

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 11-18**

**Z.C. Case No. 11-18**

**Dix Street Gateway Redevelopment Partners, LLC**

**(Map Amendment at Square 5268, Lots 9-13 and Special Exception and Variance Relief at  
Square 5268, Lots 9-16)**

**March 12, 2012**

Pursuant to public notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on January 26, 2012, pursuant to § 102 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”), to consider an application from Dix Street Gateway Redevelopment Partners, LLC (“Applicant”). The application requested review and approval of an amendment to the Zoning Map of the District of Columbia to change the zoning for Square 5268, Lots 9-13 (“Property”) from R-2 to the R-5-A Zone District. The application also requested that the Commission hear and approve a special exception required for the new residential development in the R-5-A zone and a variance from the off-street parking requirements for Square 5268, Lots 9-16 (“Development Parcel”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

**FINDINGS OF FACT**

1. The District of Columbia Department of Housing and Community Development (“DHCD”) owns the Development Parcel. Pursuant to a disposition agreement, DHCD awarded the Applicant with the right to develop the Development Parcel as an affordable housing project.
2. The Development Parcel is split-zoned C-2-A and R-2: the Property is R-2 and the remainder (Lots 14-16) is C-2-A. The Development Parcel occupies approximately 17,500 square feet mid-block on the east side of 62<sup>nd</sup> Street between Clay and Dix Streets, N.E. The Property is a portion of the Development Parcel. The Development Parcel is unimproved.
3. The predominant land use near the Property is moderate-density, multifamily apartment buildings. Across 62<sup>nd</sup> Street from the Property are four three-story apartment buildings and one single-family detached dwelling. Across the rear public alley from the Property are two three-story multifamily apartment buildings and several low-scale commercial buildings. Aside from the church to the south, the moderate-density apartment buildings characterize the uses and building types surrounding the Property.

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4. By memorandum dated September 16, 2011, and through testimony at the public meeting held on September 26, 2011, the Office of Planning ("OP") recommended that the Commission set down the application for a map amendment for the Property for a hearing to consider rezoning to R-5-A and to hear requests for a special exception under § 353 and a variance from the off-street parking requirements in § 2101.1 for Lots 9-16 in Square 5268.
5. At its September 26, 2011 public meeting, the Commission set the case down for a public hearing as a contested case. The Commission adopted OP's recommendation that the Commission consider rezoning the Property to R-5-A. The Commission also agreed to hear the requested special exception and variance relief.
6. Notice of the public hearing was provided in accordance with the provisions of 11 DCMR §§ 3014 and 3015.
7. On January 26, 2012, the Commission held a public hearing on the application. The Applicant offered written and verbal testimony in the case. The Applicant stated that its request was to rezone the Property to R-5-A in order to allow the construction of a new all-affordable apartment building on the Development Parcel consistent with the Applicant's disposition agreement with DHCD. Also, the Applicant provided written and verbal testimony in support of its request for a special exception for new residential development in the R-5-A zone and a variance from the off-street parking requirements in § 2101.1. The project will provide 39 apartments and 20 surface parking spaces.
8. OP recommended, in its final report dated January 9, 2012, rezoning the Property to the R-5-A Zone District. The OP report stated that the R-5-A Zone District would not be inconsistent with the Future Land Use Map or the Generalized Policy Map. OP cited various Comprehensive Plan policies in stating that the rezoning of the Property would not be inconsistent with the Comprehensive Plan, particularly with respect to policies of the Far Northeast, Land Use and Housing elements. With respect to land use policy LU-1.4.3: Zoning of Infill Sites, the OP report stated, "The proposed map amendment from the R-2 Zone District to the R-5-A Zone District would ensure that the vacant site is developed compatible with the surrounding neighborhood, where walk-up style apartment buildings are common. If the site were to remain within the R-2 Zone District, only single-family dwellings would be permitted and this type of residential development would not be compatible with the existing surrounding neighborhood."
9. OP also recommended in its final report dated January 9, 2012, approval of the special exception under § 353 and the variance from § 2101.1. The report stated that the project satisfies the requirements of § 353 and that granting the special exception would not tend to adversely affect the use of neighboring properties and will be in harmony with the general purpose and intent of the Zoning Regulations and Map. Further, the report stated that an exceptional condition affecting the Development Parcel gives rise to a practical difficulty for the Applicant to provide all of the required parking spaces. The report

concluded by stating that “granting the requested relief would not harm the intent of the Regulations and would further support the District’s policy of encouraging the use of alternative modes of transportation and promoting walkability in neighborhoods located near transit facilities.”

10. By memorandum dated January 10, 2012, the District Department of Transportation (“DDOT”) recommended approval of the rezoning of the Property to the R-5-A Zone District, the special exception for new residential development, and the variance from the off-street parking requirements. In particular, DDOT stated that the project “will not result in any noticeable increase in intersection delays at any of the area intersections” and that it supports the reduction of parking at this transit-oriented development site. DDOT also recommended a transportation demand management (“TDM”) plan and performance monitoring and measuring for the project.
11. The Commission finds that a TDM plan and performance monitoring and measuring are unnecessary for an affordable residential project of this small scale and that such requirements would be unnecessarily burdensome for the Applicant.
12. Advisory Neighborhood Commission (“ANC”) 7C, the ANC in which the Development Parcel is located, submitted a letter in support of the proposed rezoning. With a quorum present at its December 8, 2011 meeting, the ANC voted to support the application.
13. At the January 26, 2012 public hearing, two neighborhood residents testified in support of the application and project. The supporters stated that the project would be a welcome addition to the neighborhood, that it would help revitalize the neighborhood, and that additional affordable housing is important to the community.
14. At the conclusion of the public hearing on January 26, 2012, the Commission took proposed action to approve the map amendment.
15. Pursuant to the District of Columbia Home Rule Act, the Commission referred the application to the National Capital Planning Commission (“NCPC”) for review and comment. By report and letter dated February 6, 2012, NCPC found that the proposed map amendment is not inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other identified federal interests.

#### Map Amendment

16. Based on testimony provided by the Applicant and OP, the Commission finds that the R-5-A Zone District is more consistent with the predominant land use surrounding the Development Parcel, moderate density apartment buildings, than the existing R-2 Zone District. The R-5-A Zone District better reflects the types of buildings that are typical for the block on which the Property is located. The R-5-A Zone District is not inconsistent with nearby zoning patterns: the R-5-A Zone District will allow for the construction of a

moderate-density residential building, but it will not allow for a structure denser than what is already nearby. The Future Land Use Map of the Comprehensive Plan designates the Property as moderate density residential, with which the R-5-A Zone District is generally consistent, especially when the neighborhood characteristics are considered. The R-5-A Zone District is appropriate for the Property since the immediate neighborhood is characterized by multifamily apartment buildings. Further, the proposed R-5-A Zone District more suitably reflects the neighborhood's land use than the existing R-2 Zone District.

17. The Commission finds that the proposed map amendment is not inconsistent with the Comprehensive Plan.

#### Special Exception

18. The Commission retained jurisdiction to hear the Applicant's request for special exception relief at the setdown meeting of September 16, 2011. The Application was referred to the appropriate District agencies for comment. The proposed development is located within walking distance of Drew Elementary School and within a one-mile radius of Kelly Middle School and HD Woodson High School. Based on DCPS's on-line enrollment data, the schools' capacity would be able to accommodate school-age children who might be expected to reside in the residential development. DDOT supported approval of the special exception, but recommended a TDM plan and performance monitoring and measuring for the project. As discussed above, the Commission believes the TDM plan and performance monitoring and measuring are unnecessary. OP supported approval of the special exception. The Applicant provided the required site plans, floor plans, and elevations. The project will be very similar to the existing nearby buildings in terms of bulk and density. The project will not add a disproportionately large number of units, and the structure will not be out of scale with the surrounding neighborhood. The project will not adversely affect neighboring properties with respect to light, air, aesthetics, or traffic. The project will enhance the neighborhood by providing much-needed affordable housing on an undeveloped abandoned parcel.

#### Variance

19. Based on testimony provided by the Applicant, OP, and DDOT, the Commission finds that the Development Parcel is affected by an exceptional condition that arises from the confluence of its split-zoning, zoning history, status as a DCHD disposition site, and the fact that it is unimproved. Satisfying the DHCD disposition requirements is financially possible only when at least the 39 proposed apartments are included in the project. In addition, the project must include other programmatic elements required by the DHCD disposition agreement, thus leaving no room on the Development Parcel for all of the required surface parking. It would be financially infeasible to construct underground parking for this affordable housing project. The variance relief will not be detrimental to the public good or the Zone Plan. The provision of less than the required amount of off-

street parking will not adversely impact the availability of parking on neighborhood streets.

### CONCLUSIONS OF LAW

#### Map Amendment

The 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 an amendment to the R-5-A Zone District is consistent with the purposes of the Zoning Act. The Commission finds that the proposed R-5-A zoning is more appropriate for the Property, and that rezoning the Property to R-5-A will more closely reflect the surrounding neighborhood development pattern. The R-5-A Zone District shall permit moderate-density residential development. Further, the R-5-A Zone District is not inconsistent with the Property's designation on the Comprehensive Plan Future Land Use Map.

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. (§ 492(b)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (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.

### Special Exception

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.) Certain special exceptions must also meet the conditions enumerated in the section(s) pertaining to them. In this case, the application had to meet the requirements of § 3104 and the requirements of § 353. Section 353, however, has no specifically applicable provisions. Instead, it directs referral of the application to the D.C. Board of Education, the D.C. Departments of Transportation and Housing and Community Development, and the D.C. Office of Planning, for review and comments in the areas of those agencies’ expertise. All the referral requirements were met in this case. All comments were favorable. DDOT recommended a TDM plan and performance monitoring and measuring for the project, but the Commission believes that such measures are unnecessary for an affordable residential project of this small scale and that such requirements would be unnecessarily burdensome for the Applicant.

The Commission concludes that granting of the special exception will not tend to adversely affect the use of neighboring properties and will be in harmony with the general purpose and intent of the Zoning Regulations and Map.

The Commission, therefore, concludes that the application meets the standards for a special exception for new residential development in the R-5-A Zone District, pursuant to 11 DCMR §§ 353 and 3104.1.

### Variance

The Commission finds that the application meets the standards for a variance from the off-street parking requirements in § 2101.1 and that granting of the variance will not have an adverse effect on the surrounding community.

Pursuant to § 8 of the Zoning Act, the [Commission] may grant a variance from the strict application of the Zoning Regulations where “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situations or condition of a specific piece of property, the strict application of any regulation ... would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property ... .” (D.C. Official Code § 6-641.07(g)(3); 11 DCMR 3103.2.) Variance relief can be granted only “without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plans embodied in the Zoning Regulations and Map.” *Id.* Applications for area variances must satisfy the less stringent standard of “practical difficulties,” as compared to the more difficult showing of “undue hardship” that is required for use variances. *Palmer v. Bd. of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). Therefore the Applicant in this case must show: (1) the Property is subject to an exceptional circumstance or condition; (2) such condition or circumstances will result in practical difficulties to the Applicant; and (3) the

granting of the variance will not be detrimental to the public good and will not substantially impair the intent, purpose, and integrity of the zone plan.

The Commission concludes the Development Parcel is subject to an exceptional condition and circumstance that will result in practical difficulties to the Applicant because of its split-zoning, zoning history, status as a DCHD disposition site, and the fact that it is unimproved. Satisfying the DHCD disposition requirements is financially possible only when at least the 39 proposed apartments are included in the project. In addition, the project must include other programmatic elements required by the DHCD disposition agreement, thus leaving no room on the Development Parcel for all of the required surface parking. It would be financially infeasible to construct underground parking for this affordable housing project.

The Commission concludes granting the variance relief will not be detrimental to the public good or the Zone Plan. The provision of less than the required amount of off-street parking will not adversely impact the availability of parking on neighborhood streets.

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 the affected ANC's written recommendation. ANC 7C provided written support of the application in this case. The Commission concurs with the ANC 7C's recommendation for rezoning the Property to the R-5-A Zone District, special exception relief, and variance relief, and has given its recommendation the great weight to which it is entitled.

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 rezoning the Property to the R-5-A Zone District, special exception relief, and variance relief, 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 Lots 9-13 in Square 5268 from the R-2 Zone District to the R-5-A Zone District and for the application for special exception approval for new residential development in the R-5-A Zone District pursuant to § 353 for Lots 9-16 in Square 5268 and for the application for variance relief from the off-street parking requirements in § 2101.1 for Lots 9-16 in Square 5268.

Pursuant to 11 DCMR § 3130, the portions of this Order granting a special exception and variance shall not be valid for more than two years after it becomes effective unless, within such two-year period, the Applicant files plans for the proposed structure with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit, or the Applicant files a request for a time extension pursuant to § 3130.6. No other action, including the filing or

granting of an application for a modification pursuant to § 3129.2 or 3129.7, shall extend the time period.

Pursuant to 11 DCMR § 3125, approval of an application for a special exception and variance shall include approval of the plans submitted with the application for the construction of a building or structure (or addition thereto) or the renovation or alteration of an existing building or structure. An applicant shall carry out the construction, renovation, or alteration only in accordance with the plans approved by the Commission as the same may be amended and/or modified from time to time by the Commission.

On January 26, 2012, upon the motion of Commissioner Cohen, as seconded by Commissioner May, the Zoning Commission **APPROVED** the application at its public hearing by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Michael G. Turnbull, and Peter G. May to approve; Konrad W. Schlater not present, not voting).

On March 12, 2012, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on April 13, 2012.

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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

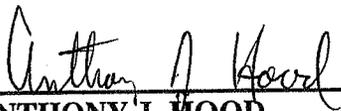
granting of an application for a modification pursuant to § 3129.2 or 3129.7, shall extend the time period.

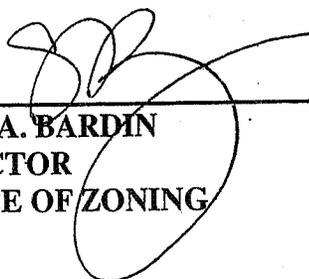
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
\_\_\_\_\_  
**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



Z.C. CASE NO.: 11-18

APR 6 2012

As Secretary to the Commission, I hereby certify that on \_\_\_\_\_ copies of this Z.C. Order No. 11-18 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
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ATTESTED BY:   
Sharon S. Schellin  
Secretary to the Zoning Commission  
Office of Zoning

