

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-29

Z.C. Case No. 07-29

(Bozzuto Development Group – Map Amendment at Square 514, Lot 864)

April 14, 2008

Pursuant to public notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on February 28, 2008, pursuant to §102 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”), to consider an application from the Bozzuto Development Group (the “Applicant”). The application requested review and approval of an amendment to the Zoning Map of the District of Columbia to change the zoning for a portion of Square 514, Lot 864 (Record Lot 9) (“Property”), from DD/R-5-B to DD/C-2-C, and inclusion within the Downtown Development (“DD”) Overlay Housing Priority Area A. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

FINDINGS OF FACT

1. On October 19, 2007, the Office of Zoning received an application from the Applicant requesting that the Commission change the zoning of a 42.2-foot portion of Lot 864 (an approximately 4,950-square-foot portion of the 7,983-square-foot lot) in Square 514 from DD/R-5-B to DD/C-2-C and include it within Housing Priority Area A of the Downtown Development Overlay District (“application”).
2. The Applicant filed its pre-hearing submission on December 4, 2007 (Exhibit 13) and its 20-day submission on February 8, 2008 (Exhibit 23).
3. The property that is the subject of this application, the western 42.2-foot portion of Square 514, Lot 864 (“Property”), is located on the north side of New York Avenue, N.W. at L Street, N.W. The Property is currently improved with two vacant and deteriorated houses. The Property is located in the Mount Vernon Square neighborhood of Ward 2, the Mount Vernon Square Historic District, and within ANC 2C. The Property is located adjacent to the Yale Laundry Condominium project and north of the City Vista project.
4. The Property is zoned DD/R-5-B.
5. The Property is located directly to the west of Lots 851 and 852, which are zoned DD/C-2-C.

6. The Applicant has a contract to purchase the Property, along with Lots 851 and 852 in Square 514 (465 and 471 New York Avenue, N.W.). Lot 852 (471 New York Avenue, N.W.) is improved with a two-story rowhouse that has significantly deteriorated. Lot 851 (465 New York Avenue, N.W.) is improved with a three-story brick and limestone house built in 1902 that is also significantly deteriorated.
7. The Commission set the case down for a public hearing at its December 10, 2007 public meeting.
8. Notice of the public hearing was provided in accordance with the provisions of 11 DCMR §§ 3014 and 3015.
9. On February 28, 2008, the Commission held a public hearing on the application. Jeffrey Kaufman, Anne Adams, and Sean Stadler testified on behalf of the Applicant. Ms. Adams was qualified as an expert in the field of architectural history and historic preservation and Mr. Stadler was qualified as an expert in the field of urban architecture by the Commission. Mr. Kaufman discussed the need for the map amendment and desire to be able to use the neighboring smaller lots of 851 and 852 in Square 514 in one unified project plan which, at present, is impossible because the unified property is split-zoned and would not allow any project to be constructed. Ms. Adams was the Applicant's architectural historian and testified that the rezoning would allow redevelopment of the Property that would be consistent with the character of the Mount Vernon Square Historic District and the greater Mount Vernon Triangle neighborhood, historic preservation elements of the Comprehensive Plan, and historic preservation related aspects of the Zoning Regulations and Plan. Mr. Stadler testified that the development allowed by the rezoning would satisfy the standards of an amendment to the Zoning Map in that it would satisfy many of the Comprehensive Plan goals and policies, would be compatible with the surrounding neighborhood, and would be in accordance with the District of Columbia Zone Plan. Two neighbors of the property, Lydia Goring and Jeff Jones, appeared at the Commission's February 28, 2008 public hearing and testified as persons in support of the requested rezoning.
10. Prior to the February 28, 2008 public hearing, the Office of Planning ("OP") submitted a final report recommending approval of the rezoning from DD/R-5-B to DD/C-2-C and the inclusion of the rezoned property in Housing Priority Area A of the DD Overlay District. OP also testified in support of the Applicant's requested map amendment during the Commission's February 28, 2008 public hearing.
11. By memorandum dated February 25, 2008 (Exhibit 25 in the record), the District of Columbia Department of Transportation ("DDOT") stated that it supported the Application.

