

BEFORE THE ZONING COMMISSION
FOR THE DISTRICT OF COLUMBIA

IN RE: *
* ZC Case No. 23-02
OFFICE OF PLANNING * (Contested Case)
*
(Map Amendment to Rezone Square 0175 *
Lot 826 (1617 U Street, NW) and *
Lot 827 (1620 V Street, NW) *
from the MU-4 Zone to the MU-10 Zone) *
*

**EMERGENCY JOINT MOTION OF THE DUPONT CIRCLE CITIZENS
ASSOCIATION, BLACK NEIGHBORS OF 1617 U STREET NW, HOMEOWNERS
WITHIN 200 FEET OF LOTS 826 AND 827 AND RANDALL JONES REQUESTING
THE COMMISSION CONTINUE THE
NOVEMBER 20, 2023 HEARING IN CASE NO. 23-02¹**

COME NOW the Dupont Circle Citizens Association, Black Neighbors of 1617 U Street
NW and Homeowners within 200 Feet of Lots 826 and 827 thru their below designated
Representatives and request the Commission to continue the November 20, 2023 hearing and state
as follows:

**PUBLIC NOTICE OF THE MEETING
VIOLATED SUBTITLE Z, §402.2**

The Public Notice of the November 20, 2023 Hearing was seriously deficient and violated
Subtitle Z, §402.2. This inadequate public notice seriously and adversely prejudiced both Movants
and members of the public.

11 DCMR, Subtitle Z, §402.2 states for contested hearings states:

“Each notice of public hearing shall include...

(g) The requirements for participation as a party.”

¹ Movants respectfully request that the Commission rule on this Emergency Motion by cob Friday,
November 17, 2023 in fairness to the public.

The official “*DC Zoning Handbook, A guide to the official Zoning Regulations of 2016*” states when interpreting these Zoning Regulations that “The word “shall” is mandatory and not discretionary.” <https://handbook.dcoz.dc.gov/>; <https://handbook-dcgis.hub.arcgis.com/pages/definitions>

Participating as a party confers very important rights on a person or organization.

The DC Administrative Procedures Act § 2–509. Contested Cases, states in part:

- (b) In contested cases ...the proponent of a rule or order shall have the burden of proof ... ***Every party shall have the right to present*** in person or by counsel his case or defense by *oral and documentary evidence*, to *submit rebuttal evidence*, and to *conduct such cross-examination* as may be required for a full and true disclosure of the facts...
- (e) Every decision and order adverse to a party to the case, rendered by the Mayor or an agency in a contested case, shall be in writing and shall be ***accompanied by findings of fact and conclusions of law***.

Below is language subtitled by the Zoning Commission as, “*How to participate as a party*”.

The Commission includes this language in every other Public Notice of a Contested Hearing the Commission issues, but the Commission left this critical language out of all Public Notices for this case. The below is copied from the Public Notice for the June 1, 2023 Contested Hearing in Case No. 22-34, Berean Baptist Church, Zoning Map Amendment at Square 2991 Lot 77:

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of Subtitle Z § 404.1.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact OZ at dcoz@dc.gov or at (202) 727-6311.

Except for an affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person’s interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Commission, not less than 14 days prior to the date set for the hearing, or 14 days prior to a scheduled public meeting if seeking advanced party status consideration, a Form 140 – Party Status Application**, a copy of which may be downloaded from OZ’s website at: <https://app.dcoz.dc.gov/Help/Forms.html>. This form may also be obtained from OZ at the address stated below.

THE NOTICE MISINFORMED THE PUBLIC

Not only did the Commission violate its own regulations, in a critical error of omission, the Commission misrepresented to the public the rights of individuals and organizations and what members of the public had to do to take part in the hearing in this case. The Public Notice the Zoning Commission misinformed members of the public that they were limited to 3 minutes of testimony; but, this is seriously incorrect, if the member of the public is a party.

Besides leaving out the requirements for participation as a party, the Public Notice also misinformed the public of what the deadline was for participating as a party. The below notice states written testimony of witnesses “must be submitted at least 24 hours prior to the start of the hearing” and that witnesses who wish to orally testify are “encouraged to sign up to testify at least 24 hours prior to the start of the hearing.”.

In fact, 11 DCMR, Subtitle Z, §404.4 states “A Request for Party Status that is to be considered at a public hearing shall be filed with the Commission not less than fourteen (14) days prior to the public hearing.” not 24 hours before the hearing. Below is the sole language this Commission put in the Public Notice for the November 20 hearing regarding the right of a member of the public to participate in this hearing:

How to participate as a witness – oral presentation

Interested persons or representatives of organizations may be heard at the virtual public hearing. All individuals, organizations, or associations wishing to testify in this case **are strongly encouraged to sign up to testify at least 24 hours prior to the start of the hearing** on OZ’s website at <https://dcoz.dc.gov/> or by calling Ella Ackerman at (202) 727-0789 in order to ensure the success of the virtual public hearing procedures.

The Commission also request that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The Commission must base its decision on the record before them. The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

- | | |
|------------------|----------------|
| 1. Organizations | 5 minutes each |
| 2. Individuals | 3 minutes each |

How to participate as a witness - written statements

Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record, provided that **all written comments and/or testimony must be submitted to the record at least 24 hours prior to the start of the hearing, unless approved by the Commission upon request to be introduced at the public hearing.** The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by e-mail to zcsubmissions@dc.gov. Please include the case number on your submission. If you are unable to use either of these means of submission, please contact Ella Ackerman at (202) 727-0789 for further assistance.

MANY MORE INDIVIDUALS AND ORGANIZATIONS WOULD HAVE
SOUGHT PARTY STATUS

There is high public interest in this case, demonstrated by the hundreds of comments already submitted in the record. But, there are only a handful of requests for party status, disproportionately very low, *less than 2%* of those who submitted comments. This Commission wrongly originally set this case down in February as a “rule-making” case and did not inform anyone about how to seek party status but only informed people how to submit comments and that their time for oral testimony was limited to 3 to 5 minutes.

It is not surprising given this Commission never corrected itself in its Public Notice for this hearing that so few have sought party status though interest is so high.

People had a right to be told that they could seek party status, how to do that and what the deadlines were. People had a right to know that as a party they could submit rebuttal evidence and cross-exam the Applicant.

The reasonable expectation is many more people and organizations would apply for Party Status, if they knew they could and what the requirements do to so were.

At issue are 2 acres of prime public land, worth millions of dollars and which, depending on whether upzoning takes place, tens of millions of dollars in construction, up to 650 apartments built and the temporary or permanent relocation of the Third District Police headquarters, fire station and EMS. The neighborhood and wider community effects are major, the spill-over effects on neighboring blocks substantial. Giving the public correct notice of how to participate in this case is obviously not a minor issue but is critically important for all the foregoing reasons.

MOVANTS ARE PREJUDICED BY THE LACK OF PUBLIC NOTICE

Not only are impacted residents and organizations seriously prejudiced by the lack of adequate notice, Movants are seriously prejudiced. Movants do not represent all persons or all groups who would have standing and face different or additional issues than have been raised by Movants. Movants are harmed by not having more parties in opposition, who would likely bring to the hearing additional expert analysis and different and effective testimony regarding this upzoning, than Movants with limited resources can offer.

