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Carol Mitten
Chairperson, D.C. Zoning Commission
441 4th Street, N.W., Second Floor
Washington, DC 20001

Re: Zoning Map Amendment Application - Building Bridges Across the River (the "Applicant"), on behalf of The National Park Service
Zoning Commission Case No. 02-41 –
RESPONSE TO REQUEST FOR INFORMATION REGARDING SPOT ZONING

Dear Chairperson Mitten:

At the November 18, 2002 Zoning Commission Public Meeting, the Zoning Commission requested that the Applicant provide information as to why the proposed Zoning Map amendment application does not constitute spot zoning. This document addresses that issue.

The established case law in the District of Columbia is very clear regarding what constitutes illegal spot zoning. The D.C. Court of Appeals has defined spot zoning "as the 'wrenching' of a small parcel from its environment for the benefit of a single owner and without benefit to the public at large or the area affected." Daro Realty, Inc. v. District of Columbia Zoning Commission, 581 A. 2d 295, 299[1]. Two tests must be satisfied in order for the Court to determine that an action to zone property in the District raises to the level of illegitimate spot zoning.

> To constitute illegal spot zoning, the Commission's action must (1) pertain to a single parcel or a limited area – ordinarily for the benefit of a particular property owner or specially interested party – and (2) must be inconsistent with the city's comprehensive plan, or if there is none, with

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[1] Citing Citizens Association of Georgetown v. District of Columbia Zoning Commission, 402 A. 2d 36, 39-40 (DC 1979); and Lee v. District of Columbia Zoning Commission, 411 A. 2d 635, 641 (D.C. 1980).

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> the character and zoning of the surrounding area, or the purposes of the zoning regulation, i.e. the public health, safety and general welfare." (Daro, supra, 299, Citizens Association of Georgetown, supra, at 39.)

In the Daro case, the Court of Appeals notes that:

> To date we have issued four decisions on spot zoning.[footnote omitted]. All four involved the rezoning of small parcels of land to the benefit of single property owners and, thus, in all four the first prong of the test was satisfied. However, we affirmed the Commission in each case, because the petitioners failed to satisfy the second prong by showing that the rezoning either was inconsistent with the comprehensive plan and/or surrounding environment *or that it failed to serve the purposes of zoning by contributing to the public welfare.* (Emphasis added.) Daro, supra, 299.

The proposed amendment to the Zoning Map does not fail either of these tests. First, the proposed area to be zoned in this application is not a "small parcel", nor does it benefit a particular property owner, and thus the first prong of the test is not satisfied. The site comprises 16.4 acres (approximately 713,400 square feet) and is significantly larger than the cases noted above. For example, the property that was rezoned in the Daro case was only 14,000 square feet of land area; the property rezoned in the Citizens Association of Georgetown case includes the Safeway supermarket on Wisconsin Avenue (the "Social Safeway") which is 3.17 acres; and the property that was rezoned in the Lee case was only 1.3 acres[2]. The establishment of the SP-1 Zone District for 16.4 acres is not a "small parcel or a limited area", an essential element of the two-prong test.

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[2] The two other cases noted by the Court in Daro are Rock Creek East Neighborhood League, Inc. v. District of Columbia Zoning Commission, 388 A. 2d 450 (D.C. 1978) which rezoned property that included 19,671 square feet and Palisades Citizens Association, Inc. v. District of Columbia Zoning Commission, 368 A. 2d 1143 (D.C. 1977) which rezoned property that included 670 feet of land along MacArthur Boulevard, N.W. with a depth that varied between 83 – 126 feet. Therefore, the total area of this rezoned property was only 1.28 – 1.94 acres.

Further, the proposed Zoning Map Amendment benefits more than one owner or a specially interested party. As noted in the statement in support of the application, the property to be zoned is owned by the National Park Service with jurisdictional authority transferred to the District of Columbia. The District of Columbia has entered into a 99 year lease with a non-profit corporation, Building Bridges Across the River, for the use of the property. The D.C. Department of Parks and Recreation has operational oversight of the lease. The non-profit corporation lease holder of the property will operate a multipurpose recreation facility, the Town Hall Education Arts and Recreation Center (THE ARC), on the property that will provide benefits to the residents of the immediate neighborhood, Ward 8 and the District as a whole. The beneficiaries of the zoning application are the National Park Service, the District of Columbia, and the residents of the District of Columbia, thus, the proposed Zoning Map amendment is not merely for a particular property owner or a specially interested party.

The second element of the two prong spot zoning test is also not satisfied in this case. As described in detail in the Applicant's statement in support of the Zoning Map amendment application, the proposed amendment to the Zoning Map is fully consistent with the Comprehensive Plan. It furthers many of the federal and local goals of the Comprehensive Plan. As noted on pages 5-7 of the statement, the proposed amendment will implement the policies of the Land Use, Economic Development and Ward 8 Elements of the Plan, as well as make a significant contribution to the public welfare through the development of THE ARC project.

Further, the Office of Planning has concluded that the application is in conformance with the goals and policies of the Comprehensive Plan and will be of significant benefit to the community. The OP Report, dated October 14, 2002, concluded that, "The proposed zoning and development is consistent with the objectives and policies of the Comprehensive Plan Elements that address land use." OP supports the SP-1 Zoning on the subject site as "appropriate as it will be an action towards fulfilling the objectives and policies of the Comprehensive Plan." Additionally, OP points out that "the development will provide services that will further the revitalization of this community." OP Report at pages 3 and 4.

The proposed Zoning Map Amendment application clearly has sufficient merit to warrant a public hearing. As described above, the application can not be challenged as spot zoning since it does not meet the enumerated legal test. The Office of Planning supports the scheduling of this case for hearing. Any further questions the Zoning

Commission may have regarding the application's consistency with the Comprehensive Plan can be addressed through additional information and testimony from the Applicant and the Office of Planning at the public hearing. Indeed, that is the purpose of having the public hearing.

The Zoning Commission also asked that the Applicant address the issue of the appropriateness of THE ARC project being located in a zoning district that allows recreation center use. Based on discussions with, and the advice of, various District of Columbia agencies, including the D.C. Department of Parks and Recreation, the Office of Corporation Counsel, the Office of Planning, and the Office of the Zoning Administrator, the Applicant believes that THE ARC project fully satisfies the Zoning Regulations requirements regarding recreation centers.

For the foregoing reasons, the Applicant requests that the Zoning Commission take action to set this case down for a public hearing at the Commission's December Public Meeting.

Sincerely,

Paul Tummonds

cc: Maxine Brown-Roberts, OP (By Fax)
Alan Bergstein, Office of Corporation Counsel (By Fax)
Rose Lindsay, Office of the DMPED
Linda Jackson (By Fax)
Skip McMahon (By Fax)
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