

STOOP LAW

A COMMUNITY JUSTICE PROJECT

1604 V St SE
Washington DC, 20002
Ph: (202) 651-1148

March 18, 2019

Dear Commissioners,

Concerned Residents of Washington DC (CROW DC) is made up of a group of homeowners that live on the 200 block of K St. NE. One of the members, Amanda Shipes, lives within 200 feet of the subject property at 219 K St NE. An alley abuts the rear of her home where the upzone is occurring and she believes the narrow alley is inadequate to accommodate more intense zoning than the two-story row homes that currently exist on the site. In any event, CROW DC is submitting these comments to inform the Commission of several issues with this Rulemaking process.

First, this site contains three fairly small lots. They are owned by one owner who will build a single apartment building numbering no more than 40 units.¹ Obviously, this is not a broad policy decision indicative of a non-contested case rulemaking. This proceeding involves the rights of a single land owner seeking to increase their buildable envelope on a small plot of land. This application involves the rights of parties more than broad based policy choices.

Consider other rulemaking proceedings and non-contested case map amendments that have been ruled upon and allowed by the DC Court of Appeals: *Dupont Circle Citizens Association v. District of Columbia Zoning Commission*, 343 A.2d 296, (allowing halfway houses in R-4 zoning districts citywide); *Charles M. Schneider v. District of Columbia Zoning Commission*, 383 A.2d 324, 329 (re-zoning 50 lots across 6 squares); *District of Columbia Citizens Association v. District of Columbia Council*, 327 A.2d 310, 316 (Altering streets and public ways for public use thus not to specific parties and non-contested); *Citizens Association of Georgetown v. District of Columbia Zoning Commission*, 291 A.2d 699, 702 (Re-zoned entire Georgetown waterfront area as non-contested case because the re-zone would implicate policy in all of DC).

Compared to the case here, the site is simply much too small to be considered broad policy. This application, almost exclusively, impacts the land owner and immediate neighbors. The principal manifestation of a "contested case" is its character as a quasi-judicial process based upon particular facts and information, and immediately affecting the interests of specific parties in the proceeding. See *Capitol Hill Restoration Soc'y v. Zoning Commission*, D.C. App., 287 A.2d 101 (1972). Consequently, when a proceeding before an

¹ Mostly market rate.

agency assumes primarily a quasi-judicial nature, the proceeding is governed by the "contested case" provision of the APA. *Capitol Hill Restoration Soc'y v. Zoning Commission, supra.*

In the zoning regulations, a PUD's purpose is set forth:

"The purpose of the planned unit development (PUD) process is to provide for higher quality development through flexibility in building controls, including building height and density"
11-X DCMR 300.

In the application before the commission, the Applicant—and only land owner on the application—is seeking flexibility in "building controls" to be able to construct greater heights and density for a single building. It will implicate immediate neighbors. At best, this should have been handled as a PUD application.² At worst, approval of this application would be spot zoning.

Indeed, the application is in a neighborhood conservation area where the "low lying character" of the neighborhood is supposed to be preserved. 10-A DCMR §§ 223.4 - .5. Instead, this map amendment application seeks to increase heights to 50 to 70 ft³ on what is currently a contiguous row of two-story homes. So, while the commission is a quasi-legislative body capable of amending maps, those amendments must be consistent with the comprehensive plan. D.C. Code § 6-641.01 (2001). Due to this upzone occurring in a neighborhood conservation area this application is also inconsistent with the comprehensive plan.

CROW DC submits these comments to avoid this matter being approved as a non-contested case rule-making. CROW DC respectfully asks the zoning commission to not go forward with making the proposed rulemaking final and to instead reject the Applicant's application as more appropriate for a PUD or contested-case map amendment should the Applicant still seek zoning relief.

Respectfully Submitted,

s/ Aristotle Theresa
Aristotle Theresa
Stoop Law
1604 V St SE
Washington DC, 20020
Attorney for CROW DC

Enclosure – Agent Authorization /Group membership

² Or a contested case zoning re-map.

³ MU 4 – 50 foot limits; MU 5A – 70 foot limits.

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Ph: (202) 651-1148

March 6, 2019

Re: Engagement Letter

Dear Amanda Shipe, Jesse Astbury, Emily Kaiser, Jeremy Goldberg

On behalf of Stoop Law (“the “Firm”), I would like to thank you for giving me the opportunity to work with you on filing a [REDACTED] for the Zoning Commission case No 18-07.

By signing and returning to the Firm a copy of this letter, you are agreeing to following scope of work:

1. “Stoop Law” will represent Amanda Shipe, Jesse Astbury, and Emily Kaiser, Jeremy Goldberg (You) [REDACTED], representation includes filing of a [REDACTED].
2. [REDACTED], there is a possibility the [REDACTED] will request [REDACTED] on the matter. [REDACTED]
3. While the Firm will file [REDACTED] on your behalf, you understand that the Firm makes no guarantee [REDACTED].
4. You agree to waive confidentiality on the aspects of Stoop Laws representation that are public record.
5. Ms. Shipe will be the representative to communicate with Stoop Law the group’s interests. Ms. Shipe will relay group decisions to Stoop Law and Stoop Law will act on the group’s behalf based on the information relayed to Stoop Law from the group’s representative. Ms. Shipe will notify Stoop Law of the group name. Before major decisions Stoop Law will seek guidance from Ms. Shipe as the group’s representative.

I HAVE READ AND UNDERSTAND THE ABOVE AGREEMENT AND AGREE TO ITS TERMS:

03/07/19

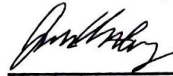
Date


Jeremy Goldberg (Mar 7, 2019)

Jeremy Goldberg

03/07/19

Date



Jesse Astbury

03/07/19

Date


Emily Kaiser (Mar 7, 2019)

Emily Kaiser

03/07/19

Date


Amanda Shipe (Mar 7, 2019)

Amanda Shipe