

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



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

AND

Z.C. ORDER NO. 18-06

Z.C. Case No. 18-06

Office of Planning

**(Text Amendment to Subtitle G Creating a New MU-3B Zone and to Amend the Zoning
Map to Change All Existing References from the MU-3 Zone to the MU-3A Zone)**

September 17, 2018

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, as amended; D.C. Official Code § 6-641.01 (2016 Rep1.)), hereby gives notice of the adoption of amendments to the Zoning Map and to Subtitle G (Mixed-Use (MU) Zones) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR).

These amendments create a new MU-3B zone. The new MU-3B zone permits a maximum floor area ratio (FAR) of 2.4, which is more density than permitted in the existing M-3 zone, but less than allowed in the existing MU-4 zone. The new zone allows a maximum height of fifty feet (50 ft.), which is higher than permitted in the existing MU-3 zone, and the same as permitted in the MU-4 zone. The new zone includes setback and buffer requirements and imposes a sixty percent (60%) lot occupancy limit for non-residential uses in Square 5539, for which there is presently no lot occupancy limit. The amendments also amend the Zoning Map to change all existing references from the MU-3 zone to the MU-3A zone to reflect the creation of the new MU-3B zone.

In this same edition of the *D.C. Register*, through Z.C. Order No. 17-11, the Commission gave notice that it adopted an amendment to the Zoning Map to rezone Lots 835 and 840 in Square 5539 from R-1-B to the new MU-3B zone. The Petitioner in that case originally requested that these two lots, as well as lots 838 and 839 (zoned MU-3), be rezoned to the MU-4 district. The subject site is currently the associated parking lot for the Penn Branch shopping center, which the Petitioner hopes to redevelop with retail and residential uses.

During the October 2, 2017 public hearing for that map amendment, the Commission heard testimony expressing concern over the additional height, density, and lot occupancy that would be available from the rezoning requested. In addition, the Commission received a written report from Advisory Neighborhood Commission (ANC) 7B expressing similar concerns. In response, the Commission inquired whether the process established under the Zoning Regulations of 2016 (ZR 16) for the creation of a new zone could potentially address the concerns over the impact of development on the site, while still allowing the height and density needed to permit the successful mixed-use redevelopment of the site.

On October 30, 2017, the Petitioner submitted, and the Commission granted, a request to defer consideration of Case No. 17-11 to allow the Petitioner to work with the community to resolve the concerns expressed. Through a letter dated April 23, 2018, the Petitioner informed the Commission that it had reached consensus with community stakeholders on the parameters of a new zone, which the Petitioner communicated to the Office of Planning (OP). The letter further stated that OP soon would request the Commission to set down for hearing the text needed to establish the new zone. If the Commission set down the case, the Petitioner requested that its petition be deemed modified to request a map amendment to the new zone, and to eliminate Lots 838 and 839 from consideration.

On April 30, 2018, the Commission agreed to setdown for hearing Case No. 18-06 to create a new MU-4A zone and to change the name of the MU-4 zone to MU-4B. The petition filed in Case No. 17-11 was deemed to be modified as requested. The two cases were scheduled to be heard on July 23, 2018, and notices of the two public hearings were given as required, with the notice for this case being given to all ANCs.

On July 19, 2018, ANC 3D submitted a report to the record of this case. The Commission's response to the ANC's issues and concerns appears later in this Notice.

Separate hearings for Case Nos. 17-11 and 18-06 were held on July 23, 2018. At the end of each hearing, the Commission voted to refer the case to the National Capital Planning Commission for review pursuant the Home Rule Act and to publish a notice of proposed rulemaking as required by the District of Columbia Administrative Procedure Act. As part of its motion in Case No. 18-06, the Commission voted to change the proposed new zone name from MU-4A to MU-3B, to reflect that it is more restrictive than MU-4. This required that the MU-3 zone be renamed "MU-3A".

A Notice of Proposed Rulemaking for this case was published in the *D.C. Register* on August 17, 2018, at 65 DCR 8574. No comments were received.

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) (2016 Repl.)) to give great weight to the issues and concerns raised in an affected ANC's written report. In this case, all ANCs are potentially affected by the creation of a new, non-geographically specific zone. As noted, ANC 3D submitted a report stating that it had become aware that the Commission intended to create a "special zone" for the Penn Branch Shopping Center site. The ANC expressed its opposition to what it considered to be a "special carve out." Further the ANC considered it to be imprudent for the Zoning Commission to create a new zone so soon after adopting the Zoning Regulations of 2016, which became effective September 6, 2016. In the ANC's view, the creation of a new zone and the mapping of a property into it should only occur if the inclusion of the property in its current zone was erroneous and the burden of proving that should be high. Lastly, ANC 3D stated it was opposed to what it considered "wholesale changes to zoning regulations perpetuated through a particular case outside of broad public awareness."

The Commission must respectfully disagree with the ANC's characterization that the Commission is creating a special zone district for the proposed redevelopment of the Penn Branch Shopping

Center. A special zone, such as Union Station North, Capital Gateway, and Hill East, applies only to a single discrete geographic area. Such zones are created in a single proceeding and notice is given only to the ANC within which the new zone will be located. The proposed MU-3B zone is not intended to be confined to a single geographic area, but as OP notes, has the potential to be useful to other areas where the FAR and height allowed are not inconsistent with their designated Comprehensive Plan Land Use Category, but for which setback and buffer requirements are needed. Thus, the creation of the MU-3B zone does not create a “special carve out” for a particular site, but provides a set of zoning tools that the Commission believes will benefit many.

The Commission is not making wholesale changes to zoning regulations. Rather, it is adopting discrete text amendments to accomplish the objective it has just described. In fact, the Commission’s action is similar to its decision to adopt the C-2-B-1 zone (now MU-5B) in March 2016, just three months after it took final action to adopt the Zoning Regulations of 2016. Thus, while Case No, 08-06 certainly had “broad public awareness”, the Commission need not wait until the next comprehensive revision to the Zoning Regulations to create new zones. In fact, few new zones were created as part of ZR16. For the most part, the map amendments made did not change the maximum FAR or height within the zone district’s shown on the 1958 map, but simply changed their names. As explained, the need for an MU-3B zone has nothing to do with the Commission renaming C-2-A as MU-3 or C-2-B as MU-4.

In its order adopting the Zoning Regulations of 2016, the Commission stated:

The Commission notes that the rules it adopts through this Order are not set in stone. As with the 1958 regulations it replaces, the new Title 11 will doubtless be the subject of numerous amendments over the years, for which any member of the public may petition.

(Z.C. Order No. 08-06A at 29.)

The new zone adopted by this Commission through this case is exactly the type of amendment anticipated by the Commission when it adopted ZR16.

The Commission took final rulemaking action to adopt these amendments at a public meeting on September 17, 2018.

The amendments shall become effective upon publication of this notice in the *D.C. Register*.

The following map amendment action is taken:

The Zoning Map is amended to change all existing references to “MU-3” to “MU-3A”.

The following amendments to the text of Subtitle G, Title 11 DCMR (Zoning Regulations of 2016) are adopted:

Subsection 400.2, of § 400, PURPOSE AND INTENT, is amended as follows:

400.2 The MU-3 zones are intended to:

- (a) Permit low-density mixed-use development; and
- (b) Provide convenient retail and personal service establishments for the day-to-day needs of a local neighborhood, as well as residential and limited community facilities with a minimum impact upon surrounding residential development.

Subsection 402.1, of § 402, DENSITY - FLOOR AREA RATIO (FAR), is amended as follows:

402.1 The maximum permitted FAR in the MU-3 through MU-10 zones shall be as set forth in the following table:

TABLE G § 402.1: MAXIMUM PERMITTED FLOOR AREA RATIO

Zone	Maximum FAR	
	Total Permitted	Maximum Non-Residential Use
MU-3A	1.0	1.0
	1.2 (IZ)	
MU-3B	2.0	1.5
	2.4 (IZ)	
MU-4	2.5	1.5
	3.0 (IZ)	
MU-5-A MU-5-B	3.5	1.5
	4.2 (IZ)	
MU-6	6.0	2.0
	7.2 (IZ)	
MU-7	4.0	2.5
	4.8 (IZ)	
MU-8	5.0	4.0
	6.0 (IZ)	
MU-9	6.5	6.5
	7.8 (IZ)	
MU-10	6.0	3.0
	7.2 (IZ)	

Subsections 403.1 and 403.3, of § 403, HEIGHT, are amended as follows:

403.1 The maximum permitted building height and number of stories, not including the penthouse, in the MU-3 through MU-10 zones and the MU-30 zone shall be as set forth in the following table, except as provided in Subtitle G § 403.2:

