

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION NOTICE OF FINAL RULEMAKING

AND

Z.C. ORDER NO. 17-26

Z.C. Case No. 17-26

MIRV Holdings, LLC

(Map Amendment @ Parcel 121/31)

May 14, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on April 12, 2018 to consider an application by MIRV Holdings, LLC (“Applicant”) for approval of a Zoning Map Amendment pursuant to 11-X DCMR § 500.1 of the District of Columbia Zoning Regulations (“Zoning Regulations”), Title 11 of the District of Columbia Municipal Regulations. The application is to amend the Zoning Map from unzoned to the MU-5-B zone for Parcel 121/31.

The Commission considered the application for the map amendment pursuant to Subtitles X and Z of the Zoning Regulations. The public hearing was conducted in accordance with the provisions of 11-Z DCMR § 400 *et seq.* As discussed below, no party, person, or entity appeared in opposition to the application at the public hearing. Accordingly, a decision by the Commission to grant this application would not be adverse to any party, and pursuant to 11-Z DCMR §604.7, the Commission waives the requirements for findings of facts and conclusions of law. As set forth below, the Commission hereby **APPROVES** the application.

Application, Parties, and Hearing

1. The property that is the subject of this application consists of Parcel 121/31 and is bound by Irving Street, N.E. to the north, Michigan Avenue, N.E. to the east, residential and commercial uses to the south, and the North Capitol Street cloverleaf interchange to the west (“Property”). (Exhibit [“Ex.”] 2.)
2. The Property is currently unzoned due to the federal ownership of the Property. The Property was formerly the subject of a consolidated planned unit development (“PUD”) and Zoning Map amendment approval to the C-3-A Zone District. (See Z.C. Case No. 08-33 and subsequent time extensions in Z.C. Case Nos. 08-33A–08-33G.) The consolidated PUD approval has expired. A first-stage PUD approval for a portion of the Property will expire on December 31, 2018. The Applicant stated that it no longer desires to construct the PUD project that was approved in Z.C. Case Nos. 08-33A-08-33G. (Ex. 2.)

3. The Property is designated on the Future Land Use Map of the Comprehensive Plan for Mixed Use: Medium-Density Residential and Moderate-Density Commercial. (Ex. 2, 2C, 2D.)
4. On December 8, 2017, the Applicant filed an application for approval of the map amendment. (Ex. 1, 2-2K.)
5. Prior to filing the application on September 15, 2017, the Applicant mailed a Notice of Intent to all property owners within 200 feet of the Property as well as Advisory Neighborhood Commission (“ANC”) 5A, the ANC in which the Property is located. On October 24, 2017, the Applicant served a copy of the Notice of Intent on ANC 5E. ANC 5E’s boundaries are located across Michigan Avenue from the Property. The Applicant made a preliminary presentation to ANC 5A on October 25, 2017 and was requested by ANC 5E to make a presentation at their regularly scheduled public meeting in January, 2018. Accordingly, the Applicant satisfied the notice requirements of 11-Z DCMR §§ 304.5, 304.6. (Ex. 2G.)
6. The application satisfied the filing requirements of 11-Z DCMR § 300 *et seq.* (Ex. 2H.)
7. On January 29, 2018, the Commission set the case down for a public hearing based on the recommendation of the Office of Planning (“OP”). (Ex. 9.)
8. On February 5, 2018, the Applicant filed a supplemental submission that requested a public hearing, provided the outlines of the expected witness testimony and included the resume of the Applicant’s proffered expert in urban planning and architecture. (Ex. 10, 12, 13.)
9. Notice of the public hearing was provided in accordance with the requirements of 11-Z DCMR § 400 *et seq.* (Ex. 15, 16, 17.)
10. On March 13, 2018, the Applicant filed a Technical Memorandum prepared by Gorove-Slade Associates which provided an analysis of the potential vehicular trip generation for two development scenarios that are consistent with the matter-of-right development parameters of the MU-5-B zone. (Ex. 20-21.)
11. On March 23, 2018, the Applicant submitted a final pre-hearing submission which provided an update on the Applicant’s presentations to ANC 5A. (Ex. 22.)
12. The Property is located within ANC 5A. At a duly noticed public meeting with a quorum present, ANC 5A voted in support of the application and submitted a report in support of the application. (Ex. 29.)
13. ANC 5E did not participate in this case.
14. On April 12, 2018, the Commission held a public hearing in accordance with 11-Z DCMR § 408.

15. No person, party, or entity appeared in support or opposition to the application.
16. OP and the District Department of Transportation (“DDOT”) each submitted reports in support of the application. (Ex. 25, 26.)
17. Pursuant to 11-Z DCMR § 506.5, at the close of the hearing, the Commission took proposed action to approve the application.
18. On April 13, 2018, the Commission referred the proposed map amendment to the National Capital Planning Commission (“NCPC”) for review and comment pursuant to the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Section 1-201 *et seq.* (Ex. 32.)
19. By letter dated May 3, 2018, NCPC’s Executive Director submitted NCPC’s action on this case, along with a copy of the NCPC’s Executive Director’s recommendation for the project. The NCPC action stated the following:
 - a. Noted that the proposed map amendment “would allow for medium-density, compact mixed-use development with an emphasis on residential use, as well as facilities for shopping and business needs”; and
 - b. Advised “the Zoning Commission that certain matter-of-right uses in this district, such as residential, shopping, and business uses, are inconsistent with the acceptable uses stipulated in the Statement of Non-Disturbance established on March 7, 1990 between the District of Columbia government and the U.S. General Services Administration.”

The NCPC’ Executive Director’s Recommendation stated in the “Project Analysis” portion of the report that, “[s]taff has evaluated the referral from the Zoning Commission of the District of Columbia and finds that the proposed map amendment would not be inconsistent with the Federal Elements of the *Comprehensive Plan for the National Capital*, but that uses allowed in this zone designation would have an adverse effect on an identified federal interest, which is reflected in the Statement of Non-Disturbance developed between the District and GSA.” (Ex. 33.)

20. On May 8, 2018, the Applicant submitted a letter in response to the NCPC report.¹ The letter stated that the Applicant believed the Commission’s determination in this case should be solely based on the standards enumerated in 11-X DMR § 500.3, which do not include issues related to the 1990 Statement of Non-Disturbance with NCPC (“SNDA”). And that accordingly, the issues related to the SNDA have no bearing on the Commission’s decision in this case, and should be considered title issues for the Applicant to overcome in its eventual development of the Property, not zoning issues pertinent to the Commission’s

¹ The Commission granted the Applicant’s motion to re-open the record to allow it to submit the letter after the Commission had closed the record at the end of the hearing, pursuant to 11-Z DCMR § 602.6.

action in this case. The Applicant stated that it plans to resolve issues related to the SNDA in another forum. (Ex. 35).

21. On May 9, 2018, ANC 5A submitted an email message stating that it does not intend to submit a separate response to the NCPC report, and that it supported the Commission re-opening the record to receive the Applicant's response to the NCPC Report.² (Ex. 36.)
22. At its May 14, 2018 public meeting, the Commission considered the NCPC report and its advice regarding the SNDA, along with the Applicant's and the ANC's responses. The Commission concluded that in deciding the map amendment, its role is limited to deciding whether the Applicant has met its burden of proof under 11-X DCMR § 500.3 of the Zoning Regulations. Accordingly, approval of the map amendment is limited to these criteria, which do not include an evaluation of whether hypothetical residential, shopping, and business uses included in future development, if constructed, would violate the SNDA. In approving the application, the Commission takes no position as to whether the development of the site with future residential, shopping, and business uses is inconsistent with the acceptable uses stipulated in the SNDA. The Applicant proceeds at its own risk with respect to the SNDA.

As directed by 11-Z DCMR § 408.8, the Commission has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for approval of a Zoning Map amendment pursuant to 11-X DCMR § 500.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. ANC 5A's reports expressed no issues or concerns. Because the ANC expressed no issues or concerns, there is nothing for the Zoning Commission to give great weight to. (*See Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The Commission carefully considered the ANC 5A position supporting approval of the application and concurred in its recommendation of approval.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. The Commission carefully considered OP's recommendation to approve and has given it great weight.

Based upon the record before the Commission, the Commission concludes that the proposed map amendment from unzoned to the MU-5-B zone, where the Property is designated for Mixed Use: Medium-Density Residential and Moderate-Density Commercial in the Future Land Use Map of the Comprehensive Plan, furthers multiple policies of the Comprehensive Plan. Pursuant to 11-X DCMR § 500.3, the Commission concludes that the map amendment is not inconsistent with the

² The Commission must give great weight to all ANC reports received prior to the Commission taking final action, pursuant to 11-Z DCMR § 402.6.

Comprehensive Plan and with other adopted public policies and active programs related to the Property, as detailed in the application and in the OP Report.

DECISION


On April 12, 2018, upon the motion of Commissioner Turnbull, as seconded by Commissioner Shapiro, 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, Michael G. Turnbull to approve; Peter G. May not present, not voting).

On May 14, 2018, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter A. Shapiro not present, not voting).


In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on June 22, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.