. 1979) in its motion; however, fails to include sufficient explanation as to why the case is relevant. The Board notes that *Heyert* involves a somewhat similar statute in the alcohol law that does not include the “nearest property line” language found in D.C. Official Code § 7-1671.06A(c) and the “main entrance” clause does not appear applicable to the present matter. *Heyert v. D.C. Alcoholic Beverage Control Board*, 399 A.2d 1309, 1312 (D.C. 1979) (“b) Said distance shall be measured between the nearest street main entrance to said place of business and the nearest street main entrance to said school, college, university, church, or recreation area by the shortest line between such entrances on, over, or across any public traveled way or public park or parking. This subsection shall not apply where the main entrance to said school, college, university, church or recreation area itself is actually on or occupies ground zoned commercial or industrial according to the official atlases of the Zoning Commission of the District of Columbia.”)

⁷ The Board further notes that the record in this case is not sufficient to determine the current usage of the P Street, N.W., lots, if such a factor was relevant.

ORDER

Therefore, the Board, on this 31st day of January 2024, hereby **DENIES** the motion for reconsideration filed by the Applicant.

IT IS FURTHER ORDERED that, as a courtesy, a copy of this decision shall be provided to the District of Columbia Department of Zoning.

IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision. The omission of any testimony or evidence in the Board's Order indicates that such testimony or evidence was contravened by the evidence or testimony credited by the Board, had no or minimal weight on the Board's findings and conclusions, was irrelevant, was not credible, was not truthful, was repetitious, was too speculative, or was otherwise inappropriate for consideration.

The ABCA shall deliver copies of this Order to the Government and the Respondent.

District of Columbia
Alcoholic Beverage and Cannabis Board

Donovan Anderson

Key: 34780378220de0801b332d129425c

Donovan Anderson, Chairperson

DS

Key: 34780378220de0801b332d129425c

James Short, Member



Silas Grant, Jr., Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage and Cannabis Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001; (202-879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b) (2004).

December 13, 2023

DeLorean 88, LLC
413 East Capitol St SE – Ground Floor
Washington, DC 20003

RE: Retailer License
ABCA-126807

Dear Applicant:

Thank you for submitting your application for a medical cannabis retailer license. We regret to inform you that your application has been denied as it does not meet the requirements set by the **DC Official Code 7-1671.06A**. This application is denied due to the following issue:

- Proximity of the proposed location to schools or recreation centers (within 300 feet of Hyde-Addison Elementary School)

Please be aware that if an applicant receives a written denial decision from the ABC Board, they have 15 days from the date of receipt to submit a written appeal to the ABC Board requesting reconsideration of the denial decision. Along with the appeal, the applicant may provide relevant documentation or evidence that challenges the findings of fact or conclusions of law in the written denial decision. If an appeal is submitted, the ABC Board is required to hold a hearing and provide a decision within 30 days.

If the applicant decides not to appeal the written denial decision or if the ABC Board renders a decision on an appeal, the ABC Board will notify the unlicensed establishment that it must close within 30 days of receipt of the denial. Failure to comply with this decision may result in penalties under **D.C. Official Code § 47-2844(a2) (1B)**.

If you have questions or need further assistance, do not hesitate to contact me.

Sincerely,

Emoni Boone

Emoni Boone
emoni.boone@gov

EXHIBIT
B

ALCOHOLIC BEVERAGE & CANNABIS ADMINISTRATION
2000 14TH ST NW, SUITE 400, WASHINGTON, DC 20009 | ABCA.DC.GOV

DeLorean 88 LLC_0962

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

In the Matter of:

**New Retailer License
DeLorean 88, LLC
1432 Wisconsin Avenue N.W.
Washington, D.C. 20007**

**Case No.:
License No.: ABCA-126807
Order No.: 2024-021**

DELOREAN 88, LLC'S (SECOND) MOTION FOR RECONSIDERATION

COMES NOW DeLorean 88 LLC ("DeLorean"), by and through undersigned counsel, and moves for reconsideration of the Alcohol Beverage and Cannabis ("ABC") Board's (the "Board") December 13, 2023, denial (the "2023 Denial") of Alcoholic Beverage and Cannabis Administration ("ABCA") License No. 126807, and the Board's January 31, 2024, Order Denying Motion for Reconsideration (the "2024 Denial").

DeLorean adopts and incorporates as if specifically set out herein the Application and all attachments filed on or about November 1, 2023, as well as all arguments and attachments A through B appended to DeLorean's December 27, 2023, Notice of Appeal and Request for Reconsideration (the "Notice of Appeal"), attachments A through W appended to DeLorean's January 18, 2024, Supplemental Memorandum (the "Supplemental Memorandum"), and all arguments and attachments X through Z in DeLorean's January 30, 2024, Second Supplemental Memorandum (the "Second Supplemental Memorandum").

As is more fully set forth in the annexed memorandum of points and authorities, the instant motion should be granted.

[the remainder of the page is left intentionally blank]

**EXHIBIT
C**

Respectfully submitted,

/s/ Philip M. Musolino

Philip M. Musolino
D.C. Bar No.: 294652
Musolino & Dessel, PLLC
1615 L Street, N.W., Suite 440
Washington, D.C. 20036
Phone: (202) 466-3883
Fax: (202) 775-7477
Email: PMusolino@MusolinoandDessel.com
Counsel for DeLorean 88 LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February 2024, I caused a true and correct copy of the foregoing to be served via electronic mail to the following address:

Alcoholic Beverage & Cannabis Administration
2000 14th Street, N.W.
4th Floor, Suite 400 South
Washington, D.C. 20009
Email: abra.legal@dc.gov
Email: abca.legal@dc.gov
Email: abca.cannabislicensing@dc.gov
Email: emoni.boone@dc.gov
Email: sean.gordy2@dc.gov
Email: martha.jenkins@dc.gov
Email: jonathan.berman@dc.gov

/s/ Philip M. Musolino
Philip M. Musolino

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

In the Matter of:

**New Retailer License
DeLorean 88, LLC
1432 Wisconsin Avenue N.W.
Washington, DC 20007**

**Case No.:
License No.: ABCA-126807
Order No.: 2024-021**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DELOREAN 88,
LLC'S (SECOND) MOTION FOR RECONSIDERATION**

Applicant/Appellant DeLorean 88 LLC ("DeLorean" and/or "Applicant" and/or "Appellant") submits this (Second) Motion for Reconsideration of the Alcohol Beverage and Cannabis ("ABC") Board's (the "Board") December 13, 2023, denial (the "2023 Denial") of Alcoholic Beverage and Cannabis Administration ("ABC") License No. 126807, and the Board's January 31, 2024, Order Denying Motion for Reconsideration (the "2024 Denial"). For the reasons set forth below, the instant motion shall be granted.

INTRODUCTION

The Findings of Fact and Conclusions of Law in the 2024 Denial must be reconsidered because: (1) the Board did not address the requirement that zoning be determined as of the time of the filing; (2) the Board lacked the authority to rely for its finding on an equivocal email that did not comport with the evidentiary mandates applicable to the Board and which was neither final nor official nor reliable nor admissible; (3) the Board erred when it concluded that the School zoning was not MU-4; and (4) the Board did not address the inapplicability of the School's zoning when the applicable property line was on land designated MU-4.

ARGUMENT

1. The Board Did Not Address The Requirement That Zoning Be Determined As Of The Time Of The Filing:

The Findings of Fact leave no room for doubt that – consistent with a century of zoning history, as is more fully discussed below – the zoning on the date of the application for Hyde-Addison Elementary School (the “School”) at Lot 854, Square 1244 (the “Lot”) was split zoning of MU-4 and R-3-GT. *See* Findings of Fact (“FF”)

Applicant argued at length that the Board’s determination of the School’s zoning had to be made as of the date of the application. Supplemental Memorandum, at 10-13. As the Supplemental Memorandum noted, only four (4) years ago the District of Columbia Court of Appeals in *Cole v. D.C. Zoning Comm’n*, 210 A.3d 753 (D.C. 2019) ruled:

New zoning regulations “supersed[ing] in full the 1958 regulations and zoning maps that had been in effect, as amended,” became effective on September 6, 2016.... However, in describing what the Commission was to consider, we cite the now-superseded regulations that governed the Commission’s substantive review of the PUD application.... Because the Application was filed prior to the date that those regulations were repealed (internal citations, quotation marks omitted).

Cole v. D.C. Zoning Comm’n, 210 A.3d at 759, n.6. Supplemental Memorandum, at 10.

In *Cole*, on “December 17, 2015, the applicant “... submitted to the Zoning Commission (the “Commission”) an application for review and approval of a consolidated planned-unit development (“PUD”) and a PUD-related zoning map amendment. *Cole v. D.C. Zoning Comm’n*, 210 A.3d, at 757. “New zoning regulations “supersed[ing] in full the 1958 regulations and zoning maps that had been in effect, as amended, became effective on September 6, 2016. *Id.*, at 759, n.6. The public hearing to address opposition to the application was held on September 29, 2016, *Id.*, at 759, and a decision was published on March 10, 2017. Notwithstanding that the decision was published a half-year after the new regulations were effective, and notwithstanding that the hearing

took place days after the new regulations, the D.C. Court of Appeals mandated the application of the regulations in place at the time of the application.

The rationales for this widely applied rule, *see* Supplemental Memorandum, at 10-12, are uncontested and uncontroversial, *id.*, at 10-13, and the failure to follow the rule triggers due process requirements over rights which vested at the time of the application, as well as, in this case, equitable considerations of waiver and estoppel. *Speyer v. Barry*, 588 A.2d 1147, 1154 (D.C. 1991) (“Familiar equitable principles, however, provide some protection to those who have substantially changed their position in reliance on existing zoning regulations....”), and *see e.g.*, *Kuri Bros. v. D.C. Bd. of Zoning Adjustment*, 891 A.2d 241, 248 (D.C. 2006) (discussing more limited application of laches).

Because there is no dispute that for over a century, up to, at and for a week or more after the application, the Lot was zoned MU-4, the Board should and must reconsider the 2024 Denial.

2. The Board Lacked The Authority To Rely For Its Finding On An Equivocal Email That Did Not Comport With The Evidentiary Mandates Applicable To The Board And Which Was Neither Final Nor Official Nor Reliable Nor Admissible:

Fact finding by the Board is expressly limited by two (2) requirements: (1) any zoning determination made with respect to the 300-foot rule commercial exception must be based on the “...official atlases of the Zoning Commission of the District of Columbia,” Conclusion of Law (“Conclusion”) 13; and (2) it “...shall be based solely upon evidence contained in the record and facts of which the Board properly took judicial notice,” 23 DCMR §1718.2, and “...shall be supported by and in accordance with reliable, probative and substantial evidence.” 23 DCMR §1718.3.

No finding or conclusion addressed at all the “official atlases.” No witness explained the term, identified the location of the official atlases, or the custodians, or authenticated any document proffered as an official atlas. Nor did any witness testify or opine that no official atlases exist.

The publicly available digital versions of the zoning map, as the Board found, reflected MU-4 zoning on the lot as of October 31, 2023, FF 5, and as of 2021, at 2, n.1. The publicly available 3D version of the zoning map reflected MU-4 zoning on the Lot as of January 18, 2024, **Appendix B-4**, and even the digital map dated November 29, 2023, **Appendix AA-1** and **Appendix AA-2**, produced by the Board, on close inspection, shows a zoning line inside, rather than on, the Lot’s property line. Indeed, the Board observes: “[t]he Board is aware of claims that not all zoning maps or documents may reflect this determination....” 2024 Denial, at 3, n.2.¹

The Board then notes that the digitized maps are subject to a broad disclaimer ending with a right that it asserts on its website – but without any reference to legislative authority – “...*to change any content on its zoning map without prior notice....*” FF 5. But, as 11-A DCMR § 210 states:

210.6 Before adopting any proposed amendment to this title or the Zoning Maps, the Zoning Commission shall submit the proposed amendment to the Office of Planning for opinion or report; provided, that if the Office of Planning fails to transmit its opinion or report to the Zoning Commission within the period specified in Subtitle A § 211.1, the Zoning Commission may proceed to take final action on the amendment.

210.7 Before adopting any proposed amendment to this title or the Zoning Maps, the Zoning Commission shall hold a public hearing on the proposed amendment in accordance with Subtitle Z §§ 408 and 506.

210.8 The hearing notice shall include a general summary of the proposed amendment to this title and the boundaries of a territory included in the proposed amendment to the Zoning Map.

¹ The Board then speculates that those maps “...likely just not been corrected...” *id.*, but offers not a scintilla of evidence to support that speculation.

210.9 Notice of the hearing shall be given in accordance with Subtitle Z §§ 402 and 502. The Zoning Commission shall give additional notice of the hearing as it deems feasible and practicable.

210.10 Any amendment to this title or the Zoning Maps shall require the favorable vote of not less than a majority of the full membership of the Zoning Commission.

11-A DCMR § 210.

The Board made no finding that any of those procedures was followed. There was no evidence that any of those procedures were followed, because those procedures, self-evidently, were not followed.

