

STOOP LAW

A COMMUNITY JUSTICE PROJECT

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Washington DC, 20002
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March 21, 2019

Dear Commissioners,

CARE has membership less than one half block from the site: Greta Fuller is a homeowner and has been living in her home for more than 15 years. She is a former ANC. She lives at 1352 Maple View Pl. SE, Washington DC 20020.

This Map Amendment rulemaking proceeding is illegal and violates 11-Z DCMR §201.2, 11-Z DCMR §201.7(a), 11 DCMR §201.9, D.C. Code §2-502(8), and D.C. Code §2-509 (2012 Repl.).

October 18, 2018 this Commission issued a “Notice of Public Hearing” specifying the proposed map amendment would be conducted as a rulemaking pursuant to the “provisions of the Zoning Commission’s Rules of Practice and Procedure, 11-Z DCMR, Chapter 5.” (Exhibit No. 13, Notice of Public Hearing). 11-Z DCMR §201.2 states:

Contested cases are adjudicatory in nature, present issues for resolution at a public hearing that potentially have a limited scope of impact, and involve primarily questions of fact applicable to that limited scope of impact, while broader issues of public policy are secondary concerns.

(emphasis ours)

This map amendment was brought through counsel from Holland & Knight on behalf of the property owner, DHCD, and authorized agent, High St., LLC. (Exhibit No. 2, Statement in Support & Exhibit 2H, Letter of Agent Authorization). DHCD’s Agent Authorization Letter grants High St., LLC the authorization to file for a map amendment pursuant to 11-Z DCMR 201.7(b) on behalf of DHCD.

The map amendment contains a single lot (976) and single square (5799). Thus, this map amendment was filed on behalf of an agency and contains a *single property*. This is in direct derogation of 11-Z DCMR §201.7(a) which states map amendment requests from agency property owners must “encompass[] multiple properties”. Granted, the actual petitioner is private and acting as an agent for a public agency and thus *arguably* this application falls under 11-Z DCMR §201.7 (b), which has no multiple property restriction, it is still telling that the property only contains a single lot and single square. To be sure, 11-Z DCMR §201.9 gives discretion to the zoning commission to waive the requirements set forth in 11-Z DCMR §§ 201.7(a), (b) so long as the decision to proceed with a rulemaking does not contradict 11-Z DCMR §201.2, which mandates a contested case proceeding

when the proposed map amendment has “a limited scope of impact, and involve primarily questions of fact applicable to that limited scope of impact...” and only has “broader issues of public policy...” as “secondary concerns”. See also D.C. Code §2-502(8).

To that end, this matter almost exclusively involves the rights of parties. This ~34,000 sq. ft. single square and single lot does not influence “broader issues of public policy”. Consider other rulemaking proceedings and non-contested case map amendments that have been ruled upon and allowed by the DC Court of Appeals: *Dupont Circle Citizens Association v. District of Columbia Zoning Commission*, 343 A.2d 296, (allowing halfway houses in R-4 zoning districts citywide); *Charles M. Schneider v. District of Columbia Zoning Commission*, 383 A2d 324, 329 (re-zoning 50 lots across 6 squares); *District of Columbia Citizens Association v. District of Columbia Council*, 327 A.2d 310, 316 (Altering streets and public ways for public use thus not to specific parties and non-contested); *Citizens Association of Georgetown v. District of Columbia Zoning Commission*, 291 A.2d 699, 702 (Re-zoned entire Georgetown waterfront area as non-contested case because the re-zone would implicate policy in all of DC); see also 11-Z DCMR 201.2; compare to 11-Z DCMR 201.5.

The subject site is a single lot that is geographically concentrated and in no way can be considered broad policy. This application impacts the land owner, a third-party potential purchaser, and immediate neighbors. The principal manifestation of a "contested case" is its character as a quasi-judicial process based upon particular facts and information, and immediately affecting the interests of specific parties in the proceeding. See *Capitol Hill Restoration Soc'y v. Zoning Commission, D.C. App.*, 287 A.2d 101 (1972). Consequently, when a proceeding before an agency assumes primarily a quasi-judicial nature, the proceeding is governed by the "contested case" provision of the APA. *Capitol Hill Restoration Soc'y v. Zoning Commission, supra*.

This matter has been allowed to go forward as an illegal rulemaking and it is part of a disturbing pattern and practice of the zoning commission also present in ZC Case No.'s 18-07, 18-10, 18-19, and 19-03, suggestive of disparate treatment based on race and geography. Three times in 95% black Ward 8 and one time in a transitional Union Market neighborhood the zoning commission has denied the rights of impacted District of Columbia residents to be party to a contested case proceeding. In fact, the Office of Planning and the developer did outreach at DHCD and represented to the community that ZC Case No. 18-10 would indeed be a rulemaking with no chance for party status, causing people who would have normally opposed the project to resign themselves to what is essentially illegal spot zoning that is inconsistent with the Comprehensive Plan.

Pursuant to 11-Z DCMR §201.2, 11-Z DCMR §201.7(a), 11 DCMR §201.9, this matter should have been setdown as a contested case proceeding in accordance with the procedures set forth in D.C. Code §2-509 (2012 Repl.). CARE believes that resetting this matter as a contested case so as to allow CARE and other interested parties the ability to seek party status would be the proper course of action.

Respectfully Submitted,

s/ Aristotle Theresa

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Attorney for CARE

Enclosure –Agent Authorization Letter