

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-24
Z.C. Case No. 14-24

**(1900 11th Street NW, LLC — Map Amendment @ Square 2848, Lots 39, 40, 72 and 838
and Variance Relief from the Required Size of Parking Spaces @ Lots 39 and 40)**

_____, 2015

Pursuant to public notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on December 7, 2015, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 787; D.C. Official Code § 6-641.01), and § 102 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”), to consider an application from 1900 11th Street NW, LLC (the “Applicant”). The Applicant requested approval of an amendment to the Zoning Map to rezone property located on Lots 39, 40, 72, and 838 in Square 2848 from the R-4 Zone District to the R-5-B Zone District and variance relief from the required size of parking spaces (on Lots 39 and 40) in order to construct a five story apartment building with eight apartments on Lots 39 and 40 (“Property”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

FINDINGS OF FACT

1. On December 23, 2014, the Office of Zoning received an application from the Applicant requesting that the Commission rezone the Property from R-4 to R-5-B. (Exs. 1-4)
2. The Office of Planning (“OP”) provided its setdown report on January 30, 2015 recommending the Zoning Commission set the case down for a public hearing. (Ex. 12)
3. The Commission set the case down for a public hearing at its February 9, 2015 public meeting as a contested case.
4. On July 13, 2015 the Applicant requested to amend the application to include variance relief from the required size of parking spaces required under 11 DCMR § 2115.1. (Ex. 13)
5. The Zoning Commission considered the request at its July 27, 2015 public meeting and voted to grant permission to amend the application to include the variance relief.
6. The Property consists of 19,768 square feet of land area currently configured as four (4) separate lots and is located at 1368 Kenyon Street, N.W. (Lot 39: currently vacant property), 1370 Kenyon Street, N.W. (Lot 40: currently vacant property), 1372 Kenyon Street, N.W. (Lot 838) and 1361 Irving Street, N.W. (Lot 72).
7. The Property is situated between Kenyon and Irving Street, N.W. east of 14th Street and the Columbia Heights Metro Station. The Property is also located immediately adjacent to the 14th Street Corridor/Columbia Heights Focus Area within the Mid-City Area Element of the Comprehensive Plan. The Property is not located within a historic district. The area

immediately west of the Property is zoned C-3-A, which permits a 4.0 FAR with a 65 foot height, and is improved with mixed use retail and multi-story residential buildings and the three level DC USA shopping mall (Target, Best Buy, Bed, Bath & Beyond, Staples) above the Columbia Heights Metro Station.

8. Lot 72 (7,413 square feet) is improved with a four-story, 16 unit apartment building with 2.7 FAR, 70% lot occupancy, 50 ft./4 stories in height and no parking (Irving Station Condominium) built in 1918 at 1361 Irving Street, N.W. Lot 838 (7,413 square feet) is improved with a four-story 18 unit apartment building with 2.9 FAR, 74% lot occupancy, 50 ft./4 stories in height and no parking (The Kenyon Street Yes We Can Cooperative) built in 1910 at 1372 Kenyon Street, N.W. The Vacant Lots are approximately 800 feet from the Columbia Heights Metro Station and will be subdivided into a single Record Lot of approximately 4,942 square feet for development purposes.
9. The Property is currently zoned R-4. The R-4 District does not permit new multi-family residential development as a matter of right. The maximum permitted height for new construction of a row dwelling in the R-4 District is 35 feet/3 stories with a minimum lot area of 1,800 square feet and minimum lot width of 18 feet for a row dwelling or flat. 11 DCMR §400.1, 401.3.
10. For a row dwelling or flat, lot occupancy is limited to 60%. 11 DCMR §403.2. A rear yard with a minimum depth of 20 feet is required for each structure in the R-4 District. 11 DCMR §404.1.
11. The Future Land Use Map of the Comprehensive Plan designates the Property for Moderate Density Residential use. Moderate Density Residential areas are intended to include row house neighborhoods which also include a mix of housing types (2-4 unit buildings, row houses and low rise apartment buildings). The Property is designated within a Neighborhood Conservation Area on the Generalized Policy Map.
12. The Applicant is requesting a map amendment to rezone the Property to the R-5-B District. The R-5-B District, in contrast to the R-4 District, is designed to serve multi-family residential functions with moderate-density residential, which is consistent with the Property's designation on the Future Land Use Map of the Comprehensive Plan, 11 DCMR §350.1.
13. The maximum permitted matter-of-right height in the R-5-B District is 50 feet with no limit on the number of stories. 11 DCMR §400.1. The maximum FAR in the R-5-B District is 1.8, for all other structures, except 2.0 for public libraries. 11 DCMR §402.4. In the R-5-B District, the maximum percentage of lot occupancy is 60%. 11 DCMR §403.2. There are no minimum lot area or lot width requirements, except for a public library. 11 DCMR 401.3. A rear yard of 4 inches per foot of vertical distance from the main finished grade at the middle of the rear of the structure to the highest point of main roof or parapet wall, but not less than 15 feet is required. 11 DCMR §404.1. Side yards generally are not required in the R-5-B District. 11 DCMR §405.9. However, if a side yard is provided, it must be at least 3 inches wide per foot of building height, but not less than 8 feet. 11 DCMR §405.6.

14. The Applicant intends to combine Lots 39 and 40 into a single record lot of approximately 4,942 to construct a five story eight unit apartment building less than fifty feet in height. The Applicant has carved out an “open court” area on the west side of the building to provide additional light, air and privacy to the adjacent Kenyon Coop building.
15. The R-5-B zoning would bring the existing buildings on Lots 72 and 838 into greater zoning conformity while accommodating a small multifamily building on the now vacant lots.
16. A new apartment house in the R-5-B District is required to have 1 parking space for each 2 dwelling units and since the Apartment Building will consist of 8 units, 4 spaces are required. While the Applicant will be providing the required number of spaces, the spaces cannot meet the required dimensions. Zoning requires each parking space to be a minimum of 9 ft. in width and 19 ft. in length whereas the Applicant proposes the width of each space to be 8 ft. 2 in. while the length of 19 ft. will be in compliance. While the proposed dimensions (8 ft. 2 in. by 19 ft.) exceed the minimum dimension for compact spaces (8 ft. by 16 ft.) (11 DCMR § 2115.3), compact spaces cannot be counted toward required spaces. Therefore, the Applicant requests a 10 inch area variance from the width of each of the four parking spaces.
17. The narrow width of combined Lots 39 and 40 presents an exceptional situation as it cannot be enlarged to a minimum of 36 feet to accommodate the required width of nine feet for each of the four required parking spaces.
18. The small reduction of the parking space width would not adversely affect neighboring property.
19. The reduction in the width of the parking spaces would not cause any substantial harm to the Zoning Regulations as the required number of spaces would be provided on-site.
20. Notice of the public hearing was provided in accordance with the provisions of 11 DCMR §§ 3014 and 3015.
21. The Advisory Neighborhood Commission (“ANC”) 1A, the ANC in which the Property is located, submitted a report indicating that the ANC has no official position. (Ex. 34).
22. The Applicant provided its prehearing statement on October 1, 2015 (Ex. 16-17) and a supplemental prehearing statement on November 17, 2015. (Ex. 30).
23. On December 7, 2015 the Zoning Commission held a public hearing on the application. The Applicant provided testimony by both Dr. Sahr Bockai and Mr. Dan Snook, of McAllister Architects, P.C.
24. Mr. Snook presented a powerpoint to explain the proposed plan for development and the request for variance relief from the width of the parking spaces. (Ex. 36) He also testified and provided sunlight studies demonstrating the improved light, air and privacy for the existing adjacent Kenyon Coop building created by the proposed “open court” compared

to conditions that would result from a matter-of-right R-4 row dwelling structure with no side yard or open court.

25. OP reviewed the Applicant’s proposal and, in its report dated November 25, 2015 and through testimony at the December 7, 2015 public hearing, recommended approval of the proposed map amendment from the R-4 zone to the R-5-B zone and variance relief from the requirements of § 2115.1, the required dimensions of four parking spaces. OP found that the proposed map amendment from the R-4 to the R-5-B zone is not inconsistent with the Comprehensive Plan designation for moderate density residential and as being within a Neighborhood Conservation Area. The proposed development meets all the requirements of the R-5-B zone except for a small reduction in the parking space dimension which should have no impact of the surrounding neighborhood. The design of the building would not be incompatible with the surrounding neighborhood and would not substantially negatively impact the light, air and privacy of the adjacent properties. (Ex. 33)
26. The D.C. Department of Transportation (“DDOT”) filed a report stating they have no objection to the approval of the requested map amendment and variance. (Ex. 32)
27. The Board heard testimony from Reverend Dr. George Holmes, a person in support, who testified that the Applicant recognized the need for residential housing on the Property.
28. Kenyon Street Yes We Can Cooperative (the “Co-op”) filed a party status request on November 20, 2015 (Ex. 31) and submitted a statement in opposition. (Ex. 36) The Zoning Commission granted the party status request.
29. The Zoning Commission accepted the Co-op’s architectural consultant, Mr. Nicholas Mroczkowski, of Stoiber and Associates Architects, an expert in the field of architecture.
30. The Co-op provided testimony by Ms. Luzmila Tivey, President of the Board of Directors of the Co-op, who expressed concern with the proposed building height and its direct impact on the quality of life of the Co-op residents. Ms. Tivey also testified about her concern that there will not be enough parking. Mr. Darryl Foster, son of Ms. Tivey, testified about his concern with privacy, noise pollution, the loss of both natural light and fresh air flow to the Co-op. Ms. Janet Stephanie Bersch testified regarding concern over light, privacy, noise, and increased demand for street parking.
31. The Co-op testified that the requested zone change to R-5-B allows for a density and design that is different from the rest of the neighborhood.
32. Following the public hearing the Zoning Commission requested additional clarification from the Office of Planning and the Applicant, in consultation with the DC Zoning Administrator, on whether the plans show a court or a side yard. The Office of Planning submitted a supplemental report into the record confirming it is an “open court” with complies with the applicable width requirements in the R-5-B zone. (Ex. 46) The Applicant also submitted information on the open court. (Ex. 47).

33. The Commission finds that the proposed map amendment is not inconsistent with the Comprehensive Plan.
34. The Commission took proposed action to approve the map amendment and variance at its regularly scheduled meeting held on January 25, 2016.
35. Pursuant to § 492(b)(2) of the District of Columbia Home Rule Act, approved Dec. 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 on _____. By letter dated _____, NCPC _____.
36. The Commission took final action to approve the map amendment at its regularly scheduled meeting held on _____.

CONCLUSIONS OF LAW

Map Amendment:

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 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.)

The Commission concludes that approval of an amendment to the R-5-B Zone District is consistent with the purposes of the Zoning Act. The rezoning creates a transition from the C-3-A Zone District in the medium-density mixed-use corridor along 14th Street, N.W., to the west, to the R-4 Zone District in the moderate-density residential neighborhood to the east. The R-5-B Zone District is designed to be located in moderate-density residential areas. (11 DCMR § 350.2.) Further, the Commission finds that the proposed R-5-B zoning is more appropriate for the buildings on the Property, and that rezoning the Property to R-5-B will bring the existing buildings into greater conformance with their zone district.

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; DC. 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 interests of the District of Columbia and will benefit the community in which the Property is located.

Variance:

Section 8 of the Zoning Act of 1938 authorizes the grant of variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition” of the property, the strict application of the Zoning Regulations would “result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property . . .” D.C. Official Code § 6-641.07(g)(3). Relief can be granted only without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.” *Id.*

A showing of “practical difficulties” must be made for an area variance, while the more difficult showing of “undue hardship,” must be made for a use variance. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case is requesting an area variance; therefore, it had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in a practical difficulty in complying with the Zoning Regulations. Lastly, the Applicant had to show that the granting of the variance would not substantially impair the public good or the intent or integrity of the Zone Plan and Regulations.

The Commission concluded that the Applicant fully complies with the applicable variance test by having shown that the narrow width of the Property is an exceptional condition that prevents the Applicant from providing the required minimum width for the four parking spaces, the proposed parking spaces in the rear of the Property cannot be reconfigured due to the narrowness and depth of the lots and the reduction of the mandatory width is minor and will not adversely affect neighboring property or the Zoning Regulations.

Great Weight:

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (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 1A took no official position in this case.

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 to rezone the Property to the R-5-B Zone District and grant the variance for the width of the parking spaces 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 Lots 39, 40, 72 and 838 in Square 2848 from R-4 to R-5-B and Variance Relief from the Required Size of Parking Spaces in Lots 39 and 40 subject to the following condition:

1. The Applicant shall develop Lots 39 and 40 generally in accordance with the site plan, roof plan, massing and building envelope and “open court” shown in the Applicant’s Power Point Presentation at the hearing (Exhibit 38).
2. Except as required by Condition 1, the Applicant shall have flexibility to modify the plans, including but not limited to materials, design elements and interior configuration and layout of the dwelling units.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. 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 affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

VOTE: _____

In accordance with the provisions of §3028.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the D.C. Register; that is, on

_____.