The only inference to be drawn from the website disclaimer is that the digital maps subject to the disclaimer are not the “official atlases” subject to the Constitutionally rigorous procedures set out in 11-A DCMR § 210. The Office of Zoning cannot make changes without due process notice or due process opportunities to be heard because, as the disclaimer notes, those maps are not inherently reliable.

No evidence from the Office of Zoning identifying the November 2023 maps as “official atlases” was presented, and no findings to that effect were made by the Board. In any event, there is nothing in the Findings or Conclusions to suggest that any digital maps formed the basis for the Board’s determination that the Lot was no longer zoned MU-4.

Quite to the contrary, the Board based its conclusion entirely on a November 9, 2023, email from one non-party non-witness to another non-party non-witness which was not produced to Applicant, through counsel, until January 4, 2024, **Appendix C-1**. FF 5 states as follows:

It is undisputed that in the October 31, 2023 document, there appeared an odd sliver on the map where the school’s zoning lines veers into the MU-4 zone. *Id.* Moreover, it is undisputed that after an inquiry from an Advisory Neighborhood Commission (ANC), the Office of Zoning determined that the sliver was a digitization error that caused the misidentification of the school’s zone. *Email from Sara Bardin, Director, District of Columbia Department of Zoning to Christopher Matthews, Commissioner, Advisory Neighborhood Commission 2E at 1.*

In explaining its reasoning, the Director of the Department of Zoning stated:

Yes, this appears to be a digitization error. The first screenshot below is from the 1966 map, and there is a clear 78' line from the edge of the alley ROW² on this square. This measurement is shown on every map up to 2003 (subsequent maps don't show measurements). The pink line on the second screenshot is a 78-foot line we made in GIS to simulate where the line should be, juxtaposed to the red existing zone boundary. *Id.* As a result, as of November 9, 2023, the Department of Zoning has *officially confirmed* that the zoning for Hyde-Addison Elementary School is listed as R3/GT only (footnotes omitted, emphasis added). FF5.

But there was nothing official, confirmatory, or final in any administrative or regulatory sense, in the email. In the first place, the use of the phrase “appears to be” and the use of the word “simulate” lack the earmarks of a final action. “[E]quivocal or tentative language” in an administrative decision is inconsistent with administrative finality. *Com. of Mass. on Behalf of Dep't of Pub. Welfare v. Lyng*, 681 F. Supp. 91, 94 (D. Mass. 1988), citing *Continental Airlines, Inc. v. C.A.B.*, 522 F.2d 107 (D.C.Cir.1975).

Second, the email contains none of the administrative guidance – for example the right to appeal, and the accompanying deadlines and forums, *see Basken v. D.C. Bd. of Zoning Adjustment*, 946 A.2d 356, 365 (D.C. 2008) (“The letter referenced the ANC's right to appeal to the BZA, also an unambiguous signal that the decision was made”) – which are considered prerequisites for administrative finality.

Third, and critically, the email was never noticed to Applicant and was never noticed to the School. The implicit contention that an officer of the Office of Zoning could unilaterally deprive the School of its zoning status without any notice or opportunity to be heard is an affront to due process and in blatant derogation of the procedures set up by the agency itself. Equally striking, the deprivation of property rights on the basis of an email exchange with a political figure

² Conspicuously, neither the email nor the portion of a map to which the email referred identified the other end of the “78’ foot line.”

and a one-hour review – again without notice or an opportunity to be heard – cannot be countenanced.

Fourth, the text of the email lacks any explicit conclusion about zoning. On its face, the email in fact describes the “existing zone boundary” as the red line; that is, the line that establishes MU-4 zoning in the Lot. The email then refers to a pink line which “simulates” where – if a digitization error in fact took place – the line “should be.” But nothing in the email connects the 78-foot measurement to the pink line or any other line. It may be that some unidentified employee, at some unidentified time, on the basis of some undisclosed analysis, began but prudently did not complete changes to maps disclaimed as “approximate,” and subject to “...errors, omissions or inaccuracies,” FF 6, but neither the email nor the pink line nor the map approximations substitutes for the due process requirements of 11-A DCMR § 210, and Ms. Bardin was well aware of those requirements when she authored her informal, equivocal email.

At a minimum, therefore, D.C. Code 23 § 1718 was not satisfied. Aligned against a century of zoning records, *see* discussion below, the Board improperly relied on a single, unauthenticated, ambivalent, unofficial, informal email from one non-party non-witness to another non-party non-witness. Fulsome, explanatory testimony from Ms. Bardin – subject to cross-examination – is or should be a critical component of the evidentiary record on zoning in this case. And that record must be directed at the fact issue which the Board is duty bound to resolve – the content of the “official atlases of the Zoning Commission of the District of Columbia.”

Applicant is not asking the Board to question, reject or go behind any Office of Zoning determination. Rather, applicant contends that the Board’s own rules prevent it from relying on an email to determine the position of the zoning agency.³

³ The time to appeal to the BZA has not yet run. See 11 DCMR 302.1, 302.2, and *see Basken v. D.C. Bd. of Zoning Adjustment*, 946 A.2d 356, 366 (D.C. 2008).

3. The Board Erred When It Concluded That The School's Zoning Did Not Include MU-4:

Since the commencement of regulated zoning in the District of Columbia in 1920, *see* Senate Bill 6922 (the “Zoning Act of March 1, 1920”), and since the creation of the first zoning map in or around 1936, (**Appendix I-1, Appendix I-2**), the Lot was part of a historical commercial corridor, with an industrial classification predating its public classification.

At the outset of the creation of the zoning scheme, and thereafter, the District of Columbia and the Zoning Commission set out to memorialize in zoning maps the then-existing uses of each of the properties in the District of Columbia. As ANC Commissioner Christopher Mathews wrote with respect to another Georgetown commercial property:

...[O]bviously M and Wisconsin were zoned for commercial from the start. But this map allowed for a substantial amount of commercial into the residential neighborhood. P Street west of Wisconsin was almost entirely zoned for commercial. 36th Street was as well. And a portion of P Street in east Georgetown (the heart of the historic black Herring Hill neighborhood) was also zoned commercial. Of course this wasn’t a coincidence. It was zoned commercial because it was commercial. The map makers were acknowledging that even though one of the stated goals of adopting the zoning laws was to limit the growth of commercial activity in residential neighborhoods, there already was commercial activity in these parts of residential Georgetown.

Appendix J.

The School itself was built around 1907. The School is now comprised of two (2) buildings on Lot 854 (the “Lot”) in Square 1244 (the “Square”). *See Survey, District of Columbia Survey of the Office of the Surveyor. Appendix E.* Comprehensive re-writes of the zoning map took place in 1936 and 1958. The School was variously zoned industrial and public, and by 1958 the zoning map still available through the Office of Zoning still showed the “sliver” creating the split zoning.

Appendix X.

The Council for the District of Columbia declared in 1989 that as of May 23, 1990, “the government shall be subject to zoning.” Comprehensive Plan Amendments Act of 1989 (CPAA),

D.C. Law 8-129, 37 D.C. Reg. 55, 235 (1990) (now codified at D.C. Code § 1-250 (1990 Supp.)).

According to these words, their ordinary meaning, "...we must hold that although the District government was previously exempt from zoning laws applicable to private parties, it is exempt no longer (internal citations omitted)." *Speyer v. Barry*, 588 A.2d 1147, 1153 (D.C. 1991).

In 2016, a new zoning map formally replaced prior zoning maps.

The Zoning Commission for the District of Columbia, pursuant to authority conferred by Congress under the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §§ 6-641.01 to 6-641.15 (hereafter, the Zoning Act), after public notice and hearing prescribed by law, does hereby establish and adopt these regulations (2016 Regulations) and the Zoning Maps accompanying them to supersede in full the zoning regulations and the Zoning Maps, as originally adopted on, and effective as of 12:01 a.m. May 12, 1958 (1958 Regulations), as amended, and that are hereby repealed.

11-A DCMR § 100.1, D.C. Mun. Regs. Tit. 11-A, § 100.1.

As of October 31, 2023, the Office of Zoning described in its publicly available digital database the Lot as split-zoned with MU-4 zoning and R-3/GT zoning. FF 4, 5. As of the time of the Application, the School had two (2) addresses: 3246 P Street, NW (the "P Street Address") and 3219 O Street NW (the "O Street Address"). As of the time of the Application, the O Street Address generated a zoning map from the Office of Zoning digital map database. Moreover, at the time of the Application, the O Street Address was the only address containing an active entrance to the School, and was the address utilized by the School on its website, **Appendix F**, and the O Street Address was the address which faced the Applicant's establishment. FF4.

The P Street building is closed to any access. **Appendix G**. The O Street Address, as of this date, remains "active" as a "non-residential" property, according to the D.C. Department of Buildings, **Appendix H**, and is the main entrance to the School. **Appendix G**. The O Street Address generates a 3D zoning map which includes MU-4 zoning. **Appendix B-4**.

Similar MU-4 zoning slivers appear to apply to other properties, elevating the importance of caution when assessing the facts necessary to undo zoning rights and privileges on which multiple property owners and businesses have relied for decades.

The Board should therefore strictly follow its own proof burdens, and decline to sign off on an informal, equivocal, and incomplete change to a century of zoning designations on the basis of anything other than a specific finding of fact on the “official atlases” of the zoning agency. Following its own regulatory requirements, as it must, the Board must conclude that the Office of Zoning still, consistent with a century of zoning records, officially designates the Lot as MU-4 and R-3-GT.

4. The Board Did Not Address The Commercial Exception When The Applicable Property Line Was On Land Designated MU-4:

Whether or not the Lot contains or did contain MU-4 zoning in whole or by split-zoning in part, the D.C. Code requires that the Board address the alternative basis for inapplicability of the 300-foot rule. 7 D.C. Code §1671.06A (c) provides as follows:

The 300-foot restrictions shall not apply where the main entrance⁴ to the preschool, primary school or secondary school or recreation center, *or the nearest property*

⁴ The Board questioned the relevance of *Heyert v. D.C., Alcoholic Beverage Control Bd.*, 399 A.2d 1309 (D.C. 1979) in the 2024 Denial at n.6. But *Heyert*’s treatment of the term “main entrance” is directly applicable to the first clause of 7 D.C. Code § 1671.06A (c). In *Heyert*, the Board and the Court applied the following:

Said distance shall be measured between the nearest street main entrance to said place of business and the nearest street main entrance to said school, college, university, church, or recreation area by the shortest line between such entrances on, over, or across any public traveled way or public park or parking....

Heyert v. D.C., Alcoholic Beverage Control Bd., 399 A.2d at 1311. The *Heyert* Court then explained:

Thus, as perceived by the Board, there could be many street entrances to a building. However, not all of those necessarily would be “street main entrances,” for “main” has been defined by the Board from the standpoint of use. That is, the Board finds as a fact from the evidence before it which of the various street entrances is most used by those who frequent the particular building. If there is one entrance that is used most often, then that entrance is the “street main entrance,” and no consideration of the term “nearest” comes into play. If, however, more than one street entrance are used equally, then all such entrances are “street main entrances” and one of them must be determined to be the “nearest.” That determination is a factual one which is simply a matter of measurement.

Id. at 1312.

*line*⁵ of the school or recreation center is actually on or occupies ground zoned commercial or industrial according to the official atlases of the Zoning Commission of the District of Columbia (emphasis added).

7 D.C. Code §1671.06A (c).

As Applicant asserted in its Supplemental Memorandum,

“...Applicant is excepted from the 300-foot rule if either the School Lot is zoned MU-4, or if the nearest property *line* is on ground zoned MU-4. The pertinent property line must be the line closest to the O Street Address. *Heyert v. D.C., Alcoholic Beverage Control Bd.*, 399 A.2d 1309, 1312 (D.C. 1979). As the 3D Zoning Map makes clear that line – routinely referred to as the MU-4 line – is “on ground” zoned commercial or industrial.

Here, again, the failure of the Board to address in any way the two exceptions to the 300-foot rule is an administrative procedural violation which mandates vacatur of the Denial.”

Supplemental Memorandum, at 14-15.

The 2024 Denial did not address at all the alternative “property line” test applicable to cannabis licensing. It was incumbent upon the Board to determine whether the alternative language in 7 D.C. Code §1671.06A (c) leads to the finding that “the property line” was zoned MU-4. The Board, in fact, noted that the property line language in the cannabis licensing rule was not present in the alcohol law. The observation certainly suggests that the “property line” test was deliberately added legislatively, compounding the error.

The 2024 Denial contains no findings of fact- such as an identification of the “...nearest property line” for that test, but the Office of Zoning interactive maps certainly suggests that the applicable property line is MU-4, since a search which clicks on the appropriate property line results in an MU-4 zoning indication. **Appendix AB-1 and Appendix AB-2.**

D.C. Code 23 § 1718.2 provides that “Findings of Fact and Conclusions of Law shall consist of a concise statement of the Board's conclusions on *each* contested issue of fact...

⁵ The Board acknowledges that the alternative test based on “the property line” is applicable to this Application and that similar language is not found in “...the alcohol law....” 2024 Denial, at n.6. That is, the zoning line test was specifically designed as an alternative for cannabis licensing.

(emphasis added).” Because the Board did not address Applicants alternative property line test, the 2024 Denial did not meet the requirements of D.C. 23 § 1718.2.

5. The Record Does Not Establish That the Establishment Is Within 300 Feet of the School:

The Board makes no explicit findings regarding the distances between the Establishment and the School. Instead, the Board addresses in detail the O Street and P Street Addresses, FF 3, 4 and 7, and concludes that the P Street Address must be taken into account in order to apply the measurement test set out in 22-C DCMR § 5000.1-2 (West Supp. 2024). Conclusions of Law 10, 11, 12. The findings and conclusions, however, contain no measurement using either address.⁶ If it hasn’t already, the Board should direct its investigators to conduct those measurements, *see* section 5000.1 (“...the distance shall be measured linearly by the Board ...”) and those measurements should be incorporated into the findings of fact.⁷

As to the use of either the O Street Address or the P Street Address for the first stage of the analysis⁸ the Board should apply the methodology utilized by ABCA Investigator Kevin Puente in 2021 and adopted by the Board. *See* 2024 Denial, at n. 1. While the Board declined to follow Mr. Puente’s determination because “...the investigator made no effort to investigate whether the underlying information shown by websites was correct.” *id.*, Mr. Puente’s reliance on the digital 2021 zoning maps is unrelated to the actual measurements he took and the methodology he used.

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⁶ As to the measurement methodology, *see Brentwood Liquors, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 661 A.2d 652, 656 (D.C. 1995) (Stating that “(i)n this case, the Board construed the phrase “the shortest distance” to mean a route which pedestrians can traverse without undue danger and, as well, a route that pedestrians actually use with some regularity,” the Court of Appeals remanded to the Board for further explication “...should it adhere to its ruling....” *Id.*, at 659.

⁷ Applicant reports that the pedestrian traverse measurement using the O Street property line exceeds 300 feet, and the distance between the main entrances exceeds 400 feet.

⁸ As noted above, the Board must first determine whether the School is within 300 feet, and then determine whether the commercial exception to the 300 foot rule under either of two alternative tests in 7 D.C. Code §1671.06A (c) applies.

Respectfully submitted,

/s/ Philip M. Musolino

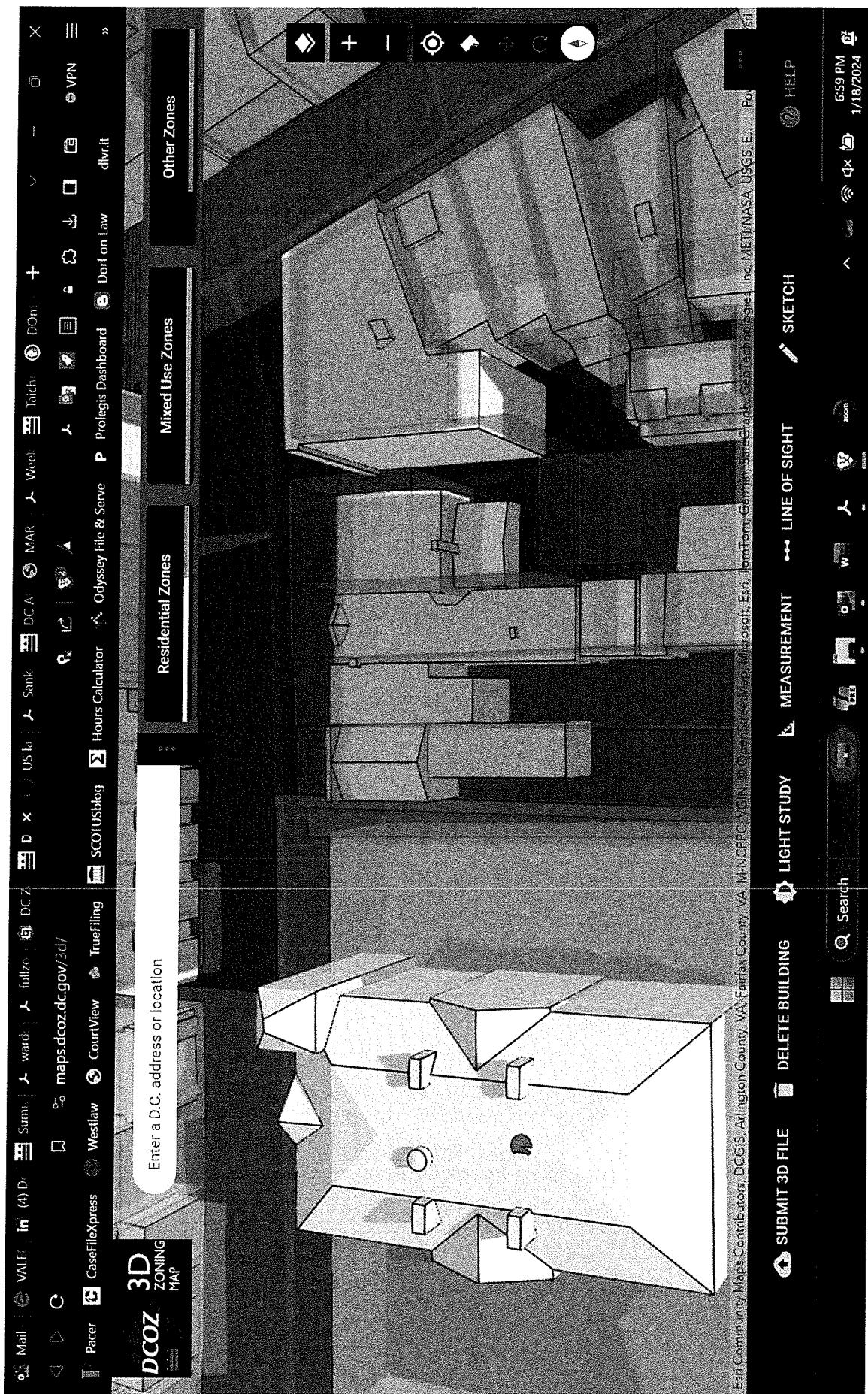
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1615 L Street, N.W., Suite 440
Washington, D.C. 20036
Phone: (202) 466-3883
Fax: (202) 775-7477
Email: PMusolino@MusolinoandDessel.com
Counsel for DeLorean 88 LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February 2024, I caused a true and correct copy of the foregoing to be served via electronic mail to the following addresses:

Alcoholic Beverage & Cannabis Administration
2000 14th Street, N.W.
4th Floor, Suite 400 South
Washington, D.C. 20009
Email: abra.legal@dc.gov
Email: abca.legal@dc.gov
Email: abca.cannabislicensing@dc.gov
Email: emoni.boone@dc.gov
Email: sean.gordy2@dc.gov
Email: martha.jenkins@dc.gov
Email: jonathan.berman@dc.gov

/s/ Philip M. Musolino
Philip M. Musolino



From: Berman, Jonathan (ABC&A)
To: [REDACTED]
Cc: [REDACTED]
Subject: Zoning Changed the Official Map (Hyde Addison)
Date: Thursday, November 9, 2023 12:57:00 PM
Attachments: image001.jpg
image002.jpg
image003.jpg
image004.jpg
image005.jpg

[REDACTED]
[REDACTED]
[REDACTED]

Sincerely,

JONATHAN BERMAN (HE, HIM, HIS) - ASSISTANT GENERAL COUNSEL
D: 202.442.4448 | E: jonathan.berman@dc.gov

ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION
2000 14th Street NW, Suite 400 South, Washington DC 20009
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ABRA has created a dedicated email account for the receipt of all electronic documents that concern legal and adjudication matters before the Alcoholic Beverage Control Board. Please send your Board correspondence, pleadings, filings, motions, Settlement Agreements, Security Plans, etc. to the following address: abra.legal@dc.gov

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From: Mathews, Christopher (SMD 2E02) <2E02@anc.dc.gov>
Sent: Thursday, November 9, 2023 12:42 PM
To: Berman, Jonathan (ABC&A) <jonathan.berman@dc.gov>
Subject: Fwd: Zoning Map Question

Jonathan,
Please see below. As I suspected, this was a result of a digitalization error. The maps have already been updated. As such, I believe Hyde-Addison still "counts" for the 300 foot rule.

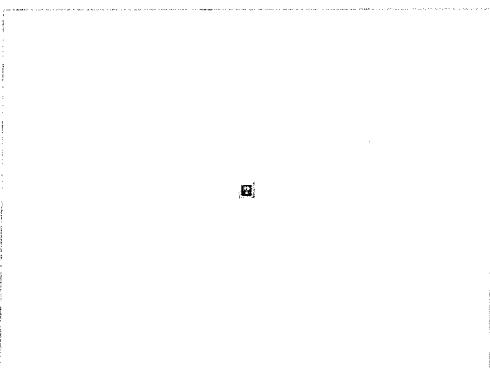
Thank you!
Topher Mathews

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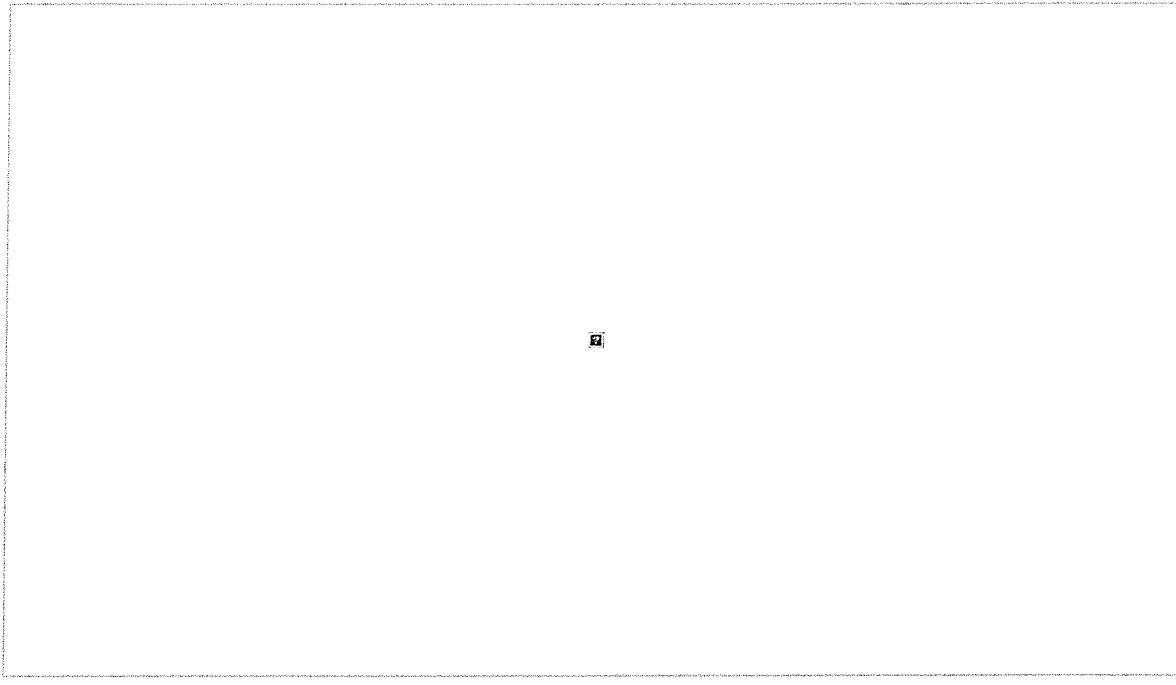
From: Bardin, Sara (DCOZ) <sara.bardin@dc.gov>
Sent: Thursday, November 9, 2023 12:16 PM
To: Mathews, Christopher (SMD 2E02) <2E02@anc.dc.gov>; Hill, Zelalem (DCOZ) <zelalem.hill@dc.gov>; ATD DCOZ <dc0z@dc.gov>
Subject: RE: Zoning Map Question

Hello Commissioner Mathews:

