

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-30
Z.C. Case No. 10-30
Jemal's Channing Place, LLC
(Map Amendment @ Square 3846)
September 10, 2012

The Zoning Commission for the District of Columbia ("Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 787, *et seq.*; D.C. Official Code § 6-641.01), and § 102 of Title 11 of the District of Columbia Municipal Regulations ("DCMR"), having held a public hearing to consider the application from Jemal's Channing Place, LLC ("Applicant"), and referred the proposed map amendment to the National Capital Planning Commission ("NCPC") for a 30-day review pursuant to § 492 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 6-641.02) ("District Charter"), hereby gives notice of its adoption of an amendment to the Zoning Map of the District of Columbia that rezones Lots 74, 854, 855, 857, and 858 in Square 3846 from the C-M-2 Zone District to the C-2-C Zone District.

FINDINGS OF FACT

1. On November 29, 2010, the Office of Zoning received an application from the Applicant requesting that the Commission rezone Lots 74, 854, 855, 857, and 858 in Square 3846 ("subject property") from the C-M-2 Zone District to the C-2-C Zone District.
2. The Commission set down the application for a public hearing as a contested case at its January 10, 2011 public meeting.
3. The subject property consists of 101,132 square feet of land area and is situated north of Rhode Island Avenue, N.E. at the intersection of Channing Place and 9th Street N.E. The subject property is improved with two vacant warehouse buildings and includes a vacant parcel to the north of the vacant buildings. The subject property is approximately 800 feet from the Rhode Island Avenue Metro Station.
4. The subject property is currently zoned C-M-2. The C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effects on other nearby, more restrictive districts." (11 DCMR § 800.1.) The Zoning Regulations note that "[h]eavy truck traffic and loading and unloading operations

are expected to be characteristic of C-M Districts." (11 DCMR § 800.2.) Even though the subject property is designated in part for high density residential uses, the current C-M-2 Zone District does not permit new multi-family residential development.

5. The maximum permitted height and density within the C-M-2 Zone District are 60 feet and 4.0 floor area ratio ("FAR"), respectively. (11 DCMR § 840.1 and § 841.1.)
6. The Future Land Use Map of the Comprehensive Plan designates the subject property for Mixed-Use: High-Density Residential and Medium-Density Commercial uses. The subject property was placed in its current land use designation during the 2006 Comprehensive Plan amendment cycle when it was recognized that mixed-use development should be encouraged in such close proximity to the Metro station. The subject property is designated within a Land Use Change Area and is designated within an Enhanced/New Multi-Neighborhood Center on the Generalized Policy Map. The subject property is also located within the Rhode Island Avenue Metro Station Area Focus Area within the Upper Northeast Area Element of the Comprehensive Plan.
7. The area immediately east of the subject property is zoned C-2-C, which permits a 6.0 FAR with a 90 foot height, and presently consists primarily of commercial buildings. That property is included in the same mixed-use category on the Future Land Use Map as the subject property. There are other commercial uses to the south and west of the subject property along Rhode Island Avenue. As stated above, the Rhode Island Avenue Metro Station is directly across Rhode Island Avenue, as is the Home Depot shopping center. Directly west are the elevated Metro Rail lines. Farther west, past the rail tracks, are the Edgewood Terrace Apartments and a strip shopping enter on the north side of Rhode Island Avenue.
8. The Applicant is requesting a map amendment to rezone the subject property to the C-2-C Zone District. The C-2-C Zone District, in contrast to the C-M-2 Zone District, is designed to serve commercial and residential functions with high-density residential and mixed uses, which is consistent with the subject property's designation on the Future Land Use Map of the Comprehensive Plan. (11 DCMR § 720.9.) Buildings in the C-2-C Zone District may be entirely residential, or may be a mixture of commercial and residential uses. (11 DCMR § 720.12.)
9. The maximum permitted matter-of-right height in the C-2-C Zone District is 90 feet with no limit on the number of stories. (11 DCMR § 770.1.) The maximum density in the C-2-C Zone District is 6.0 FAR, all of which may be devoted to residential use, but not more than 2.0 of which may be devoted to non-residential uses. (11 DCMR § 771.2.) In the C-2-C Zone District, the maximum percentage of lot occupancy for a building or portion of building devoted to residential use is 80%. (11 DCMR § 772.1.) Moreover, pursuant to § 774.1 of the Zoning Regulations, a rear yard with a minimum depth of 15 feet must be provided for each structure in the C-2-C Zone District. Side yards generally

are not required in the C-2-C Zone District. However, if a side yard is provided, it must be at least two inches wide per foot of building height, but not less than six feet. (11 DCMR § 775.5.) Pursuant to the Inclusionary Zoning Regulations, a development including 10 or more residential units located in the C-2-C Zone District would be permitted a maximum FAR of 7.2 and a maximum lot occupancy of 90%. (11 DCMR § 2604.1 and 2604.2.)

10. Notice of the public hearing was given in accordance with the provisions of 11 DCMR §§ 3014 and 3015.
11. Advisory Neighborhood Commission ("ANC") 5B, the ANC in which the subject property is located, was automatically accorded party status. ANC 5B submitted a resolution indicating that at its regularly scheduled public meeting on June 7, 2012, and with a quorum of the ANC commissioners present, the ANC voted 7-0 to support the map amendment.
12. On July 11, 2012, Old Town Trolley Tours of Washington, Inc. ("Trolley Tours") submitted a request for party status in opposition of the application. (Exhibit 21.) At the July 26, 2012 public hearing, the Commission granted Trolley Tours' request for party status. Trolley Tours' request for party status described its concerns and a representative of Trolley Tours testified at the public hearing.
13. Trolley Tours owns Lots 846 and 856 in Square 3846, which has a street address of 2640 Reed Street N.E. ("Reed Street Property") and Lot 807 in Square 3843, which has a street address of 901 Evarts Street N.E. ("Evarts Street Property"). The Reed Street Property is directly north of the subject property to be rezoned, and the Evarts Street Property is located further north and to the east, across Reed Street, from the Reed Street Property. As detailed in Trolley Tours' submission and testimony, since 1996, Trolley Tours has stored, repaired, and refueled its fleet of trolleys, tour buses, and "Duck Boats" on both the Reed Street Property and the Evarts Street Property. Trolley Tours indicates that its on-site operations begin at approximately 8:00 a.m., and that some trolleys often return as late as midnight.
14. Trolley Tours indicated that it is concerned that users of a future mixed-use development on the subject property may object to and/or complain about Trolley Tours' existing operations. Therefore, Trolley Tours requested that the Applicant: (1) provide a 15-foot strip along the northern edge of the subject property that would remain in the C-M-2 Zone; (2) provide a clear disclosure to any occupant of the subject property of Trolley Tours' operations before occupancy or purchase; and (3) provide design restrictions for the subject property such that when it is redeveloped in the future, bedroom windows or other sensitive areas are not directly overlooking Trolley Tours' property, and a sufficient buffer is provided on the subject property.

15. On July 26, 2012, the Commission held a public hearing on the application. Two principal witnesses testified on behalf of the Applicant at the public hearing, including Paul Millstein, on behalf of the Applicant, and Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP, as an expert in land use and zoning.
16. In response to the concerns raised by Trolley Tours, Mr. Millstein testified that the Applicant is fully aware of Trolley Tours' use and operations of its property. Mr. Millstein also testified that the Applicant will provide a notice in future leases to occupants of the subject property disclosing Trolley Tours' operations. Mr. Millstein also testified that once the Applicant begins to develop its subject property, the Applicant will coordinate with Trolley Tours to incorporate design features and buffers between their respective properties to minimize any adverse impacts. With the consent of the Applicant, the Commission voted to include these promises as conditions to its approval when it took final action on September 10, 2012.
17. The Office of Planning ("OP") reviewed the Applicant's proposal to rezone the subject property to the C-2-C Zone District and, in its report dated December 30, 2010, recommended that the application be set down for public hearing. OP also submitted a report dated July 16, 2012 recommending approval of the requested map amendment. OP opined that the map amendment would not be inconsistent with the Comprehensive Plan, and that the proposed map amendment and the redevelopment that it would facilitate would further numerous policy statements of the Land Use (Chapter 3) and Housing (Chapter 5) Elements of the Comprehensive Plan. OP also indicated that the requested map amendment would establish a zoning framework that would encourage the revitalization and reuse of existing underutilized warehouse properties for future medium- to high-density mixed-use development that could include a residential component.
18. Based upon the testimony and evidence presented, as well as the OP reports, the Commission finds that the proposed rezoning is consistent with numerous elements of the Comprehensive Plan, including, among others, policies to manage growth and change, create successful neighborhoods, ensure the efficient use of land resources (Land Use Element), create a safe and sustainable transportation network that meets the access and mobility needs of residents (Transportation Element), develop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District (Housing Element), and specific area goals to foster mixed use and new housing development in the District. The Commission also finds that the proposed map amendment would create favorable conditions for the District and satisfies each of the statutory standards applicable to map amendments.
19. The Commission further finds that the map amendment would implement the Future Land Use Map's designation of the subject property for Mixed-Use: High-Density Residential and Medium-Density Commercial uses; permit the matter-of-right

