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March 13, 2008

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By Hand Delivery

Mr. Anthony Hood
Chairperson, D.C. Zoning Commission
441 4th Street, N.W., Second Floor
Washington, DC 20001

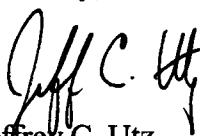
Re: **Zoning Commission Case No. 07-29, Application for a Zoning
Map Amendment for Square 514, Lot 864 (Record Lot 9) –
Draft Order**

Dear Chairperson Hood and Members of the Commission:

Enclosed please find the draft order of the Bozzuto Development Group (the
“Applicant”) for the above referenced case, as requested at the February 28, 2008
public hearing for the case.

If you have any questions or comments, please do not hesitate to call or email
Allison at (202)663-8853 or Jeff at (202)663-8715.

Sincerely,


Jeffrey C. Utz

Enclosure

ZONING COMMISSION
District of Columbia

CASE NO. 07-29
EXHIBIT NO. 29

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

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
Zoning Commission Order No. 07-29

Amendment to the Zoning Map for the Bozzuto Development Group
_____, 2008

Pursuant to public notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on February 28, 2008, pursuant to §102 of Title 11 of the District of Columbia Municipal Regulations ("DCMR"), to consider an application from the Bozzuto Development Group (the "Applicant"). The application requested review and approval of an amendment to the Zoning Map of the District of Columbia to change the zoning for a portion of Square 514, Lot 864 (Record Lot 9) ("Property"), from DD/R-5-B to DD/C-2-C (and Housing Priority Area A). 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 Applicant's proposal and, in its November 30, 2007 report, recommended that the application be set down for public hearing. OP opined that the requested map amendment 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").

Prior to the February 28, 2008 public hearing, OP submitted its final report recommending approval of the rezoning from DD/R-5-B to DD/C-2-C and the inclusion of the rezoned property in Housing Priority Area A of the DD District. OP also recommended approval of the Applicant's requested map amendment during the Commission's February 28, 2008 public hearing.

DDOT Report. By memorandum dated February 25, 2008 (Exhibit 25 in the record), the District of Columbia Department of Transportation stated that it supported the application to amend the Zoning Map for the Property.

Community Support. By letter dated January 22, 2008, the Mount Vernon Square Neighborhood Association ("MVSNA") indicated that, at a duly noticed and regularly scheduled monthly meeting, the MVSNA voted unanimously to support the application. The Applicant also submitted a petition from neighbors in the immediate vicinity that indicated support for the rezoning application. In addition, two neighbors of the property, Lydia Goring and Jeff Jones, appeared at the Commission's February 28, 2008 public hearing and testified as persons in support of the requested rezoning. The Applicant presented at two Advisory Neighborhood Commission 2C meetings, and the ANC did not take an official position on the application. Additionally, a letter of support from

Councilmember Jack Evans supporting the request as not being inconsistent with the Comprehensive Plan and achieving many of the goals of the Comprehensive Plan was filed in the record.

Public Hearing. Following a presentation by OP, the Commission agreed to set the case down for a public hearing at its December 10, 2007 public meeting. On February 28, 2008, the Commission held a public hearing on the application. Jeffrey Kaufman, Anne Adams, and Sean Stadler testified on behalf of the Applicant. Ms. Adams was qualified as an expert in the field of architectural history and historic preservation and Mr. Stadler was qualified as an expert in the field of urban architecture by the Commission. Mr. Kaufman discussed the need for the map amendment and desire to be able to use the neighboring smaller lots of 851 and 852 in Square 514 in one unified project plan which, at present, is impossible because the unified property is split-zoned and would not allow any project to be constructed. Ms. Adams was the Applicant's architectural historian and testified that the rezoning would allow redevelopment of the Property that would be consistent with the character of the Mount Vernon Square Historic District and the greater Mount Vernon Triangle neighborhood, historic preservation elements of the Comprehensive Plan, and historic preservation related aspects of the Zoning Regulations and Plan. Mr. Stadler testified that the development allowed by the rezoning would satisfy the standards of an amendment to the Zoning Map in that it would satisfy many of the Comprehensive Plan goals and policies, would be compatible with the surrounding neighborhood, and would be in accordance with the District of Columbia Zone Plan.

Proposed Action. At the conclusion of the public hearing on February 28, 2008, the Commission took proposed action 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 [March 6, 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 [April 14, 2008].

FINDINGS OF FACT

1. On October 19, 2007, the Applicant filed an application for a map amendment (Exhibit 4 in the record) with the Office of Zoning requesting that the Commission change the zoning of a 42.2 foot portion of lot 864 (an approximately 4950 square foot portion of the 7,983 square foot lot) from DD/R-5-B to DD/C-2-C (Housing Priority Area A) in order to allow redevelopment of lot 864 along with lots 851 and 852. The remainder of Lot 864 would remain DD/R-5-B.

2. The Applicant filed its pre-hearing submission on December 4, 2007 (Exhibit 13 in the record) and its 20-day submission on February 8, 2008 (Exhibit 23 in the record).
3. The property that is the subject of this application is located on the north side of New York Avenue, N.W. at L Street, N.W. The Property is currently improved with two vacant and deteriorated houses.
4. It is located in the Mount Vernon Square neighborhood of Ward 2 and the Mount Vernon Square Historic District. The Property is located on the New York Avenue Corridor, adjacent to the Yale Laundry Condominium project and north of the City Vista project. Further, the Property is located near the Downtown core.
5. The zone boundary line dividing the Property from DD/C-2-C abuts the Property's eastern lot line and divides the Property from Lots 851 and 852.
6. The Applicant also has a contract to purchase Lots 851 and 852 in Square 514 (465 and 471 New York Avenue, N.W.), which are to the east of the zone boundary line. 471 New York Avenue, N.W. (Lot 852) is improved with a two-story rowhouse that has significantly deteriorated and will be demolished by the Applicant. 465 New York Avenue, N.W. (Lot 851) is improved with a three-story brick and limestone house built in 1902 that is also significantly deteriorated but will be moved and rehabilitated by the Applicant. As a result of the existing zoning configuration and their small size, the Lots 851 and 852 would not be large enough to develop without the requested rezoning of the Property.
7. On September 27, 2007 and January 24, 2008 the Applicant received Historic Preservation Review Board approval to move and rehabilitate 465 New York Avenue, N.W., demolish 471 New York Avenue, N.W., construct a residential addition to the relocated historic building adjacent to Yale West, and subdivide Record Lot 9.
8. The Applicant introduced the legal standard for reviewing a Zoning Map amendment application in its application statement (Exhibit 4 in the record), its 20-day submission on February 8, 2008 (Exhibit 23 in the record), and during its hearing presentation. The legal standard for a Zoning Map amendment application 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

9. The Applicant – through the testimony of Jeffrey Kaufman, Sean Stadler, and Anne Adams – 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 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 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 an attractive project along a major gateway corridor to 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."

10. The rezoning of the Property would have no adverse effect on neighboring properties, would complement Yale West and the high density designation of New York Avenue, N.W., would not affect adversely the use of neighboring property in accordance with the Zoning Regulations, would permit sensitive and compatible new development and achieve the policies of the DD District, and would not produce objectionable traffic conditions.
11. Further, the Property is a small and difficult site. It has an odd shape and many constraints on its development. Allowing the rezoning of the Property ensures that the Property and Lots 851 and 852 will be redeveloped.
12. From a historic preservation perspective, the proposed rezoning would allow development that is compatible with the Mount Vernon Square Historic District and it would encourage the relocation and rehabilitation of 465 New York Avenue, N.W.
13. 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).

Not inconsistent with Comprehensive Plan

14. The Applicant – through the testimony of Jeffrey Kaufman, Sean Stadler, and Anne Adams – presented evidence that the proposed rezoning was not inconsistent with the District of Columbia Comprehensive Plan. The Applicant stated that the rezoning would satisfy and achieve the Comprehensive Plan's goals and elements.
15. 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:
 - a. Land Use Element: The Comprehensive Plan specifies general policies to "ensure the efficient use of land resources to meet long-term neighborhood, citywide, and regional needs; ...to sustain, restore or improve the character and stability of neighborhoods in all parts of the city; and to effectively balance the competing demands for land to support the many activities that take place within District boundaries." (§ 302.1).

Further, the Comprehensive Plan favors “infill development on vacant lots ... provided that such development is compatible in scale with its surroundings and consistent with environmental protection and public safety objectives.” (§ 307.2). The current use of the Property is an underutilized lot, and the current zoning scheme maintains a split-zoned site that is difficult to develop. Rezoning the Property will allow for development on a difficult infill site and will allow for the revitalization and re-use of a long abandoned historic building. Rezoning this site will provide the Applicant with an opportunity improve the urban fabric of the community and to provide the neighborhood with physical improvements that make it more attractive.

- b. Housing Element: The Comprehensive Plan includes policies that support the expansion of the housing supply (§ 503.1), particularly through the involvement of the private sector (§ 503.2) on surplus, vacant and underutilized land (§ 503.4) and on Main Street mixed use corridors and near Metrorail stations (§ 503.5). In Near Northwest, the creation of such housing opportunities is viewed as the key to creating “vibrant street life” and supporting the retail and other amenities desired in the heart of the city. (§ 503.7). As a vacant lot in a neighborhood with nearby higher density housing, the Property is underutilized. Rezoning the Property would encourage the Applicant to meet some of the demand for higher density residential development in Near Northwest. In addition, rezoning of the property will allow the Applicant to contribute to the Comprehensive Plan’s policy of encouraging a vibrant and diverse downtown community.
- c. Urban Design Element: The Comprehensive Plan encourages the enhancement of the “beauty and livability of the city by protecting its historic design legacy, reinforcing the identity of its neighborhoods, harmoniously integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and security of streets and public spaces.” (§ 901.1). Further, the Comprehensive Plan encourages the “use of Washington’s major avenues as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character” (§ 906.6) and the promotion of excellence in the design of Downtown buildings and landscapes. (§ 909.10). In addition, the Urban Design policies are to be refined by “relating the scale of infill development, alterations, renovations, and additions to existing neighborhood context and overpowering avoiding contrasts in scale and height. (§ 910.14). Rezoning the property would enable a vacant lot to be redeveloped with an attractive and suitable project on one of the District’s major gateway avenues. The rezoning will allow for the improvement of the physical appearance of the streetscape and the neighborhood by eliminating the blight and unsightliness of the vacant lot through an architecturally unique façade. This change will contribute to a stronger neighborhood character. In addition, rezoning will

allow the Applicant to construct the continuous and appropriate transition from higher density mixed uses to lower density uses.

- d. Historic Preservation Element: The Comprehensive Plan prescribes the preservation and enhancement of “the unique cultural heritage, beauty, and identity of the District of Columbia by respecting the historic physical form of the city and the enduring value of its historic structures and places, recognizing their importance to the citizens of the District and the nation, and sharing mutual responsibilities for their protection and stewardship.” (§ 1001.1). In addition, the Historic Preservation Element encourages the appropriate preservation of historic buildings through an effective design review process (§ 1011.4) and the adaptation of historic properties for current use (§ 1011.5). The Historic Preservation Element also highlights the importance of permitting compatible new infill development through sensitive siting and design and the appropriate use of materials and architectural detail. (§1011.6). Rezoning the Property will allow the Applicant to preserve and rehabilitate a historic structure while building a compatible addition to that historic structure. By rezoning the property in a manner that is consistent with intended development as a hybrid new/old building, the Zoning Commission can advance the Comprehensive Plan’s policy of historically suitable development.
- e. Near Northwest Area Element: The Comprehensive Plan lays out general policies and actions that should guide growth and neighborhood decisions in the Near Northwest neighborhood.
- f. Comprehensive Land Use Map: The Comprehensive Plan 2006 Future Land Use Map depicts the area immediately to the east of the Property as Medium Density Residential/Moderate Density Commercial and depicts the Property as Moderate Density Residential. 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 states that “the Map is to be interpreted broadly” and that the Land Use Map is “not intended to freeze future development patterns for the next 20 years.” 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 high-density Yale Laundry site), demonstrates that the proposed rezoning is not inconsistent with the Comprehensive Plan. The proposed rezoning of the Property to DD/C-2-C and DD/R-5-B Zoning Districts is more appropriate than the status quo given the site’s location on a major commercial corridor and adjacent to high density DD/C-2-C development to the east and south across New York Avenue, N.W. As evidenced by the O P’s setdown report, the O P 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 supporting the request as not

being inconsistent with the Comprehensive Plan and achieving many of the goals of the Comprehensive Plan.

Not inconsistent with character of the surrounding property

16. The Applicant – through the testimony of Jeffrey Kaufman, Sean Stadler, and Anne Adams – presented evidence that the proposed rezoning was not inconsistent with the character of the surrounding neighborhood. The Property is located on the high-density (largely DD/C-2-C) New York Avenue corridor. The Property is the ideal buffer between the two distinct elements of the Mount Vernon Square neighborhood – the high density on New York Avenue and the lower scale residential of the Mount Vernon Square Historic District. Rezoning the Property DD/C-2-C is in keeping with the character of the southern half of the square and the alley provides a dividing line between the residential uses to the north and the mixed uses to the south.
17. The Applicant provided testimony that the proposed rezoning is appropriate for this portion of the historic district. Since it fronts on New York Avenue, N.W., the rezoning would allow for an exceptional transition between the high-density commercial corridor and the more residential area of the Mount Vernon Square Historic District. As stated, it would be the ideal buffer between these two distinct elements of the Mount Vernon Square neighborhood.
18. The Applicant provided testimony that 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, N.W., 130 foot buildings will be constructed and the substantial City Vista project is already nearing completion.

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 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)) 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 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 District of Columbia 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).
6. The Commission concludes that approval of the requested map amendment from the DD/R-5-B to DD/C-2-C 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, expanding the DD/C-2-C zone over a portion of the Property is more appropriate than the present DD/R-5-B zone. The rezoning allows a much more efficient project and infill development on an underutilized site. 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.
7. The Commission further concludes that the proposed map amendment is consistent with the Comprehensive Plan Map's designation of the Property as a "Moderate Density Commercial" and its treatment of the New York Avenue corridor.
8. The Commission also finds that the requested rezoning is in accordance with the character of the surrounding neighborhood. The proposed Zoning Map amendment would allow a compatible new structure that meets demand for higher density development in central Washington and is consistent with surrounding heights and densities. The Property is an ideal buffer between the higher-density New York Avenue corridor and the lower density Mount Vernon Historic District residential areas to the north and west of the Property.

9. 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.
10. The Commission takes note of the recommendations in support of the map amendment from the MVSNA, community members living near the project, DDOT, and OP.

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 application for an amendment of the Zoning Map to change the zoning of a portion of Lot 864 (Record Lot 9) in Square 514 from DD/R-5-B to DD/C-2-C and that portion of Lot 864 is hereby placed in Housing Priority Area A of the DD District (as described in Section 1706.8(a) of the Zoning Regulations).

The Applicant 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 Applicant 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 hearing on February 28, 2008, the Zoning Commission voted to **APPROVE** the application for proposed action by a vote of 5-0-0 (Anthony Hood, Michael G. Turnbull, John Parsons, Gregory N. Jeffries, and Curtis Etherly, Jr. to **APPROVE**).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on _____, 2008 [April 14, 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