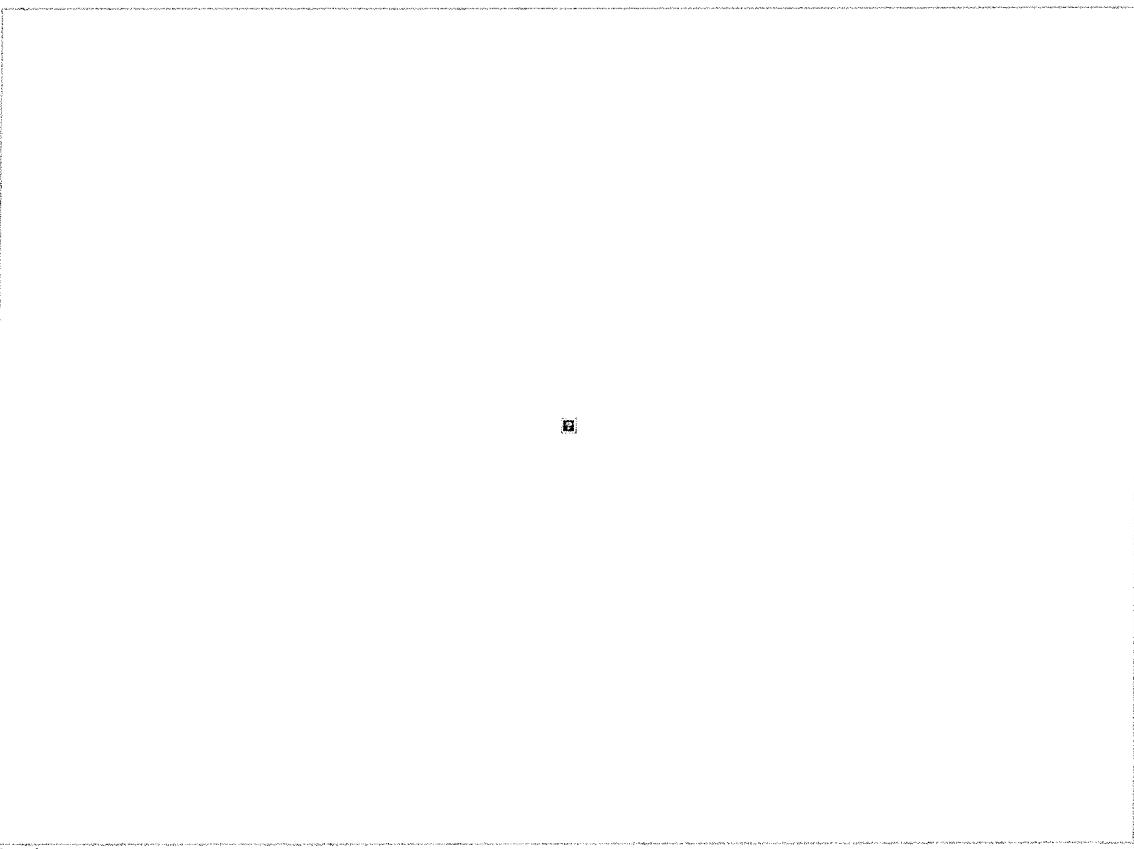
Yes, this appears to be a digitization error. The first screenshot below is from the 1966 map, and there is a clear 78' line from the edge of the alley ROW on this square. This measurement is shown on every map up to 2003 (subsequent maps don't show measurements). The pink line on the second screenshot is a 78-foot line we made in GIS to simulate where the line should be, juxtaposed to the red existing zone boundary.



APPENDIX C-1



We have corrected it:



Sincerely,

Sara

Sara Bardin
Director

DeLorean 88 LLC_0980



Office of Zoning | District of Columbia Government
www.doz.dc.gov | sarahardin@dc.gov

441 4th Street, NW | Suite 200-S | Washington, DC 20001
(202) 727-5372 (office) | (202) 727-6072 (fax)

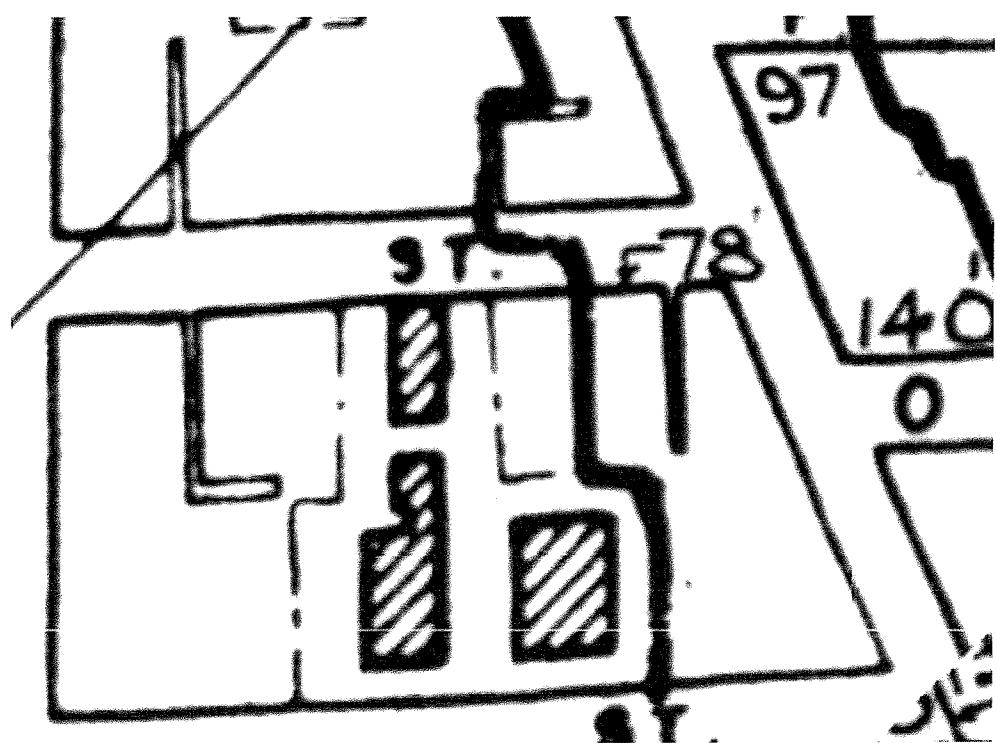
From: Mathews, Christopher (SMD 2E02) <2E02@anc.dc.gov>
Sent: Thursday, November 9, 2023 9:19 AM
To: Hill, Zelalem (DCOZ) <zelalem.hill@dc.gov>; ATD DCOZ <dcocz@dc.gov>
Subject: Zoning Map Question

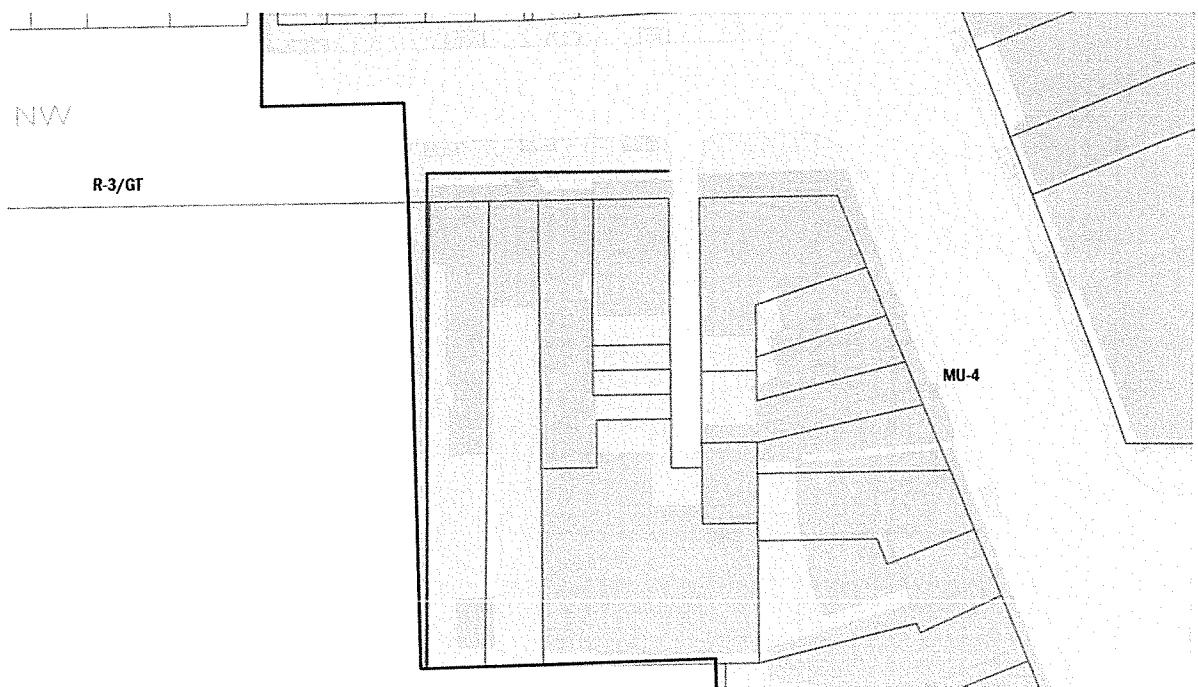
Hello,
I am an ANC Commissioner in Georgetown and I have a question about the official zoning map on the Office of Zoning's website. I believe the map is providing inaccurate information about the zoning borders. Can I speak to someone to provide clarity on how the zones are geographically defined?

Thank you very much!

Topher Mathews
ANC 2E02

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DeLorean 88 LLC_0983

The screenshot shows a zoning map for a specific location in Washington DC. The map displays a grid of parcels with various zoning codes and square numbers. A callout box highlights 'Sq. 1244' with a zoning code of 'R-3/077'. The map also includes a legend for 'Zoning / Land Use' and a 'Location' search bar. Below the map, there are links to 'View 3D Zoning Map', 'View Perspective Imagery', 'Google Maps', and 'Bing Maps'.

OFFICIAL Zoning Map

Refined Search

Address

← BUFFER FULL REPORT SET AS HOME

Location

Square, Suffix, Lot
1244 0854

Tax Record

Premises Address
3246 P ST NW WASHINGTON DC 20007

Owner Name
DISTRICT OF COLUMBIA

Owner Address
2000 14TH ST NW 8TH FLOOR
WASHINGTON DC 20009-4487

Imagery

View 3D Zoning Map

View Perspective Imagery

Google Maps

Bing Maps

Zoning / Land Use

Zone District
MU-4

R-3/GT

Sq. 1244

R-3/077

0854

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0856

0857

0858

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0860

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0862

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DeLorean 88 LLC_0984

DISTRICT OF COLUMBIA GOVERNMENT
Office of the Surveyor

Plat of SURVEY OF LOT 854 TO MARK AND TO LOCATE IMPROVEMENTS PER. INSTRUCTIONS

AND SHOW ACTUAL ANGLES AND MEASUREMENTS

SQUARE 1244

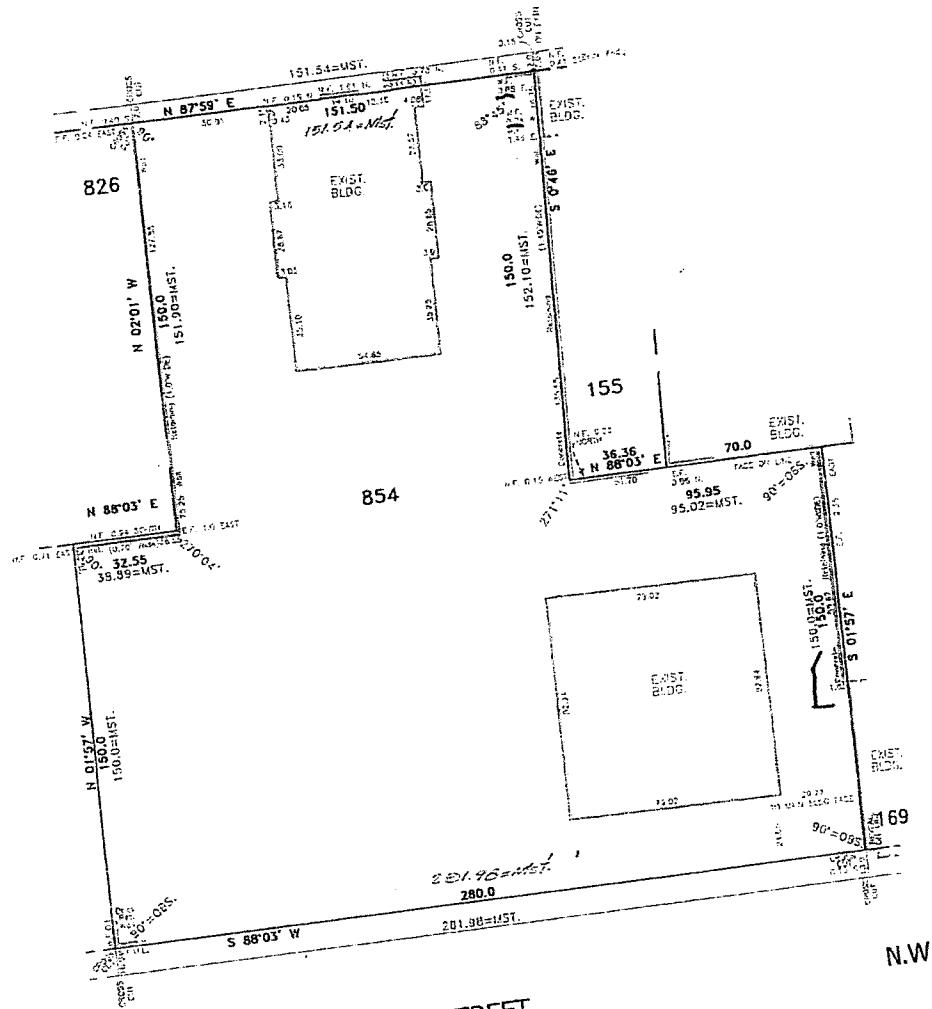
Scale: 1 inch = 30 feet

S.O. Receipt No. SP17-50-06831

P

N.W.

STREET,



O

STREET,

N.W.

APPENDIX E

S.O. SEAL

OFFICE OF THE SURVEYOR, D.C.

