Government of the District of Columbia
OFFICE OF ZONING

MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Sharon S Schellin
Acting Secretary ~~to~~ the Zoning Commission

DATE: September 1, 2005

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D C Register* on September 9, 2005

1 Z C Order No 05-07 (Case No 05-07)

Attachments

2005 SEP -1 PM 1:16
Office Of Documents And Administrative Issuances

[redacted]
Case No. 05-07
Exhibit No. 13

ZONING COMMISSION
District of Columbia
CASE NO.05-07
EXHIBIT NO.13

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Z.C. ORDER NO. 05-07
Case No. 05-07
(Proposed Zoning Map Amendment to rezone Lots 24 and 25 in Square 5684 from R-1-B to C-2)
April 11, 2005

On February 11, 2005, the Office of Zoning received an application from Joseph Washington ("Applicant") requesting Zoning Commission review and approval of a Zoning Map Amendment to change Lots 24 and 25 in Square 5684 ("Subject Property") from a Residence (R-1-B) zone district to a Neighborhood Shopping (C-1) zone district. At its public meeting on April 11, 2005, the Commission voted 5-0-0 to dismiss the application without a public hearing pursuant to 11 DCMR § 3011.3

FINDINGS OF FACT

1. The Subject Property is located at 3700 Southern Avenue, S.E. It totals 0.15 acres (6,738 square feet) in size, and is developed with one single-family detached dwelling. Public alleys abut the Subject Property to the northwest and southwest Properties to the southeast and across Southern Avenue are outside the jurisdiction of the District of Columbia.

2. Single-family detached residential is the predominant land use in the square

3. The Subject Property and surrounding lots in the square are in a Residence (R-1-B) zone district

4. The Comprehensive Plan's Generalized Land Use Map[1] designates the Subject Property and surrounding properties for low-density residential development, characterized by single-family detached and semi-detached housing as predominant uses

5. The Applicant requested a map amendment to change the zoning classification for the Subject Property from Residence (R-1-B) to Neighborhood Shopping (C-1). The Applicant later modified his request to request a change to a Community Business Center (C-2) classification at the Zoning Commission's public meeting.

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[1] References to the "Comprehensive Plan" are to the District Elements of the Comprehensive Plan for the National Capital

6 Residence (R-1) zone districts are designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes Neighborhood Shopping (C-1) zone districts are designed to provide convenient retail and personal service establishments for the day-to-day needs of a small tributary area, with a minimum impact upon surrounding residential development. Community Business Center (C-2) districts are designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core.

8 Pursuant to 11 DCMR § 3011.1, and by memorandum dated February 23, 2005, the Office of Zoning referred the petition to the District of Columbia Office of Planning ("OP") for a preliminary report and for recommendation as to whether the application had sufficient merit to warrant authorization of a public hearing.

9 By memorandum (preliminary report) dated March 25, 2005, OP recommended that the Zoning Commission not set the application down for a public hearing. OP concluded that the requested map amendment was inconsistent with the Comprehensive Plan because the allowing commercial uses as a matter of right (as permitted in a C-2 Zone District) would be inconsistent with Generalized Land Use map designation of low-density residential development for the Subject Property and surrounding area. In addition, OP noted that the proposed rezoning would be inconsistent with the Comprehensive Plan's Major Themes of stabilizing, maintaining, and improving residential neighborhoods, 10 DCMR § 102, and with the Ward 7 objective of preserving residential neighborhoods, 10 DCMR § 1828.1.

10. On April 11, 2005 at its regular monthly meeting, the Commission considered the application to determine whether to schedule a public hearing and voted unanimously to dismiss it.

CONCLUSIONS OF LAW

Section 492(b)(1) of the District of Columbia Home Rule Act, effective December 24, 1973 (Pub L.No. 93-198; 87 Stat. 774; D C. Official Code § 6-641.02 (2001)), amended § 2 of the Zoning Act of 1938 to require that the "zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital."

The Comprehensive Plan's Generalized Land Use Map designates low-density residential development, characterized by single family detached and semi-detached housing as predominant uses for the Subject Property and surrounding area The zoning designation requested would permit the introduction of commercial uses into the neighborhood and is thus facially inconsistent the land use map's designation. In addition, as noted by the Office of Planning, the rezoning requested would contravene both the Major Themes and Ward 7 Objectives of stabilizing, preserving, maintaining, and improving residential neighborhoods.

However, the fact that the rezoning proposed is inconsistent with the Comprehensive Plan does not end the inquiry The use of the term "not inconsistent" in the District Charter connotes a

degree of discretion that would permit the Commission to allow a rezoning even in the case of the most blatant inconsistency Section 1 of the Zoning Act of 1938 authorized the Commission to regulate the uses of property in order to "promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital " D C Official Code § 6-641 01 (2001) Although a facial inconsistency creates a presumption against a proposed rezoning, there may be instances when that presumption may be successfully rebutted if the rezoning would better serve the purposes stated in that section

However, the case presented here is not such an instance. The policy objectives stated in the Comprehensive Plan with respect to the need to stabilize residential neighborhoods are shared by the Commission Indeed, the existing R-1-B zoning for the subject property is "designed to protect quiet residential areas now developed with one-family detached dwellings" and "intended to stabilize the residential areas," 11 DCMR §§ 200 1 and 200.2. The rezoning proposed by the applicant would accomplish the opposite.

Lastly, the Commission believes the application seeks to accomplish illegal spot zoning. The District of Columbia 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 Com'n,* 581 A.2d 295, 299 (D.C 1990)

The elements of spot zoning are that the proposed Commission action·

> (1) must pertain to a single parcel or a limited area -- ordinarily for the benefit of a particular property owner or specially interested part -- and (2) must be inconsistent with the city's comprehensive plan .. .

Id. *at 299, quoting, Citizens Ass'n of Georgetown, Inc v District of Columbia Zoning Comm'n,* 402 A.2d 36, 39-40 (D.C 1979). On the basis of the application and Office of Planning Report, the Commission finds that both elements of spot zoning are met.

The Commission is required by § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990, (D.C. Law 8-163, D.C Official Code § 6-623 04 (2001)) to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to dismiss the application persuasive.

Under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Official Code § 1-309 10(d)(3)(a)) ("the ANC Act"), the Commission must give great weight to the issues and concerns raised in the written report of the affected Commission Pursuant to § 3012 5 of the Commission's rules of procedures, no report of an ANC is due until seven (7) days in advance of a hearing. Since this Application was not advertised for a hearing, the affected ANC was neither expected to nor did file a report. Nevertheless, the Commission does not interpret the ANC Act as precluding the

summary dismissal of an application that cannot be granted as a matter of law, as is the case here

DECISION

Upon consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia, pursuant to 11 DCMR § 3011 3 hereby **DISMISSES** the application in Z C. Case No. 05-07 without a public hearing.

Vote of the Zoning Commission taken at its regular monthly meeting on April 11, 2005· **5-0-0** (Carol J Mitten, Anthony J. Hood, Kevin Hildebrand, Gregory Jefferies, John G Parsons to dismiss the application without a public hearing)

In accordance with 11 DCMR §3028, this order is final and effective upon publication in the D.C. Register, on SEP - 9 2005