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ZONING COMMISSION
District of Columbia

CASE NO. 09-12

EXHIBIT NO. 27

ZONING COMMISSION
District of Columbia
CASE NO.09-12
EXHIBIT NO.27

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-12**

Z.C. Case Number 09-12

Amendment to the Zoning Map for George and Dimitri Mallios

January 25, 2010

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on December 7, 2009 to consider an application from the George and Dimitri Mallios ("Applicant") for review and approval of an amendment to the Zoning Map of the District of Columbia from DC/R-5-B to DC/C-2-B for Lots 30 in Square 180 ("Property"), pursuant to § 102 of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

FINDINGS OF FACT

1. On July 15, 2009, the Office of Zoning received an application from the Applicant requesting the Commission to rezone the Property from the DC/R-5-B to DC/C-2-B Zone District ("Application"). The Commission set down the Application for a public hearing as a contested case at its September 14, 2009 public meeting.
2. The Property is located on the south side of Q Street, between 16th and 17th Streets, N.W. The lot measures approximately 2,033 square feet and is improved with a two-story row building constructed in the late-nineteenth century. It originally included an in-ground basement, but subsequent site alterations removed the berm at the front of the property to create an exposed basement/ground floor level. Over time, this ground floor level has been internally reconfigured, and the front half of the first floor removed, to accommodate a dry cleaning and laundry business and artist studio, among other commercial uses. The remainder of the first floor and the second floor has been used for residential purposes. To the rear of the property is a ten-foot wide public alley.
3. The Property is zoned R-5-B and is located in the Dupont Circle ("DC") Overlay District. The subject building is also a contributing building to the Dupont Circle Historic District. The Property is flush against the eastern edge of a DC/C-2-B Zone District.
4. The Applicant proposes to amend the Zoning Map in order to change the Zone District of the Property from DC/R-5-B to DC/C-2-B. The R-5-B District permits moderate height and density residential uses, up to a maximum lot occupancy of 60%, a maximum height of 50 feet, and a maximum density of 1.8 floor area ratio ("FAR"). The C-2-B Zone District permits commercial and residential uses, up to a maximum residential lot occupancy of 80%, a maximum height of 65 feet, and a maximum density of 3.5 FAR (with non residential density limited to 1.5 FAR).

The DC Overlay District provides restrictions and evaluation standards for planned unit developments (“PUDs”) and limitations on driveways and curb cuts.

5. The area around the Property is largely developed with commercial, residential, and park uses. To the west of the Property is a two-story building that fronts on Q Street and is occupied by a restaurant. Further to the west is another restaurant located at the northwest corner of the Square. To the north of the Property, across Q Street, is an approximately six-story mixed-use building, and further east along the north side of Q Street is a three-story multifamily residential building, and a 12-story residential building. To the east of the Property is a two-story single family residential row dwelling, then several multifamily residential buildings ranging from two to five stories. Directly to the south of the Property is a 10-foot wide public alley, then the rear of a restaurant that faces 17th Street. To the southeast of the Property is Stead Park. A commercial corridor extends along 17th Street from P Street to R Street N.W. Along 16th Street are buildings ranging from two to eight stories occupied by commercial, residential, and religious uses.
6. Square 180, where the Property is located, is split zoned. Square 180’s west side is zoned DC/C-2-B, its center section of the square is zoned DC/R-5-B, and its eastern section is zoned DC/SP-1. The commercial zoning along the west side of the square extends along to an approximate depth of 100 feet into Square 180, but narrows to a depth of only 62 feet as it approaches Q Street. The Property is located in this area of narrowing, and is less than 100 feet from 17th Street.
7. The Future Land Use Map of 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), designates the Property for Commercial Low-Density/Residential Medium-Density uses. The Future Land Use Map shows a corridor along the eastern side of 17th Street that extends approximately 100 feet into Squares 178, 179, and 180 with this designation. The Property is one of the few within that corridor that is not commercially zoned. The zoning map amendment is fully consistent with the Future Land Use Map Designation.
8. The proposed map amendment is fully consistent with the following provisions of the Comprehensive Plan:

Policy LU-2.1.3: Conserving, Enhancing and Revitalizing Neighborhoods

“Recognize the importance of balancing goals to increase the housing supply and expand the 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.”

Policy ED-2.2.1: Expanding the Retail Sector

“Pursue a retail strategy that will allow the District to fully capitalize on the spending power of residents, workers and visitors, and that will meet the retail needs of underserved areas.”

Policy ED-2.2.3: Neighborhood Shopping

“Create additional shopping opportunities in Washington’s neighborhood commercial districts to better meet the demand for basic goods and services. Reuse of vacant buildings in these districts should be encouraged, along with appropriately-scaled retail infill development on vacant and underutilized sites. Promote the creation of locally-owned, non-chain establishments because of their role in creating unique shopping experiences.”

Policy ED-3.1.1: Neighborhood Commercial Vitality

“Promote the vitality and diversity of Washington’s neighborhood commercial areas by retaining existing businesses, attracting new businesses, and improving the mix of goods and services available to residents.”

Policy NNW-1.1.3: Enhancing Stable Commercial Areas

“Sustain and enhance the neighborhood, community, and regional shopping areas of Near Northwest, including M Street, P Street, Wisconsin Avenue, Connecticut Avenue, Florida Avenue, 18th Street NW, 17th Street NW, and 14th Street NW. Sustain these areas as diverse, unique, pedestrian-oriented shopping streets that meet the needs of area residents, workers, and visitors.”

The new zoning is consistent with these provisions from the Land Use, Economic Development, and Dupont Circle Policy Focus Area of the Near Northwest Area Elements of the Comprehensive Plan. The map amendment will rezone the Property to the C-2-B Zone District, thereby permitting mixed commercial and residential use of the Property, thereby increasing neighborhood commerce in the existing 17th Street commercial corridor.

Policy NNW-2.2.1: Maintaining Dupont Circle’s Residential Character

“Maintain the Dupont Circle neighborhood as a primarily residential area and discourage the expansion of commercial uses into currently residential areas ...”

The Property is located within the existing 17th Street commercial corridor and the building has a history of commercial uses. Focusing commercial activity into the existing 17th Street commercial corridor prevents the encroachment of commercial activity into residential areas.

9. Notice of the public hearing was given in accordance with the provisions of 11 DCMR §§ 3014 and 3015.
10. 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.
11. On December 7, 2009, the Commission held a public hearing on the Application. Steven E. Sher, an expert in land use and zoning, testified on behalf of the Applicant. Mr. Sher testified that the Future Land Use Map of the Comprehensive Plan designates the Property as Commercial Low Density/Residential Medium density. He stated that the boundary line on the Future Land Use Map is relatively uniform and extends approximately 100 feet in depth from 17th Street into contiguous Squares 178, 179, and 180. He noted that by superimposing the Future Land Use Map over the current Zoning Map, an anomaly is revealed in the zoning designation of this Property as R-5-B in comparison to the properties to the north, south, and west, which are C-2-B. He concluded that the proposed C-2-B zoning designation would not be inconsistent with the Future Land Use Map and would not be inconsistent with the general policies and actions noted in the Comprehensive Plan as a whole.
12. By letter dated November 12, 2009, ANC 2B indicated that, at a duly noticed monthly meeting with a quorum present, the ANC voted 7-0-1 to support the Application.
13. The Office of Planning ("OP") reviewed the Applicant's proposal to rezone the Property to the DC/C-2-B Zone District and, in its September 4, 2009 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 November 27, 2009, and through testimony at the Commission's December 7, 2009, public hearing.
14. At the conclusion of the public hearing on December 7, 2009, 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.
15. By delegated action dated December 30, 2009, NCPC found that the proposed map amendment would not be inconsistent with the Comprehensive Plan for the National Capital, nor would it have an adverse impact on any other federal interest.

16. The Commission took final action to approve the map amendment at its regularly scheduled meeting held on January 25, 2009.

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 Property is located within an existing commercial corridor. The use is consistent with the present character of the area, and will allow additional commercial uses in an existing commercial corridor. The map amendment will promote orderly development in conformity with the entirety of the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map.
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, D.C. Official Code § 6-641.02.

4. The Commission concludes that approval of the requested map amendment from the DC/R-5-B to the DC/C-2-B Zone District is not inconsistent with the Comprehensive Plan. The amendment will allow use of the property consistent with its designation on the Future Land Use Map for low-density commercial and medium-density residential purposes. The new zoning is consistent with the Comprehensive Plan, specifically the Land Use, Economic Development, and Near Northwest Elements described in this order.
5. 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.
6. The Commission is required under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135; 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.
7. 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 30 in Square 180 from the DC/R-5-B to the DC/C-2-B 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 § 2-1404.01 *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.

On December 7, 2009, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** the Application at the conclusion of its public hearing by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; William W. Keating, III, not present, not voting).

On January 25, 2010, upon the motion of Chairman Hood, as seconded by Commissioner May, the Commission **ADOPTED** the Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; William W. Keating, III, not having participated, 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 March 12, 2010.