



July 25, 2022

Zoning Commission  
of the District of Columbia  
441 4th Street, NW - Suite 210  
Washington, DC 20001  
**VIA IZIS**

**Re: Z.C. Case No. 21-17 – Motion for Reconsideration**

Dear Members of the Zoning Commission (the “**Commission**”):

The Office of the Attorney General (“**OAG**”) respectfully requests that the Commission reconsider Z.C. Order No. 21-17 (the “**Order**”) because it violates the Comprehensive Plan (Title 10A DCMR, the “**CP**”) by approving an increase in the permitted density for Lot 9 in Square 5914 on the same block as the Congress Heights Metro Station through the Zoning Map amendment process and not through a PUD, contrary to the explicit requirement of CP § 1808.2 that:

*“Any increase in zoning or density around the [Congress Heights] Metro Station **shall only be available through a Planned Unit Development (PUD)**”.* (emphases added)<sup>1</sup>

The Commission’s authorizing statute, the Zoning Act (D.C. Code § 6-641.02), requires the Commission to ensure that the Zoning Map and Regulations, and amendments thereto, are “not inconsistent with the Comprehensive Plan,” a requirement reiterated for amendments to the Zoning Map by Subtitle X § 500.3 of the Zoning Regulations (Title 11 of the DCMR, “Zoning Regulations of 2016). This disregard for the explicit language of the CP denied the community the leverage afforded by the PUD process to shape the development of their own community.

Section 1808.2 of the CP explained the reasoning for this requirement that any proposed density increase near the Congress Heights Metro Station require a PUD because:

*“Approvals of zoning variations for height or density through PUDs shall include commensurate benefits for the neighborhood in terms of education and job opportunities, new and affordable housing for homeownership, improved urban design, and public infrastructure improvements. The PUD should include civic and cultural amenities, promote quality in design of buildings and public spaces, support local schools, create opportunities for cultural events and public art, and enhance the public realm by addressing safety and cleanliness issues.”* (CP § 1808.2, immediately following the sentence quoted above. *See also*, CP §§ 1814.1, 1814.4, 1814.6, and 1815.3)

Unlike the PUD process, the map amendment process does not, and cannot, consider a specific project for the property, but instead is limited to considering whether the maximum density and

<sup>1</sup> If the Commission believes it necessary, OAG hereby requests a waiver pursuant to Subtitle Z § 101.9 from the requirements of Subtitle Z §§ 407.1 and 700.3 that a motion be filed by a party. OAG is acting in its capacity as a District agency, fulfilling the charge of D.C. Code § 1-301.81 to uphold the public interest. OAG asserts that the Order’s significant CP inconsistencies detailed herein constitute good cause for granting the waiver and that OAG’s service of this request on all parties permits them to respond without prejudice.

**OAG Motion for Reconsideration – July 25, 2022**  
**Z.C. Case No. 21-17**  
**Zoning Map Amendment – Congress Park Community Partners**

intensity permitted by the proposed new zone would not be inconsistent with the CP. The PUD process requires community benefits - including superior urban and architectural design, environmental features, and affordable housing – and mitigations of the impacts of a project that are enforceable by conditions of the Order and recorded against the property in the Land Records. In contrast, the map amendment process does not currently contemplate either community benefits or enforceable conditions, except for the additional affordable housing required under the IZ Plus requirements that the Commission has waived for this property.

Upon review, OAG has noticed that the case record includes no evidence that the Commission was apprised of this CP requirement for a PUD review, which was added to the CP near in time to the applicant’s filing. The Office of Planning (“OP”) does not include this CP requirement in the setdown and hearing reports or its oral presentations to the Commission.<sup>2</sup> Although the Order summarily dismissed this CP inconsistency, the brief discussion of the issue is copied verbatim from the applicant’s draft order and so does not reflect the Commission’s independent review or determination.<sup>3</sup>

The failure to include the CP’s requirement that density increases only be available through the PUD process deprived the community of the protections provided by the PUD process – not just the benefits including the Commission’s detailed review of the project’s design, amenities, and impacts, but especially the enforceability of conditions on the project. Although the applicant negotiated a community benefits agreement with ANC 8E (Ex. 14B), the ANC lacks the ability to enforce that agreement.

Furthermore, OAG is concerned that neglecting this explicit requirement could have serious repercussions for the planning area by establishing the precedent for future rezonings in the area and diminishing the CP’s purpose.

OAG therefore respectfully requests that the Commission grant OAG’s motion for reconsideration and address these issues.

Respectfully submitted,

**KARL A. RACINE**

Attorney General for the District of Columbia

/s/ Maximilian L.S. Tondro

Chief, Equitable Land Use Section

D.C. Bar No. 1031033

/s/ Alexandra L. Cain

Assistant Attorney General

D.C. Bar No. 1674308

---

<sup>2</sup> Ex. 15 at p.15; Ex. 25 at p.15. Although the application restated this CP requirement, it did not include the CP’s concise language and qualified it so as to obscure its clear meaning. (Ex. 3 at p. 19).

<sup>3</sup> Ex. 102 at pp. 9 and 15; Ex. 98 at pp. 9 and 14.

**OAG Motion for Reconsideration – July 25, 2022**  
**Z.C. Case No. 21-17**  
**Zoning Map Amendment – Congress Park Community Partners**

cc: Congress Park Community Partners, LLC, c/o Kyrus Freeman (via email)  
ANC 8E (via email)  
Office of Planning (via email)