

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via-email)
From: Sharon S. Schellin *SS*
Secretary to the Zoning Commission
Date: February 10, 2009
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on February 13, 2009:

1. Z.C. Order No. 08-02.

Attachment

ZONING COMMISSION
District of Columbia
CASE NO. 08-02
EXHIBIT NO. 27

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-02**

Z.C. Case No. 08-02

(Hay Adams Holding, LLC – Map Amendment at Square 186, Lot 809)

October 20, 2008

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved Jun 20, 1938 (52 Stat. 787, *et seq.*; D.C. Official Code § 6-641.01), and § 102 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”), having held a public hearing to consider the application from Hay Adams Holding, LLC (the “Applicant”), and referred the proposed amendments to the National Capital Planning Commission (“NCPC”) for a 30-day review pursuant to § 492 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 6-641.02) (“District Charter”), hereby gives notice of its adoption of an amendment to the Zoning Map of the District of Columbia that rezones Lot 809 in Square 186 (“Property”) from the SP-2 to the C-4 Zone District.

FINDINGS OF FACT

1. On January 29, 2008, the Office of Zoning received an application from the Applicant requesting the Commission to rezone the Property from the SP-2 to C-4 Zone District (“Application”). The Commission set down the Application for a public hearing as a contested case at its April 14, 2008 public meeting. In doing so, the Commission expressed some concern that the requested map amendment might constitute illegal spot-zoning.
2. The Property is located on the northwest corner of 16th and H Streets, N.W. and is approximately 12,879 square feet in area. The Property is improved with the Hay Adams Hotel, an individual landmark listed in the D.C. Register of Historic Places. The Property also falls within the White House Precinct and the design review jurisdiction of the U.S. Commission of Fine Arts under the Shipstead-Luce Act. The roof of the hotel is presently used for social functions and a tent provides patrons temporary shelter from inclement weather. The hotel proposes to construct a permanent rooftop addition at 16 feet in height. The U.S. Commission of Fine Arts, the White House Secret Service, and the D.C. Historic Preservation Review Board have reviewed the proposal and have no objections.
3. Square 186 is split-zoned, with the northwest corner of the block located in the C-4 District and the remainder of the square, including the Property, zoned SP-2. The SP-2 Zone District runs along both sides of Sixteenth Street, N.W. between Lafayette Park to the south and Scott Circle to the north. Properties to the east and west of the SP-2 zoned corridor along 16th Street are zoned C-4.

4. Notice of the public hearing was given in accordance with the provisions of 11 DCMR §§ 3014 and 3015.
5. Advisory Neighborhood Commission ("ANC") 2B, the ANC in which the Property is located, was automatically accorded party status. There were no other parties to the case other than the Applicant and ANC 2B.
6. On September 11, 2008, the Commission held a public hearing on the Application. Mr. Page Lansdale and Mr. Steven E. Sher, an expert in land use and zoning, testified on behalf of the Applicant. Mr. Lansdale described the proposed one-story addition to the Hay Adams Hotel, which is located on the Property, that would be constructed if the Application were approved, as contemplated under the District Elements of the Comprehensive Plan for the National Capital: ("Comprehensive Plan"), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300). Mr. Sher stated that the Future Land Use Map of the Comprehensive Plan designates the Property in the high-density commercial category and that the proposed rezoning to the C-4 Zone District is consistent with this designation. Mr. Sher further testified that the Central Washington Area Element of the Comprehensive Plan provides that existing hotel uses should be retained by allowing and encouraging the expansion of those uses, and, specifically, including the addition of one floor, approximately 16 feet in height, subject to coordination with Federal security needs, to the Hay Adams Hotel.
7. By letter dated August 24, 2008, ANC 2B indicated that, at a duly noticed monthly meeting with a quorum present, the ANC voted unanimously to support the Application.
8. The Office of Planning ("OP") reviewed the Applicant's proposal to rezone the Property to the C-4 Zone District and, in its April 4, 2004 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. OP also recommended approval of the Application through a written report dated August 21, 2008 and through testimony at the Commission's September 11, 2008 public hearing.
9. At the conclusion of the public hearing on September 11, 2008, the Commission took proposed action to approve the map amendment. Pursuant to § 492 of the District Charter, the Commission referred its proposed decision of approval to NCPC for review and comment.
10. By delegated action dated September 25, 2008, NCPC found that the proposed map amendment would not be inconsistent with the Comprehensive Plan for the

National Capitol, nor would it have an adverse impact on any other federal interest.

11. The Commission took final action to approve the map amendment at its regularly scheduled meeting held on October 20, 2008.

CONCLUSIONS OF LAW

1. The Commission's authority to amend the Zoning Map derives from the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, D.C. Official Code § 6-641.01) ("Zoning Act"). Section 1 of the Zoning Act authorizes 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. Section 2 of the Zoning Act provides that the "zoning regulations shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration 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. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein." D.C. Official Code § 6-641.02. Section 3 of the Zoning Act, among other things, authorizes the Commission to amend the zoning regulations and maps. D.C. Official Code § 6-641.03.
2. The Commission concludes the map amendment is consistent with the purposes of the Zoning Act. The amendment will facilitate the expansion of the Hay Adams Hotel and allows development consistent with the present character of the area.
3. In amending the Zoning Map, the Commission is constrained by the limitation in the District Charter that the Zoning Map be "not inconsistent" with the Comprehensive Plan. (§ 492(b)(1) of the District Charter.)
4. The Commission concludes that approval of the requested map amendment from the SP-2 to the C-4 Zone District is not inconsistent with the Comprehensive Plan and is fully consistent with the policy set forth in § 1608.11 of the Central

Washington Area Element of the Comprehensive Plan. That section calls for the retention and expansion of existing hotel uses, and specifically calls for a one-story addition to the Hay Adams Hotel. This addition is not possible as a matter-of-right under the existing SP-2 zoning. The requested map amendment will permit the retention of the existing Hay Adams Hotel and the construction of a one-story addition that has a maximum height of 16 feet, as articulated in the Comprehensive Plan. (10 DCMR § 1608.11.)

5. The map amendment is not spot-zoning because it is not inconsistent with the Comprehensive Plan. 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 Comprehensive Plan, or if there is none, with 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 Realty, Inc. v. District of Columbia Zoning Comm'n* 581 A.2d 295, 299 (D.C. 1990); *Citizens Association of Georgetown, Inc. v. District of Columbia Zoning Comm'n*, 402 A.2d 36, 39-40 (D.C. 1979). The proposed amendment to the Zoning Map fails this test. The C-4 zoning on the subject property is not inconsistent with the Comprehensive Plan, as noted above.
6. 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.
7. The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to issues and concerns expressed in the affected ANC's written recommendation. The Commission concurs with the ANC's recommendation for approval, and has given it the great weight to which it is entitled.
8. The Commission is required under § 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) to give great weight to OP recommendations. The Commission concurs with the OP's recommendation for approval, and has given its recommendation the great weight to which it is entitled.

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 Lot 809 in Square 186 from the SP-2 to the C-4 Zone District.

The Owner is required to comply fully with the provisions of the D.C. Human Rights Act of 1977, D.C. Law 2038, as amended, D.C. Official Code § 2-1401.01 *et seq.* ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the 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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is 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 Owner to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

At the conclusion of the public hearing on September 11, 2008, the Zoning Commission voted to **APPROVE** the Application by a vote of **4-0-1** (Peter G. May, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; Curtis L. Etherly, Jr. not present, not voting).

At the public meeting on October 20, 2008, the Commission voted to **ADOPT** the application by a vote of **4-0-1** (Anthony J. Hood, Peter G. May, Gregory N. Jeffries, and Michael G. Turnbull to approve; Curtis L. Etherly, Jr. not present, not voting).

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

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., October 18, 2007

Plat for Building Permit of: SQUARE 188 LOT 809

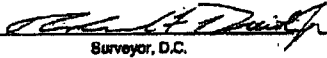
Scale: 1 inch = 30 feet Recorded on Microfilm

Receipt No. 00742

Furnished to: HOLLAND & KNIGHT

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly plotted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and plotted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be preserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or less, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____


Surveyor, D.C.

By: L.M.A. 

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

