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ZONING COMMISSION
District of Columbia

CASE NO. 09-17

EXHIBIT NO. 43

ZONING COMMISSION
District of Columbia
CASE NO. 09-17
EXHIBIT NO. 43

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
Z.C. CASE ORDER NO 09-17
Z.C. Case No. 09-17
(District of Columbia Public Library – Map Amendment and Special Exception)
January 11, 2010

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under §§ 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 798; D.C. Official Code §§ 6-641.01 and 6-641.03), and pursuant to proper notice, having held a public hearing on December 3, 2009¹ to consider an application from the District of Columbia Public Library (“Applicant” or “DCPL”) for: (a) a map amendment to zone Parcel 207/64; and (b) two special exceptions to permit the construction of a new public library on said parcel; and having referred the proposed map amendment to the National Capital Planning Commission (“NCPC”) for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of the following amendment to the Zoning Map incorporated into the Zoning Regulations of the District of Columbia (Title 11, DCMR) that changes the zoning of PAR 207/64, part of U.S. Reservation 518, known as 3660 Alabama Avenue, S.E., (“Subject Property”) from unzoned (“GOV”) to R-5-A.

For the reasons stated below, the Commission also approves the two special exception requests in the application.

PRELIMINARY MATTERS

Application

On October 8, 2009, the Office of Zoning received an application from the Applicant requesting that the Commission zone the Subject Property, which was then unzoned to the R-5-A Zone District. The Commission set down the application for a public hearing as a contested case at its October 19, 2009 public meeting.

DCPL’s requests for a map amendment and two special exceptions are necessary to permit DCPL to construct a modern, full-service library on the Subject Property. The property must be zoned before construction can take place, and the library to be constructed needs special exception relief, available pursuant to the new text amendments, to exceed the maximum permitted lot occupancy (11 DCMR § 403.4) and to provide no off-street parking spaces (11 DCMR § 2108.2).

Hearing

Notice of the public hearing on the application was given in accordance with the provisions of 11 DCMR §§ 3014 and 3015 and the hearing was conducted on December 3, 2009 in accordance

¹On that same evening, the Commission held a public hearing on text amendments also requested by the Applicant. Those amendments became effective through the publication of a Notice of Final Rulemaking and Z.C. Order No. 09-17A, in the *D.C. Register* on March 15, 2010 (57 DCR 1898).

with the provisions of § 3022. The Applicant was granted a waiver of the notice provisions to allow the case to proceed despite a late posting of the property. In response to the Commission's concerns, however, the Applicant left the posting up on the Subject Property after the hearing and modified it to indicate that the Commission had postponed taking action on the special exceptions and that the record would be open to receive public comments on them until January 4, 2010.

At the conclusion of the hearing, 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.

The Commission took final action to approve the map amendment at its regularly-scheduled meeting on January 11, 2010, with the Commissioners voting to approve it.

Final action on the special exceptions was also scheduled for the January 11, 2010 public meeting, at which time both special exceptions were approved.

Government Reports

The D.C. Office of Planning ("OP") filed a report with the Commission dated November 23, 2009, recommending approval of the application, noting that the proposed map amendment is not inconsistent with the Comprehensive Plan and that the special exception requests satisfy the requirements of 11 DCMR § 3104. (Exhibit No. 26.)

The D.C. Department of Transportation ("DDOT") submitted a "Recommendation in Brief," dated January 6, 2010, in which it characterized the requested elimination of on-site parking as a "laudable action," while also noting that "there is a need for additional safety along this portion of Alabama Avenue." (Exhibit No. 39.) DDOT notes that coordination with the Metropolitan Police Department to monitor traffic and enhance enforcement is already planned by the Applicant and goes on to recommend further safety measures, such as the installation of curb extensions.

By a delegated action dated January 7, 2010, 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. (Exhibit No. 42.)

Parties

Advisory Neighborhood Commission ("ANC") 7B was automatically a party to the case, and filed a report with the Commission stating that at a regularly-scheduled, properly-noticed meeting with a quorum present, held on November 19, 2009, the ANC had voted unanimously to support all the relief requested in the application. There were no other parties in support or in opposition to the application.

FINDINGS OF FACT

History and Proposed Use of the Subject Property

1. Parcel 67/204, located at address 3660 Alabama Avenue, S.E., is part of U.S. Reservation 518, and, as such, is owned by the United States of America.
2. Administrative jurisdiction over the subject property was, however, transferred to the District of Columbia for "Public Library" purposes by a "Transfer of Jurisdiction" document approved by NCPC on September 29, 1958, and by the National Park Service ("NPS") on December 11, 1958, and accepted by the District of Columbia on December 16, 1958. (Exhibit No. 5.)
3. The subject property is improved with the District-owned and operated Francis Gregory Library, a neighborhood public library which has operated at the site for approximately 50 years.
4. At the time the Francis Gregory library was constructed, the District government was not subject to zoning, but became subject to zoning effective May 23, 1990. (D.C. Official Code § 1-306.07.)
5. The Council grandfathered "any governmental land uses that were either in existence or substantially planned, documented, and invested in prior" to that date, such as the existing public library. (11 DCMR § 106.5(a).)
6. However, "any change or expansion in the use of land or buildings or any new construction or additions to buildings," such as that proposed by the Applicant, was, and is, subject to zoning. (11 DCMR § 106.5(b).)
7. Section 106.7 prohibits the issuance of any building permit unless the Zoning Commission has designated zoning for the property.
8. The subject property is unzoned.
9. Therefore, the application requests that the Zoning Map be amended to designate zoning for the property. Specifically, the Applicant requests that the subject property be mapped in the R-5-A Zone District.
10. After the property is zoned, DCPL proposes to demolish the existing library building and replace it with a new, full-service library.

11. The application also requests two special exceptions – to exceed the maximum permitted lot occupancy, and to provide no parking spaces – which are necessary to permit the construction of the new library.

The Subject Property and the Surrounding Neighborhood

12. The subject property is a rectangle with a small triangular projection at its northwest corner. The property has a street frontage along Alabama Avenue, S.E. of approximately 150 feet and extends approximately 100 feet back from this frontage for an area of 15,322.08 square feet.
13. The subject property comprises less than two percent of the whole of Reservation 518, which includes more than 18 acres of land.
14. To the immediate west of the subject property is an undeveloped strip of Reservation 518 approximately 88 feet wide, and then the Anne Beers Elementary School, zoned R-5-A and bounded to its west by 36th Place, S.E.
15. To the east of the subject property is a large undeveloped swath of Reservation 518, which is federal parkland.
16. All the properties across Alabama Avenue from the subject property for several blocks are zoned R-5-A or C-2-A. These properties include mostly low-scale garden apartments and townhouses, and strip malls/shopping centers.
17. Alabama Avenue has one lane of traffic in each direction, as well as a parking lane on each side, resulting in a street width of approximately 30-32 feet.

Appropriateness of the Map Amendment

18. A public library is a matter-of-right use in an R-5-A Zone District. (11 DCMR §§ 350.4(a), 330.5(a), 320.3(a), 300.3(a), and 201.1(p).)
19. The R-5-A Zone District specifically allows ‘institutional and semi-public buildings that would be compatible with adjoining residential uses’ such as the proposed public library. (11 DCMR § 350.1.)
20. Zoning the subject property R-5-A comports with the R-5-A zoning of the adjacent elementary school and the properties across Alabama Avenue, thus preserving the existing scale and general character of the neighborhood.
21. Amending the Zoning Map to place the subject property in an R-5-A Zone District, permitting construction of a new full-service library, promotes the “convenience, order, prosperity [and] general welfare of the District.” (D.C. Official Code § 6-641.01.)

22. The Comprehensive Plan's Future Land Use Map designates the subject property as for "Local Public Facilities," which includes land and facilities used by D.C. agencies, such as DCPL.²
23. Amending the Zoning Map to place the subject property in an R-5-A Zone District to permit construction of the library furthers several Elements of the Comprehensive Plan:
 - a. Urban Design Element -- The library has been individually-designed by an internationally-acclaimed architect to foster community identity and neighborhood character. (Policies UD-3.3, UD-3.3.2.);
 - b. Community Services and Facilities Element -- The library will help meet the District's goal of providing "high quality physical [library] buildings with new technology, an expanded Internet presence, inviting public spaces for meetings ... and programs and collections that meet the needs of all citizens." (Policy CSF-3.1.1.); and
 - c. Community Services and Facilities Element -- The location of the new library on the site of the old library will continue to anchor the neighborhood, will include space for the arts and other community programs, and will generally provide a clean, new, safe, and inviting civic space for community residents. (Policy CSF-3.2 and Action CSF-3.1.B.).

The Special Exceptions

The Need for the Relief

24. The maximum lot occupancy permitted for the proposed new library building is 40%, per 11 DCMR 403.2, which restricts lot occupancy for "All other structures" to 40% in an R-5-A Zone District.
25. By 2008, DCPL realized that a new library on the subject property would not meet the 40% lot occupancy maximum. It therefore requested that the National Park Service transfer more land around the subject property to District of Columbia jurisdiction to enable DCPL to meet the lot occupancy requirement of the Zoning Regulations. This request was denied.

²OP's report and testimony stated that the subject property was designated by the Future Land Use Map for "Local Public Facilities," which is an appropriate designation for a public library use. The Applicant, however, stated that the property was designated by the Map for "Parks, Recreation, and Open Space," but that, due to the scale of the Map, public facilities sitting on less than one acre of land, such as the Francis Gregory Library, were not separately shown.

26. Text amendments recently adopted by the Commission, however, permit a public library to exceed the otherwise-applicable permitted maximum lot occupancy through the grant of a special exception. (11 DCMR § 403.4.)
27. The proposed new library building, at 18,500 square feet, would require that 16 off-street parking spaces be provided. (11 DCMR § 2101.1.)
28. Text amendments recently adopted by the Commission, however, permit a reduction in the number of off-street parking spaces otherwise required by a public library by up to 100% through the grant of a special exception. (11 DCMR §§ 2108.1, 2108.2, and 3104.)

The Library Use With Increased Lot Occupancy Will Not Adversely Affect the Use of Neighboring Property

29. The subject property is not a large parcel for a public library site, but is surrounded on three sides by Federal Reservation 518, a vast open space, preventing a crowded “look” or “feel,” even with an increased lot occupancy.
30. The new building will have a somewhat larger footprint than the existing building, but will not result in the development of any additional park land.
31. Although no rear or side yards are required, the new library building will provide a rear yard of eight to ten feet and side yards of six feet, six inches, to buffer the surrounding parkland. (11 DCMR §§ 404.3 and 405.10.)
32. The side yards will provide sufficient room for access to the building and for trash to be wheeled through the side yard to the curb for regular city pick-up.
33. There are no dwellings on the north side of Alabama Avenue on the block where the subject property is located. The closest dwellings are on the other side of Alabama Avenue, approximately 30 feet away.
34. Although the building will occupy 74% of the lot, it will provide only 18,500 square feet of floor area, which, though adequate, is 1,500 square feet less than the minimum recommended for a public library in the standards for the District’s 21st Century Capital Projects Schedule.

The Library Use With No Off-Street Parking Spaces Will Not Adversely Affect Neighboring Property

35. The new library building will be a neighborhood library. It will serve the community in which it is located and most library patrons are expected to walk to the site.

36. According to the Applicant's informal survey, currently approximately 40% of library patrons walk to the site, and approximately 55% drive to the site, but of this 55%, 80% park on the street.
37. During peak-use evening times at the current library building, there are approximately 100 people using the library. Extrapolating from the results of the survey, and assuming that each person arrived alone, approximately 55 of these people would have driven to the library site.
38. A significant number of on-street parking spaces, approximately 86, are available on Alabama Avenue and 37th Street, S.E., in close proximity to the property. The long street frontage bounding the undeveloped land comprising Reservation 518 provides on-street parking unhampered by driveways or curb cuts.
39. After 4:00 p.m., on-street parking around Anne Beers Elementary School is unrestricted and available for use by library patrons. The school also has a parking lot on-site which may be available for use by library patrons.
40. Two major Metrobus routes run within one block of the subject property, along 37th Street, S.E. and Pennsylvania Avenue.
41. Alabama Avenue in the vicinity of the library is classified as a "minor arterial" street due to relatively low levels of traffic.
42. Alabama Avenue in the vicinity of the library has clear sight-lines and few conflicting cross-traffic movements.
43. Pedestrian safety features currently in place in the vicinity of the library include a traffic signal at the main intersection of Alabama Avenue and 36th Place, S.E., within approximately one block of the library, signage with flashing lights indicating a 15-mph zone during school hours on both sides of the library, and additional mid-street reminders to stop for pedestrians.
44. With the new, improved library, there will likely be an increase in the number of patrons using the facility. Therefore, DCPL has met with representatives of DDOT and the Metropolitan Police Department ("MPD") to come up with further initiatives to improve pedestrian safety and convenience in the vicinity of the library. The MPD representative indicated a willingness to: (a) provide enhanced police presence and enforcement of speeding and related violations in the area; (b) arrange for the placement of a flashing speed-indicator sign to help slow traffic; and (c) pursue the installation of a speed camera if necessary in the future. (Exhibit No. 40.)

45. The library's loading needs are minimal, with books delivered in small batches, often outside of regular library hours, and DDOT has agreed with the Applicant to assign a loading space for a specified time at the front of the library for curbside delivery of books.
46. There is an existing handicapped-accessible parking space, indicated by a sign, in front of the existing library building on Alabama Avenue, and DDOT has agreed with the Applicant to add another, if necessary.
47. With no on-site parking spaces and limited loading needs, it is not anticipated that the new, larger library building will cause any significant increase in traffic congestion on the surrounding and nearby streets.

The Library Use Is In Harmony With the General Purpose and Intent of the Zoning Regulations and Zoning Maps

48. The proposed library building is precisely the type of "institutional" building which is compatible with residential uses contemplated to be constructed in R-5-A Zone Districts and is a matter-of-right use therein. (Findings of Fact Nos. 18 and 19.)
49. The existing Francis Gregory Library Building has served the community at the subject property since approximately 1960 and the new library will continue to do so. Therefore, the new library building will not be adding a new use to the neighborhood, but will merely be replacing, and improving, an already-existing library use on the same site.
50. The neighborhood surrounding the subject property is characterized by low- and moderate-density residential and commercial development, and a public library will harmonize with these existing uses.
51. The subject property cannot be used for other than "library purposes" pursuant to the transfer of administrative jurisdiction from the federal government to the District of Columbia.

CONCLUSIONS OF LAW

1. Section 1 of the Zoning Act of 1938 (52 Stat.797, as amended, D.C. Official Code § 6-641.0) establishes the authority of the Commission to "promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia through regulation of the structures and uses on its land."
2. Section 2 of the Zoning Act of 1938 (52 Stat. 797, as amended, D.C. Official Code § 6-641.02) mandates that the Zoning Regulations shall be designed to "lessen congestion in the street," and to "promote [the] distribution of the uses of land as would tend to create

conditions favorable to ... civic activity, and recreational, educational, and cultural opportunities.”

3. Section 3 of the Zoning Act of 1938 (52 Stat 797, 798, as amended, D.C. Official Code § 6-641.03) establishes the authority of the Commission to amend the Zoning Maps of the District of Columbia.

The Map Amendment

4. The R-5-A Zone District was intended to include “institutional and semi-public,” as well as public, buildings generally compatible with residential uses. (11 DCMR § 350.1.)
5. The proposed public library is such a public building and is compatible with residential uses.
6. The R-5-A Zone District is consistent with the zoning in the area surrounding the subject property and is not inconsistent with the Comprehensive Plan for the National Capital or with the purposes of the 1938 Zoning Act.
7. The Commission concludes that the map amendment is consistent with the purposes of the 1938 Zoning Act and that the R-5-A Zone District is an appropriate zone district to map over the subject property.
8. The Commission also concludes that the proposed map amendment to R-5-A is consistent with the Future Land Use Map’s designation of the subject property in the “Local Public Facilities” category, and that if the Future Land Use Map designates the subject property in the “Parks, Recreation, and Open Space” category, this designation would not render the map amendment incompatible with the surrounding area.
9. Based upon the Findings of Fact and Conclusions of Law, the Commission concludes that the requested map amendment is in the best interests of the District of Columbia and will benefit the communities near which the property is located.
10. The Commission notes that both ANC 7B and OP recommended approval of the map amendment, and that neither brought up specific issues or concerns to which great weight needed to be given pursuant to D.C. Official Code § 1-309.10(d) and 6-623.04, respectively.

The Special Exceptions

11. Special exceptions may be granted if the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. (11 DCMR § 3104.)

12. In certain cases, along with the general requirements of § 3104, an applicant for a special exception also has to meet the requirements specific to the special exception requested.
13. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification provided specific regulatory requirements for the relief requested are met.
14. In reviewing an application for special exception relief, the Commission's discretion is limited to determining whether the application satisfies the requirements of the regulations, and if the applicant meets its burden, the Commission ordinarily must grant the application. (*First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).)

Lot Occupancy Special Exception

15. Section 403.4 of the Zoning Regulations (Title 11 DCMR) authorizes the approval of a lot occupancy for a public library building greater than that otherwise permitted by § 403.2, if the requirements for a special exception pursuant to § 3104 are met.
16. Based on the Findings of Fact above, the Commission concludes that a lot occupancy of approximately 74% for the proposed library building will not tend to adversely affect the use of neighboring property.
17. Based on the Findings of Fact above, the Commission concludes that a lot occupancy of approximately 74% for the proposed library building is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.
18. The Commission, therefore, concludes that the Applicant has met its burden of proof for a special exception, pursuant to §§ 403.4 and 3104, to permit a lot occupancy greater than that otherwise permitted for "All other uses" in this R-5-A Zone District.
19. The Commission notes that both ANC 7B and OP recommended approval of the lot occupancy special exception, that neither brought up specific issues or concerns, and that they have both been accorded the requisite "great weight."

The Parking Special Exception

20. Section 2108.2 of the Zoning Regulations authorizes the reduction, for a public library, of up to 100% of otherwise required off-street parking spaces, after consideration of the factors enumerated in § 2108.3, if the requirements for a special exception pursuant to § 3104 are met.

21. The Commission, after giving consideration to the factors enumerated in § 2108.3, concludes that, based on the Findings of Fact above, the lack of any off-street parking spaces on the subject property will not tend to adversely affect the use of neighboring property.
22. The Commission, after giving consideration to the factors enumerated in § 2108.3, concludes that, based on the Findings of Fact above, the lack of any off-street parking spaces on the subject property is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.
23. The Commission, therefore, concludes that the Applicant has met its burden of proof for a special exception, pursuant to §§ 2801.1, 2801.2, and 3104, for a 100% reduction in the required off-street parking spaces.
24. The Commission notes that both ANC 7B and OP recommended approval of the parking special exception, and that neither brought up specific issues or concerns for which great weight needed to be given.³

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 to the Zoning Map to change the status of the subject property from unzoned to R-5-A.

Further, 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 a special exception to permit a lot occupancy for a public library on the subject property greater than that otherwise allowed in an R-5-A Zone District, and for a special exception to permit a 100% reduction in the number of off-street parking spaces required for the library building to be constructed on the subject property.

On December 3, 2009, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** the map amendment application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve).

³DDOT, although not entitled to “great weight,” expressed concerns with pedestrian safety near the library which have been addressed by the Commission, both in its deliberations and in this order, to the extent of its jurisdiction. The Commission notes, however, that the concerns voiced by DDOT are best addressed by entities other than the Commission.

On January 11, 2010, upon the motion of Chairman Hood, as seconded by Commissioner Schlater, the Zoning Commission **ADOPTED** the Order for the map amendment and **APPROVED** the application for special exception at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; William W. Keating, III, to approve by absentee ballot).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*, that is on August 27, 2010.