

GOVERNMENT OF THE DISTRICT OF COLUMBIA



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 18-19
Z.C. CASE NO. 18-19
Poplar Point RBBR LLC d/b/a Columbian Quarter Holdings
(Map Amendment @ Squares 5860 and 5861)
September 23, 2019

The Zoning Commission for the District of Columbia (the “Commission”) held a properly noticed public hearing on July 31, 2019 to consider an application for a map amendment (the “Application”) submitted by Poplar Point RBBR LLC, d/b/a Columbian Quarter Holdings, (the “Applicant”) pursuant to Subtitle X, Chapter 4 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”) (Zoning Regulations of 2016 [the “Zoning Regulations] to which all references are made unless otherwise specified to amend the Zone Map from the MU-14 zone to the NHR zone for Lots 97, 1025-1031, and 1036-1037 in Square 5860 and Lots 89 and 991 in Square 5861 (the “Property”). For the reasons set forth below, the Commission hereby **APPROVES** the application.

FINDINGS OF FACT

Northern Howard Road Zone Text Amendment (Z.C. Case No. 18-18)

1. On October 5, 2018, the Office of Planning (“OP”) filed a petition proposing that the Commission adopt a text amendment creating a new Northern Howard Road Zone, initially designated the NHR-1 zone, but subsequently renamed the NHR zone,¹ for properties along Howard Road in Z.C. Case No. 18-18 (the “NHR Text Amendment”).
2. The Commission voted to set down the NHR Text Amendment on October 22, 2018; took proposed action to adopt the NHR Text Amendment, as modified, on June 6, 2019; and took final action to adopt the NHR Text Amendment, as modified, on September 23, 2019. The NHR Text Amendment became effective on December 6, 2019.

Notice of Rulemaking

3. On October 10, 2018, the Applicant filed the Application as a petition for approval of an amendment to the Zoning Map to the proposed NHR zone as a rulemaking pursuant to Subtitle Z § 201.7(b)(1). (Exhibit [“Ex.”] 1, 2.)
4. At its November 19, 2018, public meeting, the Commission voted to set down the Application as a rulemaking and scheduled it for a hearing on March 14, 2019. (Ex. 4.)

¹ As the designation changed from the NHR-1 zone to the NHR zone over the pendency of this case, the submissions to the record vary in which term is used. All references herein use the final NHR zone, even if the referenced exhibit used the NHR-1 zone designation.

5. Pursuant to the rulemaking notice requirements of Subtitle Z § 502, the Office of Zoning (“OZ”) sent notice of the public hearing to all property owners within 200 feet of the Property as well as to Advisory Neighborhood Commissions (“ANC”) 8A and 8C (the “affected” ANCs pursuant to Subtitle Z § 101.8) on January 3, 2019. OZ published a notice of the public hearing in the *D.C. Register* on January 18, 2019 as well as on the calendar on OZ’s website. (Ex. 16, 17.)
6. The Commission subsequently postponed the public hearing from March 14, 2019 to May 2, 2019 and then to June 6, 2019, to allow the Applicant additional time to work with the community.

Notice of Contested Case

7. At its June 6, 2019 public hearing, the Commission reconsidered its initial determination that the Application should be set down as a rulemaking and concluded that the Application should instead be classified as a contested case and therefore required re-noticing for the new hearing date of July 31, 2019. The Commission also took action to incorporate the proposed text amendment applicable to the Property that initially had been proposed as part of the Application, into the NHR Text Amendment in Z.C. Case No. 18-18. (June 6, 2019 Public Meeting Transcript at 20-21.)
8. Pursuant to the contested case notice requirements of Subtitle Z § 402, OZ sent notice of the new contested case public hearing to all property owners within 200 feet of the Property as well as to ANCs 8A and 8C, on June 13, 2019. OZ published notice of the public hearing in the *D.C. Register* on June 21, 2019 as well as on the calendar on OZ’s website. (Ex. 52, 53, 54).

Parties

9. The only parties other than the Applicant were ANCs 8A and 8C.

The Property

10. The Property is located near the Anacostia River waterfront and consists of approximately 348,737 square feet of land area. (Ex. 2.)
11. The Property is located on either side of Howard Road, S.E., in between Interstate 295 and South Capitol Street, S.E.
12. Lot 89 in Square 5861 is currently improved with a three-story school building. The rest of the Property is either improved with small buildings or unimproved. (Ex. 2.)

Current Zoning

13. The Property is currently located in the MU-14 zone, which is intended to permit high-density mixed-use development generally in the vicinity of the waterfront. (Subtitle G § 500.5.)
14. As a matter of right, the MU-14 zone permits:

- a) A maximum density of 6.0 floor area ratio (“FAR”), or 7.2 FAR for developments subject to Inclusionary Zoning (“IZ”), of which no more than 5.0 FAR can be devoted to nonresidential uses; (Subtitle G § 502.1.)
- b) A maximum height of 90 feet, or 100 feet for IZ developments; and (Subtitle G § 503.1.)
- c) A maximum residential lot occupancy of 75%, or 80% for IZ developments. (Subtitle G § 504.1.)

Comprehensive Plan

- 15. The Future Land Use Map (the “FLUM”) of the Comprehensive Plan (Title 10A of the DCMR, the “CP”) designates the Property for Mixed Use: High-Density Residential/High-Density Commercial and Institutional uses in the Central Employment Area (the “CEA”). (Ex. 2, 2C, 2D, 2E.)
- 16. The CP’s Framework Element (§ 225.18) establishes that a “Mixed-Use” designation on the FLUM is assigned to areas where the mixing of two or more land uses is encouraged and is generally applied to:
 - a) Established, pedestrian-oriented commercial areas that also include substantial amounts of housing;
 - b) Commercial corridors or districts which may not currently contain substantial amounts of housing but where more housing is desired; and
 - c) Large sites where opportunities for multiple uses exist but a plan dictating the precise location of these uses has yet to be prepared.
- 17. The CP’s Framework Element establishes that for areas with a Mixed-Use designation, the general density and intensity of development is determined by the specific mix of uses shown on the FLUM. (CP § 225.19.) If the desired outcome is to emphasize one use over the other, the FLUM may note the dominant use by showing it at a slightly higher density than other uses in the mix. The CP’s Area Elements may also provide detail on the specific mix of uses envisioned.
- 18. The CP’s Framework Element defines High-Density Residential as “neighborhoods and corridors where high-rise (8 stories or more) apartment buildings are the predominant use” and High-Density Commercial as “the central employment district of the city and other major office employment centers on the downtown perimeter ... characterized by office and mixed office/retail buildings greater than eight stories in height.” (CP §§ 225.6, 225.11.)
- 19. The CP’s General Policy Map (“GPM”) designates the Property as a Land Use Change Area. (Ex. 23.)

20. The CP's Framework Element states that the "guiding philosophy in the Land Use Change Areas is to encourage and facilitate new development" pursuant to the CP's Area Elements that are to "guide development and redevelopment within the Land Use Change Areas, including the desired mix of uses in each area." (CP §§ 223.11-223.12.)
21. The Property is subject to the CP's Lower Anacostia Waterfront/Near Southwest Area Element (the "Lower Anacostia Element"), which encourages mixed-use development on vacant or underutilized waterfront lands that incorporate significant commercial and affordable housing elements. (Ex. 2.)
22. The CP's Framework Element also notes that the Lower Anacostia Waterfront/Near Southwest Area is predicted to house 16.5% of the District's household growth and 20.3% of its job growth. (CP § 215.19.)

The Application

23. The Application requests to rezone the Property from the MU-14 zone to the NHR zone to make it consistent with the Comprehensive Plan. The NHR zone is intended to permit high-density mixed-use development generally in the vicinity of the Anacostia Metrorail Station along Howard Road, S.E.; encourage a variety of support and visitor-related uses, such as retail, service, and entertainment uses; provide for increased height and bulk of buildings with increased affordable housing; and provide for development of Howard Road, S.E. as an active, pedestrian-oriented street with active ground-floor uses. (Subtitle K § 1001.1.)
24. As a matter of right, the NHR zone permits:
 - a) A maximum overall density of 9.0 FAR; (Subtitle K § 1001.2.)
 - b) A maximum height of 130 feet (dependent on street right-of-way width); and (Subtitle K § 1001.3.)
 - c) A maximum lot occupancy of 100%. (Subtitle K § 1001.7.)
25. New developments in the NHR zone are subject to design standards for building façades on designated streets and require the Commission's design review approval. Developments are also subject to enhanced IZ, LEED-Gold, and renewable energy requirements. (Ex. 2.)

Responses to the Application

Office of Planning Report

26. OP submitted a report dated October 15, 2018, recommending that the Commission set down the case for a public hearing because the proposed NHR zone would allow for a higher-density development consistent with most other areas in the CEA than the current MU-14 zoning for the Property (the "OP Setdown Report"). (Ex. 4.) The OP Setdown Report concluded that the proposed NHR zone would not be inconsistent with the CP. OP reiterated this recommendation in its testimony at the November 19, 2018 public meeting.

27. On March 4, 2019, OP submitted a report recommending approval of the Application restating that the proposed NHR zone would not be inconsistent with the CP (the “OP Final Report”). (Ex. 23.)

District Department of Transportation Report

28. On March 4, 2019, the District Department of Transportation (“DDOT”) submitted a report expressing no objection to the Application (the “DDOT Report”). (Ex. 24.)²
29. The DDOT Report noted that the additional vehicular trips generated from the full build-out in the NHR zone would result in significant impacts to the District transportation network. The DDOT Report noted that Comprehensive Transportation Reviews, including proposed mitigations, would be expected for each development parcel.

ANC Report

30. On June 6, 2019, ANCs 8A and 8C submitted a joint resolution in support of the proposed NHR zone (the “Joint ANC Report”). (Ex. 51.) The Joint ANC Report indicated that both ANCs held properly noticed meetings, and with quorums present, both ANCs voted in support of the Applicant’s request to rezone the Property from the MU-14 zone to the NHR zone based on the ANCs’ conclusion that the Application was not inconsistent to the CP and in harmony with the FLUM’s spirit to foster high-density mixed use near the Anacostia Metro Station.

Persons in Support

31. Fifteen letters in support were filed in the record from individuals and entities recommending the Commission approve the proposed NHR zone. (Ex. 25-33, 35-37, 43, 46-47.)

Persons in Opposition

32. Letters in opposition from Current Area Residents EastOfTheRiver (“CARE”) and Aiyi’nah Ford and Aristotle Theresa, both individuals associated with CARE, were filed in the record raising concerns about the petition. However, CARE subsequently withdrew all opposition. (Ex. 40-41, 45, 48-49.)

Public Hearing

33. At its July 31, 2019 public hearing, the Commission heard testimony from OP in support of the Application, while the Applicant rested on the record.

CONCLUSIONS OF LAW

1. The Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, ch. 534; D.C. Official Code § 6-641.01, *et seq.*) (“Zoning Act”) authorizes the Commission to create zones within which the Commission may regulate the construction and use of property in order to “promote the health, safety, morals, convenience, order, prosperity, or general welfare of

² The DDOT Report based its conclusions on analyses done for a similar development project on the Property approved as a PUD in Z.C. Case No. 16-29 that the Commission extinguished pursuant to the Applicant’s request. (Ex. 50.)

the District of Columbia and its planning and orderly development as the national capital.” (§ 1 of the Zoning Act; D.C. Official Code § 6-641.01.)

2. Section 2 of the Zoning Act (D.C. Official Code § 6-641.02) further 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 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 or 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.

Subtitle X § 500.3 - Not Inconsistent with the Comprehensive Plan

3. The Commission must ensure that the Zoning Map, and all amendments to it, are “not inconsistent” with the CP pursuant to § 492(b)(1) of the District of Columbia Home Rule Act (§ 2 of the Zoning Act; D.C. Official Code § 6-641.02.) Subtitle X § 500.3 incorporates this intent to the Zoning Regulations by requiring that map amendments be “not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.”
4. Based upon the case record, including the Applicant’s exhibits, the reports and testimony of OP and DDOT, the Joint ANC Report, and for the reasons below, the Commission concludes that the Application’s proposed NHR zone for the Property furthers the goals of the CP and promotes orderly development in conformity with the Zone Plan as embodied in the Zoning Regulations and Zoning Map. The Commission further concludes that the Application will benefit the community in which the Property is located and is in the best interest of the District of Columbia. The Commission therefore concludes that the Application is not inconsistent with the CP and its policies and maps and so complies with the Zoning Act and Subtitle X § 500.3.

Consistent with the FLUM

5. The Commission concludes that the proposed NHR zone would remain consistent with the FLUM’s designation of the Property for high-density mixed use (High-Density Residential/High-Density Commercial, and Institutional uses). The Commission notes that the Property is located in an existing commercial corridor in which the FLUM encourages the development of additional housing stock to support the mix of commercial and retail uses. The Commission credits the statements of the Applicant, the OP Reports, and the Joint ANC Report that the increased height and density allowed by the NHR zone would better encourage the development of this mix of uses than the Property’s current MU-14 zone.

Consistent with the GPM and Lower Anacostia Element

6. The Commission concludes that the proposed NHR zoning furthers the GPM because it will allow for a greater mixture of residential, retail, office, and other uses along a mixed-use corridor and designated Great Street as called for in the Lower Anacostia Element.
7. The Commission finds that the Property is currently underutilized relative to its location along one of the District's Great Streets and its proximity to Metrorail. The proposed NHR zone will allow for greater overall density, particularly greater residential density which the Commission concludes will support the existing and potential non-residential uses in the surrounding area.

Land Use Element

8. The Commission concludes that the proposed NHR zone furthers this element because it will encourage higher-density mixed-use development, including housing, proximate to a Metrorail station, thereby revitalizing and enhancing the surrounding neighborhood while remaining consistent with the scale and density of much of the surrounding development.

Transportation Element

9. The Commission concludes that the proposed NHR zone furthers this element because it will facilitate the development of housing and retail uses in close proximity to Metrorail and Metrobus lines and other transportation options along the Martin Luther King, Jr. Avenue, S.E. corridor.

Housing Element

10. The Commission concludes that the proposed NHR zone furthers this element because it will help address the need for more housing and affordable housing in the District and more neighborhood-serving amenities in Anacostia.

Economic Development Element

11. The Commission concludes that the proposed NHR zone furthers this element because it would allow for new neighborhood serving retail and other commercial uses which will serve residents of and visitors to the surrounding area. The Commission finds that this will serve to generate tax revenue and aid in job creation for District residents.

National Capital Planning Commission ("NCPC") Review

12. Pursuant to the District of Columbia Home Rule Act of 1973, as amended (87 Stat. 790, Pub. L. No. 93-198, D.C. Code § 1-201 *et seq.*), the Commission referred the Application to NCPC for review and comment on August 5, 2019. (Ex. 58.)
13. By a letter dated September 5, 2019, NCPC concluded that the Application was not inconsistent with the Comprehensive Plan for the National Capital and would not adversely impact any other identified federal interests. (Ex. 59.)

“Great Weight” to the Recommendations of OP

- 14. Pursuant to § 13(d) 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 (2001)) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP.
- 15. The Commission concludes that OP’s reports, which provided an-depth analysis of the proposed NHR zone, are persuasive and concurs with OP’s recommendation that the Property be rezoned, as discussed above

“Great Weight” to the ANC Report

- 16. Pursuant to § 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) (2012 Repl.)) and Subtitle Y § 406.2, the Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
- 17. The Commission finds the issues raised by the Joint ANC Report persuasive and concurs in its recommendation of support for the Application.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application to amend the Zoning Map as follows:

| SQUARE | LOT | Map Amendment |
|--------|--------------------------|---------------|
| 5860 | 97, 1025-1031, 1036-1037 | MU-14 to NHR |
| 5861 | 89, 991 | MU-14 to NHR |

Proposed Action

Vote (July 31, 2019): **5-0-0** (Robert E. Miller, Peter A. Shapiro, Anthony J. Hood, Peter G. May and Michael G. Turnbull to **APPROVE**)

Final Action

Vote (Sept. 23, 2019): **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 18-19 shall become final and effective upon publication in the *D.C. Register*; that is on February 21, 2020.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (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 WHICH 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.