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June 22, 2023

Anthony J. Hood, Chair
District of Columbia Zoning Commission
441 4th Street, NW, Suite 200S,
Washington, DC 20001
Email: dcoz@dc.gov

Re: ***Zoning Commission Case 23-02***
Hearing Date: June 26, 2023
Improperly Set Down as a “Rulemaking Case”
In Violation of 11 DCMR, Subtitle Z, §201.2

Dear Chair Hood:

I represent the *Coalition for Affordable Housing Not Luxury Housing!*, with respect to the proposed map amendment concerning 1617 U Street NW and 1620 V Street NW (Square 0175, Lots 0826 and 0827) which would upzone these parcels (“Parcels”) from MU-4 to MU-10. The *Coalition for Affordable Housing Not Luxury Housing!* includes many adversely affected neighbors and property owners in Wards 1 and 2 opposed to the proposed upzoning of this public land to MU-10.

Clear Due Process Violation
With Substantial Adverse Impact

The Commission has improperly set down Zoning Commission Case 23-02 as a “rulemaking case” in order to illegally suppress public participation in the hearing and deny District of Columbia citizens their basic rights, when in fact this matter is, obviously, quintessentially, a “contested case” under Subtitle Z § 201.5.

By improperly setting this matter down as a rulemaking case the Zoning Commission, as explained below, fails to follow its own regulations thereby denying due process to adversely affected individuals and entities including the *Coalition for Affordable Housing Not Luxury Housing!*

By improperly setting this matter down as a “rulemaking case”, the Zoning Commission violates the rights of adversely affected individuals and entities under the District of Columbia *Administrative Procedure Act*, D.C. Code § 2-509, as well as, its own regulations.

Unlike in a contested case, in a rulemaking case there are no parties, no right to call witnesses, no right to cross-examination, no right to a direct appeal to the DC Court of Appeals, no required weighing by the Commission of the effects on neighboring properties of light, air, traffic congestion, etc., of the proposed map amendment, no required notice by letter or email of this public hearing “to owners of all property within two hundred feet (200 ft.)” of these Parcels

as would otherwise be required under Subtitle Z § 402.1.

Thus, the rights of the *Coalition for Affordable Housing Not Luxury Housing!*, as well as, other adversely affected neighbors and property owners, are fundamentally different depending on whether the case proceeds as a “rulemaking case” or a “contested case”.

Subtitle Z, §201.2 Provides the Applicable Standard for Determining the Kind of Hearing Which the Commission Must Conduct

11 DCMR, Subtitle Z, §201.2 of the Zoning Commission’s regulations defines “contested cases” and “rulemaking cases”. §201.2 states:

Contested cases are adjudicatory in nature,... Contested cases include:

- (e) Map amendments filed by the property owner or owners for a single property or for multiple properties that are contiguous or are only separated by a street or alley; (Emphasis added)

The proposed map amendment in ZC Case No. 23-02 is exclusively to upzone two tax lots, Tax Lots 0826 and 0827, in Square 0175, from MU-4 to MU-10.

Both Tax Lots 826 and 827, shown below, have a “single owner”, the District of Columbia.¹

Tax Lots 826 and 827 are also “contiguous or are only separated by a street or an alley” as shown in the below map reproduced from the January 18, 2023 Office of Planning Setdown Report at 3:



¹ “Because the property is District owned...” referring to Tax Lots 826 and 827. See January 18, 2023 Office of Planning Setdown Report at 2

It is clear that the map amendment to upzone Tax Lots 826 and 827 completely fits the definition of a “contested case” under Subtitle Z, §201.2.

Our Rights Are Being Denied Under a Rulemaking Process

By improperly setting down this map amendment request as a “rulemaking case” the Zoning Commission, at the *request of the property owner*, is denying the *Coalition for Affordable Housing Not Luxury Housing!*, as well as, other adversely affected neighbors and property owners the right to party status, the right to call witnesses, the right to cross-examine the witnesses of other parties including cross-examination of witnesses from the Office of Planning and DMPED, and the right to take a direct appeal to the District of Columbia Court of Appeals of any adverse decision made by the Zoning Commission in this matter.

Failure to Give Proper Public Notice of the June 26, 2023 Hearing to All Affected Property Owners

Further, by setting this map amendment down as a “rulemaking case” the Director of the Office of Zoning has failed to give proper Public Notice to all affected property owners. As a “contested case” the Director is required under Subtitle Z, §402.1 to give Public Notice in the following manner:

“Not less than forty (40) days before the public hearing on an application, the Director shall give notice of public hearing by:

Providing a copy of the notice of public hearing to owners of all property within two hundred feet (200 ft.) of the property included in the application; (Emphasis added)

Treating this map amendment as a “rulemaking case” the Director is not required to provide a copy of the notice of the June 26, 2023 hearing to any of the property owners within 200 feet of 1617 U St/1620 V St NW (Tax Lots 826 and 827). Indeed, as a “rulemaking case” the Director is not required to provide a copy of the Public Notice of this hearing even to property owners directly across the street from the Parcels that the map amendment proposes to upzone to MU-10. Such an upzoning would allow construction of a 100 to 120 foot building abutting or adjacent to the land of these many other property owners. This failure to give the right kind of notice raises serious legal issues, as well as, fundamental issues of fairness to affected individuals, entities and property owners.

Completely Inadequate and Unequal Public Notice by the Zoning Commission of the June 23, 2023 Hearing

On April 6, 2023 Sharon Schellin, Secretary to the Zoning Commission, filed a Certificate of Service attesting that the “Notice of Public Hearing for Case No. 23-02... was sent

...by first class postage prepaid... mail ... to the following” and attached a mailing list of 151 property owners. See IZIZ Exhibit 42, pages 2 through 6.

The mailing list that was used on April 6, 2023 by the Office of Zoning/Zoning Commission to provide copies of the “Notice of Public Hearing for Case No. 23-02” literally makes no rational sense.

The mailing list does not list a single property owner on Seaton Street directly across from Lot 826 as being mailed a copy of the Public Notice.

Not a single property owner on 17th St NW directly across the street from on the west side of Lot 826 is listed as being mailed a copy of the Notice of Public Hearing for Case No. 23-02.

Only 3 property owners on V Street were mailed a copy of the Public Notice though there are numerous other small property owners on the 1600 block of V Street, almost all within 200 feet of the Parcels.

Similarly, it appears none of the commercial owners of properties, restaurants and shops, directly across U Street from this proposed upzoning were mailed a copy of the Notice of Public Hearing for Case No. 23-02.

The mailing list also contains numerous errors, listing property owners without addresses, presumably meaning they also did not receive a copy of the Notice of Public Hearing for Case No. 23-02.

***The Office of Planning Lacks Authority under Subtitle Z, §201.7
to Initiate a “Rulemaking Case” for the Proposed Map Amendment***

The Office of Planning lacks authority to initiate this map amendment as a “rulemaking case” under Subtitle Z, §201.7 because Subtitle Z, §201.7(a) states:

Public agencies [may]... amend the zoning map for a neighborhood, commercial district, or other geographic area encompassing multiple properties...

Rulemaking map amendment cases initiated by public agencies are meant to involve large areas, containing many properties and many owners across a significant geographic area, such as, a map amendment covering a substantial part of the U Street commercial district or the Central Business District, not two tax lots at 17th and U owned by the city.

Further, treating Zoning Case No. 23-02 as a “rulemaking case” is contrary to the essence of what “rulemaking”, as opposed to “adjudication”, is at its core:

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) Subtitle Z, §201.5

That description in §201.5 does not fit this case. This instant case is not a rulemaking case.

Further, Subtitle Z, §201.7(b) states:

Map amendments in rulemaking cases may be initiated by...

Private persons, organizations, or other entities to amend the zoning map in cases where:

- (1) The petitioner does not own all of the property proposed to be rezoned; or
- (2) The petitioner owns all of the property proposed to be rezoned, but the ownership pattern is geographically scattered or otherwise of a character that raises land use policy questions to a greater degree than highly localized issues of fact and effects on neighboring properties. (Emphasis added)

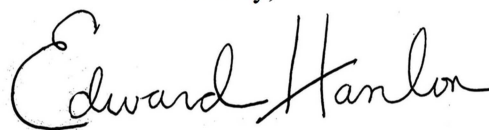
Here again, even if the Office of Planning could assert it was a “private” entity within the meaning of §201.7(b), which it is not, it would still be of no avail since Tax Lots 826 and 827 are contiguous, not “geographically scattered”.

Finally, §201.9 is of no avail to the Applicant. §201.9 is meant to allow the Commission to reclassify a case which was not properly designated initially by an applicant. §201.9 requires the Commission to apply the same “standards contained in Subtitle Z §§ 201.2 and 201.5” discussed above. Under those standards as discussed above Zoning Case No. 23-02 is a contested case not a rulemaking case.

Accordingly, the *Coalition for Affordable Housing Not Luxury Housing!* asks the Commission to withdraw the hearing notice for June 26, 2023 and, if the Applicant wishes to proceed, to reclassify this case as a “contested case”, issue the legally required notice to all property owners and set an appropriate hearing date.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Edward Hanlon". The signature is written in a cursive, flowing style with a large initial "E".

Edward Hanlon

cc: Office of the Attorney General for the District of Columbia <oag@dc.gov>
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bcc: Media list