This plat is accepted for recordation in accordance with
Chapter 28 of Title 10 DCMR.

February 6, 2018 
Surveyor, D.C.

RECORDED AT: 4:25 PM ON FEBRUARY 6, 2018

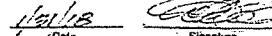
RECORDED IN SURVEY BOOK 1000, PAGE 479

SEE MAP # RS-382 FOR FIELD NOTES

RLS SEAL

REGISTERED LAND SURVEYOR'S
CERTIFICATION

I certify that this survey sheet herein was made by
me or under my direction in accordance with Chapter
28 of Title 10 DCMR.


Date: February 6, 2018 Signature: Anthony G. Currie

NAME OF RLS: ANTHONY G. CURRIE

D.C. Registration Number 01-02

Business Address and Telephone No.:

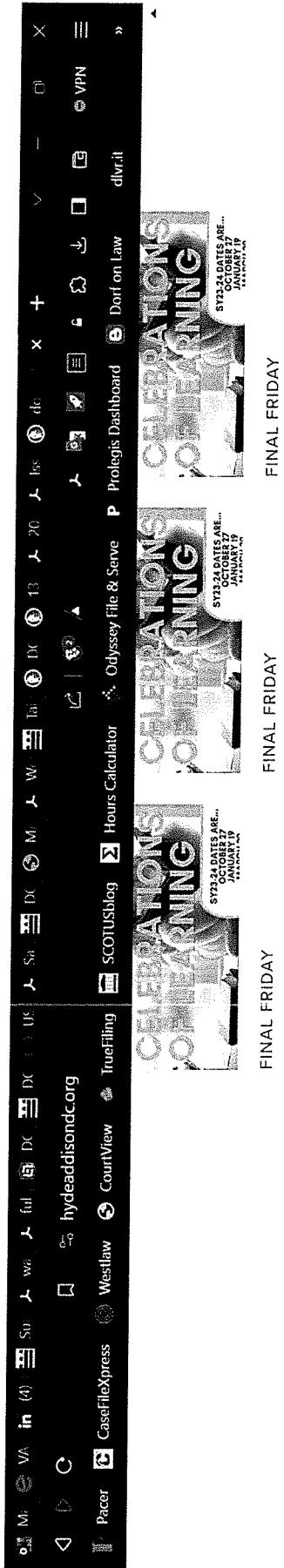
Telephone Number: (301) 559-0100

3331 TOLEDO TERRACE, SUITE # 105

HYATTSVILLE, MD 20782

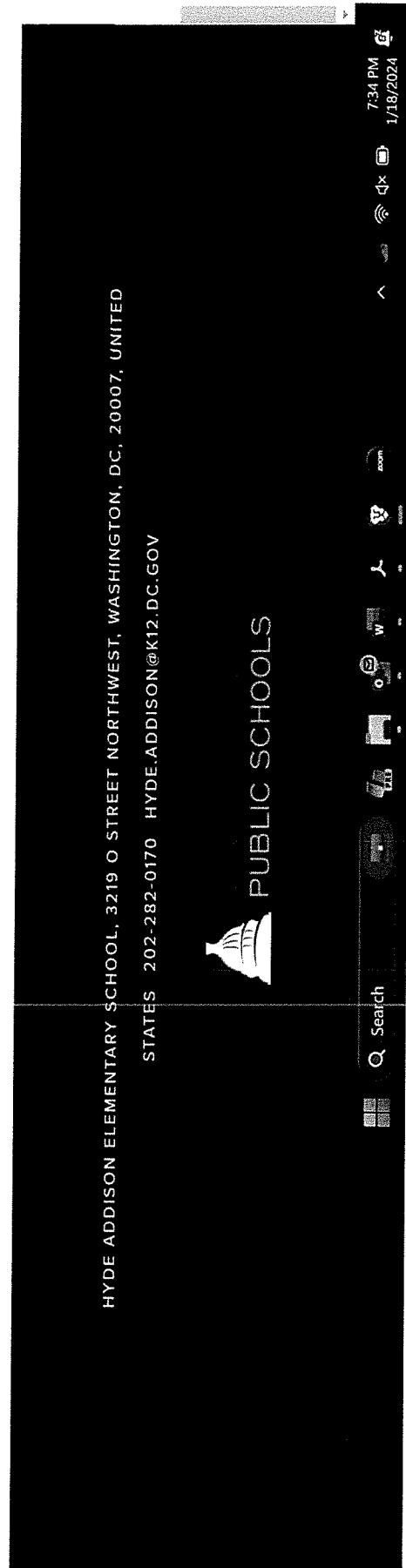
114

DeLorean 88 LLC_0985



School Office Hours 8 a.m. - 4:00 p.m.

School Hours 8:35 a.m. - 3:25 p.m. (early dismissal ends at 2:50 p.m.)

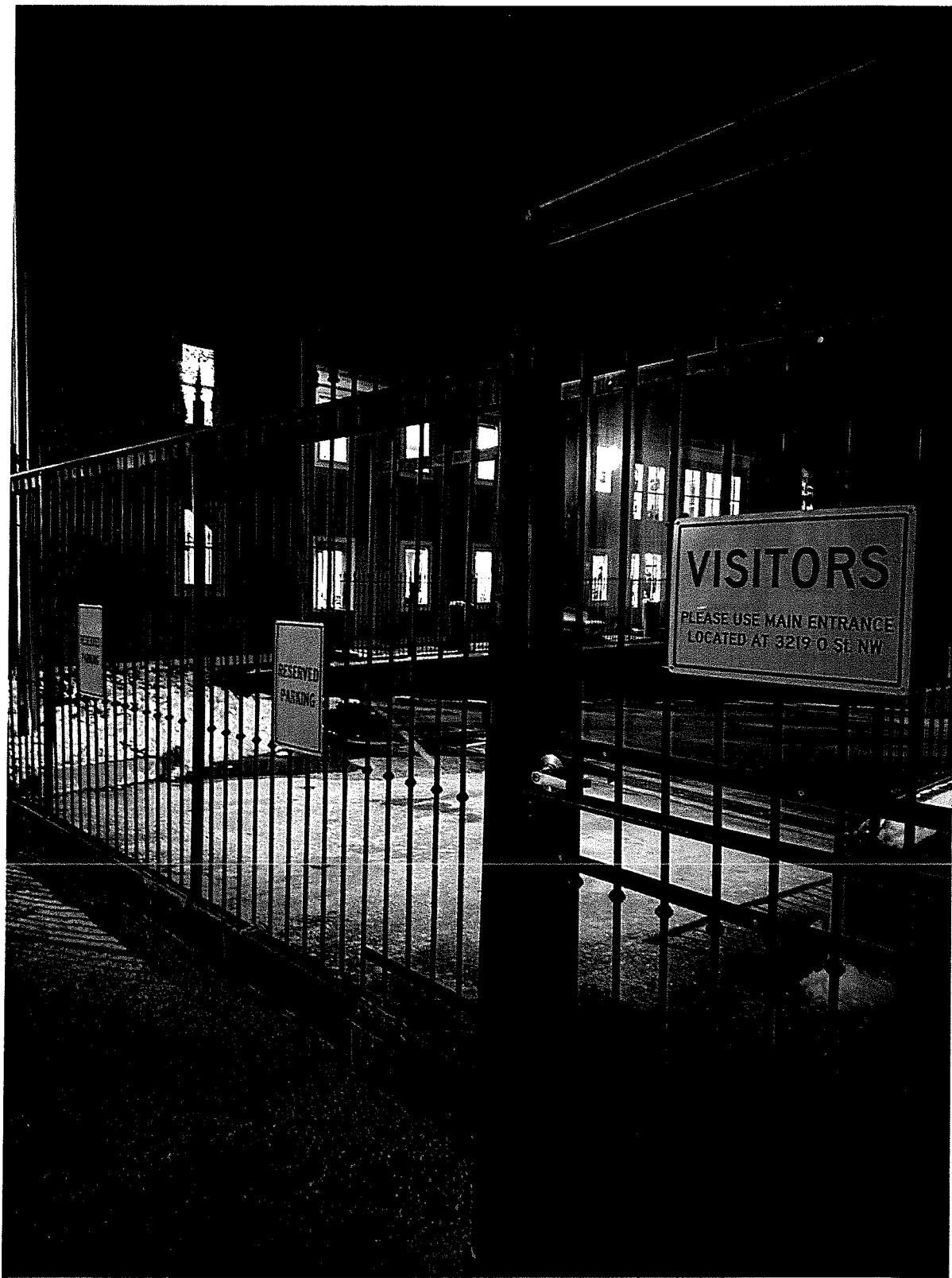


HYDE ADDISON ELEMENTARY SCHOOL, 3219 O STREET NORTHWEST, WASHINGTON, DC, 20007. UNITED STATES 202-282-0170 HYDE.ADDISON@K12.DC.GOV



DeLorean 88 LLC_0986

APPENDIX F



APPENDIX G

DeLorean 88 LLC_0987



DeLorean 88 LLC_0988

Leopold Harris

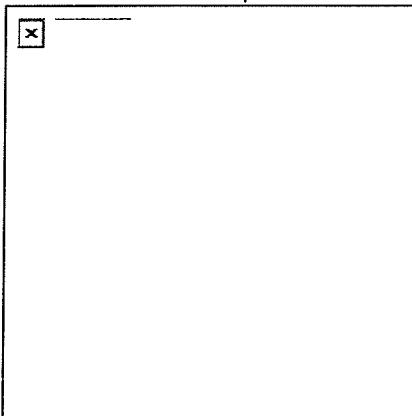
From: DC Department of Buildings <dob@dc.gov>
Sent: Thursday, January 18, 2024 3:39 PM
To: Leopold Harris
Subject: Re: Zoning Technician - Fatima Wabi
Attachments: Screenshot.docx

Good afternoon,

Can you elaborate on what you mean by removal of the 3219 O Street, NW? Per the Master Address Repository which is the districts addresses system of record, this address is active.

Best Regards,

Nicole Rogers, MPP | Chief Building Official
The Department of Buildings
1100 4th St SW, 2nd Floor, DC 20024
main: 202.671.3500 | mobile: 202.246.2823 | dob.dc.gov



On Fri, Jan 5, 2024 at 10:00 PM <lharris@musolinodessel.com> wrote:

CAUTION: This email originated from outside of the DC Government. Do not click on links or open attachments unless you recognize the sender and know that the content is safe. If you believe that this email is suspicious, please forward to phishing@dc.gov for additional analysis by OCTO Security Operations Center (SOC).

Hi,

Thank you for your information. We have been provided some additional information which we will be happy to share with you Monday.

Can you let me know if your office would have been involved in the removal of the 3219 O Street NW property address as a searchable term on any of the D.C. property databases?

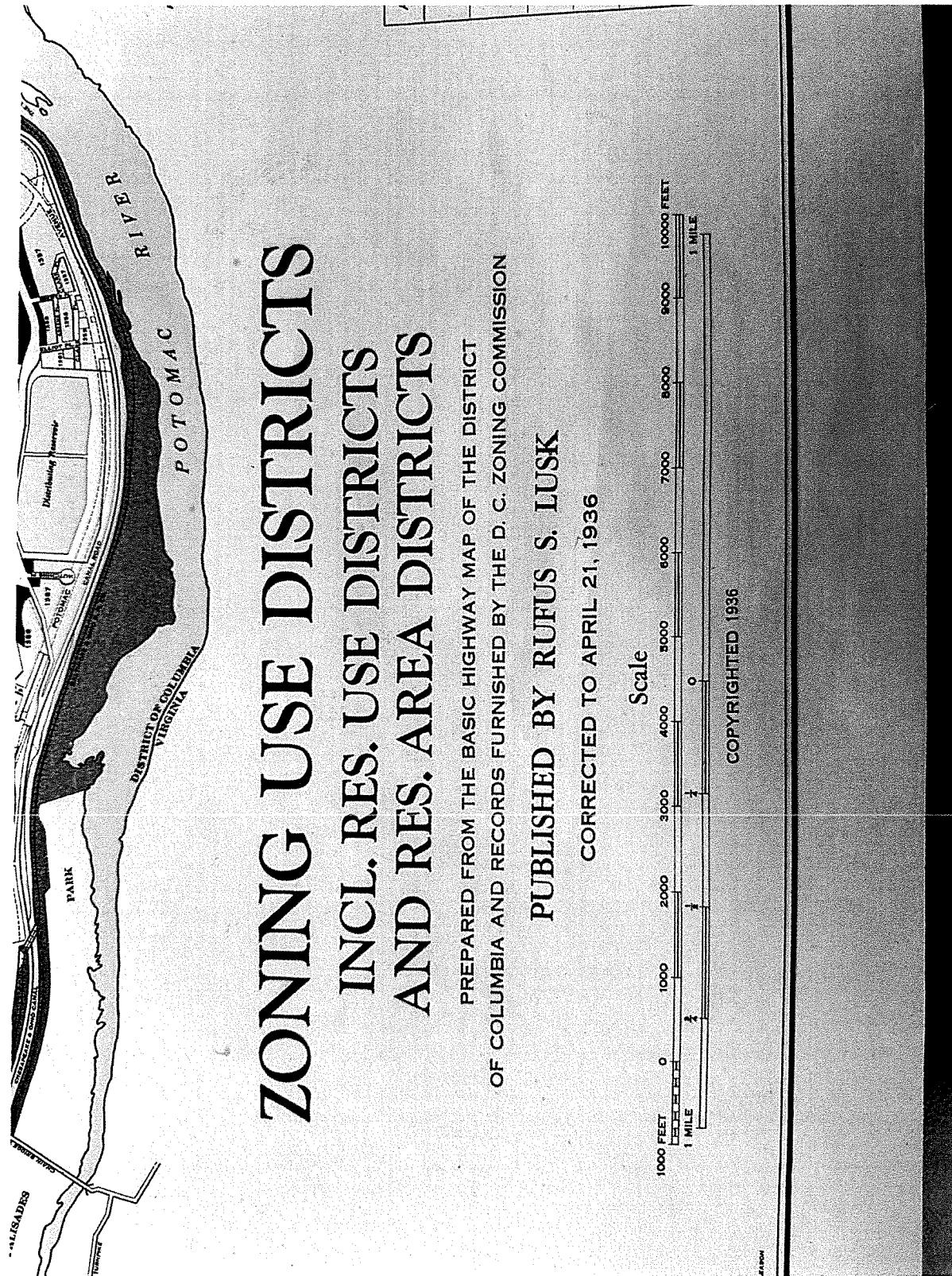
Again, thank you for your help.
Leo

Leopold Harris

APPENDIX H

Location Details for 3219 O STREET NW

Location	Units	Boundaries	Coordinates
Full Address:		3219 O STREET NW	
Alias:		HYDE-ADDISON ELEMENTARY SCHOOL	
MAR ID:		294558	
Type:		NON RESIDENTIAL	
Status:		ACTIVE	
SSLs			^
Total SSL(s):	2		
1244 0129		RECORD LOT	
1244 0854		TAX LOT	

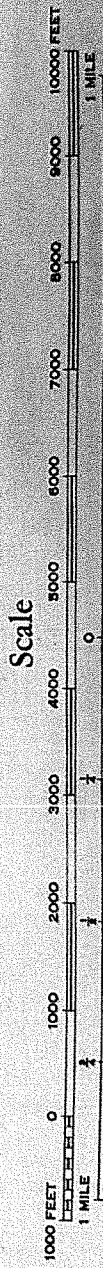


ZONING USE DISTRICTS INCL. RES. USE DISTRICTS AND RES. AREA DISTRICTS

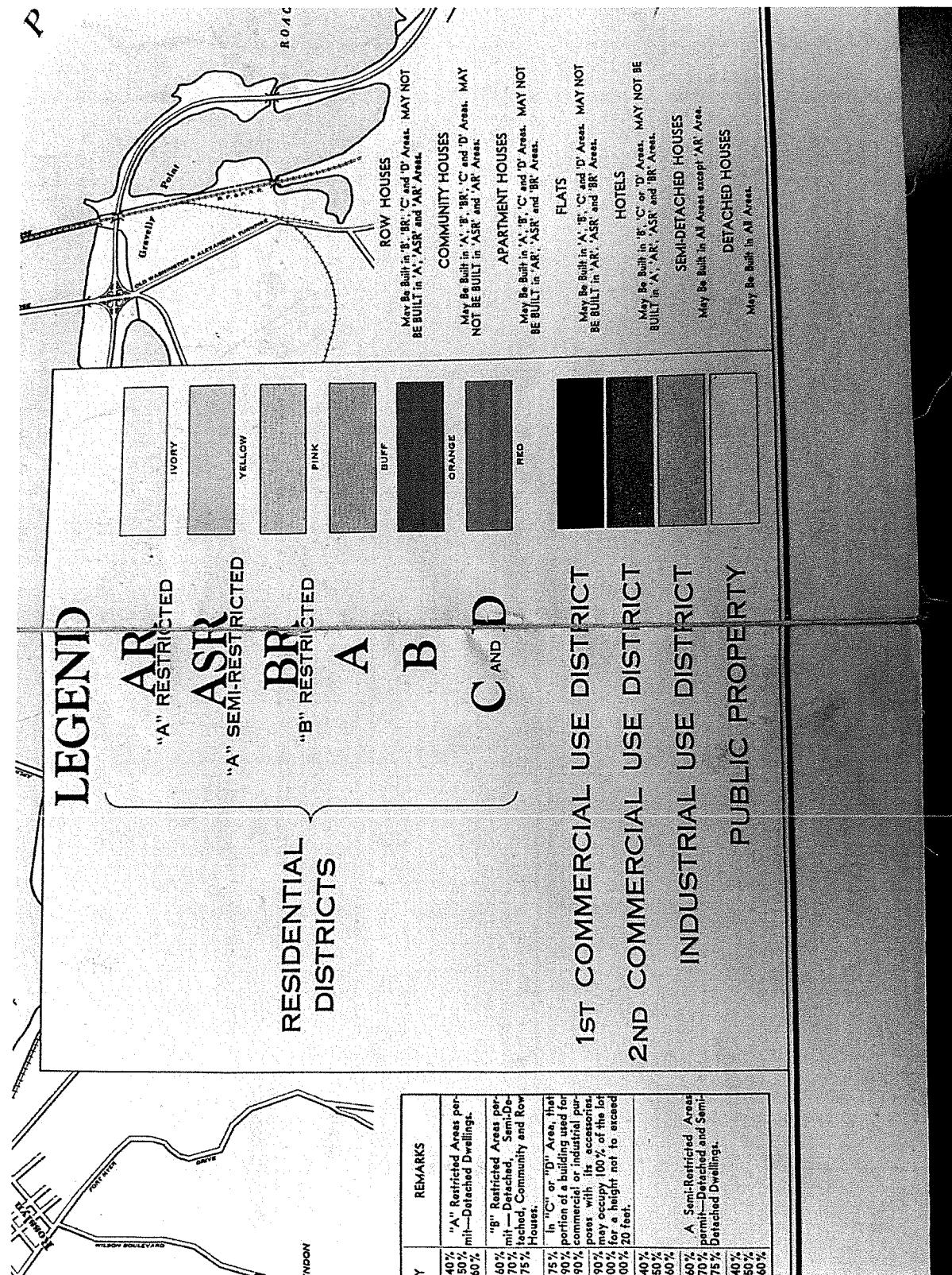
PREPARED FROM THE BASIC HIGHWAY MAP OF THE DISTRICT
OF COLUMBIA AND RECORDS FURNISHED BY THE D. C. ZONING COMMISSION

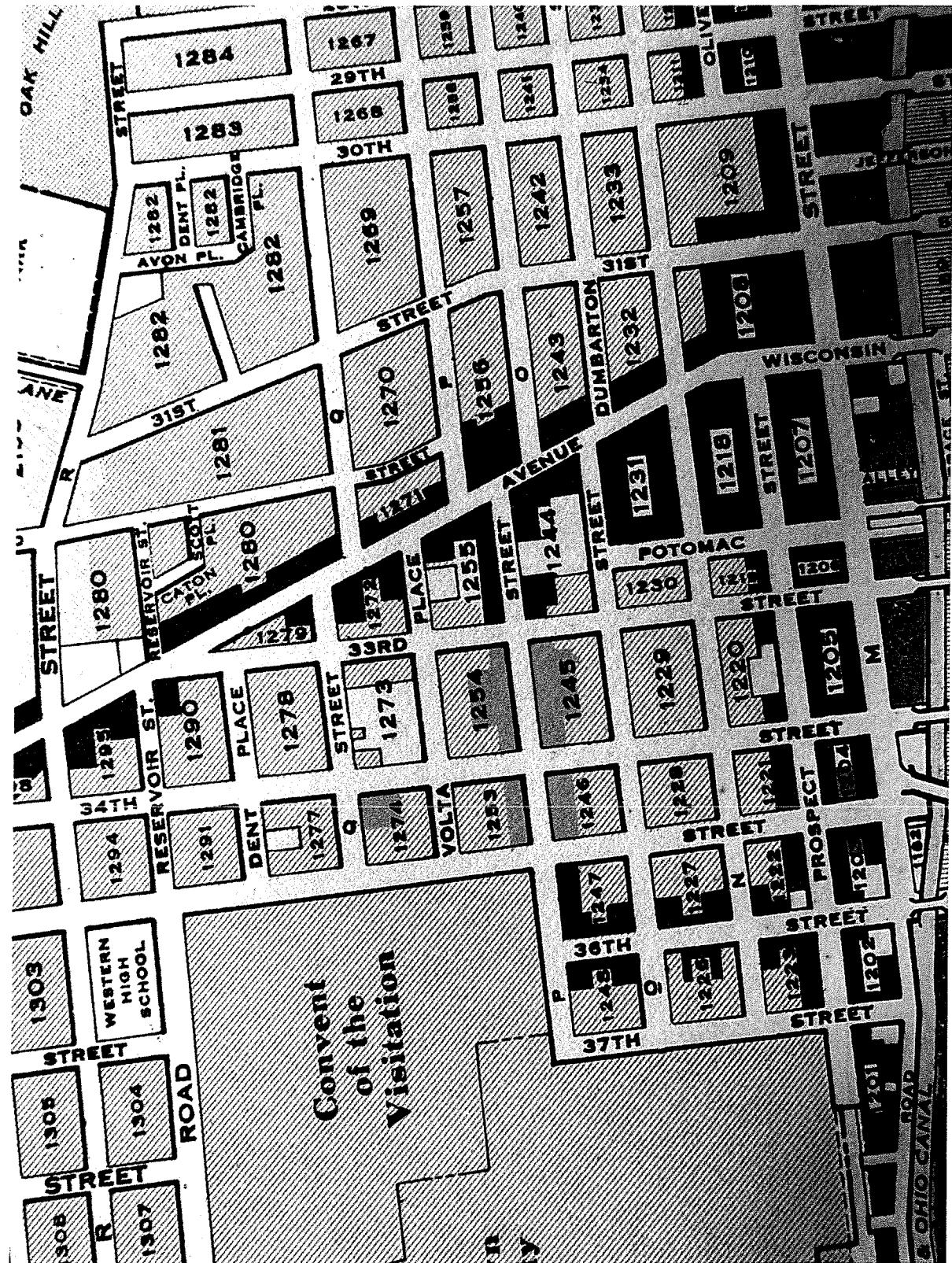
PUBLISHED BY RUFUS S. LUSK

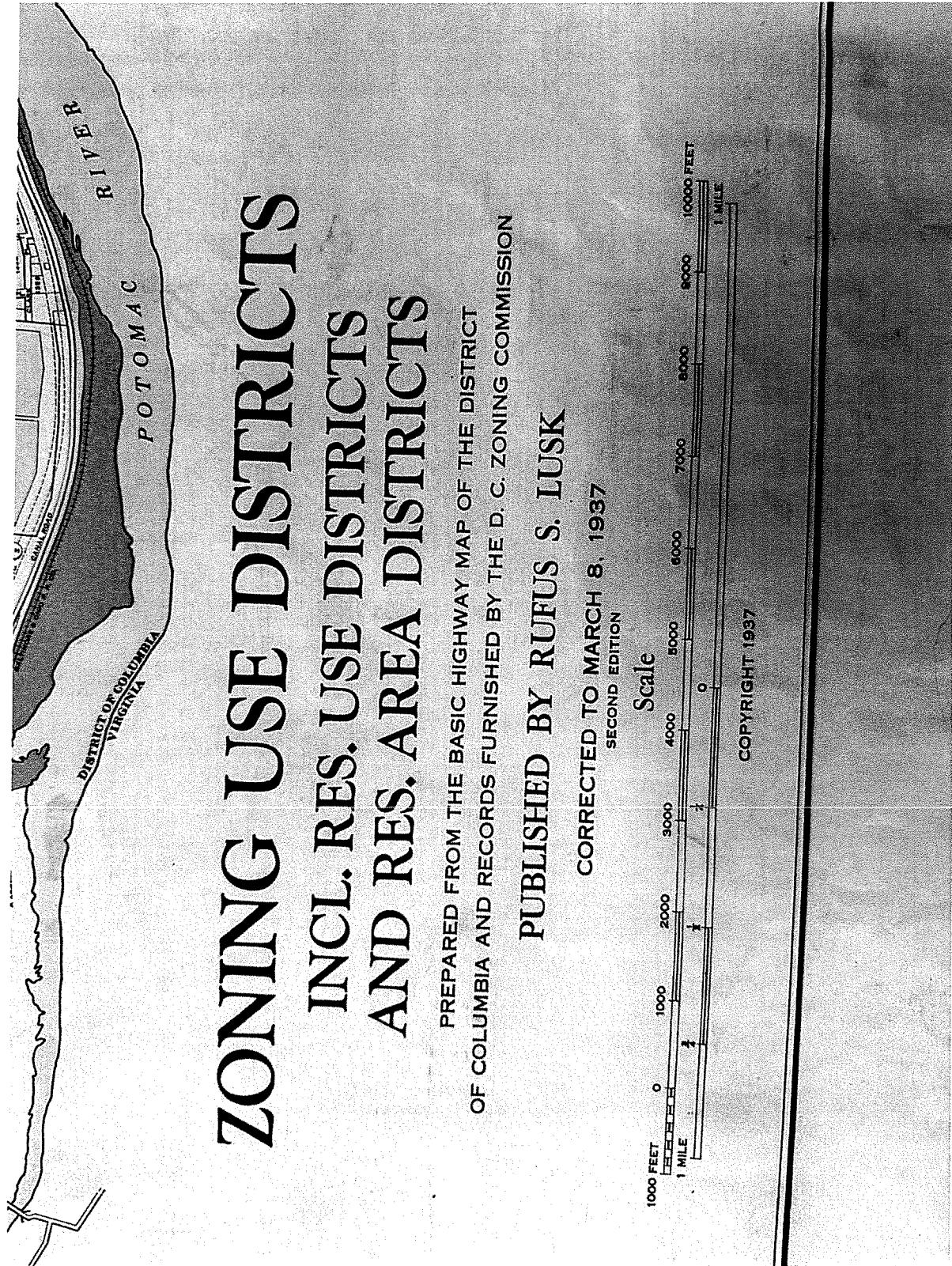
CORRECTED TO APRIL 21, 1936

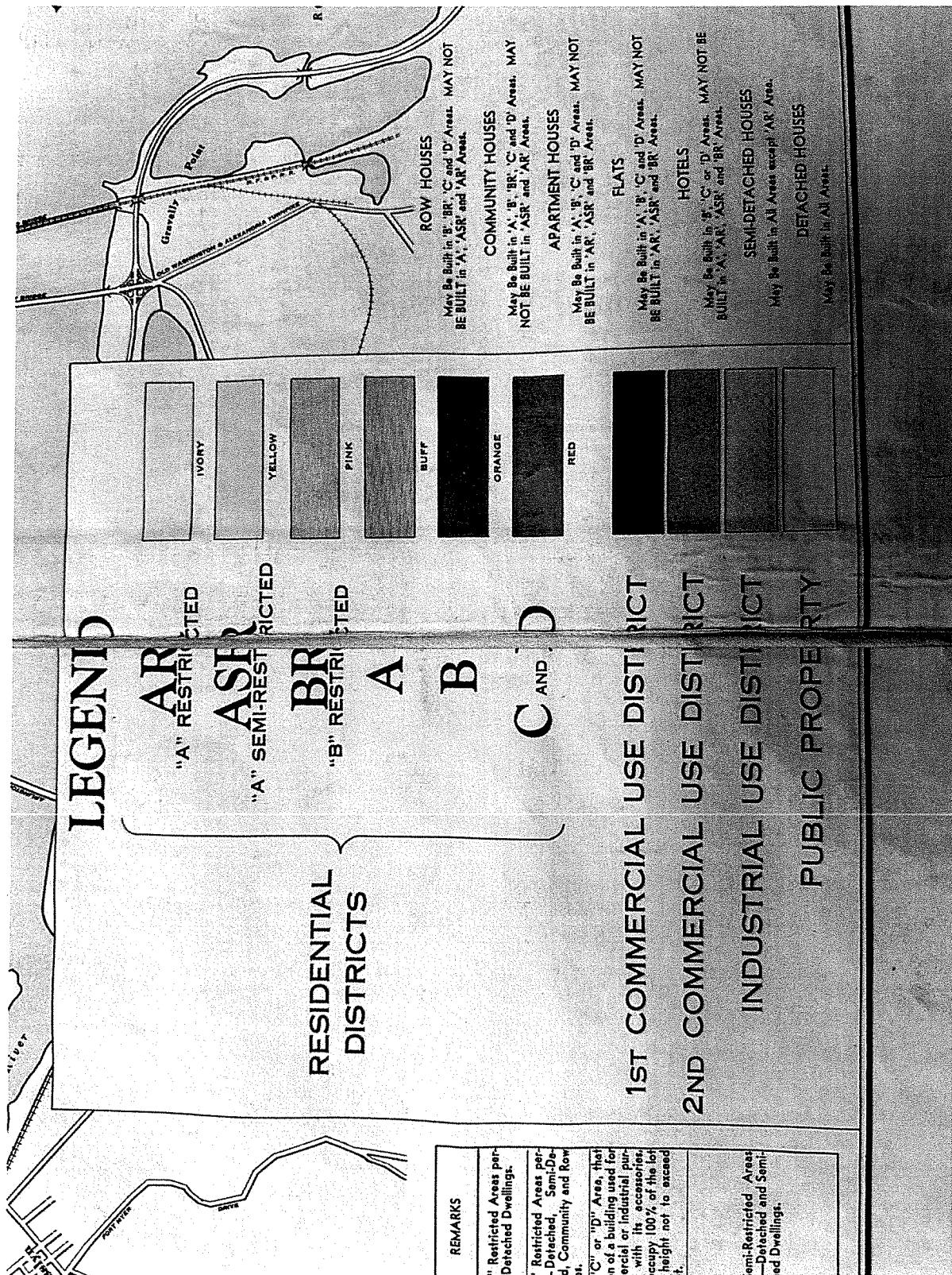


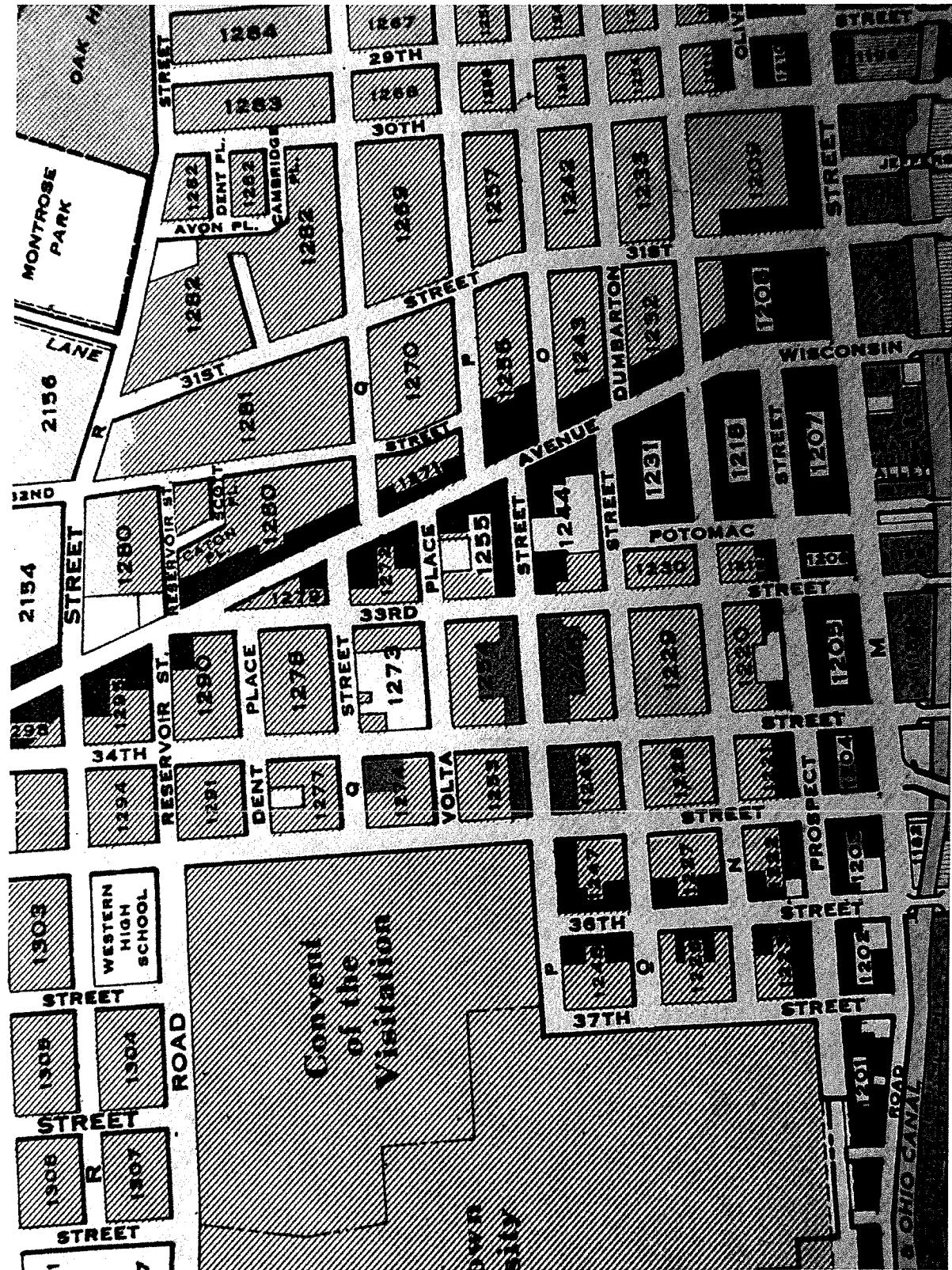
COPYRIGHTED 1936





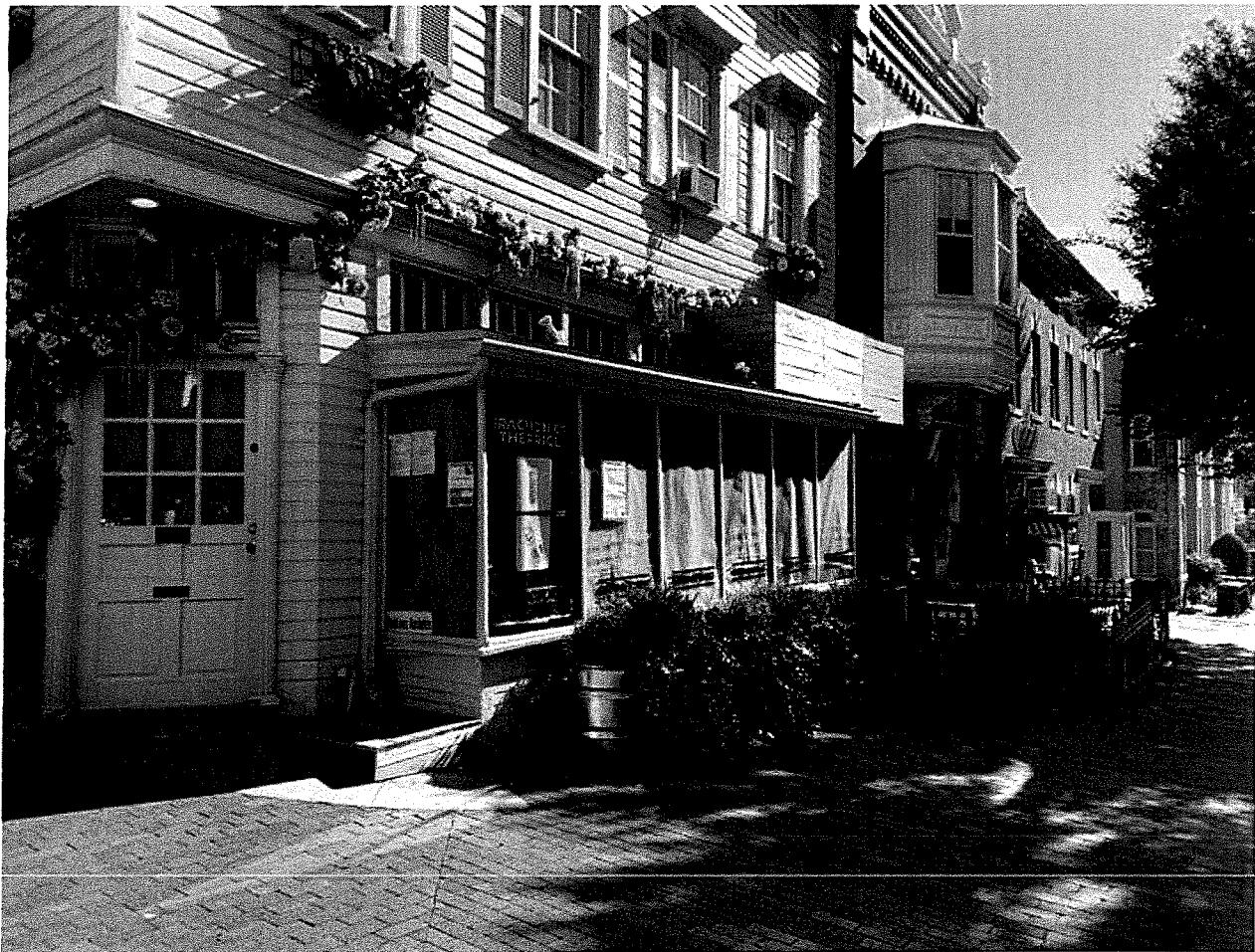






The “Call Your Mother” fight highlights the absurdity of Georgetown’s zoning

ZoningHistoryBy Topher Mathews (Contributor) November 7, 2019 17 : 9-11 minutes



The site where Call Your Mother would go. Image by the author.

