

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 21-11
Z.C. Case No. 21-11
Abraham and Laura Lisner Home for Aged Women
(Map Amendment)
April __, 2022

The Zoning Commission for the District of Columbia (the “Commission”) held a properly noticed public hearing on March 17, 2022 to consider an application for a map amendment (the “Application”) submitted by the Abraham and Laura Lisner Home for Aged Women (the “Applicant”) pursuant to Subtitle X, Chapter 4 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”) (Zoning Regulations of 2016 [the “Zoning Regulations”] to which all references are made unless otherwise specified) to amend the Zone Map from the R2 zone to the RA-2 zone for a portion of Lot 9 in Square 1663 (the “Property”). For the reasons set forth below, the Commission hereby **APPROVES** the application.

FINDINGS OF FACT

Notice

1. On July 19, 2021, the Applicant mailed a Notice of Intent to file an application for a Zoning Map Amendment to all property owners within 200 feet of the Property, Advisory Neighborhood Commission (“ANC”) 3E, within which the Property is located, and the “affected ANC” per Subtitle Z, Section 101.8. (Exhibit (“Ex”) 3D.)
2. On July 23, 2021, the Applicant filed the Application as a contested case for approval of an amendment to the Zoning Map to the proposed RA-2 zone. (Ex 1.)
3. At its November 18, 2021, public meeting, the Commission voted to set down the Application as a contested case. (Ex. 11.)
4. On January 7, 2022, the Office of Zoning (“OZ”) sent notice of the public hearing to:
 - The affected ANC 3E;
 - The affected ANC Single Member District (“SMD”) 3E04;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Consumer and Regulatory Affairs (“DCRA”);

- The Office of Attorney General (“OAG”);
 - The DC Council; and
 - Property owners within 200 feet of the Property.
(Ex. 3E.)
5. OZ also published notice of the March 17, 2022 virtual public hearing in the *D.C. Register* on January 14, 2022 (67 DCR 42) as well as through the calendar on OZ’s website. (Ex. 19.)
 6. Pursuant to Subtitle Z, §402.3, the Applicant posted notice of the hearing on the Property on February 10, and maintained such notice in accordance with the Zoning Regulations. (Ex. 29, 32.)

Parties

7. The only parties other than the Applicant was ANC 3E.

The Property

8. The Property is located in the mixed-use Friendship Heights neighborhood of northwest Washington, abutting the border with the State of Maryland. The site is just east of the intersection of Wisconsin and Western Avenues, both major arterial roads.
9. The Property 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.
10. The Property totals 5.431 acres of R-2 zoned land and is improved with a building of 1-3 stories above-grade and one below, totaling approximately 79,545 gross square feet. The Property is licensed by D.C. as a community residential facility (CRF), an assisted living residence (ALR), and a nursing facility.

Current Zoning

11. The Property is currently located in the R-2 zone, which is intended for low density residential development. The R-2 is intended to provide for area predominately developed with semi-detached houses on moderately sized lots that also contain some detached dwellings (Subtitle D § 300.5).
12. As a matter of right, the R-2 zone permits:
 - a) Detached and Semi-detached Single Household Dwellings;
 - b) Lot Area: 4,000 sq. ft. min. (all other structures) None prescribed;
 - c) 3,200 sq. ft. min. (IZ detached);

- d) 3,000 sq. ft. min. (semi-detached);
- e) 2,500 sq. ft. min. (IZ semi-detached);
- f) Lot Width: 40 ft. min. (all other structures).

Comprehensive Plan

- 13. The Future Land Use Map (the “FLUM”) of the Comprehensive Plan (Title 10A of the DCMR, the “CP”) designates the Property for Moderate Density Residential and Institutional use
- 14. The CP’s Framework Element (§ 227.6) establishes that a Moderate Density Residential designation applies to areas characterized by row houses, low-rise garden apartment complexes, and low-rise apartment buildings. Section 227.6 of the CP expressly states that the Moderate Density Residential designation is in accordance with an FAR of up to 1.8, or greater density when complying with Inclusionary Zoning (e.g., 2.16 FAR in the RA-2 Zone District) and expressly includes the RA-2 Zone District.
- 15. The CP’s General Policy Map (“GPM”) designates the Property for Institutional use. (CP §225.6.)
- 16. The CP’s Framework Element describes “Institutional” as including land and facilities occupied and used by colleges and universities, hospitals, religious organizations and similar institutions.
(CP §227.18)
- 17. The CP also includes a number of policies regarding equity and equitable development and affordable housing. (213.6) (Ex.14).

The Application

- 18. The Application requests to rezone the Property from the R-2 zone to the RA-2 zone, which is consistent with the CP. The RA-2 zone is intended to permit moderate-density residential development. (Subtitle F § 300.3.)
- 19. As a matter of right, the RA-2 zone permits:
 - a) A maximum overall density of 2.16 FAR; (Subtitle F §§ 302.1-303.2.);
 - b) A maximum height of 50 feet; and (Subtitle F § 303.1.);
 - c) A maximum lot occupancy of 60%. (Subtitle F § 304.1.)
- 20. A Zoning Map Amendment of the Property to the RA-2 Zone would facilitate additional housing on the Property including affordable housing pursuant to the IZ Plus regulations.

Responses to the Application

Office of Planning Reports

21. OP submitted a preliminary report dated November 8, 2021, recommending that the Commission set down the case for a public hearing because the proposed RA-2 zone would permit matter-of-right moderate density residential development. (the “OP Setdown Report”).(Ex. 14.) The OP Setdown Report concluded that the proposed RA-2 zone would not be inconsistent with the CP and would be appropriate for IZ Plus which would require result in a higher affordable housing requirement. OP reiterated this recommendation in its testimony at the March 17, 2022 public meeting.
22. On March 7, 2022, OP submitted a report recommending approval of the Application restating that the proposed RA-2 zone would not be inconsistent with the CP (the “OP Hearing Report”).
(Ex. 28.)

District Department of Transportation Report

23. On March 4, 2022, DDOT submitted a report expressing no objection to the Application (the “DDOT Report”).
(Ex. 27.)
24. The DDOT Report noted that the additional vehicular trips generated from a maximum build-out in the RA-2 zone would have a minimal impact on the transportation network.
(Ex. 27.)

ANC Reports

25. On March 15, 2022, ANC 3E submitted a resolution in support of the application. The ANC’s letter stated that at a properly noticed meeting, and with a quorum present, ANC 3E voted in support of the Applicant’s request to rezone the Property from the RA-1 zone to the RA-2 zone based on the ANC’s support of the map amendment and a redevelopment plan for an affordable senior housing project on the rezoned property.
(Ex. 31.)
26. On March 15, 2022, ANC 3/4G submitted a resolution in support of the Application. The resolution notes that the Property is located in ANC 3E but it is only two blocks from the western boundary of ANC 3/4G and that ANC 3/4G has strongly supported development of affordable housing and that the ANC supports the Applicant’s proposal to build a deeply affordable senior housing project on the Property.
(Ex. 30.)

Other Agencies, Persons, or Groups

27. The Coalition for Smarter Growth submitted a letter of support for the Application.
(Ex. 33.)

28. Two individuals also submitted letters in support of the Application. (Ex. 34 and 35).

Public Hearing

29. At its March 17, 2022 public hearing, the Commission heard testimony from the Applicant regarding the Application and from OP and ANC 3E in support of the Application.

CONCLUSIONS OF LAW

1. The Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, ch. 534; D.C. Official Code § 6-641.01, et seq.) (“Zoning Act”) authorizes the Commission to create zones within which the Commission may regulate the construction and use 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.” (§ 1 of the Zoning Act; D.C. Official Code § 6-641.01.)
2. Section 2 of the Zoning Act (D.C. Official Code § 6-641.02) further 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 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 or 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.

Subtitle X § 500.3 - Not Inconsistent with the Comprehensive Plan

3. The Commission must ensure that the Zoning Map, and all amendments to it, are “not inconsistent” with the CP pursuant to § 492(b)(1) of the District of Columbia Home Rule Act. (§ 2 of the Zoning Act; D.C. Official Code § 6-641.02.) Subtitle X § 500.3 incorporates this intent to the Zoning Regulations by requiring that map amendments be “not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.”
4. Based upon the case record, including the Applicant’s exhibits, the reports and testimony of OP and DDOT, the ANC 3E and 3/4G reports, and the additional letters in support of the Application and for the reasons below, the Commission concludes that the Application’s proposed RA-2 zone for the Property furthers the goals of the CP and promotes orderly development in conformity with the Zone Plan as embodied in the Zoning Regulations and Zoning Map. The Commission further concludes that the Application will benefit the community in which the Property is located and is in the best interest of the District of Columbia. The Commission therefore concludes that the Application is not

inconsistent with the CP and its policies and maps and so complies with the Zoning Act and Subtitle X § 500.3.

Consistent with the FLUM

5. The Commission concludes that the proposed RA-2 zone would be consistent with the FLUM's designation of the Property for Moderate Density Residential/ Institutional use. The CP expressly notes that the RA-2 Zone is consistent with the Moderate Density Residential category and that the Moderate Density Residential designation is consistent with an FAR of up to 1.8 FAR, which could be higher based on compliance with Inclusionary Zoning. The RA-2 Zone permits an FAR of 1.8, with a permitted 20% FAR increase by compliance with the Inclusionary Zoning requirement, directly consistent with the relevant description of the Property's FLUM designation.

Framework Element

6. The Commission concludes that the proposed RA-2 zone furthers the Framework Element's guiding principles and achieves the equity, resiliency, and affordable housing themes of the Framework Element. By allowing an increased matter-of-right residential development and affordable housing, the Map Amendment furthers the Element's goals and themes.

Land Use Element

7. The Commission concludes that the proposed RA-2 zone achieves the goals and policies of the Land Use element because it will encourage moderate density residential development and affordable housing proximate to Metrorail. Any residential development that will result from the rezoning would be subject to IZ Plus which would require more IZ units.

Transportation Element

8. The Commission concludes that the proposed RA-2 zone achieves the goals and policies of the Transportation Element because it will facilitate the development of additional housing in close proximity to Metrorail and Metrobus routes.

Housing Element

9. The Commission concludes that the proposed RA-2 zone achieves the goals and policies of the Housing Element because it will help address the need for more housing and affordable housing in the District and Ward 3 in particular. The map amendment would require IZ Plus for any future residential development, which could help the District towards its goals of ensuring that one-third of the new housing built from 2018 to 2030 be affordable to persons earning 80 percent or less of the MFI. The application of an IZ Plus set-aside requirement would also support mixed-income housing by encouraging affordable housing in a high-cost area.

“Great Weight” to the Recommendations of OP

- 10. Pursuant to § 13(d) 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 (2001)) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP.
- 11. The Commission concludes that OP’s reports, which provided an-depth analysis of the proposed RA-2 zone and the Applicant’s consistency with the CP, are persuasive and concurs with OP’s recommendation that the Property be rezoned, as discussed above.

“Great Weight” to the ANC 3E Report

- 12. Pursuant to § 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) (2012 Repl.)) and Subtitle Y § 406.2, the Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public.
- 13. The Commission finds the recommendation in ANC 3E’s report persuasive and concurs in its recommendation of support for the Application. The Commission also notes the support of ANC 3/4 G.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application to amend the Zoning Map as follows:

SQUARE	LOT	MAP AMENDMENT
1663	9	RA-1 to RA-2

On March 17, 2022, upon the motion of Commissioner Miller, as seconded by Commissioner Hood, the Zoning Commission **APPROVED** the application at the close of the public hearing by a vote of 4-0-1 (Anthony J. Hood, Robert E. Miller , Peter G. May and Joseph S. Imamura to approve) with one seat vacant on the Commission.

On April 28, 2022 , upon the motion of _____, as seconded by _____, the Zoning Commission took **FINAL ACTION** and **APPROVED** the application at its public meeting by a vote of []-[]-[] (_____).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 19-18 shall become final and effective upon publication in the *DC Register*; that is, on _____, 2022.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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 WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.