

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 18-08
Z.C. Case No. 18-08
BSREP II Dupont Circle, LLC
(Map Amendment @ Square 72, Lot 74)
December 17, 2018**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on October 25, 2018 to consider an application by BSREP II Dupont Circle, LLC (“Applicant”) for approval of a Zoning Map Amendment pursuant to Subtitle X § 500.1 of the District of Columbia Zoning Regulations (“Zoning Regulations”), Title 11 of the District of Columbia Municipal Regulations. The application is to amend the Zoning Map from the RA-5 zone to the MU-10 zone for Lot 74 in Square 72 (1143 New Hampshire Avenue, N.W.)

The Commission considered the application for the Map Amendment pursuant to Subtitles X and Z of the Zoning Regulations of 2016 (Title 11 DCMR). The public hearing was conducted in accordance with the provisions of 11-Z DCMR § 400, *et seq.* For the reasons set forth below, the Commission hereby approves the application.¹

On June 12, 2018, the Applicant filed an application for approval of the Map Amendment. (Exhibits [“Ex.”] 1, 2.) The property that is the subject of the Map Amendment consists of Lot 74 in Square 72 (“Property”). (Ex. 2.) The Property is currently in the RA-5 zone. The Property is in the Mixed-Use land use category on the Future Land Use Map of the Comprehensive Plan. The Future Land Use Map indicates areas where the mixing of two or more land uses is encouraged. The combination of uses desired in a given area is depicted in striped patterns, with striped colors corresponding to the land use categories defined in the Framework Element. For this site, there are two stripes corresponding to the Mixed-Use, High-Density Residential and High-Density Commercial land use categories. (Ex. 2, 2B, 2C.)

Prior to filing the application, on April 23, 2018, the Applicant mailed a notice of intent to file the Map Amendment application to all property owners within 200 feet of the Property as well as Advisory Neighborhood Commission (“ANC”) 2A. Also prior to filing the application, the Applicant contacted ANC 2A. Accordingly, the Applicant satisfied the notice requirements of 11-Z DCMR §§ 304.5, 304.6. (Ex. 2D.)

The application satisfied the filing requirements of 11-Z DCMR § 300 *et seq.* (Ex. 2E.) The application also included an explanation of the individual policy objectives of the Comprehensive Plan with which the application is consistent. There is no evidence in the record that the application is in any way inconsistent with the Comprehensive Plan. Since this case was filed as an application, and not a petition, it was heard

¹ As discussed below, no party opposed the grant of this application. Because the Commission’s decision to grant this application would not be adverse to any party, this Order is not required to be accompanied by findings of fact and conclusions of law. (See D.C. Official Code § 2-509 (e) (2012 Repl.); 11-Z DCMR § 604.7.)

under the contested case procedures of Subtitle X, Chapter 4. However, the Commission did not consider the Applicant's plans for its property, since the Commission cannot limit the Applicant's use of the property to a particular matter-of-right use or size.

On July 30, 2018, the Commission set the case down for a public hearing based on the recommendation of the Office of Planning ("OP"). (Ex. 10.) On August 14, 2018, the Applicant filed a pre-hearing statement that requested detailed the Applicant's planned presentation for the hearing, and the Applicant proffered Ellen McCarthy as an expert in land use planning. (Ex. 12.) Notice of the public hearing was provided in accordance with the requirements of 11-Z DCMR § 400 et seq. (Ex. 13-15.)

On October 5, 2018, the Applicant filed a supplemental prehearing submission. (Ex. 21.)

The Property is located entirely within ANC 2A, which therefore was an automatic party to this case. At a duly noticed public meeting with a quorum present, the ANC voted in support of the application and submitted a report in support, which stated no issues or concerns. (Ex. 25.)

No requests for party status were made.

On October 25, 2018, the Commission held a public hearing in accordance with 11-Z DCMR § 408 and accepted Ms. McCarthy as an expert in land use planning. (Transcript of Public Hearing, Z.C. Case No. 18-08, October 25, 2018 at page 4.) No person or entity appeared in support of or in opposition to the application. The District Department of Transportation submitted a report stating no objection to approval of the application. (Ex. 22.) OP submitted a report recommending approval of the application and testified in support of the application at the public hearing. (Ex. 23.)

Pursuant to 11-Z DCMR § 408.11, at the close of the public hearing, the Commission took proposed action to refer the application to the National Capital Planning Commission ("NCPC") for review and comment pursuant to the Home Rule Act. The referral was made by the Office of Zoning on October 29, 2018. (Ex. 28.)

By letter dated December 6, 2018, the NCPC Executive Director advised the Commission that pursuant to a delegated action dated November 29, 2018, he found that the proposed Map Amendment would not be inconsistent with the Comprehensive Plan for the National Capital nor would it adversely affect any other identified federal interests. (Ex. 30.)

Pursuant to 11-Z DCMR § 408.8, the Commission has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for approval of a Zoning Map amendment pursuant to 11-X DCMR § 500.

As required by law, the Commission must give "great weight" to the recommendations of OP and to the issues and concerns raised in the written recommendations of ANC 2A, the affected ANC. The great weight requirement is satisfied by the Commission acknowledging the written reports of OP and ANC 2A and stating whether or not they offer persuasive advice under the circumstances. OP's report recommends approval of the application and the Commission finds this evidence to be persuasive. ANC 2A's report also recommends approval of the application but states no issues and concerns for the Commission to give great weight to.

Based upon the record before the Commission, it concludes that the proposed map amendment from the RA-5 zone to the MU-10 zone is not inconsistent with the Comprehensive Plan, where the Property is

located within the Mixed-Use Category, on the Future Land Use Map of the Comprehensive Plan, which for this property which in this case encourages a combination of high-density residential, and high-density commercial uses. Further, the rezoning would further multiple policies of the Comprehensive Plan. Pursuant to 11-X DCMR § 500.3 and the Home Rule Act, the Commission concludes that the map amendment is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Property, as detailed in the case record and in the OP Report.

DECISION


On October 25, 2018, upon the motion of Commissioner May, as seconded by Vice Chairman Miller, the Zoning Commission took **PROPOSED ACTION** at the close of the public hearing by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, Peter A. Shapiro, and Michael G. Turnbull to approve).

On December 17, 2018, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter A. Shapiro, not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on February 15, 2019.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING