COZEN O'CONNOR

March 14, 2018

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Anthony Hood, Chairperson
Zoning Commission
441 4th Street, NW, Suite 200S
Washington, DC 20010

Re: ZC Case No. 17-17 (the "Map Amendment")
Property Owner's Statement in Opposition to Map Amendment

Chairperson Hood and Honorable Members of the Commission:

On behalf of PAL DC Storage, LLC ("PAL"), the owner of 1401 22nd Street SE, Washington, DC (the "Property") that is the subject of the above-referenced Map Amendment, which was filed by the ANC without PAL's authorization or support, please find enclosed a statement in opposition to the downzoning of the Property proposed in the Map Amendment.

Thank you for your attention to this matter and we look forward to presenting to the Commission on March 19, 2018.

Sincerely,

COZEN O'CONNOR

BY: Meridith H. Moldenhauer

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2018, a copy of the foregoing Property Owner's Statement in Opposition to Map Amendment was served, via electronic mail, on the following:

District of Columbia Office of Planning
c/o Jennifer Steingasser, Deputy Director
1100 4th Street SW, Suite E650
Washington, DC 20024
Jennifer.steingasser@dc.gov

Advisory Neighborhood Commission 8A
c/o Holly Muhammad, Commissioner
8A01@anc.dc.gov

Advisory Neighborhood Commission 8A
c/o Laura Richards, Authorized Representative
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Meridith H. Moldenhauer

BEFORE THE DISTRICT OF COLUMBIA
ZONING COMMISSION

APPLICATION OF **ZC CASE NO. 17-17**
ANC 8A **HEARING DATE: MARCH 19, 2018**

PROPERTY OWNER'S STATEMENT IN OPPOSITION TO MAP AMENDMENT

I. INTRODUCTION

This statement is submitted by PAL DC Storage, LLC ("PAL"), the owner of the property located at 1401 22nd Street SE, Washington, DC (the "Property"), in opposition to the proposed downzoning of the Property that is the subject of this map amendment case (the "Map Amendment"). The Map Amendment was filed by Advisory Neighborhood Commission 8A (the "ANC") on September 28, 2017 seeking to downzone the Property from the PDR-1 zone district to the RA-2 zone district in order to limit the future ability to use the Property for self-storage. In addition to this written statement, PAL representatives and its expert witnesses will testify at the hearing on March 19, 2018 in opposition to the Map Amendment.

The ANC's Map Amendment request should be denied. As discussed in more depth below, the ANC fails to meet its burden to downzone the Property to the RA-2 zone because the Map Amendment is inconsistent with the Comprehensive Plan and other public policies. There is a strong policy basis in both the Comprehensive Plan and studies commissioned by the District of Columbia that support the preservation of industrial land, such as the Property. Further, given the acute impacts to PAL and the fact-specific nature of the Map Amendment, PAL also asserts that this case should be processed as a contested case, not as a rulemaking case. This will permit PAL an opportunity to make a full presentation to the Commission as to its Property.[1]

[1] If the Commission processes this case as a contested matter, PAL would automatically become a party as the owner of the subject Property. PAL would also consent to a waiver of any notice requirements.

So the Commission is aware, in August 2017, PAL purchased the Property, which is unimproved, for the purposes of constructing a self-storage facility. At the time of purchase, the Property was in the PDR-1 zone district in which a self-storage facility is a by-right use. Prior to PAL purchasing the Property, the Property's previous owner had applied for and obtained a number of building permits to construct a self-storage facility. As described below, the Zoning Administrator has confirmed that the self-storage building permit is vested under the PDR-1 zone district. As such, PAL may construct a by-right self-storage facility at the Property. Nonetheless, the pending Map Amendment will have acute impacts on PAL, as the ANC seeks to downzone the Property to a zone district that does not permit a self-storage facility. Based on the evidence presented in this statement and the evidence to be presented at the hearing, PAL respectfully asks the Commission to deny the Map Amendment request.

II. THE MAP AMENDMENT SHOULD BE PROCESSED AS A CONTESTED CASE, AND NOT A RULEMAKING CASE

The Zoning Commission should process this case as a "contested" case, not a "rule making" case. Indeed, under Subtitle Z § 201.9, "the Commission may, on its own motion or at the request of the applicant, petitioner, or affected ANC, determine the designation of such case as a contested case or a rulemaking case." Thus, the Zoning Regulations authorize the Commission to decide that a case is a "contested" case. As outlined below, processing this case as a contested case, and not a rulemaking case, is supported by the D.C. Administrative Procedures Act (codified in the D.C. Code), the Zoning Regulations, Court of Appeals precedent, and the nature of this matter.

A. The Definition of a "Contested Case" in the APA and Zoning Regulations Direct that the Subject Case be Processed as a Contested Case

The District's Administrative Procedure Act ("APA") defines a "contested case" as "a proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of

specific parties are required by any law . . . or by constitutional right." *See* D.C. Code § 2-502(8). Similarly, the Zoning Regulations state that "contested cases are **adjudicatory** in nature, present issues for resolution at a public hearing that potentially have a **limited scope of impact**, and involve **primary questions of fact** applicable to that limited scope of impact, while broader issues of public policy are secondary concerns." (emphasis added) *See* Subtitle A § 201.2. Here, the Map Amendment is extremely limited in scope, proposing to downzone a single piece of property. As will be described in greater detail below, there are key issues of fact that are unique to the Property that must be explored to decide this case. The public policy behind the downzoning of a single parcel is secondary to specific issues of fact surrounding the Property.

On the other hand, "rulemaking cases are **legislative** in nature and present issues for resolution at a public hearing that potentially **affect large numbers of persons or property or the public in general**." (emphasis added) *See* Subtitle A § 201.5. The Map Amendment does not fit this description, as the Property's zoning **only** impacts the Property and its owner, PAL, and will not "affect large number of persons" or the "public in general." It is important to note that the most recent Zoning Commission cases processed as "rulemaking cases" were solely[2] map amendment cases concerning the rezoning of multiple properties.[3] *See* ZC Case Nos. 07-10, 07-34, 11-23, 13-07, 14-20, 15-09, and 16-28.[4]

B. Strong D.C. Court of Appeals Precedent Directs the Subject Map Amendment to be Processed as a "Contested Case"

The D.C. Court of Appeals has clearly determined that a map amendment applicable only to a single piece of property should be processed as a contested case. Specifically, in *Palisades*

[2] Generally, map amendments for single properties are paired with planned unit developments. Such cases are processed as contested cases because of the fact-specific limited scope. This is analogous to the case at hand.
[3] In *Schneider v. D.C. Zoning Commission*, which will be discussed below, the Court of Appeals noted that all cases it had studied "involving more than a single parcel of land" had been processed as rulemaking cases. *See Schneider v. D.C. Zoning Commission* 383 A.2d 324, 328 (1978).
[4] ZC Case No. 10-20 concerned a single property but was dismissed prior to setdown.

Citizens Association, Inc. v. D.C. Zoning Commission, which concerned a map amendment to a single piece of property on MacArthur Boulevard, the Court of Appeals affirmed the Zoning Commission's decision to process the matter as a contested case. *See Palisades Citizens Association, Inc. v. D.C. Zoning Commission*, 368 A.2d 1143, 1147 (1977). The Court opined that the Zoning Commission had been "influenced by the fact that here there was only one parcel of land involved and one owner as an applicant." *See id.*

The *Palisades* case follows the substantial precedent from the D.C. Court of Appeals explaining the distinction between contested cases and rulemaking cases in administrative zoning proceedings. A short summary of that precedent is instructive here. First in *Capitol Hill Restoration Society v. D.C. Zoning Commission*, the Court explored the intent of the APA, noting that rulemaking cases are generally for "administrative functions," and that "no hearing is expressly or implicitly required by any other law." *See Capitol Hill Restoration Society v. Zoning Commission*, 298 A.2d 101, 103-104 (1972).

In *Citizens Association of Georgetown, Inc. v. D.C. Zoning Commission* ("CAG"), the Court considered a map amendment to a large number of properties on the Georgetown waterfront. *See Citizens Association of Georgetown, Inc. v. D.C. Zoning Commission*, 291 A.2d 699, 701 (1972). In that case, the Court elaborated on the holding in *Capitol Hill*, stating that an adjudicatory contested case requires "weighing particular information and arriving at a decision directed at the **rights of specific individuals**," whereas a legislative rulemaking case is for "making policy decision[s] directed toward the general public." (emphasis added) *See id.* at 704. The Court of Appeals also noted that

> [a]djudicative [contested case] facts are the **facts about the parties and their activities, businesses, and properties**, but [l]egislative [rulemaking] facts **do not usually concern the immediate parties** but are general facts which help the tribunal decide questions of law and policy and discretion. (emphasis added) *See id.* at footnote 14.

The *CAG* Court ultimately determined that the proposed map amendment for a large grouping of properties was appropriately a rulemaking case because that evaluation did "not rest upon the status of any **particular** property, nor would the **peculiar problems of any one individual** in the area be of paramount concern. [Therefore] it is difficult to conceive that factual findings would be required on the particular status of specific individuals." (emphasis added) *See id.* at 705. As such, a map amendment to an "area of a city lacks the specific of subject matter and result, indicative of an adjudicatory [contested case] proceeding." *See id.*

In *Schneider v. D.C. Zoning Commission*, the Court reviewed the Zoning Commission's decision to process a map amendment for multiple properties in Dupont Circle as a rulemaking case. *See Schneider v. D.C. Zoning Commission*, 383 A.2d 324, 325 (1978). The Court determined that there is no "bright-line analysis" for distinguishing a contested case and a rulemaking case but, instead, the Commission should use a functional test based on the specific set of facts in a case. *See id.* at 326. In reaching such a determination, the Commission must consider

> The **number** and **size** of the lots or parcels to be rezoned, the **number** of owners, whether there are **fact questions** of **specific applicability** or whether facts, information and views from a wide cross section of the public are sought by the Commission to aid it in making a policy decision directed toward the general public. (emphasis added) *See id.* at 328.

The Schneider Court reiterated that a contested case is one that requires "weighing particular information and arriving at a decision directed at the rights of specific parties." *See id.* at 326 (quoting *Chevy Chase Citizens Association v. D.C. Council*, 327 A.2d 310, 313 (1974)). Notably, if the Commission determines that a rulemaking case is most appropriate based on these factors, then at the hearing the Commission "must demonstrate that the Commission has, in fact, proceeded to consider those factors which led to the initial determination to conduct a rulemaking hearing, regardless of whether it has before it a preconceived plan." *See id.*

In accordance with this substantial case law, the Map Amendment should be processed as a contested case for these very same reasons. The Map Amendment concerns only one parcel – the Property – and only one owner – PAL. This necessarily requires a consideration of *facts* the Court has directly determined to be "adjudicatory," including PAL's rights as the Property owner and how those rights may be impacted by the proposed downzoning. These adjudicatory facts are specific and peculiar to PAL, and PAL should be entitled to present its basis for opposing the downzoning as a formal party in a contested case. Notably, when the Commission setdown the Map Amendment as a rulemaking case, all of the information on this matter was not available, including the key fact that PAL opposed the Map Amendment.

III. THE PROPOSED DOWNZONING IS NOT CONSISTENT WITH THE COMPREHENSIVE PLAN AND OTHER ADOPTED PUBLIC POLICIES

Pursuant to Subtitle X § 500.3 a map amendment can only be approved if it is demonstrated that the amendment is "not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site." The ANC has failed to do this. Most notably, there are District policies encouraging the conservation of industrially-zoned land, including a number of provisions in the Comprehensive Plan, but the ANC fails to explain why the Commission should disregard these provisions. The ANC also ignores two District studies – "Industrial Land in a Post-Industrial City" and "Ward 5 Works" – that outline important land use and planning policies related to the District's industrial properties.

The D.C. Court of Appeals has expressly concluded that the Zoning Commission "may balance competing priorities" when determining whether a proposed action is consistent with the Comprehensive Plan as a whole. *See Friends of McMillan Park v. D.C. Zoning Comm'n*, 149 A.3d 1027, 1034 (2016) (quoting *D.C. Library Renaissance Project v. D.C. Zoning Comm'n*, 73 A.3d 107, 126 (2013)). This is due to the fact that the District's Comprehensive Plan and other public land use policies reflect a number of "'occasionally competing policies and goals.'" *See*

id. (quoting *Durant v. D.C. Zoning Comm'n*, 65 A.3d 1161, 1167 (2013)). However, the Comprehensive Plan's policies have "substantial force even if they are not mandatory," and the Commission "cannot simply disregard some provisions of the Comprehensive Plan on the ground that a [proposed action] is consistent with or supported by other provisions of the Comprehensive Plan." *See id.* at 1035. Instead, the Commission must recognize the policies that are inconsistent with a proposed action and "'explain [why] they are outweighed by other, competing considerations.'" *See id.* (quoting *Durant* at 1170).

As outlined below, there are several policies in the Comprehensive Plan and the two identified industrial land studies that offer competing policies and priorities to those cited by the ANC. In light of the acute impact the proposed downzoning would have on PAL's Property, these competing policies establish that the ANC has failed to meet its burden of demonstrating that the proposed downzoning is not inconsistent with the Comprehensive Plan and other District public policies.

A. <u>The Comprehensive Plan Calls for Conserving the District's Limited Supply of Industrial Land</u>

The Land Use Element of the Comprehensive Plan establishes that there is a limited supply of industrially-zoned land in the District, and "[g]iven the lenient zoning standards within industrial areas (most of which actually favor commercial uses over industrial uses), much of the city's industrial land supply is at risk." *See* 10A DCMR § 314.3. As such, "proactive measures are needed to sustain" the District's industrially-zoned land. *See* 10A DCMR § 314.3. The Comprehensive Plan also recognizes that the city's PDR uses "are part of the business infrastructure that underpins the local economy." *See* 10A DCMR § 314.1.

To implement these goals, the Comprehensive Plan Land Use Element adopts Policy LU-3.1.1, which seeks to "[e]nsure that zoning regulations and land use decisions protect active and viable PDR land uses, while allowing compatible office and retail uses . . ." *See* 10A DCMR §

314.7.[5] Policy LU-3.1.1 also recognizes "the importance of industrial land to the economy of the District of Columbia, specifically its ability to support public works functions, and accommodate production, distribution, and repair (PDR) activities." *See* 10A DCMR § 314.7. Further, under Policy LU-3.1.2, the Comprehensive Plan encourages exactly what PAL is doing on the Property – "the redevelopment of outmoded and non-productive industrial sites, such as vacant warehouses and open storage yards, with higher value production, distribution and repair uses and other activities which support the core sectors of the District economy." *See* 10A DCMR § 314.8. Policy LU-3.1.3 notes also that PDR uses should be accommodated "in areas that are well buffered from residential uses (and other sensitive uses such as schools), easily accessed from major roads and railroads, and characterized by existing concentrations of PDR and industrial uses." *See* 10A DCMR § 314.9.