development of new residential and commercial uses on the subject property, which is consistent with the subject property's designation within a Land Use Change Area on the Generalized Policy Map; and eliminate the ability to construct heavy commercial, light manufacturing and general industrial uses on the subject property, which is consistent with elements of the Rhode Island Avenue Metro Station Area Focus Area of the Upper Northeast Area Element of the Comprehensive Plan.

20. With the addition of the conditions of approval, the Commission also finds that approval of the map amendment will not impact Trolley Tours' use or operation of its property provided that Trolley Tours continues to operate its business in accordance with applicable laws and regulations
21. At the conclusion of the public hearing on July 26, 2012, 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.
22. By delegated action dated August 30, 2012, the NCPC Executive Director 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.
23. At its regularly scheduled public meeting held on September 10, 2012, the Commission considered whether to take final action on the map amendment

CONCLUSIONS OF LAW

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 *et. seq.*) ("Zoning Act").
2. Section 1 of the Zoning Act, D.C. Official Code § 6-641.01 identifies the various ways that the Commission may regulate the construction and use of buildings so as 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."
3. That same section authorizes the Commission to "divide the District of Columbia into districts or zones of such number, shape, and area as said Zoning Commission may determine, and within such districts [to] regulate the erection, construction, reconstruction, alteration, conversion, maintenance, and uses of buildings and structures and the uses of land."
4. Section 2 of the Zoning Act, D.C. Official Code § 6-641.02, as amended by § 492 of the Home Rule Act provides:

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and 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.

5. The Commission concludes the proposed 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 Mixed-Use: High-Density Residential and Medium-Density Commercial uses.
6. The Commission concludes that approval of the requested map amendment from the C-M-2 Zone District to the C-2-C Zone District is not inconsistent with the Comprehensive Plan.
7. 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 property is located.
8. 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.
9. 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.

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 Lots 74, 854, 855, 857, and 858 in Square 3846 from the C-M-2 Zone District to the C-2-C Zone District. The approval of the map amendment is subject to the following conditions. For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner.

1. The Applicant shall provide a notice in future leases to occupants of the subject property disclosing Trolley Tours' operations.
2. The Applicant shall coordinate with Trolley Tours to incorporate design features and buffers between their respective properties to minimize any adverse impacts.
3. 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.

On July 26, 2012, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Cohen, the Zoning Commission took proposed action to **APPROVE** the application at the close of its public hearing by a vote of **3-0-2** (Anthony J. Hood, Marcie I. Cohen, and Michael G. Turnbull to approve; Peter G. May, not present, not voting; 3rd Mayoral appointee position vacant, not voting).

On September 10, 2012, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Cohen, the Zoning Commission took final action to **ADOPT** this Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Marcie I. Cohen, and Michael G. Turnbull to approve; Peter G. May, not having participated, not voting; 3rd Mayoral appointee position vacant, not voting).

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In accordance with the provisions of 11 DCMR § 3028, this Order shall become effective upon publication in the *D.C. Register*; that is on October 12, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING