

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via-email)
From: Sharon S. Schellin *SS3*
Secretary to the Zoning Commission
Date: June 22, 2009
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on June 26, 2009:

1. Z.C. Order No. 08-04A (Case No. 08-04A); and
2. Z.C. Order No. 08-11 (Case No. 08-11).

Attachment

ZONING COMMISSION
District of Columbia
CASE NO. 08-11
EXHIBIT NO. 23

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ZONING COMMISSION
District of Columbia
CASE NO.08-11
EXHIBIT NO.23

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 08-11
Z.C. Case No. 08-11
(Denial of Map Amendment request by Henok Araya – Square E-475, Lot 1)
December 15, 2008

Pursuant to public notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on December 15, 2008, pursuant to §102 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”), to consider a petition from Mr. Henok Araya (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 a portion of Square E-475, Lot 1 (“Property”), from the R-4 to C-2-A Zone District. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3021.

For the reasons discussed below, the Zoning Commission denies the petition.

Petition and Set Down Proceeding

The Petitioner initiated this case by filing a petition dated April 23, 2008, requesting a map amendment from the R-4 to the C-2-A Zone District to make the zoning consistent with the District Elements of the Comprehensive Plan for the National Capital: (“Comprehensive Plan”). The Commission set down the case for a public hearing at its July 28, 2008 public meeting, and indicated it was treating the request as a rulemaking case.

Report of the Office of Planning

The Office of Planning (“OP”) submitted a final report dated December 10, 2008 recommending denial of the petition. OP based its conclusion on its analysis of the Comprehensive Plan in its totality, including the Plan’s Future Land Use Map, Plan’s Land Use policies, and on the 2005 Convention Center Area Strategic Development Plan.

The Comprehensive Plan’s Future Land Use Map designates the northeastern half of square E-475 for moderate-density residential and commercial uses, and the southwestern half of the square for moderate-density residential uses. However, OP believes this is due largely to the large scale of the map, and not dispositive of any intent by its drafters to include the Property in the commercial corridor. The report explained that the Future Land Use Map is a relatively large scale map not drawn to a smaller scale of accuracy, and not intended to be read with particularity as to individual properties. Because the moderate-density residential and commercial use designation shown is part of a corridor running along the centerline of Florida Avenue, OP believes this designation was intended for properties fronting on Florida Avenue, and was not intended to include properties that did not front on Florida Avenue. The Property does not front on Florida Avenue, and instead fronts on New Jersey Avenue, which OP described as a “well defined rowhouse residential street.” OP stated that they did not believe that the Property was intended to be included in the moderate density residential and commercial use designation of the Future Land Use Map.

The Comprehensive Plan's Land Use Policy LU-2.3.1, Managing Non-Residential Uses in Residential Areas, provides in relevant part:

Maintain zoning regulations and development review procedures that:

- (a) prevent the encroachment of inappropriate commercial uses in residential areas; and
- (b) limit the scale and extent of non-residential uses that are generally compatible with residential uses, but present the potential for conflicts when they are excessively concentrated or out of scale with the neighborhood.

(10 DCMR § 311.3.)

The 2005 Convention Center Area Strategic Development Plan study, which concludes that there was excess commercially zoned property in this area, and recommended concentrating retail uses on 7th and 9th Streets.

Public Hearing

The Commission held a public hearing on December 15, 2008. Mr. Araya testified in support of his petition, arguing that it was consistent with the Comprehensive Plan. Mr. Araya's argument was based on the Comprehensive Plan's Future Land Use Map, which depicts a corridor along Florida Avenue as appropriate for "moderate-density residential and commercial" use. The map shows a portion of his property within the "moderate-density residential and commercial" corridor.

OP testified in opposition to the petition, explaining that it believed that the revised zoning designation was inconsistent with the Comprehensive Plan. OP testified that the corridor depicted on Future Land Use Map runs along the centerline of Florida Avenue, and in its interpretation was intended to be limited to those properties that front Florida Avenue. The Property does not front on Florida Avenue and, therefore, OP does not believe it was intended to be included in the moderate density residential and commercial corridor.

The Proposed Rezoning is Inconsistent with the Comprehensive Plan

In amending the Zoning Map, the Commission is constrained by the limitation in the District Charter that the Zoning Map must be "not inconsistent" with the Comprehensive Plan. § 492(b)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 6-641.02).

The Commission concludes that approval of the requested map amendment is inconsistent with the Comprehensive Plan, and therefore must deny the petition.

The Commission is persuaded by the testimony and report of OP that the commercial corridor depicted in the Future Land Use Map along Florida Avenue is intended to apply to only those properties that front Florida Avenue, that the Comprehensive Plan favors preventing encroachment of commercial uses in residential areas, and that an OP small area plan for the area concluded that commercial uses should be concentrated along 7th and 9th Streets. The Commission accordingly believes that when the Comprehensive Plan is viewed in its totality, it favors commercial uses along Florida Avenue, and the preservation of residential uses on the surrounding property that does not front Florida Avenue. The Commission is convinced that the reason a portion of the Property within the commercial corridor on the Future Land Use Map is due to the relatively large scale of the map, and the lack of precision used when drafting the map with respect to the individual property lines along the corridor, not to an intention to include the Property in the corridor.

Great Weight Given to OP Issues and Concerns

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's recommendations. The Commission concurs with OP's recommendation for denial, and has given its recommendation the great weight to which it is entitled.

Great Weight Given to ANC Issues and Concerns

The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to issues and concerns raised in the affected ANC's written recommendation. The Commission did not receive a written recommendation from an affected ANC in this case.

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 **DENIES** the petition for an amendment of the Zoning Map to change the zoning of a portion of Square E-475, Lot 1, from the R-4 to C-2-A Zone District.

On December 15, 2008, upon the motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission voted to **DENY** the petition at the conclusion of the Public Hearing by a vote of 3-0-2 (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to deny; Gregory N. Jeffries not present, not voting; third Mayoral appointee position vacant, 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 June 26, 2009.