The proposed downzoning of the Property would be directly inconsistent with these policies in the Comprehensive Plan. To rezone the Property from PDR-1 to RA-2 would remove another parcel from the District's already dwindling supply of industrial land. This would be in direct contravention of Policy LU-3.1.1, which calls for *protecting* viable PDR uses. Indeed, PAL intends to construct a self-storage facility at the Property. Self-storage facilities require a unique building design and structure, and the unimproved Property offers the ideal "blank canvas" for such a project. Policy LU-3.1.2 specifically cites the redevelopment of open storage yards with "higher value" PDR use that support the District economy. To develop the Property with a self-storage facility would accomplish this goal, including providing a use that is supportive and incidental to residential uses.

[5] The Economic Development element of the Comprehensive Plan also calls for retention of "an adequate supply of industrially zoned land in order to accommodate the production, warehousing, distribution, light industrial and research and development activities which sustain the local economy, support municipal services, and provide good employment opportunities for District residents." *See* 10A DCMR § 711.5.

PAL's approved self-storage facility is uniquely suitable for the Property in terms of meeting the policy goals of Policy LU-3.1.3. The Property is a large parcel of land that is located at a corner lot abutting Fairlawn Avenue SE to the north and 22nd Street SE to the east. There is a public alley to the west of the Property that provides a buffer with residences along Fairlawn Avenue. There is a row of large trees along the Property's southern lot line, which separates the Property from the neighboring residence to the south. That residence also has a large side yard abutting the Property.[6] The trees and side yard provide a natural buffer between the Property and the residential uses to the south along 22nd Street SE. The Property's location also aligns with the stated intent of Policy LU-3.1.3, which encourages PDR uses with easy access to major roadways. The Property is adjacent to and easily accessible from I-295 and Pennsylvania Avenue SE.

B. <u>The Comprehensive Plan Also Supports a Proposed "Mixed Use" Zone that would include PDR Uses</u>

It is also important to note that the Comprehensive Plan calls for the creation of a mixed-use district "where residential, commercial, and lesser-impact PDR uses are permitted." *See* 10A DCMR § 314.17(f). This provision of the Comprehensive Plan recognizes that low-impact PDR uses, such as a self-storage facility, should be treated and zoned differently from other types of PDR uses. Unlike many other PDR uses, such as manufacturing facilities, chemical storage or shipping facilities, the operation of a self-storage facility is contained within the building and, therefore, would have significantly less impact on neighboring properties in terms of light, air, odor and noise.

[6] The Land Use element promotes improved buffering in neighborhoods within the Far Northeast/Southeast sectors. *See* 10A DCMR §1708.9. To that end, the self-storage facility would buffer the surrounding neighborhood from the 1-295 highway.

PAL proposes a low-impact PDR-type use that will have minimal impact on neighboring properties. Accordingly, a mixed-use zone that would allow self-storage as a permitted use would be consistent with the Comprehensive Plan recommendation, as a storage facility is more akin to commercial-type businesses that are incidental and complimentary to residential uses.

C. The District's Industrial Land Use Studies Also Call for Preserving Industrially-Zoned Properties

The District has commissioned two industrial land studies in the past twelve years, both of which establish the importance of preserving industrially-zoned property. A 2005 study prepared for the Office of Planning, which is incorporated in the Comprehensive Plan's Land Use element, analyzes the supply and demand for industrial land throughout the city. *See* 10A DCMR § 314.4. This study, entitled "Industrial Land in a Post-Industrial City,"[7] (the "Industrial Land Study") provides the framework for public works and industrial land uses in the Comprehensive Plan, with many of the study's recommendations incorporated into specific plan policies and action items. A copy of the Industrial Land Study is attached at **Tab A**; *see also* 10A DCMR § 314.4. More recently, Mayor Vincent Gray commissioned a task force to analyze industrial land in Ward 5. The resulting study - "Ward 5 Works" - also offers analysis and insight on industrial properties in the District. A copy of the Ward 5 Works study is attached at **Tab B**. While "Ward 5 Works" focused on industrial land in Ward 5, some of the study's conclusions can apply to industrial land throughout the city, including the Property.

i. Industrial Land Study

Of particular note, the Industrial Land Study found that "there is a limited supply of [industrial land], and that much of the District's industrial land is either undevelopable, has been

[7] The full title is "Industrial Land in a Post-Industrial City, District of Columbia Industrial Land Use Study: A Detailed Investigation of Industrial Land in the District of Columbia and role of Production, Distribution and Repair Industries in the District Economy."

rezoned or is under significant development pressure." *See* **Tab A**, pg. 3. In fact, the actual amount of land on which industrial development is permitted by-right is equal to approximately five percent of the total land area in the District. *See* **Tab A**, pg. 3. However, the study found that the supply of *buildable* industrial land is even smaller, with many industrially-zoned areas inclusive of railroad tracks, public rights of way, and limited by smaller lot sizes. *See* **Tab A**, pg. 3-4. Further, much of the buildable industrial land is already improved, leaving little opportunity for PDR businesses to grow. *See* **Tab A**, pg. 4. Taking this factor into account, The Industrial Land Study found that only 1.2% of the District's industrially-zoned land is vacant. *See* **Tab A**, pg. 4.

The Property, which the ANC seeks to downzone, is amongst the 1.2% of vacant land that is zoned for PDR uses. To downzone the Property would be to remove a vacant, industrially-zoned parcel of land from an already small supply of such land in the District. As reflected in the Industrial Land Study, such a policy would have a ripple effect and could significantly harm the growth of PDR-type industries in the District, in direct contradiction of the Industrial Land Study.

The Industrial Land Study also found that "once industrial land is developed for a non-industrial use, the return of industrial use to the redeveloped property is extremely unlikely." *See* **Tab A**, pg. 41. To that end, the study concluded that "each development decision made in DC carries with it an opportunity cost: the foreclosure of other development options" for PDR uses. *See* **Tab A**, pg. 5. Indeed, the Industrial Land Study specifically cites "ad-hoc rezoning requests" as well as the "proposed land use policy map" as prime examples of pressures on industrial land despite the fact that "industrial areas play just as important a role in strengthening and diversifying the District," as other types of land uses. *See* **Tab A**, pg. 41.

Further, the Industrial Land Study underscores the importance of location for industrially-zoned land. For example, the study notes that "[m]ost PDR users are located in the District because of a particular relationship with local industries which form their customer base." *See* **Tab A**, pg. 30. Proximity to customers provides PDR businesses "with a competitive advantage, whether its short delivery times, ease of face-to-face interaction, etc." *See* **Tab A**, pg. 30. Consumers also benefit from the proximity, which provides "advantages that decrease the cost and hassle of conducting a business in the District." *See* **Tab A**, pg. 31.

As noted above, and as will be explained in greater detail below, the Property's proximity is an important factor for PAL. The proposed self-storage facility is necessarily linked to residential uses, as the storage is most commonly used by residents who need extra space to store their personal belongings. By offering this service in direct proximity to residences, both the proprietor as well as the consumer will benefit, as noted in the Industrial Land Study. Downzoning the Property would destroy this mutually-beneficial aspect of the proposed self-storage facility.

The Industrial Land Study, proposes creating a mixed-use district for residential, commercial and "light PDR uses" such as self-storage facilities. *See* **Tab A**, pg. 86. Importantly, the Industrial Land Study recommended that the Anacostia/Fairlawn area, **which includes the Property**, be changed to such a mixed-use designation to allow for PDR uses to remain in place. (emphasis added) *See* **Tab A**, pg. 157.

ii. Ward 5 Works Plan

The Ward 5 Works study echoes the conclusions as the Industrial Land Study. As is the case for the entire District, Ward 5 has lost a considerable portion of its industrial land; between 2003 and 2012, the inventory of industrial space in Ward 5 declined by 7%. *See* **Tab B**, pg. 38. This loss of industrial space can be traced to market pressures, including competition from

nearby jurisdictions. *See* **Tab B**, pg. 38, 90. The Ward 5 Works Plan seeks to stop the rezoning of industrial land, and its recommendations and rationale should resonate District-wide.

Ward 5 Works directs that zoning and land use policies should be utilized to stem the loss of industrial land. *See* **Tab B**, pg. 90. In fact, Ward 5 Works specifically concludes that "the DC Zoning Commission and the Office of Planning should refrain from rezoning industrial land" in order to "preserve industrial land and space for neighborhood-friendly businesses." *See* **Tab B**, pg. 91. Alternatively, the study proposes adopting "Industrial Business Districts that strengthen the long-term protections" for industrial land. *See* **Tab B**, pg. 91. Thus, Ward 5 Works specifically calls for *refraining* from rezoning industrial land, or better protecting the loss of such land from development pressures. To permit the downzoning of the Property would be directly contrary to this public policy.

Notably, Ward 5 Works also proposes amending the industrial zoning categories to exclude "higher value uses," such as "stand-alone self-storage facilities without industrial uses activating the ground floor." *See* **Tab B**, pg. 91. In turn, these high value uses could be incorporated into a new "PDR Buffer District" that would be created "where edges of the industrial areas are proximate to housing." *See* **Tab B**, pg. 91-92. The PDR Buffer District "should be established to create physical and land use buffers which limit PDR uses to more compatible businesses that have fully contained operations and no outside storage." *See* **Tab B**, pg. 92. The study recommends that such a zone district would allow only "compatible and/or activating PDR" uses, while requiring "stricter performance standards," and adequate off-street parking. *See* **Tab B**, pg. 91. This recommendation is similar to the mixed-use zone district proposed in the Industrial Land Study and the Comprehensive Plan. *See* **Tab A**, pg. 86. The fact that the Comprehensive Plan, Industrial Land Study and Ward 5 Works propose creating new buffer/mixed-use zones for low-impact PDR uses, such as self-storage facilities, is an

acknowledgment that these low-impact uses are compatible with residential neighborhoods from a land use and planning perspective.

D. The Mixed-Use Recommendation for the Property in the Industrial Land Study Should be Balanced with the Future Land Use Map

Further, the Industrial Land Study specifically recommends that the Anacostia/CSX2/Fairlawn area, which includes the Property, be changed to a mixed-use designation to allow for PDR uses to remain in place. *See* **Tab A**, pgs. 143, 157. While the Future Land Use Map ("FLUM") designates the Property for "moderate density residential" uses, the recommendation in the Industrial Land Study is incorporated into the Comprehensive Plan's Land Use Element and must not be disregarded. In fact, the Industrial Land Study acknowledges that the Anacostia/CSX2 Fairlawn area's "proximity to residential uses . . . do not make this area ideal for *heavy* industrial uses," but that "its strategic access could be a good location for municipal uses . . . and **should be rezoned for mixed-use**." (emphasis added) *See* **Tab A**, pg. 143.

To that end, PAL's proposed self-storage facility would be an appropriate use for a buffer/mixed-use PDR zone at the Property. The Property abuts residential uses, but a self-storage facility is identified as a low-impact use in the aforementioned studies. Indeed, a self-storage facility is completely self-contained and would be compatible with a residential neighborhood. PAL proposes to provide adequate off-street parking and complies with all necessary loading management plans. Therefore, approving the proposed Map Amendment would be directly contrary to the Industrial Land Study and Ward 5 Works recommendations.

IV. THE PROPOSED DOWNZONING WILL HAVE SIGNIFICANT ADVERSE IMPACTS ON PAL'S PRIVATE INTERESTS

PAL faces significant adverse impacts if the Zoning Commission approves the proposed downzoning of the Property.[8] The proposed downzoning will make PAL's proposed storage facility a non-conforming use. This will not only restrict PAL's ability to alter or extend the proposed self-storage facility in the future, but could have a potentially substantial effect on the financial interests of PAL and its investors if the proposed facility burns down or suffers some other form of casualty. The downzoning would cause future uncertainty as PAL would incur the risk of casualty without an ability to re-build the self-storage facility. These adverse impacts to PAL are likely why in another map amendment case, the Office of Planning has stated that it typically "isn't supportive of requested down zone property against [the] owner's wishes." *See* ZC Case No. 13-07, 9/26/13 hearing transcript, pg. 20. For these reasons, PAL requests that the Commission deny the proposed Map Amendment.

A. A Self-Storage Facility is a Non-Conforming Use in the RA-2 Zone and Would Severely Restrict PAL's Ability to Alter or Extend the Building

Most importantly, the proposed downzoning would immediately make PAL's approved and vested self-storage facility a non-conforming use at the Property. As noted above, PAL purchased the Property in August 2017 with the specific intent to construct a self-storage facility in accordance with approved permits. Prior to PAL purchasing the Property, the previous owner of the Property applied for and obtained a number of permits. Building Permit No. B1707249 (the "Building Permit") to construct a five-story self-storage facility at the Property was filed and processed on August 31, 2017, which occurred in advance of the October 16, 2017 setdown hearing in the Map Amendment. As such, the Zoning Administrator has confirmed, in writing,

[8] The Comprehensive Plan specifically calls for "[d]irecting growth and new development to achieve economic vitality while minimizing adverse impacts on residential areas and open space." *See* 10A DCMR § 300.2. As such, the Comprehensive Plan requires consideration of the impact of a land use decision on the property owner's interests, including financial factors.

that the Building Permit is vested under the PDR-1 zone district pursuant to Subtitle A § 301.5. A copy of the Zoning Administrator's confirmation is attached at **Tab C**.

At the time PAL purchased the Property in August 2017, the Property was zoned PDR-1. A self-storage facility is a by-right use in the PDR-1 zone district. *See* Subtitle U § 801.1(u); *see also* Subtitle B § 200.2(aa)(3). However, a self-storage facility is not a by-right use in the RA-2 zone, nor is a self-storage facility permitted by special exception in the RA-2 zone. *See* Subtitle U § 400. As a non-conforming use, PAL would be severely restricted from altering or extending the proposed self-storage facility. Under Subtitle C §204.1, a "nonconforming use of land or structure shall not be extended in land area, gross floor area, or use intensity." Thus, the Map Amendment would effectively foreclose PAL's ability to construct an addition to the self-storage facility in the future. Additionally, structural alterations to a building with a nonconforming use are not permitted. *See* Subtitle C § 204.7.

B. In the Event of a Casualty, PAL Would Not Be Permitted to Re-Build the Self-Storage Facility

Further, if the Property is downzoned and PAL's approved self-storage facility is destroyed through a casualty, then PAL would be unable to re-build the self-storage facility. Under Subtitle C § 205.1, the Zoning Regulations establish that,

> If a structure devoted to a nonconforming use is destroyed by fire, collapse, explosion, or act of God to an extend of more than fifty percent (50%) of the cost of reconstructing the entire structure, it shall not be restored or reconstructed except in conformity with all provisions of this title.

As a non-conforming self-storage facility use in the proposed RA-2 zone, PAL would not be permitted to reconstruct the facility if it is destroyed by fire, collapse, explosion or an act of God. Thus, under the proposed downzoning, PAL faces an enormous risk in the event of a casualty.

C. The Proposed Downzoning Will Have a Negative Financial Impact on PAL and its Investors

The proposed downzoning would have a significant negative financial impact on PAL and its investors if the approved self-storage facility burned down or suffered another form of casualty because a new structure on the Property would be limited in use and size. Specifically, the buildable square footage on the Property would be greatly reduced in the event of a casualty. A structure in the PDR-1 zone may obtain a maximum FAR of 3.5; whereas, a structure in the RA-2 zone may only obtain a maximum FAR of 1.8. *See* Subtitle J § 202.1-202.2; *see also* Subtitle F § 302.1. As a result of the downzoning, PAL would be limited to approximately 50% of the buildable square footage it had prior to such downzoning. This decrease would be compounded by the fact that subgrade space can be used in a self-storage facility, and the value of that space is consistent with the above-grade floors. Yet, the value of subgrade space for a residential use in the proposed RA-2 zone is significantly reduced in comparison to the above-grade stories.

The reduction in buildable square footage alone could contribute to an immediate loss of land value of the Property up to **$3,000,000**. This loss of value is calculated in the following chart[9] prepared by PAL:

Land Value Comparison		
	Zoning Scenario	
	Current	**Proposed**
Lot Size	20,499	20,499
FAR	3.50x	1.80x
Above Grade SQFT	71,747	36,898
Subgrade SQFT	30,245	0
Total Buildable SQFT	101,991	36,898
Land Value per SQFT	$47	$47
Total Value	**$4,750,000**	**$1,718,450**

[9] The chart does not include subgrade space for the proposed zoning, as fully subgrade space has minimal value for a residential use.

If the Map Amendment is granted, the loss of property value would occur immediately even before a structure is built at the Property.

Additionally, PAL's self-storage facility is expected to have a stabilized value of approximately $27,200,000, as compared to an estimated stabilized value of approximately $6,800,000 for a residential building conforming with the proposed downzoning, as outlined in the chart below prepared by PAL:

Stabilized Value Comparison		
	Zoning Scenario	
	Current	**Proposed**
Total Buildable SQFT	101,991	36,898
Value per SQFT	$267	$184
Total Value	**$27,189,946**	**$6,789,269**

(1) Proposed scenario 'Value per SQFT' is based on the median price per SQFT of walk-up apartments in zip code 20020 in 2017. Data sourced from Yardi Matrix
(2) Current 'Value per SQFT' is based on the May 2016 sale of Extra Space, the most comparable sale to the to-be built property
(3) Buildable QFT includes 2 below grade level which do not count against FAR

A total loss due to a casualty would yield a replacement cost insurance payment by PAL's property insurer of approximately $12,000,000 and a business interruption insurance payment of 18 months of lost revenues of roughly $3,000,000. Thus, a casualty event that destroys greater than 50% of the proposed self-storage facility would result in a total loss of approximately $10,500,000 of value for the Property because PAL would be prevented from rebuilding a self-storage facility.[10] As such, in the instance of a major casualty, the proposed downzoning would result in significant financial loss for PAL and its investors.

The proposed downzoning not only creates potential financial harm for PAL due to casualty, but the Property's re-sale value is immediately and similarly harmed. Under the proposed downzoning, PAL projects that the Property value, sale liquidity, and availability of

[10] This project assumes a sale of the land for the $1.7 million value listed above in the Land Value Comparison chart.

debt would be diminished, resulting in the loss of gross asset value of at least 38%, and potentially more.[11] Future buyers would need to factor into its price for the Property the possible material loss in value in the event of a major casualty and navigate a less liquid asset with financial challenges. These factors would lower the value of the Property enough to substantially impair Palatine's investment and future investment by others. PAL would likely also face difficulty in re-financing the Property because an appraisal of the Property, which is necessary for a loan, would factor into the appraised value a similar reduction to account for this potential loss of value in the event of a major casualty.

Given that PAL purchased the Property in August 2017 with the specific intent to construct a storage-facility, the proposed downzoning changes the financial calculus for the Property and could result in a significant financial loss for PAL and its investors, whether in the instance of a casualty, a re-sale of the Property, or PAL's ability to refinance its current loan on the Property.[12]

V. PAL'S PROPOSED SELF-STORAGE FACILITY OFFERS BENEFITS TO THE SURROUNDING NEIGHBORHOOD

PAL's proposed self-storage facility provides a direct benefit and useful amenity to the surrounding public. Further, the Map Amendment proposes a use that would actually *increase* traffic around the Property. As such, the Map Amendment should be denied.

A. PAL's Proposed Self-Storage Facility Offers Community Benefits in an Area with a Dearth of Self-Storage Facilities

Due to the composition of smaller single-family homes, growing families in city-sized homes, and multi-family apartment buildings in the surrounding neighborhood, the self-storage facility would provide an amenity for homes with limited or no storage space. PAL's proposed

[11] In the commercial real estate world, a loss of this percentage is substantial and catastrophic.
[12] No matter the extent of PAL's due diligence prior to purchasing the Property, the proposed downzoning could not have been discovered as this Map Amendment was filed on September 28, 2017, which is *after* PAL closed on its purchase of the Property.

facility will be professionally managed by one of the largest owners and operators of self-storage businesses to insure safe and secure storage for the local community. For winter items, including holiday decorations and winter clothing, the facility provides a storage space that is not exposed to heat or moisture. Alternatively, summer items can be stored away from cold and ice.

To that end, PAL has compiled a map, attached at **Tab D**, highlighting the existing self-storage facilities located in the District. As reflected in the map, there are zero self-storage facilities in Ward 8. *See* **Tab D**. The closest existing self-storage facilities are across the Anacostia River. PAL's proposal for the Property will offer greater convenience for community members in need of this amenity. Given the surrounding homes, there will be many residents of Ward 8 who can benefit from a self-storage facility nearby.

B. PAL's Traffic Study Confirms a Self-Storage Facility will have Less Impact on Traffic Than a Residential Apartment Building

In response to the Map Amendment, PAL commissioned a traffic study from Gorove/Slade, an expert in traffic and transportation matters within the District. A copy of Gorove/Slade's Traffic Study is attached at **Tab E**. The Traffic Study measures the comparative effect on traffic between a self-storage use at the Property and a residential apartment use at the Property. *See* **Tab E**. Under the ANC's proposed downzoning, the Traffic Study contemplates the impact of a 50-unit[13] mid-rise apartment building on surrounding traffic patterns. *See* **Tab E**.

The Traffic Study concludes that a residential apartment use would generate significantly more traffic in comparison to PAL's self-storage facility. Specifically, there would be an average of approximately 5 more trips during the afternoon peak hour for a residential use. *See* **Tab E**. The disparity is much greater on Saturdays, when the residential use would generate more than 300 additional trips. *See* **Tab E**.

[13] PAL's architect calculated the anticipated net units for an RA-2 zone.

The Traffic Study rebuts any claims made by the ANC that the self-storage facility would have a negative impact on the surrounding neighborhood. The self-storage facility will provide the required number of parking spaces, and the Public Space Committee recently approved PAL's loading management plan. Therefore, the proposed downzoning will have a greater effect on neighboring properties than the self-storage facility.

C. The Proposed Downzoning Would Decrease Real Estate Taxes Paid by PAL

As outlined above, the Property will immediately lose a substantial amount of value if the proposed downzoning is granted. This loss of value not only impacts PAL's private interests, but will also lead to a decrease in the amount of real estate taxes paid on the Property. Since real property taxes are based on the relative value of a piece of property, the loss of value in a property will inevitably lower the District's tax assessment of that property. This means that the proposed downzoning will greatly limit property taxes levied against the Property.

This decrease in property taxes is compounded by the fact that PAL's proposed self-storage facility will not utilize the District's infrastructure in the same way as another use such as a large apartment building. In other words, PAL would pay more real estate taxes for a self-storage facility at the Property, but PAL would use fewer of the benefits that are generated by those property taxes. For example, a family that owns property in the District pays property taxes that fund schools attended by the children in that family. Of course, this is not the case for a self-storage facility. As such, the community would benefit from the increased property taxes levied against a self-storage facility at the Property.

D. Community Outreach

Finally, it must be noted that PAL was not permitted to present at the full ANC 8A meeting on March 6, 2018, but PAL attended a community meeting on March 13, 2018 to discuss its plans for the Property. The goal of the March 13, 2018 meeting was for PAL to

actively engage and begin an open dialogue with community members regarding the self-storage facility. Unfortunately, the community members that attended the meeting did not wish to engage with PAL on a mutually-beneficial plan moving forward. Nonetheless, PAL will continue community outreach and remain open to a discussion with the community and ANC.

VI. CONCLUSION

In conclusion, there are many land use and planning policies that support PAL's proposed self-storage facility as well as the retention of industrial land in the District. Further, the proposed downzoning would pose harm to the Comprehensive Plan and PAL; whereas, the self-storage facility offers many benefits to the surrounding public and would be consistent with the District's planning goals. As such, PAL requests that the Commission deny the ANC's Map Amendment and maintain the Property in the PDR-1 zone district.

PAL further respectfully requests that this Commission convert this matter to a contested case and allow PAL to fully present opposition to the ANC's proposed downzoning. In that instance, PAL intends to present evidence and testimony from fact witnesses and expert witnesses. A list of PAL's witnesses is attached at **Tab F**.

Respectfully submitted,
COZEN O'CONNOR

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