

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING¹

Z.C. CASE NO. 22-30

Office of Planning

(Zoning Map Amendment from R-3 and PDR-1 Zones to MU-7B Zone
@ Square 5600, Lot 17; Square 5601, Lots 860, 862, a Portion of Lot 865; Parcel
224/31; and a Portion of the 13th Street Right-of-Way)

June 29, 2023

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. 797; D.C. Official Code § 6-641.01 (2018 Repl.)), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206, as amended; D.C. Official Code § 2505 (2013 Repl.)), hereby gives notice of its adoption of the following amendments to the Zoning Map:

Rezone Square 5600, Lot 17; Square 5601, Lots 860, 862, a portion of Lot 865; Parcel 224/31; and a portion of the 13th Street right-of-way² (collectively, the Property) from the R-3 and PDR-1 zones to the MU-7B zone.

Set down

On September 19, 2022, the Office of Planning (OP), on behalf of the Deputy Mayor for Planning and Economic Development (DMPED), filed a report that served as a Petition (OP Petition and OP Set Down Report) requesting the Commission approve a proposed amendment of the Zoning Map for the Property from the R-3 and PDR-1 zones to the MU-7B zone. (Exhibit [Ex.] 2.)

The Property consists of approximately 272,781 square feet of land located near the intersection of Martin Luther King, Jr. (MLK) Avenue and Good Hope Road in the Anacostia neighborhood of the southeastern quadrant of the District. Most of the Property is currently zoned PDR-1 with the remaining portion currently zoned R-3. The Property is bounded by the District Department of Housing and Community Development (DHCD) office and undeveloped property to the south; 13th Street, S.E., to the east; MLK Avenue to the west; and CSX rail right-of-way to the north. The Property is generally undeveloped except for the northern portion that is currently used as a surface parking lot which has a District license that will expire in 2034 (unless terminated sooner).

¹ For Office of Zoning tracking purposes only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 22-30.

² The OP Petition includes a metes and bounds legal description of the portion of the 13th Street, S.E., right-of-way subject to this Map Amendment. (Ex. 2.) At the May 1, 2023 public hearing, OP testified that DMPED plans to seek approval of a disposition of the Property, which will involve a subdivision of this portion of the 13th Street right-of-way. Following the disposition, DMPED intends to return to the Commission to request a minor modification or technical correction to update the metes and bounds description for the subdivided portion of the right-of-way with Square and Lot numbers.

Generally, the neighborhood is a mix of uses. To the south, across Good Hope Road and along MLK Avenue, is the Anacostia Historic District with predominantly one- and two-story buildings with ground-floor retail or office uses in the MU-7B zone with residential uses beyond in the RF-1 and R-3 zones. To the east, across 13th Street, are predominantly two-story row dwellings in the R-3 zone with commercial uses fronting Good Hope Road in the MU-4 zone. To the west across MLK Avenue is the railway right-of-way and one- and two-story commercial buildings in the PDR-1 zone.

The Property is owned by the District. A portion of the Property is the subject of a Request for Proposal (RFP) initiated by the District, through DMPED, for a mixed-use development. The area of the RFP is within the R-3, MU-7B, and PDR-1 zones, and this Map Amendment would result in the RFP area all being zoned MU-7B. An award for the development of the site was made in February 2023.

Current R-3 Zoning:

The R-3 zone is intended to permit attached rowhouses on small lots. (Subtitle D § 300.7.) The R-3 zone permits a maximum building height of forty feet (40 ft.) or three (3) stories; a maximum penthouse height of twelve feet (12 ft.) or one (1) story, except eighteen feet (18 ft.) and six inches (6 in.) is allowed for penthouse mechanical space on non-residential buildings; and a maximum lot occupancy of sixty percent (60%) for row dwellings and places of worship and forty percent (40%) for all other structures. (Subtitle D §§ 303.1, 303.2, 304.1.)

Current PDR-1 Zoning:

The PDR-1 zone is intended to permit moderate-density commercial and PDR activities employing a large workforce and requiring some heavy machinery under controls that minimize any adverse impacts on adjacent, more restrictive zones. (Subtitle J § 200.1.) The PDR-1 zone permits a maximum density of 3.5 FAR (2.0 FAR for restricted uses); a maximum building height of fifty feet (50 ft.); and a maximum penthouse height of twelve feet (12 ft.) or one (1) story, except fifteen feet (15 ft.) and a second story is allowed for penthouse mechanical space. (Subtitle J §§ 202.1, 203.1, 203.6.)

Proposed MU-7B Zoning:

The MU-7 zones are intended to:

- Permit medium-density mixed-use development; and
- Be located on arterial streets, in uptown and regional centers, and at rapid transit stops.

(Subtitle G § 400.6.)

The MU-7B zone permits a maximum density of 4.0 FAR (4.8 FAR with Inclusionary Zoning (IZ)) of which no more than 2.5 FAR is permitted for non-residential uses; a maximum building height of sixty-five feet (65 ft.); a maximum penthouse height of (12 ft.) or one (1) story, except eighteen feet (18 ft.) and six inches (6 in.) and a second story is allowed for penthouse mechanical space; and a maximum lot occupancy of seventy-five percent (75%) (eighty percent [80%] with IZ). (Subtitle G §§ 402.1, 403.1, 403.3, 404.1.) The limitation of a maximum 1.5 FAR for non-

residential uses is to encourage and ensure that more of the maximum density is devoted to housing development where it is a priority.

The OP Petition states that the proposed Map Amendment would not be inconsistent with the Comprehensive Plan and the Anacostia Transit Area, Strategic Investment and Development Plan (2006) (Small Area Plan), which applies to the Property. The OP Petition states that the northeast quadrant of the intersection of Good Hope Road and MLK Avenue, including portions of the Property, was subject to an approved Planned Unit Development (PUD) and related map amendment from the R-3, C-3-A, and C-M-1 zones to the C-3-A (now MU-7) zone (*see* Z.C. Order No. 05-03, effective August 19, 2005) to house the Anacostia Gateway Government Center (AGGC). However, the OP Petition explains that the vision and need for a government center changed, and the PUD was allowed to expire in 2009. Through the RFP process, DMPED envisions the Property potentially being developed with high-quality commercial office / residential / retail mixed-use buildings, which will be facilitated by the Map Amendment. (Ex. 2.)

At the Commission's September 29, 2022 public meeting, OP presented its OP Set Down Report on the Map Amendment. The Commission asked OP to describe its community outreach and engagement efforts, to explain whether there were any concerns about financing issues for the site if IZ Plus were applied, and to update its racial equity analysis. The Commission then voted to set the Map Amendment down as a rulemaking case.³

Notice

Pursuant to Subtitle Z § 502, the Office of Zoning (OZ) sent notice of the May 1, 2023 public hearing, on March 1, 2023 (Ex. 4, 5), and published notice of the public hearing in the March 10, 2023 *D.C. Register* (70 DCR 003041 *et seq.*), as well as on the calendar on OZ's website. (Ex. 3, 4.)

ANC Report

The Property is within the boundary of Advisory Neighborhood Commission (ANC) 8A, which is the "affected ANC" as defined by Subtitle Z § 101.8. ANC 8A did not testify at the public hearing or submit a written report to the case record.

DDOT Report

The District Department of Transportation (DDOT) submitted an April 21, 2023 report (DDOT Report), stating no objection to the approval of the Map Amendment given that the Property is a short walking distance to several Priority Bus Routes 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 notes that the proposed Map Amendment includes rezoning a portion of the 13th Street right-of-way including areas of 13th Street that will continue to have a transportation need in the future. Coordination with DDOT should occur regarding a subdivision application to close the 13th Street right-of-way for non-transportation uses because

³ The Commission set this case down as a rulemaking per Subtitle Z § 201.7(a) because the petition was initiated by OP and encompasses multiple properties.

DDOT will not support a street closure that takes away sidewalks, tree boxes, and public parking uses. (Ex. 6.)

OP Reports

OP Set Down Report

The OP Set Down Report states that the Comprehensive Plan's Future Land Use Map (FLUM), Generalized Policy Map (GPM), Citywide and Area Elements and other policies, and the Small Area Plan support the rezoning of the Property to the MU-7B zone. (Ex. 2.) A summary of the contents of the OP Set Down Report follows:

Zoning Maps

Future Land Use Map (FLUM)

The FLUM designates the western portion of the Property as Mixed Use (Medium Density Residential and Medium Density Commercial) and the eastern portion of the Property as Local Public Facilities.

Mixed Use Categories: *The Future Land Use Map indicates areas where the mixing of two or more land uses is especially encouraged. The particular combination of uses desired in a given area is depicted in striped patterns, with stripe colors corresponding to the categories defined on the previous pages. . . The Mixed-Use Category generally applies in the following circumstances:*

- a. Established, pedestrian-oriented commercial areas that also include substantial amounts of housing, typically on the upper stories of buildings with ground-floor retail or office uses;*
- b. Commercial corridors or districts which may not contain substantial amounts of housing today, but where more housing is desired in the future. The pattern envisioned for such areas is typically one of pedestrian-oriented streets, with ground-floor retail or office uses and upper story housing;*
- c. Large sites (generally greater than 10 acres in size), where opportunities for multiple uses exist, but a plan depicting the precise location of these uses has yet to be prepared; and*
- d. Development that includes residential uses, particularly affordable housing, and residentially compatible industrial uses, typically achieved through a Planned Unit Development or in a zone district that allows such a mix of uses.*

(10-A DCMR § 227.20.)

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. (10-A DCMR § 227.22.) A variety of zoning designations are used in Mixed Use areas, depending on the combination of uses, densities, and intensities. . . Residential uses are permitted in all of the MU zones, however, so many Mixed-Use areas may have MU zoning. (10-A DCMR § 227.23.)

Medium Density Residential: *This designation is used to define neighborhoods or areas generally but not exclusively, suited for mid-rise apartment buildings. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. Pockets of low and moderate density housing may exist within these areas. Density typically ranges from 1.8 to 4.0 FAR, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The RA-3 Zone District is consistent with the Medium Density Residential Category, and other zones may also apply. (10-A DCMR § 227.7.)*

Medium Density Commercial: *This designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Moderate Density Commercial areas. Retail, office, and service businesses are the predominant uses, although residential uses are common. Areas with this designation generally draw from a citywide market area. Buildings are larger and/or taller than those in Moderate Density Commercial areas. Density typically ranges between a FAR of 4.0 and 6.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-8 and MU-10 Zone Districts are consistent with the Medium Density category, and other zones may also apply. (10-A DCMR § 227.12.)*

Local Public Facilities: *This designation includes land and facilities occupied and used by the District of Columbia government or other local government agencies (such as WMATA), excluding parks and open space. Uses include public schools including charter schools, public hospitals, government office complexes, and similar local government activities. Other non-governmental facilities may be co-located on site. While included in this category, local public facilities smaller than one acre – including some of the District’s libraries, police and fire stations, and similar uses – may not appear on the map due to scale. Zoning designations vary depending on surrounding uses. (10-A DCMR § 227.17.)*

The OP Set Down Report concludes that the proposed Map Amendment to the MU-7B zone is not inconsistent with the FLUM. While the Comprehensive Plan lists the MU-7 zones as consistent with the Moderate Density Commercial category, the Zoning Regulations describe the MU-7 zones as intended for “medium-density” mixed-use development. (Subtitle G § 400.6(a).) In this case, OP determined that the MU-7B zone is more appropriate than the higher density MU-8 or MU-10 zones listed as compatible with the Medium Density Commercial category, since nearby properties are already zoned MU-7B and the lower height and density permitted by the MU-7B zone is more compatible with the portions of the adjacent historic district to the south and west that are already zoned MU-7B and the lower density row dwellings to the east.

In addition, the OP Set Down Report states that the partial Local Public Facilities designation reflects prior plans for the Property to serve as the site of the AGGC. While the Comprehensive Plan does not provide much guidance about the densities or zones consistent with this designation,

the Framework Element states: “If a change in use occurs on these sites in the future (for example, a school becomes surplus or is redeveloped), the new designations should be generally comparable in density or intensity to those in the vicinity, unless otherwise stated in the Comprehensive Plan Area Elements or an approved Campus Plan.” (10-A DCMR § 228.1(h).) Since the District no longer needs the Property for government offices and has offered it to be redeveloped with opportunities for housing through the RFP, the OP Set Down Report concludes that the MU-7B zone is consistent with this guidance because the surrounding area is zoned MU-7B.

Generalized Policy Map (GPM)

The GPM designates the western portion of the Property as a Main Street Mixed Use Corridor, the eastern portion of the Property as a Neighborhood Conservation Area, and the entire site as within a Resilience Focus Area.

Main Street Mixed Use Corridors: *These are traditional commercial business corridors with a concentration of older storefronts along the street. The area served can vary from one neighborhood (e.g., 14th Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper-story residential or office uses, Some corridors are underutilized, with capacity for redevelopment. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment. (10-A DCMR § 225.14.)*

Neighborhood Conservation Areas: *Neighborhood Conservation areas have little vacant or underutilized land. They are generally residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. 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. Neighborhood Conservation Areas that are designated “PDR” on the Future Land Use Map are expected to be retained with the mix of industrial, office, and retail uses they have historically provided. (10-A DCMR § 225.4.)*

The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs. 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. Areas facing housing insecurity (see Section 206.4) and displacement should emphasize preserving affordable housing and enhancing neighborhood services, amenities, and access to opportunities. (10-A DCMR § 225.5.)

Resilience Focus Area: *For areas within the 100- and 500-year floodplain, future planning efforts are intended to guide resilience to flooding for new and existing development and infrastructure projects, including public capital projects. Resilience focus areas will explore watershed resilience to encourage the implementation on a neighborhood scale, as well as site-specific solutions, design guidelines and policies for a climate adaptive and resilient District. (10-A DCMR § 304.8.)*

The OP Set Down Report concludes that the proposed Map Amendment is not inconsistent with the GPM. The Main Street Mixed Use Corridor portion of the Property abuts MLK Avenue and Good Hope Road, both of which are pedestrian-oriented roadways with one- (1) and two- (2) story buildings with ground-floor retail or office uses. The development of the Property with housing and other economic uses could encourage other redevelopments in the area to serve neighborhood needs. The proposed MU-7B zone would allow a development that would be similar in scale and density along these corridors. The Property is a little over half a mile (0.7 mile) from the Anacostia Metrorail station with multiple bus routes along both MLK Avenue and Good Hope Road. Development of the site would therefore also support and enhance transit use.

The OP Set Down Report concludes that the proposed MU-7B zone is also not inconsistent with the Neighborhood Conservation Area designation as it would allow for the development of a District-owned property at a desirable location with potential affordable housing, family housing, and home ownership opportunities that would address a citywide need. The density and intensity of the development that would be allowed under the MU-7B zone would be complementary to the projected development that the FLUM envisions along Good Hope Road and MLK Avenue. Overall, future development would protect and enhance the neighborhood character. As this is a District property, the OP Set Down Report notes that the developer of the Property would be required to work with nearby property owners to ensure that buildings are compatible in scale, height, and design.

The OP Set Down Report states that the Property is within a Resilience Focus Area, and the floodplain maps show that a five hundred (500)-year floodplain may cross or is in close proximity to the Property. Development of the site would require coordination with the Department of Energy & Environment (DOEE) to determine the boundary and the site-specific solutions and protections that would be necessary for a climate adaptive and resilient development.

IZ Plus

The OP Set Down Report recommends that the Map Amendment not be subject to IZ Plus pursuant to Subtitle X § 502.2(c). IZ Plus requires a higher affordable housing set-aside requirement than Regular IZ and prescribes a set aside requirement based on either:

- A sliding-scale that is correlated to the total floor area built; or
- The amount of IZ bonus density built.

The OP Set Down Report argues that an IZ Plus set-aside requirement would not be appropriate due to the disproportionate amount of affordable housing already existing within ANC 8A and the Far Southeast/Southwest Planning Area (Planning Area), in which the Property is located. According to the 2019 Housing Equity Report prepared by OP and DHCD, the Far Southeast/Southwest Planning Area had the largest number or thirty-one percent (31%) of all of the city's affordable housing units, and fifty-one percent (51%) of the housing in the Planning Area is affordable housing.

In addition, the OP Set Down Report states that the Map Amendment is not appropriate for IZ Plus because the Property is District-owned and therefore subject to a more rigorous affordability requirement and that proposals which include multi-family residential units are required to reserve thirty percent (30%) of the units as affordable in perpetuity pursuant to District law § 10-801. This affordability requirement is greater than Regular IZ or IZ Plus requirements. Therefore, the OP Set Down Report does not recommend that IZ Plus apply to this Map Amendment.

Racial Equity

In applying the standard of review applicable to the Map Amendment, the Comprehensive Plan requires the Commission to do so through a racial equity lens. (10-A DCMR § 2501.8.) Consideration of equity is intended to be based on the policies of the Comprehensive Plan, and part of the Commission's consideration of whether the Map Amendment is "not inconsistent" with the Comprehensive Plan, rather than a separate determination about a zoning action's equitable impact.

The Comprehensive Plan's 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. (10-A DCMR § 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." (10-A DCMR § 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. (10-A DCMR § 213.9.)

The Comprehensive Plan's Implementation Element provides guidance to help the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element

states that “[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 in the District.” (10-A DCMR § 2501.6.)

The OP Set Down Report provides a racial equity lens analysis and concludes that the Map Amendment would advance the racial equity policies of the Comprehensive Plan. The OP Set Down Report states that the demographics of the Planning Area have remained fairly stable since 2000—ninety-one percent (91%) of the residents are Black, two percent (2%) are of Hispanic/Latino origin, and two percent (2%) are foreign-born. In addition, thirty-seven percent (37%) of the Planning Area’s residents live below the poverty level and less than twenty percent (20%) of residents own their homes. The rezoning would allow the District to utilize a property that is no longer needed for government offices to provide potential affordable housing, family housing, homeownership opportunities, neighborhood serving retail and/or service uses, and other amenities which would be beneficial to area residents, in particular populations of color who on average have lower incomes, and lower homeownership rates than white residents and are cut off from many amenities in the District. The OP Set Down Report indicates that the Map Amendment would not directly result in the physical displacement of residents as the Property does not currently include any residential use.

Citywide Elements

The OP Set Down Report concludes that the Map Amendment is not inconsistent with the Citywide Elements of the Comprehensive Plan and would further the policies of the Land Use, Transportation, Housing, and Environmental Protection Elements noted below.

Land Use

The OP Set Down Report states that the Map Amendment would further the Land Use Element policies listed below by allowing a new development that will create opportunities to accommodate population growth, advance affordability, and racial equity. Further, it would permit a mix of ground-floor neighborhood-serving uses, that will help widen the types of neighborhood services available to existing and prospective residents and improve the character of the neighborhood. The Map Amendment would also allow for an appropriately scaled development in the vicinity of the Anacostia Metrorail station, which will reduce the necessity of auto use and ownership in support of a related reduction in household expenses for future residents.

- *Action LU-1.4.B: Zoning Around Transit*
- *Policy LU-1.4.3: Affordable Rental and For-Sale Multi-family Housing Near Metrorail Stations*
- *Policy LU-1.4.6: Development Along Corridors*
- *Policy LU-1.5.1: Infill Development*
- *Policy LU-2.1.2: Neighborhood Revitalization*
- *Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods*
- *Policy LU-2.1.10: Multi-Family Neighborhoods*

- *Policy LU-2.1.1: Variety of Neighborhood Types*
- *Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods*
- *Policy LU-2.1.11: Residential Parking Requirements*

Transportation

The OP Set Down Report states that the Map Amendment would support the Transportation Element by facilitating a transit-oriented development within a transit-accessible neighborhood and could provide opportunities to lower-income residents who would be able to access employment, nearby schools, and services without the burden of high transportation costs and loss of valuable time to access such needs.

- *Policy T-1.1.4: Transit-Oriented Development*

Housing

The OP Set Down Report states that the Map Amendment would further the Housing Element since the proposed MU-7B zone and the requirements of the RFP would in combination allow a future development with additional density to expand the housing supply, including affordable units above what would be required under Regular IZ and IZ Plus requirements. The development would be required to provide units of varying sizes, including three-bedrooms, homeownership opportunities, and affordability in perpetuity.

- *Policy H-1.1 Expanding Housing Supply*
- *Policy H-1.1.3: Balanced Growth*
- *Policy H-1.1.4: Mixed Use Development*
- *Policy H-1.1.6: Housing in Central Washington*
- *Policy H-1.1.9: Housing for Families*
- *Policy H-1.2.1: Low- and Moderate-Income Housing*
- *Policy H-1.2.3: Affordable and Mixed-Income Housing*
- *Policy H-1.2.4: Housing Affordability on Publicly Owned Sites*
- *Policy H-1.2.5: Moderate-Income Housing*
- *Policy H-1.2.9: Advancing Diversity and Equity of Planning Areas*
- *Policy H-1.2.11: Inclusive Mixed-Income Neighborhoods*
- *Policy H-1.2.11 Inclusive Mixed-Income Neighborhoods*
- *Policy H-1.3.1: Housing for Larger Households*
- *Policy H-1.3.2: Tenure Diversity*

Environmental Protection

The OP Set Down Report states that the Map Amendment would further the Environmental Protection Element because future development of the Property would be encouraged to implement the District policies under the Sustainable DC Plan and Building Code requirements which protect the health and well-being of residents across all incomes and the District as a whole.

- *Policy E-1.1.2: Urban Heat Island Mitigation*
- *Policy E-2.1.2: Tree Requirements in New Development*
- *Policy E-3.2.2 Net-Zero Buildings*

- *Policy E-3.2.3: Renewable Energy*
- *Policy E-3.2.5: Reducing Home Heating and Cooling Costs*
- *Policy E-3.2.6: Alternative Sustainable and Innovative Energy Sources*
- *Action 3.3.L: Reduce Residential Construction and Demolition Waste*
- *Policy E-4.1.2: Using Landscaping and Green Roofs to Reduce Runoff*

Far Southeast/Southwest Area Element

The OP Set Down Report concludes that the Map Amendment is not inconsistent with the Far Southeast/Southwest Area Element, including the policies of the Historic Anacostia Policy Focus Area in which the Property is located. The MU-7B zone would allow for increased height and additional density at a medium range over what is currently allowed and facilitate a development with a variety of unit sizes and incomes, along with ground-floor retail or services. The RFP stipulates that the chosen developer work with residents, organizations, and the ANC of the surrounding neighborhood to address issues which are important to them. In addition, the District Government is providing incentives to promote and leverage affordable housing at this site and in the Planning Area. The location would provide easy access to transportation which is a key element for affordably moving people to jobs and amenities in an environmentally friendly way.

- *Policy FSS-1.1.1: Directing Growth*
- *Policy FSS-1.1.4: Infill Housing Development*
- *Policy FSS-1.1.6: Retail Development*
- *Policy FSS-1.1.109: Minority/Small Disadvantaged Business Development*
- *Policy FSS-1.1.13: District Government Incentives for Economic Development*
- *Policy FSS-R.1.1.16: Resilient Housing*
- *Policy FSS-2.1.2: Activity Concentrations*

Small Area Plan – Anacostia Transit Area, Strategic Investment and Development Plan

The OP Set Down Report concludes that the Map Amendment and the RFP would further the goals of the Small Area Plan by enabling a development that would be transit-oriented and respectful of the buildings and uses in the adjacent historic district and the lower density residences to the east. Residents would also benefit from the availability of an improved transportation network along Good Hope Road and MLK Avenue which provides easy access to the new 11th Street Bridge, Anacostia Parkway, and Anacostia Park. The development would utilize transit to attract and accommodate residents and residential units required to support a successful retail district. The OP Set Down Report notes that the Property is within the Small Area Plan’s Gateway Node, which was to be “developed in the early years of the plan as a major local employment center of significant new office, active ground floor uses, and attractive public spaces.” Although the Property will not be developed with government offices as envisioned by the Small Area Plan, any development of the site will incorporate the Small Area Plan’s planning principles.

OP Hearing Report

OP submitted an April 24, 2023 report⁴ (OP Hearing Report), recommending approval of the Map Amendment and largely reiterating the statements and conclusions in the OP Set Down Report. (Ex. 7.)

The OP Hearing Report provides an update to OP's racial equity analysis in response to the revised Racial Equity Analysis Tool released by the Commission on February 3, 2023. OP's updated racial equity analysis addresses the revised tool's new components regarding community outreach and engagement and disaggregated race and ethnicity data. The OP Hearing Report indicates that DMPED's outreach efforts with ANC 8A began prior to the RFP process, and the community responded in support of the development of the Property. Each of the RFP respondents gave presentations of their visions for development, and in response, changes were made to have retail on the ground floor to help activate Good Hope Road instead of a residence community room. The Map Amendment has been a part of all discussions to direct the desired density, height, and mix of uses allowed to effectuate the desired development. DMPED informed OP that in the community meetings and comments received during the RFP review and more recently for the Map Amendment, there has been no opposition to development of the site and to the density and height that would be allowed by the MU-7B zone.

The updated racial equity analysis in the OP Hearing Report also includes a summary and analysis of disaggregated race and ethnicity data regarding population, median household income, and unemployment, based on the District overall, the Planning Area, and the Census Tract. OP notes that between 2012 and 2016, ninety-one percent (91%) of the population in the Planning Area was Black, but this figure has dropped to eighty-seven percent (87%) in the 2017-2021 period. The data shows that Black or African American Alone and Other Race have the lowest median incomes in the Planning Area at \$35,034 and \$31,801, respectively. Black or African American Alone, Asian alone, and Other Race had the highest portion of their population unemployed. In addition, a significant percentage, eighty-one percent (81%), of the population in the Planning Area were renters, which is higher than the District-wide average. Based on this data, the proposed Map Amendment would allow for an increase in density to facilitate the projected increase in population and also provide options for homeownership to the population in the Far Southeast/Southwest area. (Ex. 7.)

Public Hearing

At the May 1, 2023 public hearing, the Commission heard testimony from OP, which mostly reiterated the findings contained in the OP Set Down Report and OP Hearing Report. In response to a question from the Commission about whether the proposed MU-7B zone is consistent with the Property's partial Medium Density Commercial FLUM designation, OP responded that the Comprehensive Plan's recommended zones for that FLUM designation would allow for a higher height and density, but that those alternative zones were deemed inappropriate since the Property is adjacent to residential rowhomes and the Anacostia Historic District. OP also reiterated its recommendation that IZ Plus not apply to the Map Amendment since the Planning Area is already

⁴ OP requested a waiver to late file its OP Hearing Report less than ten (10) days before the hearing, which the Commission granted at the May 1, 2023 public hearing.

on track to meet its housing production goals and has a disproportionate amount of existing affordable housing.

At the public hearing, the Commission also asked about the current progress regarding the RFP award for developing the Property, and about DMPED's community outreach efforts regarding the Map Amendment.

No persons or organizations testified in support, in opposition, or undeclared.

Proposed Action

The Commission found persuasive, and concurred with, OP's recommendations that the Commission take proposed action to adopt the Map Amendment.

Since the affected ANC, 8A, did not testify at the public hearing or submit a written report to the case record in response to the proposed Map Amendment, there was nothing to which the Commission could give great weight at proposed action.

At the conclusion of the May 1, 2023, public hearing, the Commission voted to take **PROPOSED ACTION** to adopt the Map Amendment and to authorize the publication of a Notice of Proposed Rulemaking (NPR):

VOTE (May 1, 2023): **4-0-1** (Robert E. Miller, Peter G. May, Anthony J. Hood, and Joseph S. Imamura to **APPROVE**; one seat vacant, not voting)

National Capital Planning Commission (NCPC)

The Commission referred the proposed Map Amendment to the NCPC on May 4, 2023, for the thirty (30)-day review period required by Section 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 (2018 Repl.).

On May 30, 2023, NCPC staff filed a letter, stating that the Map Amendment falls under an exception listed in Chapter 8 (Exceptions and Project Changes) of NCPC's submission guidelines, and no comments were received when the Map Amendment was made available for public review on the NCPC website. Accordingly, staff determined that the Map Amendment is exempt from NCPC review. (Ex. 12.)

OZ published a Notice of Proposed Rulemaking (NPR) in the May 26, 2023 *District of Columbia Register* (70 DCR 007785 *et seq.*)

Prior to its June 29, 2023 public meeting, the Commission received no comments in response to the NPR.

FINAL ACTION

Pursuant to Subtitle X § 500.3, the Commission shall find that the proposed Map Amendment is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Property. The Commission finds the proposed Map Amendment not inconsistent with the FLUM, GPM, and the Citywide and Area Elements of the Comprehensive Plan, particularly when viewed through a racial equity lens, given the opportunity the increased MU-7B zone density would create for development of housing close to transit. The Commission also finds that the Map Amendment is not inconsistent with the Small Area Plan and will facilitate a development that will have an appropriate height and density in relation to the Property's location near a historic district at the entrance into Anacostia.

The Commission is persuaded by and concurs with OP's recommendation that IZ Plus not apply to the Map Amendment because of the mitigating circumstances identified in the OP Set Down Report and OP Hearing Report. Specifically, the reports indicate that the Planning Area in which the Property is located had the largest number of the District's affordable housing units compared to all other planning areas and is expected to exceed its 2025 housing production goal. In addition, since the Property is District-owned, it will be subject to higher and deeper affordability requirements when compared to Regular IZ and IZ Plus. Therefore, based on these mitigating circumstances identified by OP, the Commission concludes that the IZ Plus should not apply to this Map Amendment.

“Great Weight” to the Recommendations of OP

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).)

The Commission finds OP's recommendation that the Commission take final action to adopt the Map Amendment persuasive and concurs in that judgment based on the analyses in the OP Set Down Report and OP Hearing Report detailed above. The Commission also finds OP's recommendation that the Map Amendment not be subject to IZ Plus, pursuant to Subtitle X § 502.2(c), persuasive, which is also detailed above.

“Great Weight” to the Written Report of the ANC

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 (1978) (citation omitted).)

ANC 8A, the affected ANC, did not submit a written report in response to the NOPR; therefore, there is nothing for the Commission to give great weight to.

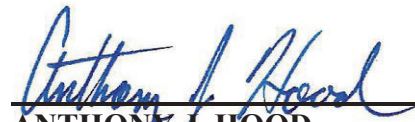
At its June 29, 2023 public meeting, the Commission voted to take **FINAL ACTION** to adopt the Map Amendment and to authorize the publication of a Notice of Final Rulemaking to amend the Zoning Map as follows:


VOTE (June 29, 2023): 4-0-1

(Anthony J. Hood, Peter G. May, Robert E. Miller, and Joseph S. Imamura to **APPROVE**; 3rd Mayoral Appointee seat vacant, not voting)

PARCEL(S)		MAP AMENDMENT
224/31		PDR-1 to MU-7B
SQUARE	LOT(S)	MAP AMENDMENT
5600	17	PDR-1 to MU-7B
5601	860, 862, a portion of Lot 865	R-3 and PDR-1 to MU-7B
OTHER		MAP AMENDMENT
A portion of the 13 th Street right-of-way (see metes and bounds description at Exhibit 2, page 27, of the case record)		R-3 to MU-7B

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 22-30 shall become final and effective upon publication in the *D.C. Register*, that is on August 25, 2023.


 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.