GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-27
Z.C. Case No. 10-27
(District of Columbia Deputy Mayor for Planning and Economic Development and 3050 R Street Partners, LLC – Map Amendment and Special Exception)
May 23, 2011

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01), and pursuant to proper notice, having held a public hearing on April 7, 2011, to consider an application from the District of Columbia Deputy Mayor for Planning and Economic Development and 3050 R Street Partners, LLC (the "Applicant") for: (a) a map amendment to rezone Lot 276 in Square 1282 from the D/R-1-B Zone District to the D/R-5-A Zone District; and (b) a special exception to permit the construction of a new residential development in the D/R-5-A Zone District under 11 DCMR § 353; and having referred the proposed map amendment to the National Capital Planning Commission ("NCPC") for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of the following amendment to the Zoning Map incorporated into the Zoning Regulations of the District of Columbia (Title 11, DCMR), that changes the zoning of Lot 276 in Square 1282, known as 3052 R Street, N.W., (the "Subject Property") from D/R-1-B to D/R-5-A.

For the reasons stated below, the Commission also approves the special exception request in the application.

PRELIMINARY MATTERS

Application

On October 28, 2010, the Office of Zoning received an application from the Applicant requesting the Commission to rezone the Subject Property from the D/R-1-B Zone District to the D/R-5-A Zone District in order to convert the former Hurt Home for the Blind into a new residential development. The Applicant also requested the Commission to retain jurisdiction to hear the Applicant's special exception application, filed pursuant to § 353, for the new residential project. The Commission set down the application for a public hearing as a contested case at its January 10, 2011, public meeting and retained jurisdiction to hear the special exception application.

Hearing

Notice of the public hearing on the application was given in accordance with the provisions of 11 DCMR §§ 3014 and 3015 and the hearing was conducted on April 7, 2011, in accordance with the provisions of § 3022. At the conclusion of the hearing, the Commission took proposed action to approve the map amendment. Pursuant to § 492 of the District Charter, the Commission referred its proposed decision of approval to NCPC for review and comment.

The Commission took final action to approve the map amendment and the special exception at its regularly scheduled meeting on May 23, 2011, with the Commissioners voting to approve it.

Government Reports

The D.C. Office of Planning ("OP") filed a report with the Commission dated March 28, 2011, recommending approval of the application, noting that the proposed map amendment is not inconsistent with the Comprehensive Plan and that the special exception request satisfies the requirements of 11 DCMR § 3104. (Exhibit 25.)

By a delegated action dated April 28, 2011, NCPC found that the proposed map amendment would not be inconsistent with the Comprehensive Plan for the National Capital, nor would it have an adverse impact on any other federal interest. (Exhibit 36.)

Parties

Advisory Neighborhood Commission ("ANC") 2E was automatically a party to the case, and filed a report with the Commission stating that at a regularly scheduled, properly noticed meeting with a quorum present, held on February 28, 2011, the ANC had voted unanimously to support all the relief requested in the application. (Exhibit 22). There were no other parties in support or in opposition to the application.

FINDINGS OF FACT

History and Proposed Use of the Subject Property

1. The Subject Property is situated within the D/R-1-B Zone District and contains approximately of 43,869 square feet of land area. It also falls within the boundaries of the Georgetown Historic District and is deemed to contribute to the character of the historic district.

2. The District of Columbia is the current owner of the Subject Property, but the parcel was declared surplus pursuant to The Hurt Home Disposition Approval Resolution of 2010, R18-548, adopted by the Council on July 13, 2010. 54 *D.C. Reg.* 7612 (Aug. 20, 2010).

The Office of the Deputy Mayor for Planning and Economic Development ("DMPED") awarded 3050 R Street Partners, LLC ("R Street Partners"), the right to redevelop the property as a 15-unit multi-family residential use and to seek the necessary zoning relief to effectuate the plan.

3. The Subject Property is improved with the former Henry & Annie Hurt Home for the Blind, a three-story plus basement edifice originally constructed in 1913. The assisted living facility for the blind operated at the site for more than 60 years. In 1987, the District purchased the property and in 1992 the city obtained Board of Zoning Adjustment approval to convert it to a 24-bed residential treatment facility for seriously emotionally disturbed children. (*See*, BZA Order No. 15565 issued August 27, 1992.) The building has been vacant for the last several years.

4. The Subject Property includes a landscaped front yard and a spacious rear yard. A driveway off the west alley provides access to a 14-space parking lot and service area. A brick wall along the property line screens the property from adjacent parcels.

<u>The Subject Property and the Surrounding Neighborhood</u>

5. Square 1282 is a rectangular block bounded by R Street on the north, Q Street on the south, 31st Street on the west, and 30th Street on the east, all within Northwest Washington. Lot 276 is an irregularly shaped tract of land, spanning 179 feet along R Street. A dead-end public alley, 14 feet wide, abuts the property to the west.

6. To the east is the Jackson Arts Center, a former District elementary school now occupied by more than 50 artist studios. Abutting the property to the south is the Dumbarton Courts condominium and accessory garages serving the rowhouses fronting on Avon Place. Other single-family rowhouses and detached dwellings are located within Square 1272 and predominate the surrounding area. Small and medium-size apartment buildings are also scattered throughout the neighborhood. Across R Street to the north is Montrose Park and Dumbarton Oaks Research Library and Collection.

7. The areas to the west are located in the R-1-B Zone District. The R-4 Zone District is mapped in the area immediate east of the Subject Property. The federal parkland to the north is unzoned.

<u>Appropriateness of the Map Amendment</u>

8. The existing D/R-1-B zoning does not permit multi-family dwelling units and would not allow the conversion of the former Hurt Home to apartments or condominiums. The R-5-A Zone District is the first zone classification that permits multiple dwellings, subject to the provisions of § 353 of the Zoning Regulations.

9. The Future Land Use Map of the Comprehensive Plan designates the Subject Property for moderate-density residential land uses. The Framework Element of the Comprehensive Plan provides that the moderate-density residential designation is "used to define the District's row house neighborhoods, as well as its low-rise garden apartment complexes…. In some of the older inner city neighborhoods with this designation, there may also be existing multi-story apartments…." (10 DCMR A § 225.4.) The R-3, R-4, and R-5-A Zone Districts are generally consistent with this land use category, and the R-5-B District and other zones may also apply in some locations. (*Id*.)

10. The Generalized Policy Map designates the Subject Property as part of a Neighborhood Conservation Area ("NCA"). The guiding philosophy in the NCA is to ensure that the unique and special qualities of each area are maintained and conserved, and that the overall neighborhood character is protected as development takes place. The proposed map amendment will help implement the policies embodied in the Generalized Policy Map by converting an institutional building to a residential use, thereby conserving and preserving the residential qualities of historic Georgetown.

11. The proposed map amendment will also be compatible with the land use designations for the properties located in the surrounding area, which are designated on the Future Land Use Map for a range of moderate-density residential uses, and are currently improved with uses that are consistent with that designation. The proposed map amendment will permit redevelopment of the Subject Property that is in character with the immediate vicinity.

12. The proposed map amendment is consistent with many of the citywide elements of the Comprehensive Plan and will advance a number of their stated goals and policies, including the following:

    a. Land Use Element (Chapter 3) – The map amendment will conserve, enhance, and revitalize the Georgetown historic neighborhood, in support of Policy LU-2.1.3. It will increase the housing supply through the provision of 15 new residential units, three of which will be devoted to affordable housing. The map amendment will also permit the preservation and adaptive reuse of a contributing building in the Georgetown Historic District, consistent with Policy LU-2.1.12 (Reuse of Public Buildings). It will further restore a vacant property and return it to the tax rolls of the city, in fulfillment of Policy LU-2-2.3 (Restoration or Removal of Vacant and Abandoned Buildings).

    b. Housing Element (Chapter 5) – The map amendment will foster mixed income housing in Georgetown, in furtherance of Policy H-1.2.3 (Mixed Income Housing). Three of the 15 units will be affordable to households earning no more than 80% of the annual median income ("AMI") for the District. The map

amendment will also promote housing affordability on publicly owned sites, consistent with Policy H-1.2.4 (Housing Affordability on Publicly Owned Sites).

c. Historic Preservation Element (Chapter 10) – The map amendment will ensure the transfer of an historic district property to a suitable new steward with conditions to protect and re-use the building in an appropriate manner, as contemplated under Policy HP-2.1.2 (Disposition of District-Owned Properties). The former Hurt Home is no longer feasible for use as a residential care facility but can appropriately be converted to residential condominium use in a manner that preserves the historic qualities of the building, consistent with Policy HP-2.4.2 (Adaptation of Historic Properties for Current Use).

d. Urban Design Element (Chapter 9) – The map amendment will allow the former Hurt Home to be adaptively reused in a manner that will preserve the architectural continuity and design integrity of the Georgetown Historic District, consistent with Policy UD-2-2-2 (Areas of Strong Architectural Character).

Special Exception Relief Under § 353

13. Section 353.1 of the Zoning Regulations requires that all new residential developments in the R-5-A Zone District, except detached and semi-detached single-family dwellings, shall be reviewed as special exceptions under § 3104 and in accordance with the standards set forth in § 353.

14. The site is served by three public schools: Hyde-Addison Elementary School at 3219 O Street, N.W.; Hardy Middle School at 1819 35th Street, N.W.; and Woodrow Wilson Senior High School at 3950 Chesapeake Street, N.W. Several public recreational facilities are located in the immediate vicinity, including Montrose Park directly across the street.

15. No new additions are proposed for the existing building and thus there will be no infringement on the privacy of the buildings on either side. Sufficient off-street parking is to be provided in the rear yard, at a ratio of two spaces for each of the 15 units, helping to avoid any parking impacts from the project. No significant traffic impact is expected from the project's modest number of units. The small apartment house nature of the use is compatible with other uses on the street and the scale and massing of the building is in character with the surrounding Georgetown neighborhood.

16. Pursuant to § 353.2, 353.3 and 353.4, the application was referred to the D.C. Public Schools ("DCPS")[1]; Departments of Transportation ("DDOT") and Housing and Community Development ("DHCD"); and OP. Neither DCPS, DDOT, nor DHCD file reports with the Commission. OP, after having examined and analyzed all the aspects of the project set forth in § 353.4, filed a report recommending approval of the special exception.

CONCLUSIONS OF LAW

Map Amendment

1. The Commission's authority to amend the Zoning Map derives from the Zoning Act of 1938, approved 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.)

2. The Commission concludes the map amendment is consistent with the purposes of the Zoning Act. The amendment will allow use of the property consistent with its designation on the Future Land Use Map for moderate density residential purposes. The height and bulk will not be obtrusive nor will it cause any adverse affect on any nearby properties.

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[1] Subsection 353.2 actually requires a referral to the Board of Education. Pursuant to § 106 of the District of Columbia Public Schools Agency Establishment Act of 2007, effective June 12, 2007 (54 DCR 4102, D.C. Official Code § 38–175), the functions of the Board of Education were transferred to the Mayor. OP concluded that the Mayor was vested with the authority to respond to such referrals to DCPS.

3. In amending the Zoning Map, the Commission is constrained by the limitation in the District Charter that the Zoning Map be "not inconsistent" with the Comprehensive Plan. (*See*, § 492(b)(1) of the District Charter.)

4. The Commission concludes that approval of the requested map amendment from the DC/R-1-B to the D/R-5-A Zone District is not inconsistent with the Comprehensive Plan.

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

6. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to issues and concerns expressed in the affected ANC's written recommendation. The Commission concurs with the ANC's recommendation for approval, and has given it the great weight to which it is entitled.

7. 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 the OP's recommendation for approval, and has given the recommendation the great weight to which it is entitled.

<u>Special Exception</u>

8. The Commission is authorized to grant a special exception where, in its judgment, the special exception will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." (11 DCMR § 3104.1.) Certain special exceptions must also meet the conditions enumerated in the particular section pertaining to them. In this case, the Applicant had to meet both the requirements of §§ 3104.1 and 353 of the Zoning Regulations. Both §§ 3104.1 and 353 set forth general compatibility parameters for special exceptions to which they apply. Section 3104 requires a finding of harmony with the Zoning Regulations and no adverse impact on nearby properties. Section 353 requires an examination into the relationship of the project with local public services, such as schools, public streets, and public recreation facilities. Section 353 further requires the application to be referred to OP for a recommendation on "the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading" as they relate to the project itself and the surrounding neighborhood. (*See*, 11 DCMR § 353.4.)

9. The proposed project meets all the requirements of both §§ 3104.1 and 353. No new additions are proposed for the existing building and thus there will be no infringement on the privacy of the buildings on either side. Sufficient off-street parking is to be provided in the rear yard, at a ratio of two spaces for each of the 15 units, helping to avoid any parking impacts from the project. No significant traffic impact is expected from the project's modest number of units. The small apartment house nature of the use is compatible with other uses on the street and the scale and massing of the building is in character with the surrounding Georgetown neighborhood. OP, after having examined and analyzed all aspects of the project set forth in § 353.4, filed a report recommending approval of the special exception.

10. Based upon the record before the Commission and having given great weight to the OP report, the Commission concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 353, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Commission further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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 Lot 276 in Square 1282 from the D/R-1-B to the D/R-5-A Zone District.

Further, 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 a special exception to permit a new residential development in the R-5-A Zone District pursuant to § 353 of the Zoning Regulations.

In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (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 which 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.

On April 7, 2011, upon the motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission voted to **APPROVE** the Application at the conclusion of its public hearing by a vote of **4-0-1** (Konrad W. Schlater, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to approve; Anthony J. Hood, not present, not voting).

On May 23, 2011, upon the motion of Vice Chairman Schlater, as seconded by Commissioner Turnbull, the Zoning Commission voted to **ADOPT** the Order at its public meeting by a vote of **4-0-1** (Konrad W. Schlater, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to adopt; Anthony J. Hood, not having participated, 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* on July 15, 2011.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning

Z.C. CASE NO.: 10-27

As Secretary to the Commission, I hereby certify that on JUL 12 2011 copies of this Z.C. Order No. 10-27 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Carolyn Brown, Esq.
   Holland & Knight
   2099 Pennsylvania Ave., N.W. #100
   Washington, D.C. 20006
3. ANC 2E
   3265 S Street, N.W.
   Washington, D.C. 20007
4. Commissioner Charles Eason, Jr.
   ANC/SMD 2E07
   3027 Cambridge Place, N.W.
   Washington, D.C. 20007
5. Gottlieb Simon
   ANC
   1350 Pennsylvania Avenue, N.W.
   Washington, D.C. 20004
6. Councilmember Jack Evans
7. DDOT (Martin Parker)
8. Melinda Bolling, Acting General Counsel
   DCRA
   1100 4th Street, S.W.
   Washington, DC 20024
9. Office of the Attorney General (Alan Bergstein)
10. Robert McKeon, Acting Director
    for Real Property Taxes
    D.C. Assessor's Office
    1100 4th Street, S.W. 5th Floor
    Washington, D.C. 20024

ATTESTED BY: S. S. Schellin
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning