

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 12-07
Z.C. Case No. 12-07
Office of Planning
(Map Amendment @ Square 323 and Parcels 1, 2, and 3 of Square 349)
January 28, 2013

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under §§ 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §§ 6-641.01 and 6-641.03); and pursuant to proper notice, having held a public hearing on December 6, 2012 to consider an application from the District of Columbia Office of Planning (“Applicant” or “OP”) for a map amendment to establish initial zoning of Square 323 and Parcels 1, 2, and 3 of Square 349, 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 Square 323 and Parcels 1, 2, and 3 of Square 349, known as the Old Post Office and Old Post Office Pavilion or 1100 Pennsylvania Avenue, N.W. (“Subject Property”) from unzoned to DD/C-4.

FINDINGS OF FACT

Application

1. On June 29, 2012, the Office of Zoning received an application from the Applicant requesting that the Commission zone the Subject Property, which was then unzoned, to the DD/C-4 Zone District. The Commission set down the application for a public hearing as a contested case at its July 9, 2012 public meeting¹.
2. The General Services Administration is currently in negotiations with The Trump Organization for a long-term lease of the building and site for a major private business redevelopment. Because the property is presently unzoned, the required building permits and certificate of occupancy cannot be issued. (11 DCMR § 106.7.) Thus the need for the amendment arises.

¹ The Applicant also requested a related text amendment to the Zoning Regulations, but withdrew the request for the text amendment at the beginning of the hearing for this case.

Hearing

3. Notice of the public hearing on the application was given in accordance with the provisions of 11 DCMR §§ 3014 and 3015. On September 24, 2012, the Applicant requested postponement of the hearing and a waiver from the requirement to post the Pennsylvania Avenue frontage of the Subject Property, due to the inability to obtain permission from the General Services Administration to post along that frontage. The request to postpone and the waiver of the posting requirements for the Pennsylvania Avenue frontage were granted by the Commission on September 24, the hearing was readvertised in accordance with §§ 3014 and 3015, and the hearing was conducted on December 6, 2012 in accordance with the provisions of § 3022.
4. 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.
5. The Commission took final action to approve the map amendment at its regularly scheduled meeting on January 28, 2013, with the Commissioners voting to approve it.

Government Reports

6. OP filed a report with the Commission dated November 26, 2012, recommending approval of the application, noting that the proposed map amendment is not inconsistent with the Comprehensive Plan. (Exhibit [“Ex.”] 14) OP filed a supplemental report dated January 14, 2013 stating that it was adopting the draft order submitted by counsel of the Trump Organization as its own.
7. The D.C. Department of Transportation (“DDOT”) submitted a report November 28, 2012, in which it noted that “based on the review of the existing and future traffic conditions from operational and safety perspectives, it is DDOT’s opinion that the proposed change in zoning would not have any adverse impacts on the transportation network.” (Ex. 16)
8. Through a letter dated January 15, 2013, the NCPC Executive Director enclosed the NCPC’s action on this application taken at its January 10, 2013 meeting. The action advises the Zoning Commission “that the proposed map amendment ... will not adversely affect the federal interest.” (Ex. 27).²

² The action also “notes” NCPC’s opinion that the property will remain subject to NCPC’s in-lieu of zoning authority and that the General Services Administration intends to be the exclusive permitting authority for the project. The Commission sees no need to respond to these observations, but its silence should not be construed as an expression of its concurrence.

Parties

9. The Trump Organization (“Trump”) submitted a request for party status in support of the proposed map amendment on November 20, 2012. (Ex. 13.) At the hearing, the Commission determined that as the preferred selected developer for the Old Post Office, Trump’s interests were more directly, distinctively, and uniquely affected than that of the general public, and approved the request for party status as a party in support of the Application. There were no other parties in support or in opposition to the application.

History and Proposed Use of the Subject Property

10. The Subject Property is located at 1100 Pennsylvania Avenue, N.W. and is owned by the United States of America.
11. The Subject Property is improved with the Old Post Office, a historic building constructed between 1892 and 1899 for use as the city post office for the District of Columbia and offices for the Postmaster General. The single lot on Square 323 is developed with a single building with 389,000 square feet of floor area, equal to a floor area ratio (“FAR”) of 6.3, a building height of 135 feet, and a bell tower that reaches an approximate height of 315 feet. Parcels 1, 2, and 3 in Square 349 are developed with the “Annex” or “Old Post Office Pavilion,” an addition to the Old Post Office constructed in the 1990s for retail and movie theater use. The Pavilion has been closed for many years, while the Old Post Office remains in use as a federal public building.
12. The Subject Property is unzoned.
13. The U.S. General Services Administration, which has jurisdiction over the Subject Property, is in negotiations with the Trump Organization for a long-term lease of the Subject Property for use as a luxury hotel.

The Subject Property and the Surrounding Neighborhood

15. The Subject Property is located on the south side of Pennsylvania Avenue. Other squares south of Pennsylvania Avenue and developed with high-density office buildings, some with ground-floor and lower-level retail and service lease space. Properties north of Pennsylvania Avenue that are developed with high-density mixed office, retail, and residence uses are in the DD/C-4 and DD/C-5 Zone Districts.
16. The Subject Property is currently developed with a historic landmark. The existing site development would conform to the allowable lot occupancy and density in the C-4 Zone District, but would exceed the maximum height allowed as a matter of right by five feet. Provisions of the DD Overlay District would also provide guidance for additional office

development, and encourage the provision of the appropriate amount of cultural and arts uses.

Appropriateness of Map Amendment

17. The Central Business District (C-4) is designed to contain residential and mixed uses developed to a high density. Office, retail, and hotel uses are allowed in this zone district as a matter of right to a maximum allowable density of 8.5 FAR and height of 130 feet, and to a 10.5 FAR and 130 feet through an approved planned unit development (“PUD”).
18. The C-5 (PAD) Zone District is located directly across Pennsylvania Avenue; however, C-5 is limited to the north side of Pennsylvania Avenue, consistent with the goals and mandates of the U.S. Congress in the Pennsylvania Avenue Development Corporation Act of 1972.
19. The DD Overlay District is applicable to subareas identified in the DC Comprehensive Plan including the Downtown Shopping District (Retail Core), the Pennsylvania Quarter and historic preservation areas, which may overlap. It is intended to help accomplish Comprehensive Plan land use and development policies related to the affected downtown sectors. The most important of these being the creation of a balanced mix of uses by means of incentives and requirements for critically important land uses identified in the Plan, including retail, hotel, residential, entertainment, arts, and cultural uses; guidance and regulation of office development which is traditionally favored by market forces over the other desired uses; and protection of historic buildings.
20. The appropriate zone to accommodate the existing and desired mix of retail, cultural, service, and hotel development on the Subject Property is a C-4 Zone District with the DD Overlay District.
21. The Comprehensive Plan Future Land Use Map designates the subject properties south of Pennsylvania Avenue as “federal,” which includes land and facilities owned, occupied, and used by the federal government (excluding parks and open space). The “federal” category generally denotes ownership rather than use.
22. Squares immediately north of Pennsylvania Avenue are designated High-Density Commercial which is used to define the Central Employment Area (“CEA”) and other major office employment centers on the downtown perimeter. It is characterized by office and mixed office/retail buildings greater than eight stories in height, although many lower scale buildings (including historic buildings) are scattered about. The corresponding zone districts include C-4.

23. The Comprehensive Plan Policy Map shows the Subject Property and most of the downtown in the CEA. The CEA hosts a wide variety of commercial uses, including those proposed for the Subject Property as part of the redevelopment.
24. Amending the Zoning Map to place the subject property in the DD/C-4 Zone District to permit redevelopment of the Subject Property furthers several Elements of the Comprehensive Plan:
 - a. Central Employment Area – Preservation and protection of historic resources and placement of appropriate uses in the Central Employment Area (Policies L U-1.1.4 and J.1.6); and
 - b. Federal sites – Even where federal lands will remain in federal use, the impacts of new activities on local land use and transportation is critical (Policy LU – 1.2.3).

CONCLUSIONS OF LAW

1. The Commission’s authority to amend the Zoning Map derives from Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, as amended,) (“Zoning Act”). Section 1 of the Zoning Act establishes the authority of the Commission to “promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia through regulation of the structures and uses on its land.” (D.C. Official Code § 6-641.01.)
2. Section 2 of the Zoning Act mandates that the Zoning Regulations shall be designed to “lessen congestion in the street,” and to “promote the distribution of the uses of land as would tend to create conditions favorable to...civic activity, and recreational, educational, and cultural opportunities.” (D.C. Official Code § 6-641.02.)
3. Section 3 of the Zoning Act establishes the authority of the Zoning Commission to amend the Zoning Maps of the District of Columbia. (D.C. Official Code § 6-641.03.)
4. The Commission concludes that the proposed map amendment is consistent with the purposes of the Zoning Act. The amendment will allow use of the Subject Property consistent with its designation on the Comprehensive Policy Map’s Central Employment Area.
5. In amending the Zoning Map, the Commission is constrained by the limitation of § 492(b)(1) of the District of Columbia Home Rule Act, that the Zoning Map be “not inconsistent” with the Comprehensive Plan. 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.

6. Based upon the Findings of Fact and Conclusions of Law, the Commission concludes that the requested map amendment is in the best interest of the District of Columbia and will benefit the communities near which the Subject Property is located.
7. The Zoning 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 to the Zoning Map to change the status of the Subject Property from unzoned to the DD/C-4 Zone District.

The Applicant is required to comply fully with the provisions of the D.C. Human Rights Act of 1977, D.C. Law 2038, as amended, D.C. Official Code § 2-1404.01 *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. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On December 6, 2012 upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the map amendment application at the conclusion of its public hearing by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Marcie I. Cohen, not having participated, not voting).

On January 28, 2013, upon the motion Commissioner Miller of, as seconded by Chairman Hood, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G Turnbull to adopt; Marcie I. Cohen, not having participated, not voting).

Z.C. ORDER NO. 12-07
Z.C. CASE NO. 12-07
PAGE 7

In accordance with the provisions of 11 DCMR § 3028, this Order shall become effective upon publication in the *D.C. Register*; that is on February 22, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING