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March 19, 2008

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By Hand Delivery

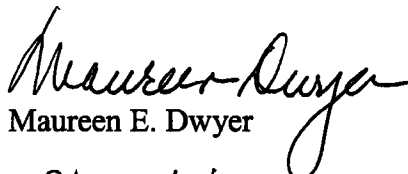
Anthony Hood, Chairperson
District of Columbia Zoning Commission
441 4th Street, N.W.
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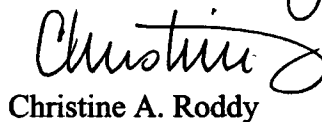
Re: Proposed Findings of Fact and Conclusions of Law; Zoning Commission
Case No. 07-25; Square 2794, Lots 18, 19, 877, 879, 895, 899, 2001-2047
("Property")

Dear Members of the Commission:

Enclosed please find twenty copies of the Petitioner's proposed Findings of Fact and Conclusions of Law in the above-referenced case. Please feel free to contact us should you have any questions.

Sincerely yours,


Maureen E. Dwyer


Christine A. Roddy

cc: Stephen Rice, Office of Planning (w/encl.)
ANC 4A (w/encl.)

Enclosure

ZONING COMMISSION
District of Columbia

CASE NO. 07-25

EXHIBIT NO. 29

ZONING COMMISSION
District of Columbia
CASE NO. 07-25
EXHIBIT NO. 29

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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Zoning Commission Order No. 07-25

Amendment to the Zoning Map for Arena Development
_____, 2008

Pursuant to public notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on January 28, 2008, pursuant to §102 of Title 11 of the District of Columbia Municipal Regulations ("DCMR"), to consider a petition from Arena Development (the "Petitioner"). The petition requested review and approval of an amendment to the Zoning Map of the District of Columbia to change the zoning for Square 2794, Lots 18, 19, 877, 879, 895, 899, 2001-2047 (the "Property"), from the R-5-A Zone District to the R-5-C Zone District. The petition was filed to make the Property's zoning designation consistent with its Comprehensive Plan designation, which indicates that the Property is appropriate for medium density residential development. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

PROCEDURAL BACKGROUND

Public Notice. Notice of the public hearing was conducted in accordance with the provisions of 11 DCMR §§ 3014 and 3015.

Office of Planning Reports. The Office of Planning ("OP") reviewed the Petitioner's proposal and, in its November 9, 2007, report, recommended that the petition be set down for a public hearing. OP opined that the requested map amendment to the R-5-C Zone District would not be inconsistent with the Comprehensive Plan as amended and enacted by the Council of the District of Columbia in the "Comprehensive Plan Amendment Act of 2006" (the "Comprehensive Plan").

On January 18, 2008, OP submitted its final report recommending approval of the rezoning from the R-5-A Zone District to the R-5-C Zone District. OP testified in support of rezoning the Property to the R-5-C Zone District.

District Department of Transportation Report. The District Department of Transportation ("DDOT") submitted a report on February 4, 2008. The report focused on the proposed redevelopment of Lot 877 rather than the rezoning of the Property. DDOT stated that the proposed development would not have an adverse traffic or parking impact on the neighboring residential area and that they supported the petition.

Community Support. By letter dated November 9, 2007, the Advisory Neighborhood Commission ("ANC") 4A indicated that, at a regularly scheduled monthly meeting with a quorum present, they voted to recommend rezoning the Property from the R-5-A Zone District to the R-5-C Zone District.

Ward 4 Councilmember Muriel Bowser submitted a letter in support of the petition dated November 13, 2007. She stated that she believes the "rezoning will promote

development in an area that hasn't benefited from the housing boom as other neighborhoods in the District." She further noted that the "rezoning will enable a quality residential development at 1330 Missouri Avenue ... these types of developments are the kind that will help re-energize this stretch of Missouri Avenue and this re-zoning will help encourage them. At-Large Councilmember Kwame Brown submitted a letter dated November 13, 2007, in support of rezoning the property from the R-5-A Zone District to the R-5-C Zone District stating that rezoning the site will "encourage meaningful development at a site that has long been overlooked."

Letters from neighboring property owners at 1326 Missouri Avenue and 1322 Missouri Avenue submitted letters in support of the rezoning, stating that they believed it would be in keeping with the character of the existing development.

At the hearing on January 28, 2008, Karrie Braxton, a neighbor residing at 1320 Missouri Avenue, testified in opposition to the rezoning. Subsequent to the hearing, however, she met with the Petitioner and determined that the rezoning was in the best interest of the community. She submitted a letter dated February 14, 2008, indicating her support for rezoning the Property to the R-5-C Zone District.

Public Hearing.

On November 19, 2007, the Commission agreed to set the case down for a public hearing. A public hearing was held on January 28, 2008. George Mavrikes testified on behalf of the Petitioner to the appropriateness of the rezoning as well as the project the Petitioner would pursue if the rezoning were approved. He further testified that rezoning the Property would not be inconsistent with the Comprehensive Plan because the Comprehensive Plan anticipates medium density residential development on the Property, which is inconsistent with the R-5-A Zone District, but consistent with the R-5-C Zone District.

Proposed Action. The Commission took proposed action at its public meeting on March 10, 2008, to approve the map amendment.

National Capital Planning Commission Review. Pursuant to the District of Columbia Home Rule Act, the Commission referred its proposed decision of approval to the National Capital Planning Commission ("NCPC") for review and comment. By report and letter dated _____, 2008, NCPC found that the proposed map amendment

Final Action. The Commission took final action to approve the map amendment at its regularly scheduled meeting held on _____, 2008.

FINDINGS OF FACT

1. On September 13, 2007, the Petitioner filed a petition for a map amendment with the Zoning Commission requesting that the Commission change the zoning of

eight lots in Square 2794 from the R-5-A Zone District to the R-5-C Zone District or, in the alternative, to the R-5-B Zone District. The area included in the petition consists of approximately 203,502 square feet of land. The remainder of the Square would remain in the R-5-A Zone District. (Exhibit 3.)

2. The case was set down for a public hearing at the Zoning Commission's public meeting on November 19, 2007. The Commission set the case down as a request to rezone from the R-5-A Zone District to the R-5-C Zone District. The public hearing was held on January 28, 2008. The Petitioner filed its pre-hearing submission on November 21, 2007. (Exhibit 15.) It filed a supplemental submission on January 8, 2008. (Exhibit 18.) The Petitioner filed a post-hearing submission on February 25, 2008 (Exhibit 26.) The petition was referred to NCPC on March 11, 2008. (Exhibit 28.)
3. The property that is the subject of this petition is located on the southeast side of the intersection of 14th Street, NW and Missouri Avenue, NW. It is located in Ward 4 and is currently improved with six residential buildings.
4. The Petitioner owns 1330 Missouri Avenue (Lot 877, Square 2794), which is an undeveloped 8,800 square foot parcel of land. It is the only undeveloped lot that has development potential included in the petition. (Exhibits 3 and 15.) The other lots are developed with residential buildings that were constructed prior to the adoption of the Zoning Regulations in 1958. One building has five stories and several buildings are at least four stories in height. Records confirming the heights of the buildings or the gross floor area of the buildings could not be located.
5. The Petitioner introduced the legal standard for reviewing a Zoning Map amendment petition in its statement (Exhibit 3 in the record), during its hearing presentation, and in its post-hearing submission. (Exhibit 26.) The legal standard for a Zoning Map amendment petition is that the rezoning is not inconsistent with the purpose of the Zoning Regulations, the Comprehensive Plan, and the character of the surrounding neighborhood. *Citizens Association of Georgetown v. District of Columbia Zoning Commission*, 402 A 2d 36 (DC 1979).

Not inconsistent with purpose of Zoning Regulations

6. The Petitioner, through its submissions and the testimony of George Mavrikes, presented evidence that the proposed rezoning is consistent with the purposes and intent of the Zoning Regulations and the Zoning Enabling Act of 1938. Section 101.1 of the Regulations and the Zoning Enabling Act and Section 2 of the Act require that amendments to the zoning map "promote public health, safety, morals, convenience, order, prosperity, and general welfare" and "tend to create conditions favorable to . . . protection of property." The proposed Zoning Map amendment would allow the Petitioner to erect a twenty-unit residential building that will infuse the area with new market-rate housing stock as well as affordable

housing. Further, the rezoning will enable the Property to be redeveloped into an attractive project along a major corridor of the District, improve the physical appearance of the streetscape, and contribute to a stronger neighborhood character. Finally, the proposed Amendment is consistent with Section 101.2 of the Regulations, because it will encourage the "stability of districts and of land values in those districts" and will focus density along a major street.

7. The rezoning of the Property will have no adverse effect on neighboring properties, will be consistent with the existing development on the Property, will not produce objectionable traffic conditions, and will enable development of Lot 877 in a manner compatible with the existing neighborhood.

Not inconsistent with Comprehensive Plan

8. The Petitioner, through its submissions and the testimony of George Mavrikes, presented evidence that the proposed rezoning was not inconsistent with the District of Columbia Comprehensive Plan. The Petitioner testified that the rezoning would satisfy and achieve the Comprehensive Plan's goals and elements.
9. The Commission finds that the proposed map amendment is consistent with and fosters the goals and policies stated in various elements of the Comprehensive Plan, specifically:

- Land Use Element: Policy LU-2.1.3: Conserving, Revitalizing and Enhancing Neighborhoods – Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources and restore the environment. The overarching goal to “create successful neighborhoods” in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others. 309.8

Policy LU-2.1.10: Multi-Family Neighborhoods – Maintain the multi-family residential character of the District's medium- and high-density areas. Limit the encroachment of large scale, incompatible uses into these areas, and make these areas more attractive, pedestrian-friendly and transit accessible. 309.14

The Commission finds that the current heights of the buildings on the Property are inconsistent with the existing zoning of the Property. Rezoning the Subject Property will make the existing structures conforming and will help preserve the apartment house character of the community.

- Housing Element: Policy H-1.1.1: Private Sector Support - Encourage the private sector to provide new housing to meet the needs of present

and future District residents at locations consistent with District land use policies and objectives. 503.2

Policy H-1.1.3: Balanced Growth - Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing. 503.4

Policy H-2.1.3: Avoiding Displacement - Maintain programs to minimize displacement resulting from the conversion or renovation of affordable rental housing to more costly forms of housing. 509.7

Rezoning the Subject Property will increase the number of residential units in the city and enable limited residential growth on-site, helping the city meet its housing needs.

- **Urban Design Development Element**: Policy UD-2.2.1: Neighborhood Character and Identity - Strengthen the defining visual qualities of Washington's neighborhoods. This should be achieved in part by relating the scale of infill development, alterations, renovations, and additions to existing neighborhood context. 910.6

Policy UD-2.2.5: Creating Attractive Facades - Create visual interest through well-designed building facades, storefront windows, and attractive signage and lighting. Avoid monolithic or box-like building forms, or long blank walls which detract from the human quality of the street. 910.12

The rezoning will improve the physical appearance of the neighborhood by affording the opportunity to eliminate a vacant lot that disrupts the fabric of the community.

- **Rock Creek East Area Element**: The proposed rezoning is consistent with the goals and policies of the Rock Creek East Area Element (Section 2200). While the Rock Creek East Area Element focuses largely on improving the potential of certain corridors for commercial use, the rezoning will "protect and enhance the stable neighborhoods for which the area is known" and will help achieve the goal to provide "a variety of housing choices." In addition, approval of this petition will satisfy the following:

Policy RCE 1.1.5: Housing Renovation – Strongly encourage the rehabilitation or renovation of existing housing in Rock Creek East,

taking steps to ensure that housing remains affordable for current and future residents.

- Generalized Land Use Map: The Generalized Land Use Map includes the Subject Property in the Medium Density Residential Land Use Category. This land use category is compatible with development in the R-5-C Zone District. The R-5-A zoning designation for the property is inconsistent with the Comprehensive Plan designation as well as with the existing structures on the property.

Not inconsistent with character of the surrounding property

10. The Petitioner, through its submissions and the testimony of George Mavrikes, presented evidence that the proposed rezoning was not inconsistent with the character of the surrounding neighborhood. The R-5 Zone Districts are designed to permit flexibility of design by permitting in a single district all types of urban residential development if they conform to the height, density and area requirements established for these districts. The R-5- C Zone District permits a “medium” height and density and the heights of the buildings erected on the Property are consistent with “medium” density development.
11. Only one new development is being proposed in connection with this rezoning. The new development will consist of a small residential building constructed on a 9,000 square foot lot; it will have a minimal effect on the surrounding community and will not be nearly as large as the existing buildings on the Property. The new development will be conforming to surrounding development rather than negatively affecting it.
12. The rezoning of the Property will not warrant a wide-spread rezoning throughout the greater community because the other properties do not present the same conditions as are present in the instant petition.

CONCLUSIONS OF LAW

1. The public notice, public hearing, and NCPC referral requirements for the map amendment, including requirements in 11 DCMR §§ 102.6 – 102.9, 3015, and 3028, have been met.
2. The Zoning Commission is authorized under §§ 1 and 3 of the Zoning Act of 1938, approved June 20, 1938, (52 Stat. 797, as amended, D.C. Official Code §6-641.01 et seq. (2001)), to amend the Zoning Map. The law provides that the Commission may divide the city into districts or zones in order to regulate the height, location and bulk of buildings 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.” The Commission has the authority to amend the zoning maps provided such

amendments “shall not be inconsistent with the comprehensive plan for the national capital.” D.C. Code section 6-641.02.

3. In reviewing the decisions of the Zoning Commission, the District of Columbia Court of Appeals has held that the legal test for a Zoning Map amendment petition is whether the requested zoning is not out of harmony: (i) with the comprehensive plan, (ii) with the character of the surrounding property, or (iii) with the purposes of the zoning regulations. (See, *Citizens Association of Georgetown v. District of Columbia Zoning Commission*, 402 A 2d 36, 40 (DC 1979)) In its review of a petition, the Commission applies the standards and criteria set forth under the Zoning Enabling Act (which are also embodied in Section 101.1 of the Zoning Regulations) in deciding whether to approve the requested map amendment.
4. The requested rezoning is in keeping with the purposes of the Zoning Regulations as set forth in Section 101.1:

to provide adequate light and air; to prevent undue concentration of population and overcrowding of land; and to provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity and recreational, educational, and cultural opportunities....

5. The Commission concludes that approval of the requested map amendment from the R-5-A Zone District to the R-5-C Zone District is not inconsistent with the Comprehensive Plan nor with the purposes of the Zoning Act. In fact, the Commission concludes that the requested map amendment will further the goals of the Comprehensive Plan and will promote orderly development in conformity with the entirety of the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map. Pursuant to the Comprehensive Plan’s goals and policies of revitalizing neighborhoods, producing new housing, and creating attractive new buildings, the R-5-C zone is more appropriate than the present R-5-A zone. The rezoning allows for infill development on an underutilized site.
6. The Commission further concludes that the proposed map amendment is consistent with the Comprehensive Plan Map’s designation of the Property as a “Medium Density Commercial.”
7. The Commission also finds that the requested rezoning is in accordance with the character of the surrounding neighborhood. The proposed Zoning Map amendment is consistent with the existing buildings on the Property and would allow a compatible new structure on the infill site.

8. Based upon the findings and conclusions, the Commission also concludes that the requested map amendment is in the best interests of the District of Columbia and will benefit the community in which the Property is located.
9. The Commission takes note of the recommendations in support of the map amendment from the ANC, community members living near the project, OP, and Councilmembers Bowser and Brown.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the petition for an amendment of the Zoning Map to change the zoning of Square 2794, Lots 18, 19, 877, 879, 899, 2001-2047 from the R-5-A Zone District to the R-5-C Zone District.

The Petitioner is required to comply fully with the provisions of the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Petitioner to comply shall furnish ground for the denial or, if issued, revocation of any building permits or certificates of occupancy pursuant to this Order.

At the public meeting on March 10, 2008, the Zoning Commission voted to **APPROVE** the petition for proposed action by a vote of 5-0-0 (Anthony Hood, Michael G. Turnbull, Peter May, Gregory N. Jeffries, and Curtis Etherly, Jr. to **APPROVE**).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on _____, 2008, by a vote of _____ (_____ to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the D.C. Register on _____.

ANTHONY HOOD
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning