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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-17

Z.C. Case No. 14-17

AE Tower, LLC

(Map Amendment @ Square 4310)

March 9, 2015

The Zoning Commission for the District of Columbia ("Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 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 of AE Tower, LLC ("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 a portion of Lot 808 in Square 4310 (the "Property") from R-1-B to the C-2-A Zone District.

FINDINGS OF FACT

1. On September 29, 2014, the Office of Zoning received an application from the Applicant requesting that the Commission rezone a portion of the Property from the R-1-B Zone District to the C-2-A Zone District, making all of Lot 808 to be within the C-2-A Zone District
2. At the time the application was filed, the Applicant was the contract purchaser of the Property.
3. The triangular-shaped Property is located at Rhode Island Avenue, N E , north of Monroe Street, N E and is bounded by a public alley to the southeast. It consists of one, split-zoned lot totaling slightly over one-half acre in area. The topography of the Property is generally flat along Rhode Island Avenue, but slopes down, towards the southeast near Monroe Avenue, N.E. and the public alley, which is the eastern boundary of the Property. There currently is a surface parking lot (currently unused) on the R-1-B-zoned portion of the Property, and a vacant, one-story structure located in the C-2-A portion of the Property, between Rhode Island Avenue, N E and the public alley. The adjacent property immediately to the east of the Property is a car lot/dealership. The Property was previously subject to BZA Order No. 14256, approved April 3, 1985, which allowed special exception accessory parking spaces for the adjacent car dealership to the east
4. The immediately surrounding neighborhoods to the north, south, and west are zoned to the R-1-B Zone District and primarily consist of single-family detached residences. To the northeast along Rhode Island Avenue towards Eastern Avenue (the District boundary), there exists low-scale commercial development including a gas station,

convenience store, liquor store, etc., zoned in the C-2-A Zone District. No other lots on the square are split-zoned R-1-B and C-2-A.

- 5 The existing C-2-A zoning for a portion of the Property permits low-to-medium density commercial and residential uses. The purpose of the C-2-A Zone District is to provide facilities for shopping and business needs, allow a mix of uses including residential, and accommodate commercial developments, serving local residential areas. The existing R-1-B zoning for the remainder of the Property allows for low-density single-family detached residential development on lots of 5,000 square feet. It does not permit commercial or mixed-use development.
6. By memorandum dated October 31, 2014, and through testimony at the public meeting held on November 10, 2014, the Office of Planning (“OP”) recommended that the Commission set down the application for a hearing, as the request was not inconsistent with the Comprehensive Plan.
7. The Commission set the case down for a public hearing at its November 10, 2014 public meeting as a contested case. The Commission adopted OP’s recommendation that the Commission consider rezoning the R-1-B portion of the Property to C-2-A.
8. Notice of the public hearing was provided in accordance with the provisions of 11 DCMR §§ 3014 and 3015. Notice to Advisory Neighborhood Commission (“ANC”) 5C was sent on October 2, 2014.
- 9 On February 5, 2015, the Commission held a public hearing on the application. The representative of the Applicant primarily relied on the record and on the report of OP, but also provided testimony generally about his interactions with the community and with ANC 5C, and generally about the Applicant’s conceptual plan to pursue a matter-of-right, mixed-use project on the Property.
- 10 In its Public Hearing Report dated February 5, 2015, OP recommended approval of the map amendment application, writing that the request was consistent with the Comprehensive Plan and policies for the area. In particular, OP based its position on the Future Land Use Map, providing that under the FLU Map, the “low-density commercial” designation corresponds to areas that are low in scale and character and are primarily retail, office, and service businesses. Per the Citywide Elements of the Comprehensive Plan, “areas with this designation range from small business districts that draw primarily from surrounding neighborhoods to large business districts that draw from a broader market area. Their common feature is that they are comprised primarily of one- to three-story commercial buildings. The corresponding zone districts are generally C-1 and C-2-A, although other districts may apply.” In addition to the basis of map consistency,

because a portion of the property is zoned to the C-2-A Zone District, as are other nearby properties along Rhode Island Avenue, it is an appropriate zone district to consider for the portion of the property currently zoned to the R-1-B Zone District (low-density residential)

11. On February 4, 2015, ANC 5C, the ANC in which the Property is located, submitted a letter in support of the proposed rezoning (Exhibit 23) The letter stated that, with a quorum present at its meeting, the ANC voted 7-0 to support the application to amend the Zoning Map. The letter stated that the ANC's advice was to grant the relief, without listing any qualifications or conditions
12. Elder Keith Young, a representative of the property owner, testified in support of the application, stating that the church had received input from the community that it preferred some type of mixed-use development on the site, rather than a townhouse development
13. Kyle Todd, the executive director of Rhode Island Avenue Main Street, also testified in support of the application.
14. At the conclusion of the public hearing on February 5, 2015, the Commission took proposed action to approve the map amendment
15. Pursuant to § 492(b)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 810. D.C. Official Code §6-641.05), the Commission referred the application to the National Capital Planning Commission ("NCPC") for review and comment.
16. On February 18, 2015, ANC 5C submitted a second letter The second letter was identical to the first letter, except that the ANC attached a list of conditions to the ANC's support. The conditions were as follows.
 - That a representative of the Applicant solicit comments for owners and residents of nearby properties concerning the Applicant's intent to build on the Property;
 - That the Applicant conduct a traffic study prior to construction;
 - That the Applicant allow for vibration monitoring during the construction for residences immediately adjacent to the property, and
 - That the Applicant purchase an insurance policy to protect nearby property owners for damages caused by the construction
17. The Commission finds that the proposed map amendment is not inconsistent with the Comprehensive Plan.

CONCLUSIONS OF LAW

The Commission's authority to amend the Zoning Map derives from the Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797 D.C. Official Code § 6-641 01, *et seq*) ("Zoning Act"). Section 1 of the Zoning Act authorizes the Commission to regulate the uses of property in order to "promote 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 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 or 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.)

The Commission concludes that approval of an amendment to the C-2-A Zone District is consistent with the purpose of the Zoning Act, and also finds that the request is not inconsistent with the policies and maps of the Comprehensive Plan.

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 of Columbia Home Rule Act. D.C. Official Code § 6-641 02 The Commission concludes that approval of the requested map amendment is not inconsistent with the Comprehensive Plan The requested map amendment furthers the goals of the Comprehensive Plan, and promotes orderly development in conformity with the Zone Plan as embodied in the Zoning Regulations and Map

The Commission concludes that the requested map amendment is in the best interest of the District of Columbia and will benefit the community in which the Property is located

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 ("ANC Act") (D.C. Law 1-21. D.C. Official Code § 1-309 10(d)) to give great weight to the affected ANC's written recommendation. ANC 5C provided written support of the application in this case. ANC 5C then amended its support to make it subject to certain conditions that pertain to a development proposal for the site.

The Commission does not adopt the conditions listed in the ANC's second letter. The proposed conditions listed by the ANC in its second letter relate to a specific construction proposal that is not the subject of this application. The conditions are therefore not relevant to the decision before the Commission, which is limited to whether the requested C-2-A Zone District is consistent with the purposes of the Zoning Act, and not inconsistent with the Comprehensive Plan. In addition, ANC 5C's second letter was submitted late. The Commission's rules require that ANCs provide their report no less than seven days prior to the hearing date (11 DCMR § 3102.5). In this case, the second report was submitted 13 days after the hearing. Section 13(d)(4) of the ANC Act permits oral testimony to be followed by a written report, if the written report is submitted no more than seven days after the oral testimony is presented. (D.C. Official Code § 1-309 10(d)(4)). In this case, there was no oral testimony by ANC 5C, and the letter was filed well after the seven day window.

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 the OP's recommendation for rezoning the Property to the C-2-A Zone District 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 the portion of Lot 808 in Square 4310 that is currently zoned R-1-B to C-2-A.

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, gender identity or expression, familial status, family responsibilities, matriculation, political affirmation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which 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.

On February 5, 2015, upon the motion of Vice Chairperson Cohen, as seconded by Chairman Hood, the Commission **APPROVED** the application at the conclusion of its public hearing by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Michael G. Turnbull to approve, Peter G. May not present, not voting).

On March 9, 2015, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Miller, the Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Michael G. Turnbull to approve, Peter G. May, not having participated, not voting).

In accordance with the provisions of 11 D.C.R. § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on April 3, 2015.