

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-02

Z.C. Case No. 13-02
Jemal's Hecht's, LLC
(Map Amendment @ Square 4037)
July 8, 2013

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 Hecht's, LLC ("Applicant"), and referred the proposed amendments 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 portions of Lots 7 and 804 in Square 4037 ("Property") from the C-M-2 to C-M-3 Zone District.

FINDINGS OF FACT

1. On January 16, 2013, the Office of Zoning received an application from the Applicant requesting the Commission to rezone the Property from the C-M-2 to C-M-3 Zone District ("Application"). The Commission voted unanimously to set down the Application for a public hearing as a contested case at its February 25, 2013, public meeting.
2. The Property is located along New York Avenue in Northeast Washington, D.C. in Ward 5. The project site is bounded by New York Avenue to the north, Fenwick Street to the west, Okie Street to the south, and 16th Street to the east, all within Northeast Washington. The property is improved with the former Hecht Company Warehouse, a landmark complex of connected buildings constructed between 1937 through 1994. The portions of the building that contribute to its landmark status date from 1937, 1948, and 1961. The heights of the contributing buildings range from approximately 82 feet (1937 landmark section), to 54.5 feet (1948 landmark section), to 14 feet (1961 landmark section). The site has been vacant for the last several years and was recently purchased by the Applicant in late 2011.

3. Situated along the busy industrial section of New York Avenue, the Property is surrounded by production, distribution, and repair uses. The CSX railroad and Metrorail tracks are located across New York Avenue to the north. Other one- and two-story industrial buildings dating from the early twentieth century predominate the surrounding area.
4. The Applicant proposes to rezone the eastern portion of Square 4037 to the C-M-3 Zone District. (Exhibit ["Ex.,"] 3B.) The portion of the square to remain in the C-M-2 Zone District begins at the west boundary line of Square 4037 and extends east a distance of 343 feet, 10 inches. The remainder of Square 4037 would be rezoned to C-M-3.
5. On March 11, 2013, the Applicant submitted a Prehearing Statement. The Commission schedule a hearing on the Application for June 3, 2013, and notice of the public hearing was given in accordance with the provisions of 11 DCMR §§ 3014 and 3015.
6. Advisory Neighborhood Commission ("ANC") 5D, the ANC in which the Property is located, was automatically accorded party status. There were no other parties to the case other than the Applicant and ANC 5D.
7. By letter dated February 16, 2013, ANC 5D stated that, at a duly noticed meeting held February 12, 2013, with a quorum present, the ANC voted 6-0 to support the Application.
8. The Office of Planning ("OP") reviewed the Applicant's proposal to rezone the Property from the C-M-2 to the C-M-3 Zone District and, in its written report dated May 24, 2013, recommended approval of the Application. With regard to the Future Land Use Map ("FLUM"), OP stated that a C-M-3 zone would be as consistent with the FLUM as would a C-M-2 zone. With regard to the Generalized Policy Map, OP stated that the requested rezoning would be consistent with the policy of maintaining or enhancing existing land use and neighborhood characteristics, would help to ensure the continuation of Production, Distribution, and Repair ("PDR") land uses, and would not threaten the stability of adjacent PDR uses, nearby residential uses in Ivy City, or the Moderate-Density Commercial/Medium-Density Residential land use change area designated at the intersection of New York Avenue, N.E. and Bladensburg Road, N.E. With regard to the Comprehensive Plan, the OP stated that the requested rezoning is not inconsistent with the written elements of said plan, particularly policies for Industrial Land, the Upper Northeast Element, the New York Avenue Corridor, and Historic Preservation.

9. The District's Department of Transportation ("DDOT") reviewed the Applicant's proposal to rezone the Property from the C-M-2 to the C-M-3 Zone District and, in its written report dated May 24, 2013, could not make an exact determination of the expected impacts of the rezoned area without a full development proposal and Transportation Impact Study ("TIS"). DDOT stated that as a result of the rezoning, however, vehicular traffic is expected to increase on arterials and adjacent local streets potentially leading to significant increases in travel delay. At the hearing, DDOT clarified that it does not normally request a TIS unless a specific project requires zoning relief from the Board of Zoning Adjustment or the Commission, or through the Large Tract Review process or, public space review is required for a private street, for example, as is being proposed in this case.
10. On June 3, 2013, the Commission held a public hearing on the Application. Mr. Paul Millstein testified on behalf of the Applicant in support of the Application. The Applicant also submitted the report of Mr. Steven Sher, which was qualified as the work of an expert in land planning.
11. Kathy Henderson (ANC 5D05) and Peta-Gay Lewis (ANC 5D01) testified in support of the Application at the hearing. Others testifying in support of the Application were Alicia Swanson-Canty, President of the Ivy City Citizens Association, and Vonetta Dumas (ANC 5D02).
12. Based upon the testimony and evidence presented, and the DDOT and OP reports, the Commission finds that the proposed rezoning is consistent with numerous elements of the Comprehensive Plan, including, among others, policies to restore and improve the character and stability of the neighborhood (Land Use Element), actions to promote the renovation and rehabilitation of a landmark industrial warehouse building and its site for compatible PDR and commercial uses (Historic Preservation Element), and actions designed to guide growth and neighborhood conservation in Upper Northeast (Upper Northeast Area Element). 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.
13. The Commission further finds that the map amendment to the C-M-3 Zone District would be consistent the Future Land Use Map's designation of the Property for PDR uses. The requested map amendment is not inconsistent with the Comprehensive Plan, would not create any adverse impacts on surrounding properties, and would result in a number of important benefits to the surrounding community and the District of Columbia as a whole.
14. At the conclusion of the public hearing on June 3, 2013, 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.

15. The Commission took final action to approve the map amendment at its regularly scheduled meeting held on July 8, 2013.

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) ("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 that the map amendment is consistent with the purposes of the Zoning Act. The amendment is not inconsistent with the Comprehensive Plan, would not create any adverse impacts on surrounding properties, and would result in a number of important benefits to the surrounding community and the District of Columbia as a whole.
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 C-M-2 to the C-M-3 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 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's recommendations. The Commission concurs with 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 of the District of Columbia that rezones the portions of Lots 7 and 804 in Square 4037 from the C-M-2 to the C-M-3 Zone District shown on Exhibit 3B to the record. The west portion of Square 4037, beginning at the west boundary line and extending 343'-10" to the east, shall be located in the C-M-2 Zone District and the remainder of Square 4037 shall be located in the C-M-3 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.

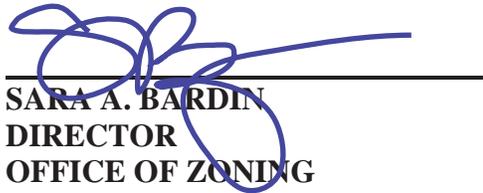
On June 3, 2013, upon the motion of Vice Chairman Cohen, as seconded by Commissioner Miller, the Commission **APPROVED** the Application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Michael G. Turnbull, and Peter G. May to approve).

On July 8, 2013, upon the motion of Commissioner Miller, as seconded by Commissioner May, Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Michael G. Turnbull, and Peter G. May to adopt).

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 19, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING