

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 12-03
Z.C. Case No. 12-03
Asmara, LLC
(Consolidated PUD and Related Map Amendment at Lot 806, Square 5113)
May 14, 2012

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public meeting on May 14, 2012, to consider an application from Asmara, LLC ("Applicant"), for the approval of a consolidated planned unit development ("PUD") and for a related map amendment. The subject property is Lot 806 of Square 5113 ("Property"), located near the intersections of Kenilworth and Eastern Avenues in the Northeast quadrant of the District. The Commission considered the application pursuant to Chapters 1, 24, and 30 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 February 27, 2012, the Applicant filed: (a) an application requesting the review and consolidated approval of a PUD on the Property (Exhibit ["Ex.,"] 4); (b) an application requesting approval of a PUD-related map amendment to rezone the Property from R-5-A to C-2-A (Ex. 3); (c) a statement in support of the applications (Ex. 1); (d) plans showing the proposed project (Ex. 2); and (e) a surveyor's plat showing the proposed development (Ex. 5) (collectively, the "Application").

The Property

2. The Property is comprised of 108,700 square feet of land area (nearly 2.5 acres). (Ex. 15.)

The PUD Project

3. The Application describes the PUD project as comprised of 39 residential townhouses for low-income residents and a commercial building that would contain a retail pharmacy¹. (Ex. 1.)

¹ The Application documents contain conflicting information about the proposed retail building. The application for consolidated approval of a PUD states that the project would include a 15,000 square foot retail pharmacy. (Ex. 4.) The statement in support of the applications states that the project would include a 13,000 square foot retail pharmacy. (Ex. 1.) The plans submitted with the application includes a site plan showing a four-story

4. The pharmacy and other commercial uses are not permitted in the R-5-A Zone District as a matter of right use or by special exception. (Ex. 15.)

Development Under Existing R-5-A Zone District

5. The R-5 Zone Districts are General Residence Districts designed to permit flexibility of design by permitting in a single district, except as provided in §§ 350 through 361, all types of urban residential development if they conform to the height, density, and area requirements established for these districts under chapter 4 of this title. The R-5 Zone Districts shall also permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive Residence Districts. (11 DCMR § 350.1.) Retail uses are not permitted in R-5 Zone Districts. (See 11 DCMR § 350.4.)
6. The R-5 Zone Districts are subdivided into R-5-A, R-5-B, R-5-C, R-5-D, and R-5-E Zone Districts. In R-5-A Zone Districts, only a low height and density shall be permitted. (11 DCMR § 350.2.)

Compliance with the Comprehensive Plan

7. The Comprehensive Plan contains the following policy guidance that is relevant to the Application.
 - (a) The Comprehensive Plan's Future Land Use Map designates Square 5113 in its "Moderate Density Residential" category. The Comprehensive Plan describes the policy guidance of this category as follows:

This designation is used to define the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings. In some of the older inner city neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). The R-3, R-4, R-5-A Zone districts are generally consistent with the

commercial building comprised of a 13,430 square foot first floor devoted to retail uses, and second through fourth floors of 12,755 square feet each devoted to office uses. (Ex. 2.) The plans also include an elevation drawing of the commercial buildings and show a one-story building. (Ex. 2.) The notice of intent to file the PUD also contained conflicting information about the PUD Project. The notice that the Applicant sent to the neighbors stated that the PUD would allow for the construction of 39 townhouses and a 50,000 square foot office/retail complex. The notice the Applicant sent to the ANC stated that Project would include 39 townhomes and a retail pharmacy. (Ex. 6.)

Moderate Density Residential category; the R-5-B district and other zones may also apply in some locations. (10 DCMR § 225.4.)

- (b) The 2010 Comprehensive Plan Policy Map shows all properties on the square as part of a larger Neighborhood Enhancement Area. The Comprehensive Plan describes the policy guidance of this category as follows:

Neighborhood Enhancement Areas are neighborhoods with substantial amounts of vacant residentially zoned land. They are primarily residential in character. Many of these areas are characterized by a patchwork of existing homes and individual vacant lots, some privately owned and others owned by the public sector or non-profit developers. These areas present opportunities for compatible small-scale infill development, including new single family homes, townhomes, and other density housing types. Land uses that reflect the historical mixture and diversity of each community should be encouraged. (10A DCMR § 223.6.)

The guiding philosophy in Neighborhood Enhancement Areas is to ensure that new development “fits-in” and responds to the existing character, natural features, and existing/planned infrastructure capacity. New housing should be encouraged to improve the neighborhood and must be consistent with the land use designation on the Future Land Use Map. The unique and special qualities of each area should be maintained and conserved, and overall neighborhood character should be protected as development takes place. Publicly-owned open space within these areas should be preserved and enhanced to make these communities more attractive and desirable. (10A DCMR § 223.7.)

- (c) According to the Comprehensive 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. (10A DCMR § 218.1.)

- (d) The Comprehensive Plan’s Land Use Element describes the balancing of priorities that must take place in order to accommodate a multiplicity of land uses within the boundaries of the District of Columbia. (10A DCMR § 300.1.) The Land Use Element of the Plan offers the following policy guidance for infill development:

Policy LU-1.4.1: Infill Development

Encourage infill development on vacant land within the city, particularly in areas where there are vacant lots that create “gaps” in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern. (10A DCMR § 307.5.)

- (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. (10A DCMR § 311.3.)

Office of Planning Report

8. The Office of Planning (“OP”) submitted a report dated May 4, 2012 stating that the Application was inconsistent with the Comprehensive Plan and, accordingly, the Commission should not set it down for a public hearing.
9. The OP report cited the provisions of the Comprehensive Plan that were pertinent to the case. It analyzed how these provisions related to the proposed project and concluded:

While a small amount of non-residential development mainly serving the immediate neighborhood may be considered not inconsistent with a residential designation, the proposal includes a significant amount of both retail and office space. Rather than complementing the surrounding residential character, OP is concerned that this would compete with existing areas designated for commercial or mixed uses in the vicinity.

The current R-5-A district on the subject property is not inconsistent with the Moderate Density Residential land use designation. The current zone district would allow the residential component of this proposal to proceed subject to special exception approval. Rezoning this property to C-2-A would be inconsistent with the current land use designation and would allow commercial uses inconsistent (*sic*) the established community character and in competition with established commercial corridors. This is particularly the case given the uncertainty about aspects of the proposal. OP is also concerned that the property has no access to a public street or right-of-way; and much of

the private property involved in this project does not appear to be owned or controlled by the Applicant. (Ex.15.)

Public Meeting

10. At a properly noticed public meeting on May 14, 2012, the Commission considered the Application and the recommendation of OP pursuant to § 3011 of the Zoning Regulations. Office of Zoning staff separately informed the Applicant that the matter would be on the agenda that evening by electronic mail.
11. The Commission invited the Applicant to present its views to the Commission at the public meeting, but no representative of the Applicant came forward.

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 Zoning Regulations require that the Commission find that the proposed PUD is not inconsistent with the Comprehensive Plan. (11 DCMR § 2403.4.)

Because the PUD-project and PUD-related map amendment are interrelated, if the PUD-related map amendment falls, then the PUD must fall as well. *Dupont Circle Citizens Ass’n v. District of Columbia Zoning Comm’n*, 426 A.2d 327, 336 (1981).

The Commission concludes that the Applicant's proposal to rezone a portion of the Property from R-5-A to C-2-A is inconsistent with the Comprehensive Plan. The Commission agrees with OP that the PUD-related rezoning would allow commercial uses that are inconsistent with the established community character and in competition with established commercial corridors and is therefore inconsistent with the Comprehensive Plan. The Commission therefore concludes it must deny the PUD-related map amendment and PUD.

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.

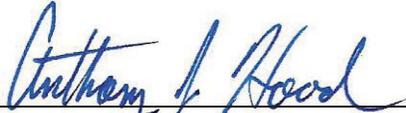
The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns of an affected ANC as expressed in its written recommendation. ANC 7D was advised of the Application by letter dated February 12, 2012. No ANC report was received in this case.

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** of the Application for the planned unit development on Lot 806 of Square 5113, and a PUD-related map amendment to rezone the Property from R-5-A to C-2-A.

On May 14, 2012, upon the motion of Commissioner Cohen, as seconded by Chairman Hood, the Zoning Commission **DENIED** the Application 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 deny).

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 October 5, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING