

Laurence J. Freedman  
4104 Legation Street, N.W.  
Washington, D.C. 20015

Re: Opposition to Setdown for Lisner Home Map Amendment Application, 21-11

Dear Chair Hood, Vice Chair Miller, and members of the Zoning Commission,

I live at 4104 Legation Street, N.W., with my wife Lucy, and 17-year old son. Lucy and I moved here in May 2000 from around the corner on 42<sup>nd</sup> Street, and I have lived in D.C. continuously since 1989. I write this in my personal capacity.

I know it is unusual to consider resident input at the setdown stage, and I know that the Zoning Commission (“ZC”) generally schedules hearings on map amendment applications if the technical requirements are met. However, the ZC has the discretion to dismiss an application, but permit refiling of a modified application, as it deems appropriate. *See* D.C. Municipal Regulations, Title 11, Sub-title 11-Z, Section 400.14.

**The Applicant submitted in its statement to the ZC materially incorrect and misleading representations of the area that bounds the Site Property (Square 1663, Lot 9) on which it seeks very substantial upzoning.** Applicant’s statement in support of its application describes the Site Property as surrounded by higher density commercial and residential uses when, in fact, it is bounded almost entirely by low-density residential neighborhoods. This overarching and incorrect land use context is echoed in the Office of Planning’s setdown report. For the reasons below, **the ZC should request that Applicant refile its application to correct material misstatements and omissions in the Applicant’s submission.**

Alternatively, because the Applicant seeks now to develop only on the northeast corner of the Site Property, the ZC might suggest a PUD process, or a more limited map amendment, than the one sought for the entire 5.4 acres of the Site Property.

**I. Applicant’s “Updated Statement” in Support of its Application for a Map Amendment Is Clearly Deficient and Misleading**

On July 23, 2021, Applicant submitted its *Statement of Behalf of Louise-Lisner-Dickson-Hurt Home in Support of Map Amendment (“Statement”)*, Exhibit 3. It contains numerous and material factual errors. Apparently, Applicant recognized this, and on September 23, 2021, it submitted what the dockets calls an *Updated Statement*. *See Statement on Behalf of Louise-Lisner-Dickson-Hurt Home in Support of Map Amendment (“Updated Statement”)*, Exhibit 13. Unfortunately, the *Updated Statement* also contains material misrepresentations and omissions.

First, the *Updated Statement* represents that “[t]he proposed map amendment is supported by the FLUM designations and zoning of other areas surrounding the Subject Property, particularly those to the southeast which are designated mixed use including medium density residential and moderate density commercial (emphasis added).” This is not correct, and is

material to understanding the property. To the southeast, the zone is entirely R-2, single-family detached and semi-detached homes.

Second, the *Updated Application* says that “[w]ithin Square 1663, the Property is bordered by the 8 story Chase Point condo on the east and several single family houses which flank the south west corner of Square 1663.” Both statements in that sentence are incorrect. The Chase Point condo, built in part on land Applicant (Lisner) sold to the developer, is to the west of the Site Property, and the single family homes in Square 1663 are in the southeast corner of it. *All higher density zones are to the southwest, and west, of the property, toward Wisconsin Avenue, a major artery, and none of them (except the PUD) border the property.*

Third, the *Updated Application* portrays the misleading impression of the area surrounding the Site Property. It repeats the misstatement that “[i]mmediately to the southeast of the Property at 5401 Western Ave. is an 8-story condo building developed under the PUD process” and, in the next sentence, states that “[a]long Wisconsin Avenue is substantial mixed-use development including the Mazza Gallerie retail mall . . . the Chevy Chase Pavilion retail mall . . . and the Embassy Suites hotel.” This narrative gives the false impression that the site is sandwiched between an 8-story condo building to the east, and substantial mixed-use development to the west and southwest.

Fourth, Applicant says that “[t]o the north the Property is buffered by the Chevy Chase Recreation Center and playground. To the east, the primary development pattern is single family residential.” This is misleading in two respects. Except for a tiny corner of the park, the Chevy Chase Recreation Center is to the northeast to Square 1663. And to the east, the *sole* “development pattern” is single family residential, both detached and semi-detached.

Fifth, Applicant, toward its closing in its *Updated Statement*, states in error that “[t]he proposed map amendment will allow additional development on the Subject Property to be devoted to senior housing and senior care *at a medium-density* that is compatible with the Future Land Use Map of the Comprehensive Plan” (emphasis added). This carelessness is hard to understand, given that the most significant correction to the *Statement* in the *Updated Statement* is the deletion of a paragraph about medium-density residential.

## **II. Applicant Confuses the Site Property with the Building Currently on It**

As the Office of Planning accurately states in its setdown report, “[r]ezoning applications only consider consistency with the Comprehensive Plan and not a specific development proposal.” Nonetheless, it is not inappropriate to discuss the current land use of the property – type of building, use of building, size of buildings – as context for the current zoning and the proposed rezoning.

However, Applicant goes farther, and erroneously defines the Site Property as both the real property and the *facility* on it, and then erroneously represents that the Site Property itself is licensed as a community residential, assisted living, and skilled nursing facility.

In its *Updated Statement*, Applicant describes and defines the Site Property: “[t]he Property is located in the mixed-use Friendship Heights neighborhood of northwest Washington, abutting the border with the State of Maryland,” and that the Property “is located in Square 1663 which is bordered by Western Avenue on the east, Military Road on the south, Livingston St NW on the north and 42nd Street on the west.” Further, it states that “[t]he Property totals 5.431 acres of R-2 zoned land and is improved with building of 1-3 stories above-grade and one below, totaling approximately 79,545 gsf.” Notwithstanding that two of four statements in the second part of the description are wrong (actually Western Avenue is to the north, and 42<sup>nd</sup> Street is to the east), this is a typical type of description of the real property at issue for the requested rezoning.

However, Applicant proceeds to represent that “[t]he Property is licensed by D.C. as a community residential facility (CRF), an assisted living residence (ALR), and a nursing facility (NF),” and then further describes the Property along these lines. The Site Property – the real estate - is not licensed by D.C. for these purposes. This is erroneous, and confusing, and should be stricken in any modified filing the ZC may suggest to Applicant.

### **III. The Office of Planning’s Set Down Report Also Mis-Describes the Property**

Based on the referral by the ZC to the Office of Planning on July 29, 20121, it issued a report that materially mis-describes the property. *See Office of Planning, Set Down Report*, dated November 8, 2021 (Exhibit 14).

On the first page of its report, the Office of Planning states that:

The property (shown in blue) is an irregularly shaped corner lot that is generally bounded by Western Avenue, NW to the north, 42nd Street, NW to the east, Military Road, NW and three detached homes to the south, and an eight-story condominium building to the west. One block to the west is the Friendship Heights Metro Station and the Friendship Heights commercial corridor along Wisconsin Avenue, NW. One block to the east is the Chevy Chase Recreation Center.

This is incorrect and misleading. The Chevy Chase Recreation Center, commonly known as Livingston Park, is *not* to the east. *To the east and the south, the property is bounded entirely by low-density, R-2 zoned residential neighborhoods.* Nowhere else in its report does the Office of Planning correct this essential information.

Likewise, in the remainder of its report, the Office of Planning makes no mention whatsoever of the low-density neighborhoods that almost entirely surround the property. The site is a triangle lot, bounded by low-density neighborhoods along the entire borders to the east and south, Western Avenue to the north and, in a small corner to the west, the PUD.

\* \* \* \* \*

These deficiencies are significant and material to the ZC and public’s understanding of the application for a very significant rezoning of 5.4 acres. These deficiencies are an appropriate reason for the ZC to exercise its discretion to dismiss the application, tell the Applicant the

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reasons why it did so, and request that it refile a modified application. Alternatively, the ZC may suggest to the Applicant that it use the PUD process, which is uniquely well situated for the development it would like to build only on the northeast corner, or a more limited map amendment that pertains only to the land required for that proposed development.

Respectfully,

Laurence J. Freedman