

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-31
Z.C. Case No. 08-31
Bao-An Nguyen C.
(Map Amendment at Lot 44, Square 1417)
June 11, 2012**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public meeting on June 11, 2012, to consider an application from Bao-An Nguyen C. (the "Applicant"), for the approval of an amendment to the Zoning Map. The subject property is Lot 44 of Square 1417 ("Property"), located at 5248 MacArthur Boulevard in the Northwest quadrant of the District. The Commission considered the application pursuant to § 102 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). For the reasons stated below, the Commission hereby denies the application.

FINDINGS OF FACT

The Application

1. On December 5, 2008, the Applicant filed an application requesting an amendment to the Zoning Map rezoning the Property from the R-1-B Zone District to the C-1 Zone District ("Application"). (Exhibit 1.) On March 18, 2009, the Applicant submitted a statement in support of the Application. (Exhibit 3.) The statement indicated that the Applicant intended to use the Property for a retail business.

The Property and its Surroundings

2. The Property is comprised of 5,750 square feet of land area (0.13 acres) and is improved with a two-story one-family dwelling.
3. All lots on Square 1417 but one are in an R-1-B Zone District and developed with detached one-family dwellings. The abutting property north of the site is developed with the sole non-residential use on the square. The bank use on this property is in the C-1 Zone District.
4. On May 2008, the Applicant received Home Occupancy Permit No. 166571 for an artist studio on the premises doing business as the "Palisades Art Studio." Permit conditions included setting the hours of operation from 10:00 a.m. to 5:00 p.m. and limiting the number of clients on site to no more than eight per hour, in accordance with the home-based business limitations of the Zoning Regulations. (Exhibit 13.)

5. In her June 11, 2012 supplement, the Applicant indicated she applied for the map amendment in order to be able to accommodate more clients at the site at one time than allowed by § 203.4 the Home Occupation regulations. (Exhibit 14.)
6. The Board of Zoning Adjustment may modify up to two of the conditions enumerated in § 203.4 through 203.8, provided that the general purposes and intent of this section are complied with. (11 DCMR 203.10 (b).)

Existing R-1-B Zone District

7. The R-1-B Zone District is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes. (11 DCMR § 200.1.)

Requested C-1 Zone District

8. The requested C-1 Zone District is designed to provide convenient retail and personal service establishments for the day-to-day needs of a small tributary area, with a minimum impact upon surrounding residential development. (11 DCMR § 700.1.)

Consistency with the Comprehensive Plan

9. The Comprehensive Plan contains the following policy guidance that is relevant to the Application.
 - (a) The 2010 Comprehensive Plan's Future Land Use Map designates Square 1417 in its entirety (including the bank property) in its "Low Density Residential" category. The Comprehensive Plan describes the policy guidance of this category as follows:

This designation is used to define the District's single family neighborhoods. Single family detached and semi detached housing units with front, back, and side yards are the predominant uses. The R-1-A, R-1-B, and R-2 Zone Districts are generally consistent with the Low Density Residential land use category, although other zones may apply. (10 DCMR A § 225.3.)
 - (b) The 2010 Comprehensive Plan Policy Map shows the Property and all properties on the square except the bank property as part of a Neighborhood Conservation Area. The Comprehensive Plan describes the policy guidance of this category as follows:

Neighborhood Conservation areas have very little vacant or underutilized land. They are primarily residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. Where change occurs, it will be modest in scale and will consist primarily of scattered site infill housing, public facilities, and institutional uses. Major changes in density over current (2005) conditions are not expected but some new development and reuse opportunities are anticipated. Neighborhood Conservation Areas that are designated "PDR" on the Future Land Use Map are expected to be retained with the mix of industrial, office, and retail uses they have historically provided. (10 DCMR A § 223.4.)

The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. Limited development and redevelopment opportunities do exist within these areas but they are small in scale. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map. (10 DCMR A § 223.5.)

The bank property and the land across the street in the C-1 Zone District are within a Neighborhood Commercial Center area that continues south along the eastern frontage of MacArthur Boulevard.

Neighborhood Commercial Centers meet the day-to-day needs of residents and workers in the adjacent neighborhoods. Their service area is usually less than one mile. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and child care. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. (10 DCMR A § 223.15.)

- (c) According to the Comprehensive Plan ("Plan"), one of its guiding principles for creating successful neighborhoods is protecting their residential character. The Plan describes this principle as follows:

The residential character of neighborhoods must be protected, maintained and improved. Many District neighborhoods possess social, economic, historic, and physical qualities that make them unique and desirable places in which to live. These qualities can lead to development and redevelopment pressures that threaten the very qualities that make the neighborhoods attractive. These pressures must be controlled through

zoning and other means to ensure that neighborhood character is preserved and enhanced. (10 DCMR A § 218.1.)

- (d) The Comprehensive Plan's Land Use Element offers the following policy guidance for conservation of single family Neighborhoods:

Policy LU-2.1.5: Conservation of Single Family Neighborhoods

Protect and conserve the District's stable, low density neighborhoods and ensure that their zoning reflects their established low density character. Carefully manage the development of vacant land and the alteration of existing structures in and adjacent to single family neighborhoods in order to protect low density character, preserve open space, and maintain neighborhood scale. (10 DCMR A § 309.10.)

- (e) The Land Use Element also contains the following policy regarding non-residential uses in residential area:

Policy LU-2.3.1: Managing Non-Residential Uses in Residential Areas

Maintain zoning regulations and development review procedures that: (a) prevent the encroachment of inappropriate commercial uses in residential areas; and (b) limit the scale and extent of non-residential uses that are generally compatible with residential uses, but present the potential for conflicts when they are excessively concentrated or out of scale with the neighborhood. 10 DCMR A § 311.3.

- (f) The Arts and Culture Element contains the following policy regarding Live-Work spaces:

Policy AC-3.1.2: Live-Work Spaces

Ensure that the District's zoning and land use regulations support the development of live-work space for artists in a variety of settings around the city. 10 DCMR A § 1409.5.

Office of Planning Report

10. The Office of Planning ("OP") submitted a report dated June 1, 2012 stating that the Application was inconsistent with the Comprehensive Plan and accordingly the Commission should not set it down for a public hearing. (Exhibit 13.)

11. The OP report cited the provisions of the Comprehensive Plan that are set forth in Finding of Fact No. 9 above. It analyzed how these provisions related to the proposed project and concluded:

The R-1-B district on subject property and square is consistent with the current Low Density Residential land use designation, and allows the establishment of a live-work arrangement on the subject property. Although the Neighborhood Conservation policy designation does not preclude changes in land use that are modest in scale, extending the existing C-1 district further south to include the subject property would be inconsistent with this designation. (Exhibit 13.)

12. The OP report indicated that as part of the 2009 Comprehensive Plan amendment cycle, the Applicant requested the Office of Planning to include within the Mayor's bill an amendment to the Future Land Use Map to expand the Property's designation to "Low Density Commercial." OP did not do so principally because of the opposition of the affected Advisory Neighborhood Commission ("ANC") 3D. The legislation transmitted by the Mayor to the Council was accompanied by a description of all amendments proposed to OP, including those not in the bill. The Council did not add the Applicant's proposal to the amendment act it ultimately adopted.

Public Meeting

13. At a properly noticed public meeting on June 11, 2012, the Commission considered the Application and the recommendation of OP pursuant to § 3011 of the Zoning Regulations.
14. The Commission invited the Applicant to present her views to the Commission at the public meeting after OP presented its report recommending that the Commission deny the Application without a public hearing, but before the Commission voted on the Application. The Applicant testified in support of her Application, but was unable to explain how the proposed amendment could be considered to be not inconsistent with the Comprehensive Plan.

CONCLUSIONS OF LAW

Section 492(b)(1) of the Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 6-641.02) requires that all zoning maps "shall not be inconsistent" with the Comprehensive Plan for the National Capital.

The Commission concludes that the Applicant's proposal to rezone the Property from R-1-B to C-1 is inconsistent with the Comprehensive Plan. The requested C-1 zoning is inconsistent with the Comprehensive Plan's Future Land Use Map.

The Land Use Map designates the Property in its “Low Density Residential” category. This designation is used to define single family residential neighborhoods. (10 DCMR A § 225.3.)

The Comprehensive Plan states that the R-1-A, R-1-B, and R-2 Zone Districts are generally consistent with this land use category. (*Id.*) The requested commercial zoning is not consistent with this designation.

The requested C-1 zoning is also inconsistent with the policy guidance of the Comprehensive Plan’s Policy Map, which designates the Property as part of a Neighborhood Conservation Area. The Comprehensive Plan states that Neighborhood Conservation areas are primarily residential in character, and maintenance of existing land uses and community character is anticipated over the next 20 years. (10 DCMR A § 223.4.) The requested rezoning would permit commercial uses, a change from what is currently permitted, which is inconsistent with the policy guidance for the Property in the Policy Map.

One of the guiding principles of the Comprehensive Plan is conservation of single family neighborhoods, and the use of zoning to control redevelopment pressures. (10 DCMR A § 218.1.) Rezoning the Property to the commercial, C-1 Zone District is inconsistent with this policy guidance.

The Comprehensive Plan’s Land Use Element suggests maintaining zoning regulations to prevent the encroachment of inappropriate commercial uses in residential areas. (10 DCMR A § 311.3.) The requested C-1 Zone District permits uses that would be inappropriate in a residential area. The requested rezoning is therefore inconsistent with this policy guidance.

The Comprehensive Plan’s Arts and Culture Element supports live-work spaces for artists. (10 DCMR A § 1409.5.) The Applicant currently uses the Property as a residence and an art studio, and indicated the reason she sought the requested map amendment was to permit expanded use of the Property as a gallery for her art. The requested rezoning is consistent with this policy guidance in that it would allow this expanded artist’s live-work use. However, if granted, the requested map amendment would permit many uses other than artist’s live-work spaces, and future use of the Property would not be limited to artist live-work uses. Moreover, the expansion of the gallery that is the objective of this application apparently can be accomplished by the Applicant seeking a special exception from the Board of Zoning Adjustment to waive the two home occupation conditions that limit customer trips and the total number of customers on site. (*See* 11 DCMR § 203.4 (l) and (m).)

Taking all of this policy guidance of the Comprehensive Plan into account, the Commission concludes the requested map amendment is inconsistent with the Comprehensive Plan. The Commission therefore concludes it must deny the requested map amendment.

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. For the reasons stated above, the Commission concurs with OP's recommendation for denial and has given the OP recommendation the great weight 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 orders **DENIAL WITHOUT PREJUDICE** of the Application for the map amendment to rezone the Property from R-1-B to C-1.

A denial without prejudice means that this Application "may be refiled at the convenience of the applicant," rather than having to wait six months after dismissal. (11 DCMR § 2029.12.) However, when the Commission denies an application without prejudice, its order must "state the type of modification the Commission considers appropriate."

In this case, the modification is not to the Application, but to the Comprehensive Plan. Any Application filed within the next six months must be accompanied by proof that the Future Land Use Map of the Comprehensive Plan has been amended to expand the designation of the property to include "Low Density Commercial." In stating this prerequisite, the Commission is not expressing its support for such an amendment. It is only affording the Applicant an opportunity to immediately resubmit this Application if the Mayor proposes such an amendment and it becomes adopted and effective within the next six months.

On June 11, 2012, upon the motion of Chairman Hood, as seconded by Vice Chairman Cohen, the Zoning Commission **DENIED** the Application without prejudice at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to deny; third Mayoral appointee position vacant, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on November 2, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARBIN
DIRECTOR
OFFICE OF ZONING