OP'S NOVEMBER 8, 2023 SUPPLEMENTAL REPORT URGES THE COMMISSION TO DELAY ENTERING A FINAL ORDER SO OP CAN HAVE TIME TO FILE A *SECOND MAP AMENDMENT CASE FOR THE SAME PROPERTY*

OP filed in its Supplemental Report on November 8, 2023 urging the Commission not to enter a final order because Applicant intends to file a new "text" amendment case to create a new setback requirement along V St for this site. *This in itself is an admission by the Applicant that this Application is not ready for a merits hearing.*

But, what OP intends to file is quintessentially not a "text" amendment case but rather a new "map" amendment case; a new map case amending the present map amendment case. After all, text amendments apply to all properties in a zone or district. Map amendments apply to only one or more particular lots in a zone or district. ***What OP wants to file is a second map amendment case for this same site.***

PROCEEDING ON NOVEMBER 20, 2023 GIVEN OP'S NOVEMBER 8, 2023 SUPPLEMENTAL HEARING REPORT #2 IS HIGHLY PREJUDICIAL AND WOULD VIOLATE DC CODE § 2-509(a)

Twelve days before the start of the contested hearing in this matter, OP has filed a Supplemental Report informing the Commission that it intends to file (on date not specified) an

application to amend the text of the Zoning Regulations to create a new Zone and map part of the property squarely at issue in this case to this new Zone. Nowhere in any Notice issued by the Office of Zoning is the public informed of these new issue raised by OP or OP's intent to create a new zone for the site.

The Administrative Procedures Act, DC Code § 2-509(a) states:

(a) In any contested case, *all parties* thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved...

Twelve days before the start of the hearing OP informed the Zoning Commission that OP intends to file a text amendment and create a new zone to apply to part of the site. This OP announcement is *per se* unreasonable and prejudices all parties who may have to proceed to a merits hearing in the dark on November 20, 2023.

The parties do not have any proposed text language from OP to review. The parties do not know some of the most important specifications of this new zone, yet uncreated. No outreach has been done by OP with the Community concerning its surprise announcement about creating a new zone and OP's proposed text amendment.

More than 1000 Community members have signed a Petition opposing this upzoning as too big, too high, too dense. OP is now asking the Commission to approve their original plan with the understanding that OP intends to introduce new issues, new criteria, new standards to part of the property with a new and different zone on the site that is not contained in their Application.

It is impossible for those in opposition to know how to proceed with a contested hearing and present their cases without having all of the new issues, criteria and text language for the new zone in front of them and with sufficient time for analysis.

CONCLUSION

This case is not ready for a merits hearing on November 20, 2023. The November 20, 2023 hearing should be continued until such time as OP files its second map amendment case or withdraws and files a new map amendment case. Proper legal notice of any new hearing should conform to the requirements of 11 DCMR, Subtitle Z, §402.2.

For all the foregoing reasons Movants respectfully request the Commission grant this motion.

Respectfully submitted,

/s/ Edward V. Hanlon
Edward V. Hanlon, Esq. DC Bar No. 421789
Law Office of Edward V. Hanlon, Chartered
5510 Cherrywood Lane, Suite G
Greenbelt, Maryland 20770
(301) 466-4492
Ed.Hanlon.3@gmail.com
(Attorney for Dupont Circle Citizens Association)

/s/ Gregory Adams
Gregory Adams
2105 17th St NW
Washington, DC 20009
202 251-7843
Adams.gregory1@yahoo.com
(Representative for Black Neighbors of 1617 U St. NW)

/s/ Arlene Feskanich

Arlene Feskanich
1701 Seaton St NW
Washington, DC 20009
202 387-3681
Feskanicha@gmail.com

(Representative for Homeowners within 200 Feet of Lots 826 and 827)

/s/ Randall Jones

Randall Jones
2109 17th St NW
Washington, DC 20009
609 213-1875
rjj0302@gmail.com

(Representative for Randall Jones)

CERTIFICATE OF SERVICE

I certify that on this date one copy of the forgoing Motion was sent via email to the

Daniel Lyons
DMPED
Daniel.Lyons@dc.gov

Jennifer Steingasser, Deputy Director
Office of Planning
Jennifer.Steingasser@dc.gov

Joel Lawson
Office of Planning
Joel.Lawson@dc.gov

Office of Zoning
dcoz@dc.gov

ANC1B
1B@anc.dc.gov

ANC2B
2B@anc.dc.gov

/s/ Edward V. Hanlon
Edward V. Hanlon, Esq.

11/16/2023
Date