12. By letter dated January 22, 2008, the Mount Vernon Square Neighborhood Association (“MVSNA”) indicated that, at a duly noticed and regularly scheduled monthly meeting, the MVSNA voted unanimously to support the application. The Applicant also submitted a petition from neighbors in the immediate vicinity that indicated support for the rezoning application.
13. Advisory Neighborhood Commission (“ANC”) 2C did not take an official position on the application.
14. Councilmember Jack Evans submitted a letter in support of the request.
15. At the conclusion of the public hearing on February 28, 2008, the Commission took proposed action to approve the map amendment.
16. Pursuant to the District of Columbia Home Rule Act, the Commission referred its proposed decision of approval to the National Capital Planning Commission (“NCPC”) for review and comment. By report and letter dated March 27, 2008, NCPC found that the proposed map amendment would not be inconsistent with the Comprehensive Plan for the National Capitol, nor would it have an adverse impact on any other federal interest.
17. The rezoning of the Property would have no adverse effect on neighboring properties, would complement Yale West and the high-density designation of New York Avenue, N.W., would not affect adversely the use of neighboring property, would permit compatible new development and achieve the policies of the DD Overlay District, and would not produce objectionable traffic conditions.
18. Further, the Property is a small and difficult site. It has an odd shape and many constraints on its development. Allowing the rezoning of the Property ensures that the Property and Lots 851 and 852 will be redeveloped.
19. From a historic preservation perspective, the proposed rezoning would allow development that is compatible with the Mount Vernon Square Historic District and it would encourage the relocation and rehabilitation of 465 New York Avenue, N.W.
20. The Commission finds that the proposed map amendment is not inconsistent with the District Elements of the Comprehensive Plan for the National Capital (“Comprehensive Plan”) and is fully consistent with the following components of the Comprehensive Plan:
 - a. Land Use Element: The Comprehensive Plan specifies general policies to “ensure the efficient use of land resources to meet long-term neighborhood, citywide, and regional needs; ...to sustain, restore or improve the character and stability of neighborhoods in all parts of the city; and to effectively balance the competing demands for land to support the many activities that take place within District

boundaries.” (§ 302.1) Further, the Comprehensive Plan favors “infill development on vacant lots ... provided that such development is compatible in scale with its surroundings and consistent with environmental protection and public safety objectives.” (§ 307.2) The current use of the Property is an underutilized lot, and the current zoning scheme maintains a split-zoned site that is difficult to develop. Rezoning the Property will allow for development on a difficult infill site and will allow for the revitalization and re-use of a long abandoned historic building. Rezoning this site will provide the Applicant with an opportunity improve the urban fabric of the community and to provide the neighborhood with physical improvements that make it more attractive.

- b. Housing Element: The Comprehensive Plan includes policies that support the expansion of the housing supply (§ 503.1), particularly through the involvement of the private sector (§ 503.2) on surplus, vacant and underutilized land (§ 503.4) and on Main Street mixed use corridors and near Metrorail stations (§ 503.5). In Near Northwest, the creation of such housing opportunities is viewed as the key to creating “vibrant street life” and supporting the retail and other amenities desired in the heart of the city. (§ 503.7) As a vacant lot in a neighborhood with nearby higher density housing, the Property is underutilized. Rezoning the Property would encourage the Applicant to meet some of the demand for higher density residential development in Near Northwest.
- c. Urban Design Element: The Comprehensive Plan encourages the “use of Washington’s major avenues as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character” (§ 906.6) and the promotion of excellence in the design of Downtown buildings and landscapes. (§ 909.10) In addition, the Urban Design policies are to be refined by “relating the scale of infill development, alterations, renovations, and additions to existing neighborhood context and overpowering avoiding contrasts in scale and height. (§ 910.14) Rezoning the property would enable a vacant lot to be redeveloped.
- d. Comprehensive Land Use Map: The Comprehensive Plan 2006 Future Land Use Map depicts the area immediately to the east of the Property as Medium Density Residential/Moderate Density Commercial and depicts the Property as Moderate Density Residential. Under the Comprehensive Plan’s Framework Element’s “Guidelines for Using the Generalized Policy Map and the Future Land Use Map,” § 224.24 states that the Land Use Map is “intended to provide generalized guides for development and conservation decisions” but that it is “not a zoning map.” Section 224.24 states that “the Map is to be interpreted broadly” and that the Land Use Map is “not intended to freeze future development patterns for the next 20 years.” The satisfaction of the provisions of the Comprehensive Plan’s elements combined with the fact that the Property is immediately adjacent to an area of Moderate Density Commercial and Medium Density Residential land (corresponding to the high-density Yale Laundry site), demonstrates that the proposed rezoning is not inconsistent with the Comprehensive Plan. The

proposed rezoning of the Property to DD/C-2-C and DD/R-5-B Zoning Districts is more appropriate than the status quo given the site's location on a major commercial corridor and adjacent to high density DD/C-2-C development to the east and south across New York Avenue, N.W. As evidenced by OP's setdown report, OP agrees that the requested rezoning is not inconsistent with the Comprehensive Plan.

21. The Property is located on the high-density (largely DD/C-2-C) New York Avenue corridor. The Property is a buffer between the two distinct elements of the Mount Vernon Square neighborhood – the high-density on New York Avenue corridor and the lower-scale residential of the Mount Vernon Square Historic District. Rezoning the Property DD/C-2-C is in keeping with the character of the southern half of the square and the alley provides a dividing line between the residential uses to the north and the mixed uses to the south.
22. Since the Subject Property fronts on New York Avenue, N.W., the rezoning would allow for a transition between the high-density commercial corridor and the more residential area of the Mount Vernon Square Historic District.
23. The Applicant provided testimony that immediately abutting the Property is the extensive Yale Laundry condominium project that will reach 130 feet for much of its New York Avenue street frontage. Immediately across New York Avenue, N.W., 130-foot buildings will be constructed and the substantial City Vista project is already nearing completion.

CONCLUSIONS OF LAW

The Zoning Commission's authority to amend the Zoning Map derives from the Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, D.C. Official Code § 6-641.01) ("Zoning Act"). Section 1 of the Zoning Act authorizes the Commission to regulate the uses of property in order to "promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital." (D.C. Official Code § 6-641.01.) Section 2 of the Zoning Act provides that the "zoning regulations shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein." (D.C. Official Code

§ 6-641.02.) Section 3 of the Zoning Act, among other things, authorizes the Commission to amend the zoning regulations and maps. (D.C. Official Code § 6-641.03.)

The Commission concludes that approval of the requested map amendment is consistent with the purposes of the Zoning Act. Rezoning the Property to the DD/C-2-C Zone District and including it in Housing Priority Area A, is appropriate given the site's location on a major commercial corridor and adjacent to high-density DD/C-2-C development to the east and south across New York Avenue, N.W. As a vacant lot in a neighborhood with nearby higher-density housing, the Property is underutilized, and the current zoning scheme maintains a split-zoned site that is difficult to develop. Rezoning the Property will allow for development on a difficult infill site, encourage higher-density residential development in Near Northwest on one of the District's major gateway avenues. In addition, rezoning will allow for an appropriate transition from higher-density mixed-uses on New York Avenue to lower-density uses in the Mount Vernon Historic District.

In amending the zoning maps, the Commission is constrained by the limitation in the District Charter that the zoning map be "not inconsistent" with the Comprehensive Plan. § 492(b)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, effective December 24, 1973 (Pub.L.No. 93-198; 87 Stat. 774; D.C. Official Code § 6-641.02).

The Commission concludes that approval of the requested map amendment is not inconsistent with the Comprehensive Plan. The requested map amendment furthers the

goals of the Comprehensive Plan, and promotes orderly development in conformity with the Zone Plan as embodied in the Zoning Regulations and Map.

The Commission concludes that the requested map amendment is in the best interests of the District of Columbia and will benefit the community in which the Property is located.

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the affected ANC's recommendation. ANC 2C did not make a recommendation in this case.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. The Commission concurs with OP's recommendation for approval, and has given its recommendation the great weight to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for an amendment of the Zoning Map to change the zoning of a portion of Lot 864 (Record Lot 9) in Square 514 from DD/R-5-B to DD/C-2-C and that portion of Lot 864 is hereby

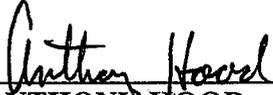
placed in Housing Priority Area A of the DD Overlay District (as described in § 1706.8(a) of the Zoning Regulations).

The applicant is required to comply fully with the provisions of the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

At the conclusion of the public hearing on February 28, 2008, the Zoning Commission voted to **APPROVE** the application by a vote of **5-0-0** (Gregory N. Jeffries, Curtis L. Etherly, Jr., Anthony J. Hood, Michael G. Turnbull, and Peter G. May to approve).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on April 14, 2008, by a vote of **5-0-0** to adopt (Anthony J. Hood, Peter G. May, Gregory N. Jeffries, Curtis L. Etherly, Jr., and Michael G. Turnbull).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on MAY 16 2008



ANTHONY HOOD
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., October 3, 2007

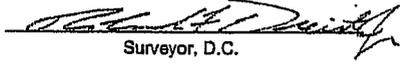
Plat for Building Permit of: SQUARE 514 LOTS 851, 852 & 864

Scale: 1 inch = 20 feet Book A&T Page 3185-H (LOTS 851 & 852)
Book A&T Page 3772-G (LOT 864)

Receipt No. 00444

Furnished to: PWSP

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

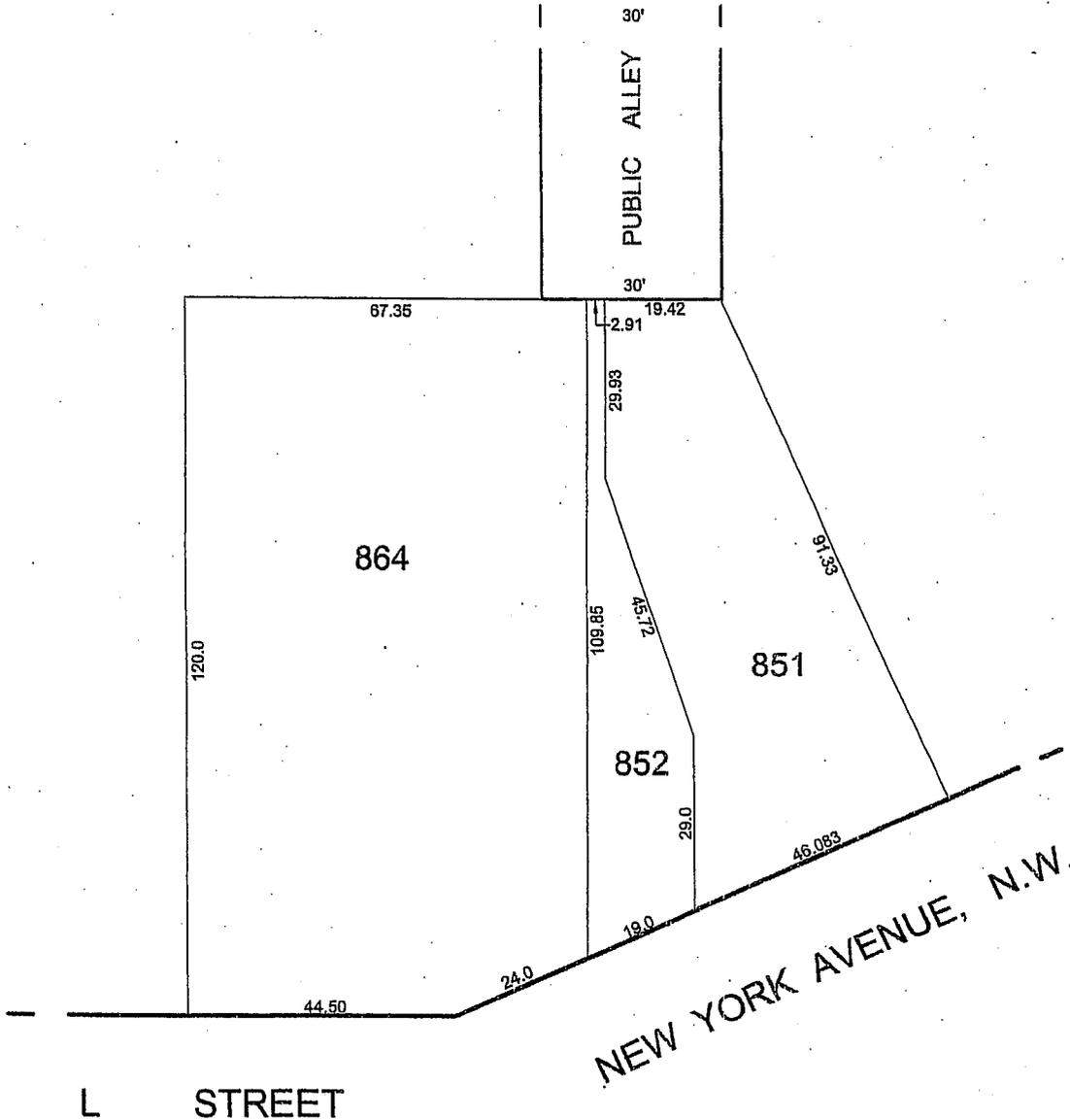

Surveyor, D.C.

Date: _____

By: L.M.A. 

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 07-29

MAY 12 2008

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 07-29 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Maureen Dwyer, Esq.
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6. Councilmember Jack Evans
7. Office of Planning (Harriet Tregoning)
8. DDOT (Karina Ricks)
9. Zoning Administrator (Matthew LeGrant)
10. Jill Stern, Esq.
General Counsel - DCRA
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Suite 9400
Washington, D.C. 20002
11. Office of the Attorney General
(Alan Bergstein)

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "S. Schellin", is written over a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning