

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 21-14
Z.C. CASE NO. 21-14
New Macedonia Baptist Church
(Zoning Map Amendment @ Square 4220, Lot 802)
October 27, 2022

Pursuant to notice, at its public hearing on September 19, 2022, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) by New Macedonia Baptist Church (the “Applicant”) for approval of a map amendment of the Zoning Map from the R-1-B zone to the MU-4 zone (the “Map Amendment”) for Lot 802 in Square 4220 (the “Property”), pursuant to Subtitle X, Chapter 5 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.)

The Commission determined the Property is appropriate for IZ Plus. The Property shall be indicated with an “IZ+” symbol on the Zoning Map. For the purposes of calculating an IZ Plus set-aside requirement pursuant to Subtitle C § 1003, the maximum permitted floor area ratio (“FAR”) of the existing R-1-B zone was equivalent to 0.4.

The Commission considered the Application as a contested case pursuant to Subtitle A § 210 and Subtitle Z, Chapter 4. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. In addition to the Applicant, the only other party to this case was Advisory Neighborhood Commission (“ANC”) 5C, the ANC in which the Property is located and the “affected ANC” pursuant to Subtitle Z §§ 101.8 and 403.5(b).
2. The Commission received no requests for party status.

NOTICE

3. On February 4, 2021, the Applicant mailed a notice of intent to file the Application to all property owners within 200 feet of the Property as well as ANC 5C, as required by Subtitle Z § 304.5. (Exhibit [“Ex.”] 4.)

4. On May 27, 2022, the Office of Zoning (“OZ”) sent notice of the September 19, 2022, virtual public hearing to:
 - Applicant;
 - ANC 5C;
 - ANC Chairperson (“Chair”) 5C04;
 - ANC Single Member District (“SMD”) 5C07;
 - Office of the ANCs;
 - Office of Planning (“OP”);
 - District Department of Transportation (“DDOT”);
 - At-Large Councilmembers and the Chair of the Council;
 - The Ward 5 Councilmember;
 - Department of Energy & Environment (“DOEE”);
 - Department of Consumer and Regulatory Affairs (“DCRA”);
 - Office of Zoning Legal Division (“OZLD”); and
 - Property owners within 200 feet of the Property.
(Ex. 30, 31.)
5. OZ published notice of the public hearing in the June 10, 2022, *D.C. Register* (69 DCR 006694 *et seq.*), as well as on the calendar on OZ’s website. (Ex. 29, 30.)
6. Pursuant to Subtitle Z §§ 402.8 and 402.9, the Applicant filed an affidavit supported by photos stating that on August 10, 2022, it had posted the required notice of the public hearing. (Ex. 37, 40.)
7. Pursuant to Subtitle Z § 402.10, the Applicant filed an affidavit attesting that it had maintained the posting of the notice on the Property. (Ex. 42.)

THE PROPERTY

8. The Property is located in the northeast quadrant of the District in the Brookland-Edgewood neighborhood and consists of approximately 9,430 square feet of land area (approximately 0.22 acres).
9. The square within which the Property lies is generally bounded by Kearny Street NE to the north, 22nd Street NE to the east, Jackson Street NE to the south, and 20th Street NE to the west. The Property is a corner lot with a southeast portion abutting Rhode Island Avenue NE. (Ex. 2, 21.)
10. The Property abuts the Applicant’s private church property to the north and abuts a private single-family dwelling property to the west. (Ex. 2, 21.)
11. The Property is unimproved and is currently used as a parking lot for the Applicant’s church. (Ex. 2, 21.)

12. The Property is within a short one-quarter mile walking distance to Priority Corridor Network Metrobus Route G8. (Ex. 39.)
13. The properties to the north and west of the Property are zoned R-1-B. The properties to the east and south of the Property are zoned MU-4. (Ex. 2, 21.)

CURRENT ZONING

14. The Property is in the R-1-B zone. The R-1-B zones are intended to provide areas predominately developed with detached houses on moderately sized lots. (Subtitle D § 300.3.)
15. The R-1-B zone imposes the following limits for matter-of-right developments:
 - A maximum height of 40 feet and three stories; (Subtitle D § 303.1.)
 - A maximum lot occupancy of 40%, or 60% for places of worship; (Subtitle D § 304.1.)
 - The uses permitted in the R-1-B zone are limited with respect to non-residential uses; residential use is limited to detached single-family dwellings; and (Subtitle U § 201; *see also* Subtitle U § 202.)
 - For the purposes of calculating an IZ Plus set-aside requirement, the R-1-B zone has a maximum permitted FAR equivalent to 0.4. (Subtitle X § 502.4.)

COMPREHENSIVE PLAN (TITLE 10-A OF THE DCMR, THE “CP”)

Racial Equity and the Comprehensive Plan

16. Pursuant to Subtitle X § 500.3, the Commission shall find that the Map Amendment is not inconsistent with the CP and with other adopted public policies and active programs related to the Property.
17. In applying the standard of review applicable to the Map Amendment, the CP requires the Commission to do so through a racial equity lens. (CP § 2501.8.) Consideration of equity is intended to be based on the policies of the CP, and part of the Commission’s considerations of whether the Map Amendment is “not inconsistent” with the CP, rather than a separate determination about a zoning action’s equitable impact.
18. The CP Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (CP § 213.6.) Further, “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development, and employment opportunities.” (CP § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (CP § 213.9.)

19. The CP Implementation Element provides guidance to help the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states “[a]long with consideration of the defining language on equity and racial equity in the Framework Element, guidance in the Citywide Elements on District-wide equity objectives, and the Area Elements should be used as a tool to help guide equity interests and needs of different areas of the District.” (CP § 2501.6.)

Generalized Policy Map (the “GPM”)

20. The CP’s GPM designates the Property as a Neighborhood Conservation Area. The Neighborhood Conservation Area is defined as:

“[Neighborhoods] that are generally residential in character. [...] Where change occurs, it will typically be modest in scale and will consist primarily of infill housing, public facilities, and institutional uses. Major changes in density over current (2017) conditions are not expected but some new development and reuse opportunities are anticipated, and these can support conservation of neighborhood character where guided by Comprehensive Plan policies and the Future Land Use Map. [...] Limited development and redevelopment opportunities do exist within these areas. The diversity of land uses and building types in these areas should be maintained and new development, redevelopment, and alterations should be compatible with the existing scale, natural features, and character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map and Comprehensive Plan policies. Approaches to managing context-sensitive growth in Neighborhood Conservation Areas may vary based on neighborhood socio-economic and development characteristics. In areas with access to opportunities, services, and amenities, more levels of housing affordability should be accommodated.” (CP § 225.4-225.5)

Future Land Use Map (the “FLUM”)

21. The CP’s FLUM Designates the Property as Mixed-Use - Moderate Density Commercial and Moderate Density Residential.

Moderate Density Residential – *“[N]eighborhoods generally, but not exclusively, suited for row houses as well as low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings. In some 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). Density in Moderate Density Residential areas is typically calculated either as the number of dwelling units per minimum lot area, or as a FAR up to 1.8, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The R-3, RF, and RA-2 Zone Districts are consistent with the Moderate Density Residential category, and other zones may also apply.”* (CP § 227.6.)

Moderate Density Commercial – “[S]hopping and service areas that somewhat greater in scale and intensity than the Low-Density Commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in Low Density Commercial areas. Density typically ranges between a FAR of 2.5 and 4.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-5 and MU-7 Zone Districts are representative of zone districts consistent with the Moderate Density Commercial category, and other zones may also apply (CP § 227.11.)

Mixed Use

- The FLUM indicates areas where the mixing of two or more land uses is encouraged, and generally applies in established, pedestrian-oriented areas, commercial corridors where more housing is desired, large sites, and development that includes residential uses, particularly affordable housing; (CP § 227.20.)
- The general density and intensity of development within a given Mixed Use area is determined by the specific mix of uses shown. The CP Area Elements may also provide detail on the specific mix of uses envisioned; (CP § 227.21.)
- The “Mixed Use” designation is intended primarily for larger areas where no single use predominates today, or areas where multiple uses are specifically encouraged in the future; and (CP § 227.22.)
- A variety of zoning designations are used in Mixed Use areas, depending on the combination of uses, densities, and intensities. (CP § 227.23.)

Upper Northeast Area Element

22. The Property falls within the Upper Northeast Area Element that encourages compatible residential infill development throughout Upper Northeast neighborhoods, especially in Brentwood, Ivy City, and Trinidad, where numerous scattered vacant residentially-zoned properties exist. New and rehabilitated housing in these areas should meet the needs of a diverse community that includes renters and owners; seniors, young adults, and families; and persons of low and very low-income, as well as those of moderate and higher incomes. (CP § 2408.3.)

II. THE APPLICATION

PROPOSED ZONING

23. The Application proposes to rezone the Property from the R-1-B zone to the MU-4 zone. (Ex. 2, 21, 27.)
24. The MU-4 zone is intended to:
- Permit moderate-density mixed-use development;

- Provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and
 - Be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers. (Subtitle G § 400.3.)
25. As a matter of right, the MU-4 zone permits/requires:
- A maximum FAR of 2.5 (3.0 with Inclusionary Zoning [“IZ”] bonus density) (1.5 maximum non-residential uses); (Subtitle G § 402.1.)
 - A 50-foot maximum building height, not including the penthouse or rooftop structure; (Subtitle G § 403.1.)
 - A 60% maximum lot occupancy (75% with IZ); and (Subtitle G § 404.1.)
 - The uses permitted in MU-Use Group E; (Subtitle U § 500.2; *see also* Subtitle U § 512.)

APPLICANT’S JUSTIFICATION OF RELIEF

Not Inconsistent with the CP

26. The Application asserted that the Map Amendment is not inconsistent with the CP and with other adopted public policies and active programs applicable to the Property, as detailed below. (Ex. 2, 21, 27.)

GPM

27. The Application asserted that the Map Amendment would not be inconsistent with the GPM because:
- The Map Amendment will allow for the development of the Property with a mixed-use building that will be consistent with the heights and densities contemplated by the GPM;
 - The additional density will allow for the Property to support a range of uses, including multi-family residential and street-level retail; and
 - The development of the Property will allow for a complementary use adjacent to a Main Street Mixed-Use Corridor.
- (Ex. 21.)

FLUM

28. The Application asserted that the Map Amendment would not be inconsistent with the FLUM because:
- The MU-4 zone is consistent with the Property’s Mixed Use Moderate Density Residential and Commercial FLUM designation because it will permit multi-family residential and commercial uses that are not permitted under the current R-1-B zoning; and
 - The Property is located in an area where no single use predominates today and the mixing of two or more land uses is encouraged.
- (Ex. 21.)

Upper Northeast Area Element

29. The Application asserted that the Map Amendment is not inconsistent with the policies of the Upper Northeast Area Element because it will encourage infill development of a vacant site with a new mixed-use development. (Ex. 2, 21; CP § 2408.3.)

Land Use Element

30. The Application asserted that the Map Amendment is not inconsistent with the policies of the Land Use Element because the Map Amendment would allow for the development of a vacant site with a new, mixed-use development in a manner that is generally consistent with the scale of the surrounding area. Moreover, the Application asserted that development under the MU-4 zone will enable the production of new housing and new affordable housing and encourage infill development on a vacant property which currently detracts from both commercial and residential streets. (Ex. 2, 21; CP §§ 308.6-7.)

Housing Element

31. The Application asserted that the Map Amendment is not inconsistent with the policies of the Housing Element because the Map Amendment will encourage development of new housing on vacant land and affordable housing in the area. It will also aid in advancing the goal of achieving 15% affordable units within the planning area. (Ex. 2, 21; CP §§ 503.3, 503.5, 504.17, 504.29.)

Transportation Element

32. The Application asserted that the Map Amendment is not inconsistent with the policies of the Transportation Element because the Map Amendment would encourage investment in this site and area, which could increase pedestrian safety adjacent to a key boulevard, Rhode Island Avenue, and Main Street corridor. (Ex. 2, 21; CP §§ 404.5-6, 404.10.)

Environmental Protection Element

33. The Application asserted that the Map Amendment is not inconsistent with the policies of the Environmental Protection Element because the Map Amendment would allow for development of the site, which is currently improved with a paved, impermeable parking lot. It would allow for the development of a new building compliant with the Green Energy codes. (Ex. 2, 21; CP §§ 615.3-4.)

Economic Development Element

34. The Application asserted that the Map Amendment is not inconsistent with the policies of the Economic Development Element because the Map Amendment would allow for commercial use on this site, which could further the goal of promoting local entrepreneurship. (Ex. 2, 21; CP § 703.15.)

IZ Plus

35. The Applicant provided an IZ Plus analysis for the site explaining that if a future development were to maximize the permitted IZ lot occupancy with an entirely residential development, the total IZ square footage could potentially exceed 5,600 net square feet. In the case of a mixed-use development, the IZ square footage could still be approximately

4,500 net square feet. Further, if the average size units ranged from 600-800 net square feet, a potential development could provide between six to eight IZ units. (Ex. 21, 23, 24.)

Public Hearing Testimony

36. At the September 19, 2022, public hearing, the Applicant presented its case, including testimony from:
- Alexandra Wilson, Senior Associate Attorney, Sullivan & Barros, LLP; and
 - Ian Ruel, Representative of the Applicant, New Macedonia Baptist Church. (Transcript [“Tr.”] from September 19, 2022 hearing at pp. 6-11.)

III. RESPONSES TO THE APPLICATION

OP REPORTS AND TESTIMONY

37. OP submitted a report dated April 1, 2022, recommending the Commission set down for a public hearing the Applicant’s request for a Zoning Map amendment (the “OP Setdown Report”) and concluding that the Map Amendment would not be inconsistent with the CP because: (Ex. 25.)
- **GPM** – The GPM’s Neighborhood Conservation Area designation allows for new development within the existing scale for the area. The site is surrounded by MU-4 zoned properties and is also located adjacent to the Main Street Mixed-Use Corridor policy area, which encourages mixed-use development, and would be supported by the proposed MU-4 zone;
 - **FLUM** – The FLUM encourages more density on the site and the MU-4 zone permits mixed-use development with a maximum FAR of 2.5 (and up to 3.0 for the provision of IZ units). The MU-4 zone would be appropriate, as the site sits between a low-density residential neighborhood and a moderate density mixed-use area;
 - **Upper Northeast Area Element** – The proposed MU-4 zone would allow for infill development compatible with the MU-4 developments in the immediate area. The new zone would also increase the possibility of affordable housing being provided on the site, which would have been unlikely under its existing R-1-B zoning. Furthermore, the Map Amendment would be subject to IZ Plus which through its density bonus could encourage significantly more IZ units than would have been provided without IZ Plus. More affordable units in the area would allow for more residents of various income levels to live in the area;
 - **Land Use Element** – The proposed Map Amendment would allow an underutilized parking lot to be developed in a way that is compatible with the surrounding properties;
 - **Housing Element** – The Map Amendment would encourage mixed-use and housing development on the site. The zone’s additional density with the bonus IZ Plus density could encourage the private sector to develop this site with more market rate and affordable housing units than could be provided today. As set forth in the 2019 Housing Equity Report, affordable housing on this site would help the District increase the amount of affordable housing units in the Upper Northeast area, which today has only 8.7% of the District’s affordable housing units;

- **Transportation Element** – As a mixed-use zone, the proposed MU-4 zone could bring a mix of housing and jobs to the area. The new zone would allow the site to redevelop from a parking lot into a development that would meet current standards, including pedestrian accessibility and safety requirements, which would be beneficial to pedestrians who pass by along Rhode Island Avenue;
- **Racial Equity** – A key piece of this Map Amendment proposal is the potential to create additional affordable housing through an IZ Plus set-aside requirement. It is likely that the MU-4 zone could require a 95% set-aside requirement resulting in approximately 4,479 sq. ft. of residential floor area for the IZ program. The IZ program requires affordable housing units to be available to households earning either no more than 60% MFI for rental housing or 80% MFI for ownership housing. The potential affordable housing units that could be created under the requested MU-4 zone is substantially higher than if the Property was developed by-right under the existing R-1-B zone. Providing additional affordable housing units has the potential to benefit non-white populations who on average have lower incomes than white residents. Furthermore, the proposed rezoning to the MU-4 zone would result in no direct displacement because of development on this site as the site is currently vacant. In addition, the proposed MU-4 zone allows 1.5 FAR to be used exclusively for non-residential purposes, which creates an opportunity for a range of non-residential uses such as neighborhood retail, service, or office uses. These uses could offer employment opportunities and based on the location of the site adjacent to a residential neighborhood, the non-residential uses could also support a walkable community.

38. The OP Setdown Report also stated that an IZ Plus set-aside requirement was appropriate for the Map Amendment, pursuant to Subtitle X § 502, noting that:
- The Map Amendment would rezone the Property to the MU-4 zone, which allows a higher maximum permitted FAR than the existing R-1-B zone; and
 - The 2019 Housing Equity Report prepared by OP and the Department of Housing and Community Development reports that:
 - As of 2018, only 8.7% of the District’s total number of affordable housing units is in this planning area; and
 - The Upper Northeast area is short 190 units of its production goal level to be on track to achieve a total production goal of 6,900 units by 2025.
 (Ex. 25.)

39. OP submitted a hearing report, dated September 9, 2022, that largely reiterated the OP Setdown Report’s conclusions, and recommended approval of the Map Amendment. (Ex. 38.) At the September 19, 2022, public hearing, OP reiterated its support for the Application as detailed in its reports. (Tr. from September 19, 2022 hearing at pp. 28-29.)

DDOT REPORT

40. DDOT submitted a September 9, 2022 report (the “DDOT Report”), stating that it had no objection to the Application given that the Property is a short walking distance along 22nd Street to a Priority Bus Route and the proposed change in zoning is consistent with DDOT’s

approach to new development that supports higher densities, adjacent transit, and walkable design. The DDOT Report noted that based on the information provided, the proposed rezoning would likely not lead to a significant increase in the number of peak hour vehicle trips on the District's transportation network if developed with the most intense matter-of-right uses under the MU-4 zone. Specifically, DDOT estimated the amount of person and vehicle trips that would be generated by theoretical maximum matter-of-right developments under the existing R-1-B and the proposed MU-4 zone. As a result, DDOT concluded that development of the site with the maximum number of allowable units (estimated 24 units) under the MU-4 zone would add approximately five vehicle trips in the weekday AM peak hour and approximately 10 vehicle trips in the weekday PM peak hour as compared to the zero trips generated by the current vacant site under the R-1-B zone. (Ex. 39.)

41. DDOT did not provide testimony at the public hearing.

ANC REPORTS AND TESTIMONY

42. On September 17, 2021, ANC 5C submitted a setdown report (the "ANC 5C Setdown Report") recommending against setdown of the Application for a hearing unless the Applicant is required to provide 1-for-1 parking on the site equal to that of the existing use. The ANC 5C Setdown Report stated that the proposed MU-4 zone is inconsistent with the Comprehensive Plan and would "alter substantially the look and feel of the area," which the ANC states is primarily suburban. The ANC 5C Setdown Report also stated that the Map Amendment would result in a development that strains existing water and power infrastructure and adds more vehicle users to the detriment of seniors and residents living along Jackson Street and 22nd Street. (Ex. 14, 14A.)
43. Following setdown of the Application, ANC 5C submitted a letter in support of the Application, dated June 1, 2022 (the "ANC 5C Hearing Report"), stating at its properly noticed public meeting of May 18, 2022, with a quorum present, the ANC voted 3-0-4 to support the Application. The ANC 5C Hearing Report noted that the ANC continues to have questions concerning potential adverse impacts upon the community, and parking in particular. However, the ANC defers for a later time discussion of the proposed use, structure, and parking impacts for a presumed Board of Zoning Adjustment hearing. (Ex. 32.)
44. During the September 19, 2022, hearing, Commissioner Jeremiah Montague, the SMD representative from ANC 5C, testified in support of the Application, while noting that four of the ANC 5C Commissioners abstained from a vote in favor of the Application because they wanted to wait for more details about a potential project on the Property which would be discussed at a later time. (Tr. from September 19, 2022 hearing at pp. 31-34.)

PERSONS IN SUPPORT

45. Letters in support of the Map Amendment were submitted by Vijay Kapur, Kelly Bell, Katherine Brown, Thomas M. McIntyre, Bill Perry, Alan Madison, Samantha Marcy, and Morgan Lewis-Richardson. (Ex. 13, 15, 16, 17, 19, 20.)

PERSONS IN OPPOSITION

46. Miles Dittmore, owner of the property located at 2011 Kearny Street, N.E., submitted a letter in opposition of the Map Amendment, dated November 30, 2021. Mr. Dittmore objected to the proposed Map Amendment as unnecessary because the Property can already be developed as a single-family residence, educational center, or other productive use more fitting the character of the neighborhood. Mr. Dittmore noted that there are other properties on Rhode Island Avenue where density can be increased. In addition, any proposed development that will be facilitated by the Map Amendment will have a negative impact on parking and facilitate “zoning creep” which will have further negative effects on parking, traffic, decrease in sunlight, and noise issues. (Ex. 18.)
47. Allegra Connor, Ashley Nichols, and Phyllis David, residents within 250 feet of the Property, submitted a letter in opposition of the Map Amendment, dated September 12, 2022. Ms. Connor, Ms. Nichols, and Ms. David objected to the proposed Map Amendment because it will have a negative impact on parking, will result in a significant increase in traffic, will permanently alter the housing stock density, and will be inconsistent with surrounding uses comprised of single-family homes whose views of the neighborhood will be blocked. In addition, the area has insufficient public services to support development on the Property. (Ex. 41.)
48. During the September 19, 2022 public hearing, Allegra Connor and Carolyn Rivers provided testimony in opposition to the Application. Ms. Rivers raised concerns about negative impacts on parking and foot traffic that would result from increased density on the Property. Ms. Rivers also expressed reservations about the potential for the Property to be used as a bar. Ms. Connor stated that an increase in traffic will have a negative impact on parking and pedestrians and that development on the Property would not be aesthetically pleasing. (Tr. from September 19, 2022 hearing at pp. 37-42.) In response to Ms. Connor’s and Ms. Rivers’ testimony, the Applicant’s representative stated that he has had no discussions with any potential bar tenants and intends for the Property to provide neighborhood-serving retail uses. (Tr. from September 19, 2022 hearing at pp. 42-43.)
49. A letter in opposition of the Map Amendment, dated September 26, 2022, was submitted by Cheryl Dixon, resident of 2000 Jackson Street, NE. Ms. Dixon stated that the Map Amendment will enable development that is unnecessary and not in the best interest of the community. (Ex. 46.)

NATIONAL CAPITAL PLANNING COMMISSION (“NCPC”)

50. The Commission referred the Application to the National Capital Planning Commission (“NCPC”) on September 20, 2022, for the 30-day review period required by § 492(b)(2) of the District Charter (Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(b)(2); D.C. Official Code 6-641.05.) (Ex. 45.)
51. On October 27, 2022, NCPC staff filed a letter dated October 26, 2022 stating that the proposed map amendment is exempt from NCPC review because it meets the requirements of exception 12 in Chapter 8 of NCPC’s Submission Guidelines. (Ex. 48.)

CONCLUSIONS OF LAW

1. Section 1 of the Zoning Act of 1938 (effective June 20, 1938, as amended, 52 Stat. 797 ch. 534; D.C. Official Code § 6-641.01 *et seq.* (2012 Repl.)) (the “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 the District of Columbia and its planning and orderly development as the national capital.”
2. Section 2 of the Zoning Act (D.C. Official Code § 6-641.02) further provides that:

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in 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 of population 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 of districts and of land values therein.

NOT INCONSISTENT WITH THE COMPREHENSIVE PLAN (SUBTITLE X § 500.3)

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. The Commission concludes, based on the case record, including the filings and testimony of the Applicant, OP, DDOT, ANC 5C, and the letters in support and opposition, that the Map Amendment from the R-1-B zone to the MU-4 zone is not inconsistent with the CP and its policies and maps and complies with the Zoning Act and Subtitle X § 500.3.
5. Even if the Map Amendment conflicts with one or more individual policies associated with the CP, this does not, in and of itself, preclude the Commission from concluding that the Map Amendment would be consistent with the CP as a whole. (*Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013).) In this case, the Commission concludes that any inconsistencies with CP policies are outweighed by the Map Amendment's overall consistency with the CP Maps and Citywide and Area Element policies, which support, among other things, increasing density to permit more mixed-use and housing, including affordable housing, in proximity to transit on an infill lot.

Racial Equity

6. The Commission concludes that the Map Amendment is not inconsistent with the CP when evaluated through a racial equity lens because:
 - The Map Amendment would increase the allowable density and would permit a mix of uses on a currently vacant site that will enhance the Property's opportunity for development with neighborhood-serving retail uses and affordable housing;
 - An IZ Plus set-aside requirement will apply to the Map Amendment to further increase the affordable housing supply compared to what can be developed by-right under the existing R-1-B zone; and
 - The increase in allowable density permitted by the Map Amendment would help to balance supply and demand of housing which could help mitigate increases in housing prices and costs.

GPM

7. The Commission concludes that the Map Amendment is not inconsistent with the GPM's designation of the Property as a Neighborhood Conservation Area because:
 - The development permitted by the Map Amendment will enhance the character of the surrounding neighborhood by facilitating a mixed-use residential and commercial development along Rhode Island Avenue; and
 - New development under the MU-4 zone will support neighborhood and citywide housing needs and attract complementary new ground-floor retail and service uses that better serve the needs of existing and future residents.

FLUM

8. The Commission concludes that the Map Amendment is not inconsistent with the Property's Mixed Use – Moderate Density Residential / Moderate Density Commercial FLUM designation because:
 - The MU-4 zone's maximum 2.5 FAR (3.0 with IZ) falls within the FAR contemplated by the Moderate Density Residential FLUM category because the category states density greater than 1.8 FAR may be possible when complying with Inclusionary Zoning; and

- The MU-4 zone’s maximum 2.5 FAR (3.0 with IZ) also falls within the FAR contemplated by the Moderate Density Commercial FLUM category, which contemplates density between 2.5 and 4.0 and identifies the MU-5 and MU-7 zones as being “consistent” with the Moderate Density Commercial FLUM designation.

Upper Northeast Area Element

9. The Commission concludes that the Map Amendment furthers the policies of the Area Element because:
- It will facilitate new mixed-use, mixed-income development for area residents on a currently vacant lot;
 - It will encourage a vibrant and diverse mix of new businesses and activities that will provide needed retail services to the adjacent neighborhoods and that will be compatible with the surrounding land uses;
 - It will provide for additional mixed-use development consisting of moderate-density housing, affordable housing, and moderate-density neighborhood commercial uses; and
 - It will encourage the development of neighborhood-serving commercial uses along Rhode Island Avenue.

Land Use Element

10. The Commission concludes that the Map Amendment furthers this Element because:
- The Map Amendment would allow for the development of a vacant site with new, mixed-use development, including multi-family and affordable housing; and
 - The Map Amendment will encourage infill development on vacant land, particularly in an area where there are vacant lots creating gaps in the urban fabric and detracting from the character of the adjacent street.

Housing Element

11. The Commission concludes that the Map Amendment furthers this Element because it will allow the Property to be developed with new housing and affordable housing options in a “high opportunity” location, subsequently helping to meet the needs of present and future District residents consistent with the Mayor’s housing initiative.

Transportation Element

12. The Commission concludes that the Map Amendment furthers this Element as it will facilitate the development of the Property near a Priority Bus Route, subsequently providing equitable transportation access to residents, workers, and visitors within the District.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

13. The Commission must give “great weight” to the recommendations of OP pursuant to § 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 (2018 Repl.)) and Subtitle Z § 405.8.

(*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

14. The Commission concludes that OP's reports, which provided an in-depth analysis of the Map Amendment, are persuasive and concurs with OP's recommendation that the Property's rezoning would not be inconsistent with the CP Maps, Citywide and Area Elements, and would advance the racial equity policies of the CP when evaluated through a racial equity lens, as discussed above.
15. The Commission also concurs with OP that the proposed Map Amendment is appropriate for an IZ Plus set-aside requirement for the reasons discussed above.

“GREAT WEIGHT” TO THE ANC REPORTS

16. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting 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 Z § 406.2. 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. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).)
17. The ANC 5C Hearing Report expressed the ANC's recommendation of support for the Map Amendment. The Commission acknowledges and concurs with the ANC's support for the Map Amendment.

DECISION

In consideration of the record for Z.C. Case No. 21-14 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(S)	MAP AMENDMENT
4220	802	R-1-B to MU-4


For the purposes of calculating an IZ Plus set-aside requirement pursuant to Subtitle C § 1003, the maximum permitted FAR of the existing R-1-B zone was equivalent to 0.4.

On September 19, 2022, upon the motion of Commissioner Imamura, as seconded by Vice Chair Miller, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the Application at

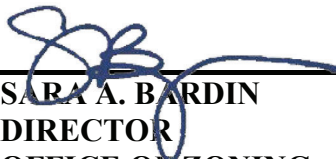
the close of the public hearing by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Joseph S. Imamura to approve; third Mayoral appointee seat vacant, not voting).

On October 27, 2022, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Robert E. Miller, Peter G. May to approve; Joseph S. Imamura not present, not voting; third Mayoral appointee seat vacant, not voting).

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 21-14 shall become final and effective upon publication in the *D.C. Register*, that is on December 23, 2022.



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.