

May 30, 2019

Via IZIS

Anthony Hood, Chairman  
District of Columbia Zoning Commission

Re: **Zoning Commission Case No. 19-08 – Applicant’s Additional  
Information Regarding Case Type: Rulemaking or Contested Case**

Dear Chairman Hood and Members of the Commission:

In this case, the Applicant seeks a Zoning Map amendment for the subject property to establish zoning. The subject property is not currently zoned. The Applicant plans to develop the property, so it must be zoned before that can occur. Accordingly, the Applicant filed this case as a rulemaking.

Following a discussion with the Office of Planning and in light of the Commission’s setdown decisions in other recent Zoning Map amendment cases, the Applicant has considered whether this case should be set down as a rulemaking or a contested case. The Applicant continues to believe that this case should be set down as a rulemaking, but the Applicant will not object if the Commission decides that it should be set down as a contested case.

**I. This Case is Appropriate for a Setdown as a Rulemaking**

The case seeks a Zoning Map amendment to establish the MU-13 zone on a large and prominent site – the former West Heating Plant – in Georgetown. The subject property contains approximately two (2) acres of land area that is currently unzoned because of prior federal ownership. The surrounding properties to the north and west are zoned MU-13, so this case appropriately seeks to extend that same zone onto the subject property.<sup>1</sup> Furthermore, this case will achieve zoning consistency with the medium density residential/moderate density commercial; and parks, recreation, and open space designations for the subject property on the Future Land Use Map (FLUM).

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<sup>1</sup> The adjacent property to the east is part of Rock Creek Park, so it is unzoned.

The Zoning Commission is empowered to conduct rulemaking proceedings by the D.C. Code and the Zoning Regulations.<sup>2</sup> According to the Zoning Regulations, “rulemaking cases are legislative in nature and present issues for resolution at a public hearing that potentially affect large . . . property or the public in general.”<sup>3</sup> Further, the Zoning Regulations state that Map amendments initiated by private entities when “[the property] otherwise [is] of a character that raises land use policy questions to a greater degree than highly localized issues of fact and effects on neighboring properties” are categorized as rulemakings.<sup>4</sup>

At two acres, the subject property is large, especially for its context in Georgetown, so its character affects the general public. Also, given the FLUM’s designation for the property in contrast with its current lack of zoning, this case presents larger “land use policy” questions that are not focused on “localized issues of fact or effects on neighboring properties” because the property will be zoned consistent with the Comprehensive Plan. The proposed Map Amendment is a policy decision aimed at the general public because it will establish contextual zoning on a large unzoned site to allow development that will effectuate the site’s FLUM designation and Comprehensive Plan policies.<sup>5</sup> Therefore, as a broad-based issue of the suitable future development of the subject property, this case is appropriately categorized as a rulemaking under the Zoning Regulations.<sup>6</sup>

## **II. Conclusion – No Objection to Setdown Type**

In spite of the foregoing, the Applicant understands that Commission may decide that the case should be set down as a contested case. In the interest of expediency, the Applicant will not object if the Commission decides to set down the case as a contested case. The Applicant looks forward to the Commission’s consideration of this case at a public meeting as soon as possible.

Sincerely,

/s/

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Cary R. Kadlecek

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<sup>2</sup> D.C. Code §6-641.01 (2019); 11-Z DCMR §100.6.

<sup>3</sup> 11-Z DCMR §201.5.

<sup>4</sup> 11-Z DCMR § 201.7(b).

<sup>5</sup> As described in the application materials, this case will advance Land Use; Housing; Environmental Protection; Parks, Recreation, and Open Space; and Urban Design policies in the Comprehensive Plan.

<sup>6</sup> *Schneider v. District of Columbia Zoning Commission*, 383 A.2d 324, 329 (1978) (dismissing a petition for review of a rezoning because the rezoning was appropriately decided as a rulemaking).

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 30, 2019, copies of the attached letter were delivered via email to the following:

Anne Fothergill  
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\_\_\_\_\_/s/\_\_\_\_\_  
Cary Kadlecek