

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 19-02**

Z.C. Case No. 19-02

Milestone East Capitol 2, LLC

Milestone East Capitol 3, LLC

Milestone East Capitol 4, LLC

Milestone East Capitol 5, LLC

**(Map Amendment @ Square 5411, Lot 802, Square 5412, Lot 801,
Square 5413, Lot 802, Square 5413N, Lot 801)**

August _____, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on July 22, 2019 to consider an application by Milestone East Capitol 2, LLC, Milestone East Capitol 3, LLC, Milestone East Capitol 4, LLC, and Milestone East Capitol 5, LLC (“Applicant”) for approval of a Zoning Map Amendment pursuant to Subtitle X § 500.1 of the District of Columbia Zoning Regulations (“Zoning Regulations”), Title 11 of the District of Columbia Municipal Regulations. The application is to amend the Zoning Map from the RA-1 zone to the RA-2 zone for Lot 802, in Square 5411 (3610 Minnesota Avenue, S.E.) Lot 801, in Square 5412 (3501-3547 East Capitol Street, S.E.), Lot 802, in Square 5413 (127 35th Street, S.E.), and Lot 801, in Square 5413N (3425 East Capitol Street, S.E.)

The Commission considered the application for the Map Amendment pursuant to Subtitles X and Z of the Zoning Regulations of 2016 (Title 11 DCMR). The public hearing was conducted in accordance with the provisions of 11-Z DCMR § 400, *et seq.* For the reasons set forth below, the Commission hereby approves the application.¹

On January 7, 2019, the Applicant filed an application for approval of the Map Amendment. (Exhibits [“Ex.”] 1-6.) The property that is the subject of the Map Amendment consists of Square 5411, Lot 802, Square 5412, Lot 801, Square 5413, Lot 802, and Square 5413N, Lot 801 (“Property”). (Ex. 8.) The Property is currently in the RA-1 zone. The Property is in the Moderate Density Residential land use category on the Future Land Use Map of the Comprehensive Plan.

Prior to filing the application, on November 20, 2018, the Applicant mailed a notice of intent to file the Map Amendment application to all property owners within 200 feet of the Property as well as Advisory Neighborhood Commission (“ANC”) 7F. Also prior to filing the application, the Applicant contacted ANC 7F. Accordingly, the Applicant satisfied the notice requirements of 11-Z DCMR §§ 304.5, 304.6. (Ex. 4.)

¹ As discussed below, no party opposed the grant of this application. Because the Commission’s decision to grant this application would not be adverse to any party, this Order is not required to be accompanied by findings of fact and conclusions of law. (See D.C. Official Code § 2-509 (e) (2012 Repl.); 11-Z DCMR § 604.7.)

The application satisfied the filing requirements of 11-Z DCMR § 300 et seq. (Ex. 8.) The application also included an explanation of the individual policy objectives of the Comprehensive Plan with which the application is consistent. There is no evidence in the record that the application is in any way inconsistent with the Comprehensive Plan. Since this case was filed as an application, and not a petition, it was heard under the contested case procedures of Subtitle X, Chapter 4. However, the Commission did not consider the Applicant's plans for its property, since the Commission cannot limit the Applicant's use of the property to a particular matter-of-right use or size.

On February 25, 2019, the Commission set the case down for a public hearing based on the recommendation of the Office of Planning ("OP"). (Ex. 14.) On May 7, 2019, the Applicant filed a pre-hearing statement that detailed the Applicant's planned presentation for the hearing, and the Applicant proffered Scott Matties, AIA, as an expert in land use planning and Nicole White, P.E., PTOE, as an expert in transportation planning. (Ex. 17.) Notice of the public hearing was provided in accordance with the requirements of 11-Z DCMR § 400 et seq. (Ex. 20, 20-A.)

The Property is located entirely within ANC 7F, which therefore was an automatic party to this case. At a duly noticed public meeting with a quorum present, the ANC voted in support of the application and submitted a report in support, which stated no issues or concerns. (Ex. 17B.) The Honorable Vincent Gray, Ward 7 Councilmember also submitted a letter of support. (Ex. 15.)

No requests for party status were made.

On July 22, 2019, the Commission held a public hearing in accordance with 11-Z DCMR § 408 and accepted Ms. White as an expert in transportation planning. (Transcript of Public Hearing, Z.C. Case No. 19-02, July 22, 2019 at page ____.) Numerous persons appeared in support and two persons appeared in opposition to the application. The District Department of Transportation submitted a report stating no objection to approval of the application. (Ex. 26.) OP submitted a report recommending approval of the application and testified in support of the application at the public hearing. (Ex. 27.)

Pursuant to 11-Z DCMR § 408.11, at the close of the public hearing, the Commission took proposed action to refer the application to the National Capital Planning Commission ("NCPC") for review and comment pursuant to the Home Rule Act. The referral was made by the Office of Zoning on August _____, 2019. (Ex. ____.)

By letter dated _____, 2019, the NCPC Executive Director advised the Commission that pursuant to a delegated action dated _____, 2019, he found that the proposed Map Amendment would not be inconsistent with the Comprehensive Plan for the National Capital nor would it adversely affect any other identified federal interests. (Ex. ____.)

Pursuant to 11-Z DCMR § 408.8, the Commission has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for approval of a Zoning Map amendment pursuant to 11-X DCMR § 500.

As required by law, the Commission must give "great weight" to the recommendations of OP and to the issues and concerns raised in the written recommendations of ANC 7F, the affected ANC. The great weight requirement is satisfied by the Commission acknowledging the written reports of OP and ANC 7F and stating whether or not they offer persuasive advice under the circumstances. OP's report recommends approval of the application and the Commission finds this evidence to be persuasive. ANC 7F's report also recommends approval of the application but states no issues and concerns for the Commission to give great weight to.

Based upon the record before the Commission, it concludes that the proposed map amendment from the RA-1 zone to the RA-2 zone is not inconsistent with the Comprehensive Plan, where the Property is located within the Moderate Density Residential Category, on the Future Land Use Map of the Comprehensive Plan, which for this property which in this case encourages a variety of moderate density residential uses. Further, the rezoning would further multiple policies of the Comprehensive Plan. Pursuant to 11-X DCMR § 500.3 and the Home Rule Act, the Commission concludes that the map amendment is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Property, as detailed in the case record and in the OP Report.

DECISION

On July 22, 2019, upon the motion of Commissioner Shapiro, as seconded by Vice Chairman Miller, the Zoning Commission took **PROPOSED ACTION** at the close of the public hearing by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Michael G. Turnbull to approve, Peter G. May, not present, not voting).

On September 9, 2019, upon the motion of _____, as seconded by Commissioner _____, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Michael G. Turnbull to approve, Peter G. May, not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on _____, 2019.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.