



Pillsbury
Winthrop
Shaw
Pittman_{LLP}

2300 N Street NW
Washington, DC 20037-1122

Tel 202.663.8000
Fax 202.663.8007
www.pillsburylaw.com

Maureen E. Dwyer
Phone: 202.663.8834
maureen.dwyer@pillsburylaw.com

February 8, 2007

Mr. Anthony Hood
Chair, Zoning Commission
441 4th Street, NW
Suite 210
Washington, DC 20001

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**Re: Zoning Commission Case No. 07-29 of the Bozzuto Group (the
"Applicant"); Application to Rezone a Portion of Lot 864 in Square
514 ("Property") from DD/R-5-B to DD/C-2-C**

Dear Chairperson Hood and Members of the Commission:

The above-referenced case is scheduled for hearing by the Commission at its February 28, 2008 public meeting. The application was filed with the Commission on October 19, 2007 and included a Statement in Support of the Application with the detailed justification for the requested zoning change.

On December 4, 2007, the Applicant submitted its sixty-day prehearing submission in support of the map amendment application. Pursuant to 11 DCMR § 3013.1(d), the Applicant provides the following additional information to supplement its previous filings.

Update on Community/HPRB Review

Since the pre-hearing statement was filed, the Applicant has met with ANC 2C and the Mount Vernon Square Neighborhood Association in addition to residents of the community. On January 22nd, the MVSNA submitted a letter in support of this application finding that the requested map amendment meets the legal test.

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In addition, the Applicant received final concept approval of its proposed development plans for the site at the January 24, 2008 Historic Preservation Review Board hearing.¹

Further Clarification of the Legal Standard for a Map Amendment Application

At the December 10 public meeting when the Commission set the case for public hearing there was discussion of the legal standard for its review of the map amendment application by both the Commission and the Office of Planning. The Applicant addressed this issue in its prior submissions and would like to provide additional clarification in this filing.

Legal Standard Under the Zoning Enabling Act:

The Zoning Commission is authorized under § 1 of the Zoning Act of 1938, approved June 20, 1938, (52 Stat. 797, as amended, D.C. Official Code § 6-641.01), 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 6-641.02.²

In reviewing the decisions of the Zoning Commission, the DC Court of Appeals has held that the legal test for a Zoning Map amendment application 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), attached as Exhibit A.) In its review of an application, 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

¹ This information is provided simply to give the Zoning Commission context. Since this is a map amendment application and not a PUD, the application does not seek approval of a specific set of plans.

² In its setdown report, OP agreed that the requested rezoning was not inconsistent with the Comprehensive Plan. OP then suggested, however, that the Applicant’s burden was to demonstrate why the site *must* be rezoned suggesting a different legal standard. Under the Zoning Enabling Act, however, there is only one legal standard that applies to all map amendment applications.

whether to approve the requested map amendment. As set forth in our prior filings, and as detailed below, the requested DD/C-2-C zoning meets the standards for approval.

Compliance with the Statutory Standards:

A. Consistency with the Purposes of the Zoning Regulations

The requested rezoning is in keeping with the purposes of the Zoning Regulations as set forth in Section 101.1:

[T]o promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services.

The proposed Zoning Map amendment would allow the Applicant to rehabilitate and preserve a historic structure while erecting a compatible new structure that meets demand for higher density development in central Washington and is consistent with surrounding heights and densities. Further, the rezoning will enable the Property to be redeveloped into a an attractive residential building along a major gateway to the District, improve the physical appearance of the streetscape, and contribute to a stronger neighborhood character. The proposed rezoning helps to further the redevelopment of New York Avenue as a major urban boulevard and also allows for infill development with a transition in height between the buildings on either side. 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."

In satisfaction of this prong of the legal standard, the DC Court of Appeals has recognized that the use of zoning to accomplish historic preservation goals is in keeping with the Commission's authority under the Zoning Act which authorizes the Commission, among other things, to conduct zoning so as to promote the "general welfare of the District of Columbia and its planning and orderly development as the national capital." *Dupont Circle Citizens Association v. District of Columbia Zoning Commission*, 355 A.2d 550 (DC 1976).

In all respects this application meets the legal test and the relocation of the zoning line will promote both historic preservation and land use goals by concentrating density

on New York Avenue and allowing the relocation and preservation of a contributing historic building. In addition, the rezoning would achieve many other goals of the Comprehensive Plan, as detailed in our prior submissions and in the Office of Planning setdown report.

B. Consistency with the Comprehensive Plan

Specifically, the requested rezoning is not inconsistent with the recently adopted Comprehensive Plan. The Applicant described in great detail the satisfaction of this element of the legal test for a Zoning Map amendment in the statement that accompanied its application. Not only is the proposed rezoning of the Property not inconsistent with the Comprehensive Plan, but it furthers and achieves the goals and policies of the Comprehensive Plan, particularly for the Downtown District and the Mount Vernon Square area. Pursuant to the Comprehensive Plan's goals and policies of revitalizing neighborhoods, producing new housing, and creating attractive new buildings, expanding the DD/C-2-C zone over a portion of the Property is more appropriate than the present DD/R-5-B zone. Furthermore, the preservation of the DD/R-5-B zone over a portion of the Property for the relocation of a historic building complies with the Comprehensive Plan's goals and policies of preserving historic resources in District neighborhoods.

In its setdown report, the Office of Planning noted that the requested map amendment is not inconsistent with the Future Land Use Map which designates the eastern portion of the lot as suitable for Medium Density Residential/Moderate Density Commercial and the western portion of the site as suitable for Moderate Density Residential uses. Further, under the Comprehensive Plan's Framework Element's "Guidelines for Using the Generalized Policy Map and the Future Land Use Map," Section 224.24 states that the Land Use Map is "intended to provide generalized guides for development and conservation decisions" but that it is "not a zoning map." Section 224.24 continues:

Whereas zoning maps are parcel-specific, and establish detailed requirements for setbacks, height, use, parking, and other attributes, the Future Land Use Map does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. By definition, the Map is to be interpreted broadly.

That section continues: "The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan,

including the citywide elements and the area elements, as well as approved Small Area Plans.” Section (k) of the same section states further that:

the Future Land Use Map and the Generalized Policy Map can be amended. They are not intended to freeze future development patterns for the next 20 years. The Comprehensive Plan is intended to be a dynamic document that is periodically updated in response to the changing needs of the city. Requests to amend the maps can be made by residents, property owners, developers, and the District itself. In all cases, such changes require formal public hearings before the DC Council, and ample opportunities for formal public input.

Clearly the rezoning of the Property achieves a great deal of the Comprehensive Plan’s goals and policies. The rezoning action for the Property and the redevelopment that it would allow, particularly when reviewed and approved by the HPRB since it is in the Mount Vernon Square Historic District, would deliver to the District optimal development in accordance with numerous goals, policies and actions. The satisfaction of the provisions of the Comprehensive Plan’s elements combined with the fact that the Property is immediately adjacent to an area of Moderate Density Commercial and Medium Density Residential land (corresponding to the Yale condominium site), demonstrates that the proposed rezoning is not inconsistent with the Comprehensive Plan.

As evidenced by the Office of Planning’s setdown report, the Office of Planning agrees that the requested rezoning is not inconsistent with the Comprehensive Plan. Additionally, there is a letter of support in the record from Councilmember Jack Evans also supporting the request as not being inconsistent with the Comprehensive Plan and actually achieving many of the goals of the Comprehensive Plan.

C. Consistent with the Character of the Surrounding Area

The requested rezoning is also in keeping with the character of the surrounding property which includes high density DD/C-2-C zoning on the eastern portion of the site and continuing up New York Avenue to 4th Street in addition to high density DD/C-2-C zoning across New York Avenue from the site. Immediately abutting the Property is the extensive Yale Laundry condominium project that will reach 130 feet for much of its New York Avenue Street frontage. Immediately across New York Avenue, 130 foot buildings will be constructed and the substantial City Vista project is already nearing

completion. As a result, the requested rezoning would be in keeping with the character of the surrounding property – both the large and often commercial “gateway projects” on New York Avenue and the smaller scale residential uses to the north and along 5th Street, NW. The requested rezoning would allow the Property to construct the ideal buffer between these two distinct elements of the Mount Vernon Square neighborhood.

Precedent Cases

The Zoning Commission has previously approved similar requests for Zoning Map amendments. Below is a sample of some of the existing precedent that demonstrates that a Zone Map amendment at the Property should be granted:

- Z.C. Order No. 76-4 (Order attached as Exhibit B) – This order rezoned a portion of Safeway’s property at 1855 Wisconsin Avenue, NW from R-1-B to C-1. The re-zoning allowed the enlargement of that Safeway. The rezoning of the property was allowed due to the finding that the request would result in an increase in the tax base and enhancement of food services to the City and no adverse impact on services at the site. Further, the Commission concluded that the rezoned property would not be out of character with the surroundings, as it was part of the commercial strip which lines a traffic artery, even though it was also adjacent to a residential area. In affirming the Commission’s decision, the DC Court of Appeals concluded that “neither a showing of a mistake in the original zoning nor a demonstration of substantial change in the area since the time of such zoning is necessary to justify amendment of the zoning map.” *Citizens Association of Georgetown*, 402 A 2d at 39.
- Z.C. Order No. 02-41 (Order attached as Exhibit C) – This order established SP-1 zoning for a property that was owned by the US Federal government and leased to Building Bridges Across the River, Inc. to operate a community center known as Town Hall Education Arts Recreation Center (THE ARC). The property was surrounded by properties that were unzoned and zoned R-5-A, R-3, and C-2-B. The SP-1 rezoning and resulting use was found to be complimentary to nearby residential uses and located on the edge of a residential community. The proposed use of the project was found to enhance and strengthen the surrounding neighborhood and furthering the health, safety and welfare of the District. The proposed use was found not inconsistent with the Comprehensive Plan Generalized Land Use Map that recommended parks, recreation and open space for the property.

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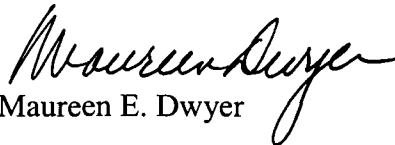
- Z.C. Order No. 07-01 (Order attached as Exhibit D) – This order rezoned a portion of property owned by the Heritage Foundation from CAP/R-4 to CAP/CHC/C-2-A. Prior to the application, the building on the property was split zoned such that the rear portion of the property was subject to the requirements of the R-4 Zone, while the front portion of the building was subject to the requirements of the C-2-A Zone and the Capitol Hill Commercial Overlay District (CHC). The requested rezoning was found to be not inconsistent with the District Elements of the Comprehensive Plan. The Commission went on to state: “[T]he 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.”

Conclusion

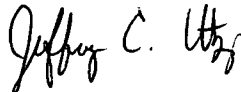
For all of the above reasons, the Applicant believes that the requested map amendment meets the legal standards under the Zoning Enabling Act and merits favorable action by the Commission.

Thank you for your consideration of this application. We greatly look forward to the opportunity to present the case to you on February 28th.

Sincerely yours,



Maureen E. Dwyer



Jeffrey Utz

cc: Jennifer Steingasser
Office of Planning

Steve Cochran
Office of Planning