TABLE G § 403.1: MAXIMUM PERMITTED HEIGHT/STORIES

Zone	Maximum Height (Feet)	Maximum Stories
MU-3A	40	3
MU-3B	50	4
MU-4	50	N/A

Zone	Maximum Height (Feet)	Maximum Stories
MU-5-A	65	N/A
	70 (IZ)	
MU-5-B	75	N/A
MU-6	90	N/A
MU-7	65	N/A
MU-8	70	N/A
MU-9	90	N/A
MU-10	90	N/A
	100 (IZ)	
MU-30	110	NA

403.3 The maximum permitted height of a penthouse, except as prohibited on the roof of a detached dwelling, semi-detached dwelling, rowhouse, or flat in Subtitle C § 1500.4, shall be as set forth in the following table:

TABLE G § 403.3: MAXIMUM PERMITTED PENTHOUSE HEIGHT AND STORIES

Zone	Maximum Penthouse Height	Maximum Penthouse Stories
MU-3A MU-3B MU-4	12 ft. except 15 ft. for penthouse mechanical space	1; Second story permitted for penthouse mechanical space
MU-5-A MU-7	12 ft., except 18 ft. 6 in. for penthouse mechanical space	1; Second story permitted for penthouse mechanical space
MU-5B MU-8	20 ft.	1; Second story permitted for penthouse mechanical space
MU-6 MU-9 MU-10 MU-30	20 ft.	1 plus mezzanine; Second story permitted for penthouse mechanical space

Section 404, LOT OCCUPANCY is amended as follows:

Subsections 404.1 is amended as follows:

404.1 The maximum permitted lot occupancy for residential use in the MU-3 through MU-10 zones and the MU-30 zone shall be as set forth in the following table:

TABLE G § 404.1: MAXIMUM PERMITTED LOT OCCUPANCY

Zone	Maximum Lot Occupancy for Residential Use
MU-3A	60%
	60% (IZ)
MU-3B	60%
	75% (IZ)

Zone	Maximum Lot Occupancy for Residential Use
MU-4	60%
	75% (IZ)
MU-5-A MU-5-B	80%
	80% (IZ)
MU-6	80%
	90% (IZ)
MU-7	75%
	80% (IZ)
MU-8	N/A
MU-9	N/A
MU-10	75%
	N/A (IZ)
MU-30	N/A

A new 404.2 is added to read as follows:

404.2 Notwithstanding Subtitle G § 404.1, lots 835 and 840 located on Square 5539 shall not exceed a sixty percent (60 %) maximum lot occupancy for all residential and non-residential uses.

A new § 411, TRANSITION SETBACK REQUIREMENTS, is added to read as follows:

411 TRANSITION SETBACK REQUIREMENTS

411.1 In the MU-3B zone the following transition setback requirements shall apply to any building or portion of a building within thirty feet (30 ft.) of a lot line directly abutting an R zone district:

- a) A twenty-foot (20 ft.) minimum transition setback shall be provided from any lot line directly abutting an R zone district extended as a vertical plane parallel to each abutting lot line. No building or portion of a building may be constructed within the 20-foot transition setback; and
- b) An additional upper-story transition setback of 10 feet minimum shall be provided above a building height of 40 feet, or top of third story.

411.2 Any required transition setback area shall not be used for loading.

411.3 A minimum of six feet (6 ft.) of the transition setback area, measured in from the abutting residential lot line, shall be landscaped with evergreen trees subject to the following conditions:

- (a) The trees shall be maintained in a healthy growing condition;

- (b) The trees shall be a minimum of eight feet (8 ft.) high when planted; and
- (c) Planting locations and soil preparation techniques shall be shown on a landscape plan submitted with the building permit application to the Department of Consumer and Regulatory Affairs for review and approval according to standards maintained by the Department's Soil Erosion and Storm Management Branch, which may require replacement of heavy or compacted soils with top and drainage mechanisms as necessary.

411.4 A required transition setback may be inclusive of a required side or rear yard provided all conditions of each section are met.

411.5 No residential communal outdoor recreation space shall be located within 50 feet of any lot line directly abutting an R zone district extended as a vertical plane parallel to each abutting lot line.

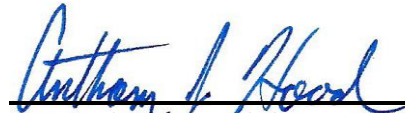
On July 23, 2018, upon the motion of Chairman Hood, as seconded by Commissioner Shapiro, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the petition at the conclusion of the public hearing by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

On September 17, 2018, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the petition at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Michael G. Turnbull, and Peter G. May 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 *DC Register*; that is on October 12, 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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Zoning Commission**



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September 17, 2018

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