



March 4, 2022

To: Zoning Commission of the District of Columbia
441 4th Street, NW - Suite 210
Washington, DC 20001

Re: Request to Reopen the Record - Failure to Follow Proper Rulemaking Procedure in Z.C. Case No. 19-14A

Dear Members of the Zoning Commission (the “**Commission**”):

Per the Office of Zoning’s February 24, 2022, request, the Office of the Attorney General (“**OAG**”) hereby requests the Commission to reopen the case record in Z.C. Case No. 19-14 to include OAG’s February 4, 2022, filing that identified the Commission’s failure to follow the proper rulemaking procedure in considering and taking final action in Z.C. Case No. 19-14A.

OAG reiterates that a key procedural defect identified by its February 4, 2022, filing is that the Commission failed to properly open the record when it accepted OP’s petition without identifying and acknowledging that OP’s “technical correction” proposed substantive changes that require public notice and comment pursuant to the District of Columbia’s Administrative Procedure Act (D.C. Official Code § 2-501, *et seq.*, the “**DCAPA**”). OAG asserts that the Commission’s action was *ultra vires* since the Commission lacks the authority to waive the DCAPA, which can only be amended by the Council of the District of Columbia.

Given the severity of this violation, OAG requests that:

- The Commission as a whole, and not just the Chair, consider OAG’s request; and
- Even if the Commission decides to not reopen the record in Z.C. Case No. 19-14, that the Commission address OAG’s letter at its next public meeting as a letter of correspondence from a District agency.

To ensure procedural equity, rulemaking procedures must comply fully with the requirements of the law. OAG therefore respectfully requests that the entire Commission review this issue, including the standards for legal sufficiency review and reiterates its request that the Zoning Commission rescind this “technical correction” and follow the proper rulemaking procedures to adopt the proposed changes.

Respectively submitted,

KARL A. RACINE
Attorney General for the District of Columbia

/s/ Maximilian L.S. Tondro
Chief, Land Use Section

**OAG Petition – March 4, 2022 – Failure to Follow Proper Rulemaking Procedure
Z.C. Case No. 19-14A**

D.C. Bar No. 1031033

/s/ Alexandra L. Cain
Assistant Attorney General
D.C. Bar No. 1674308

Attachments
February 4, 2022, Letter from OAG
cc: Certificate of Service

CERTIFICATE OF SERVICE

I certify that on March 4, 2022, a copy of the foregoing application was served on the following:

District of Columbia Office of Planning
Jennifer Steingasser, Deputy Director for Development Review and Historic Preservation
David Lieb, Senior Counsel
1100 4th Street, SW, Suite 650E
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Via Email

Office of Documents and Administrative Issuances
Victor L. Reid, Director
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Washington, DC 20001
Victor.Reid@dc.gov

Via Email

All ANCS (per the original rulemaking)

Via Email

ANC 1A - 1A@anc.dc.gov ANC 1B - 1B@anc.dc.gov ANC 1C - 1C@anc.dc.gov
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