APPENDIX

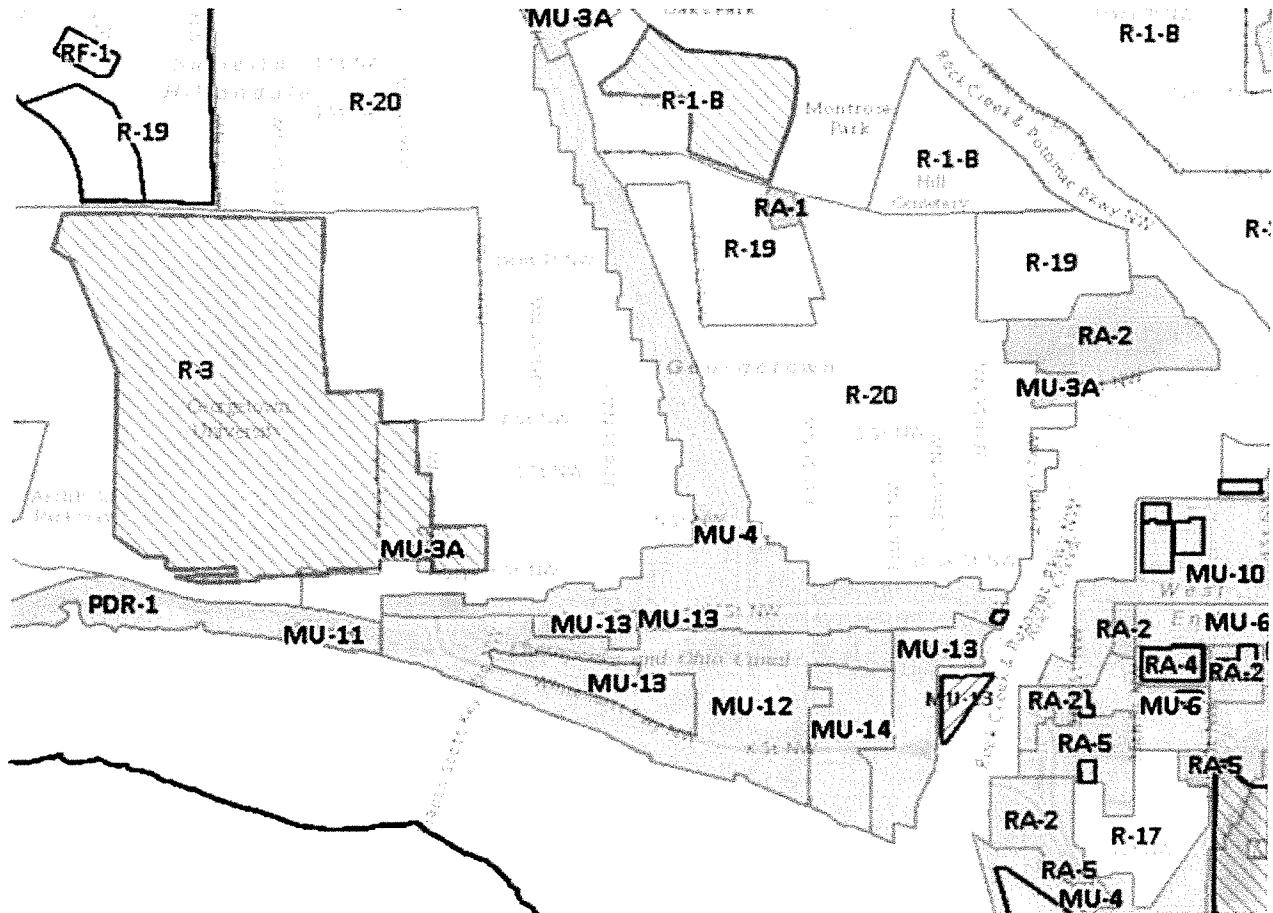
J

Last week, the owners of the popular bagel shop, Call Your Mother, appeared before the Board of Zoning Adjustment (BZA) to request a variance to operate their shop at 3428 O Street NW, on the corner of O Street and 35th. While the ANC voted to approve the variance, and the Office of Planning also supported it, a group of neighbors, living adjacent or nearby, as well as the ANC commissioner for the location objected to the variance. While the BZA deferred a final decision on the application to December, it’s worth taking a moment to consider how absolutely absurd it is that zoning makes such approval necessary in the first place.

Zoning regulates the size and use of properties. Each property is assigned a particular zone, which sets forth, among other things, how tall the building can be, how much of the property area it can cover, and (most important for this discussion) what you can do on the property. For most residential zones, the only thing you’re

allowed to do "by right" (i.e. without having to seek additional approval) is to use it as a home. Commercially zoned properties, on the other hand, allow you to do just about any (legal) commercial enterprise on site.

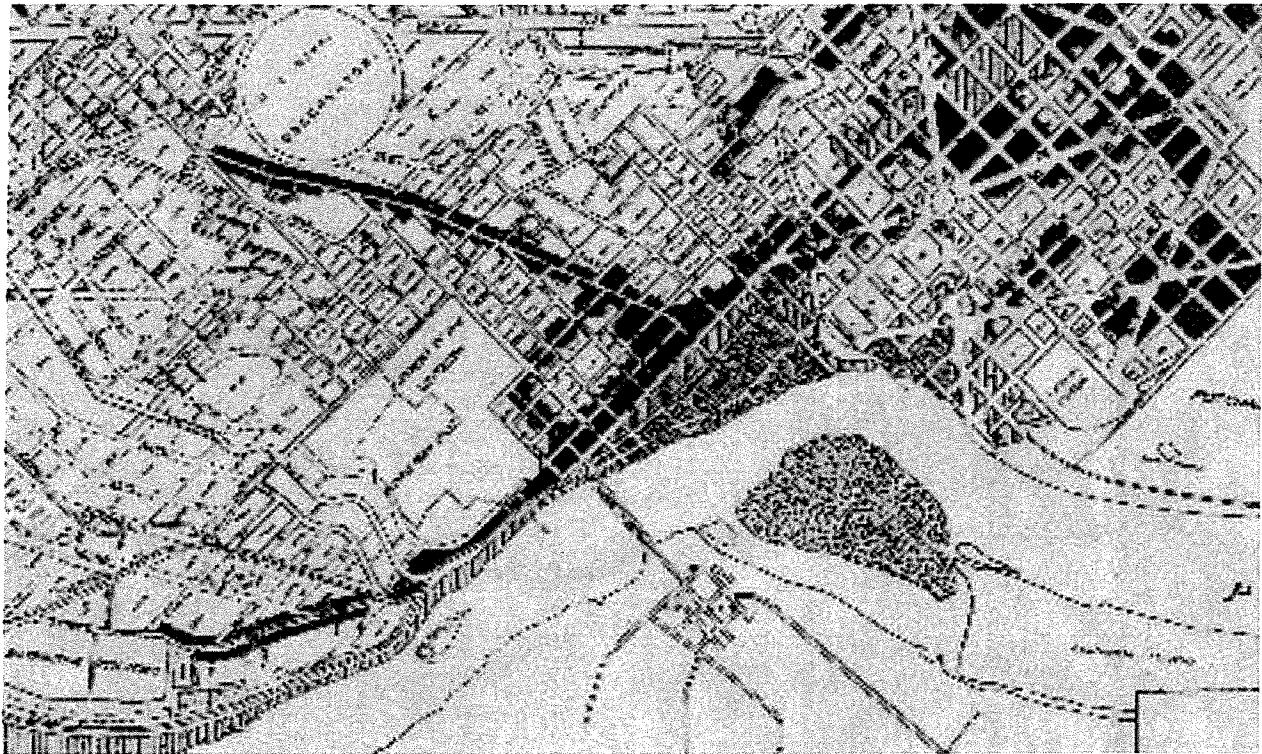
Georgetown is a mix of residential and commercially zoned blocks:



Roughly speaking, the yellow areas are the residentially zoned blocks. For Georgetown that includes R-19 (for blocks with primarily detached homes) and R-20 (blocks primarily full of rowhouses). There are a few more varieties of commercially zones. MU-4 covers most of Wisconsin Ave. and M Street MU-12, 13, and 14 covers south of M Street (this area used to be zoned as "Waterfront", but that name was changed with the zoning rewrite several years ago).

This map, of course, wasn't around when Georgetown was being built into what it is today. The first significant zoning laws were adopted in DC in 1920. The laws were largely modeled after New York's. From the beginning, though, they did pretty much the same thing the modern zoning laws do: regulate the size of buildings and how they can be used.

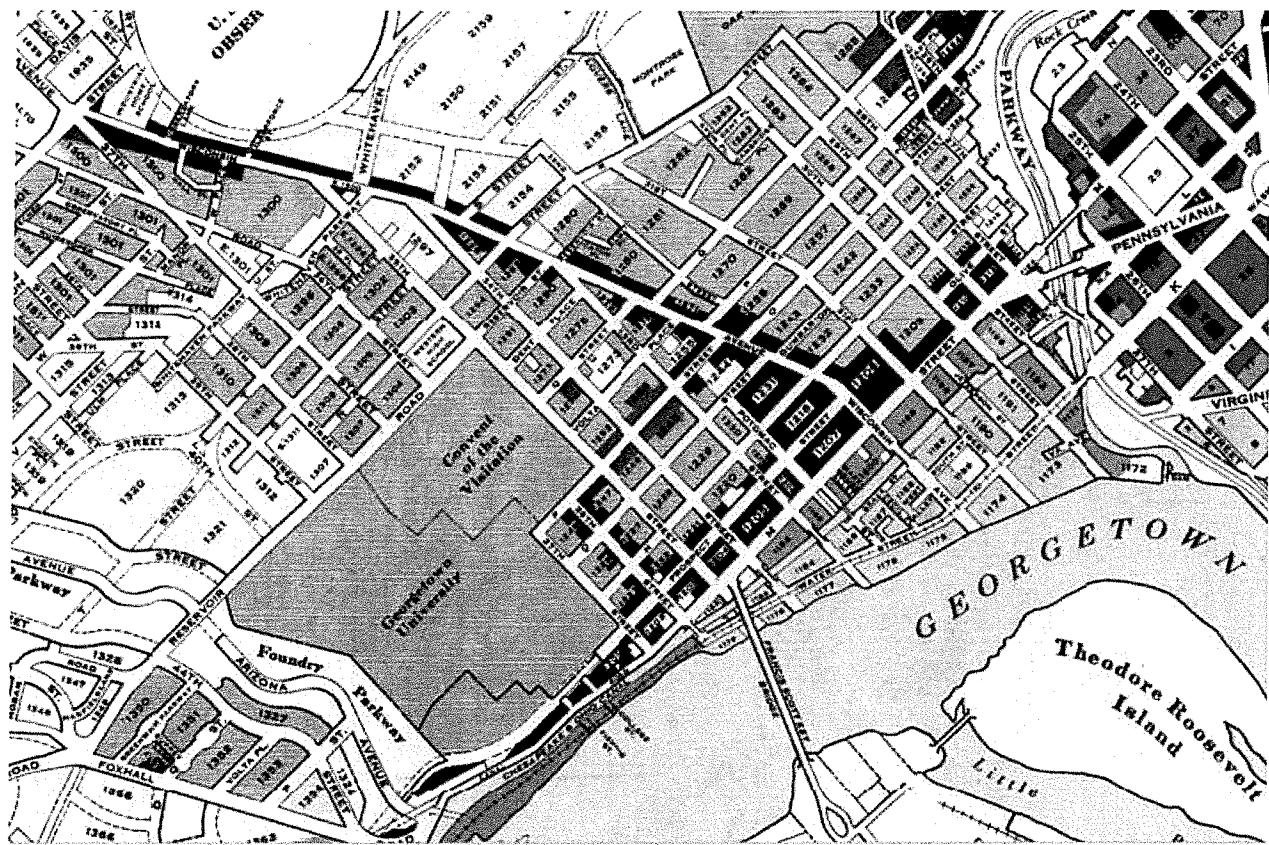
A map was drawn up in 1921 delineating for the first time what blocks would be commercial and what would be residential. Here is the Georgetown portion of the 1921 use map:



The black colored blocks are the commercial blocks, the light colored blocks the residential. As you can see, obviously M and Wisconsin were zoned for commercial from the start. But this map allowed for a substantial amount of commercial into the residential neighborhood. P Street west of Wisconsin was almost entirely zoned for commercial. 36th Street was as well. And a portion of P Street in east Georgetown (the heart of the historic black Herring Hill neighborhood) was also zoned commercial.

Of course this wasn't a coincidence. It was zoned commercial because it was commercial. The map makers were acknowledging that even though one of the stated goals of adopting the zoning laws was to limit the growth of commercial activity in residential neighborhoods, there already was commercial activity in these parts of residential Georgetown.

This acknowledgment carried forward to the first major refinement of the maps in 1936:



In this map, the black still represents commercial. As you can see, several blocks of P west of Wisconsin were shifted to residential (the bright red was a type of residential zoning). But 36th Street and the eastern edge of P Street remained commercial.

And finally in 1958, the Zoning Commission adopted the map that would not face a major rewrite until 2012: