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July 28, 2020

## **VIA IZIS**

Zoning Commission for the  
District of Columbia  
441 4<sup>th</sup> Street, N.W., Suite 210-S  
Washington, DC 20001

**Re: Z.C. Case No. 19-28 / Zoning Map Amendment from RF-1 to ARTS-3  
Square 417, Lots 53 & 54  
Applicant's Proposed Findings of Fact and Conclusions of Law**

Dear Members of the Commission:

On behalf of Square 417, LLC (the "Applicant"), we respectfully submit the Applicant's proposed Findings of Fact and Conclusions of Law for the above-referenced case.

We look forward to the Commission taking final action on this application at the public meeting scheduled for September 14<sup>th</sup>. Thank you for your considerate attention to this matter.

Sincerely,

HOLLAND & KNIGHT LLP



Leila M. Jackson Batties  
Christopher S. Cohen

Encl.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on July 28, 2020, a copy of this letter and the Applicant’s draft Findings of Fact and Conclusions of Law were served on the following:

1. Advisory Neighborhood Commission (“ANC”) 1B  
c/o Commissioner James Turner, Chair  
Via Email: 1b09@anc.dc.gov
  
2. Commissioner Anita Norman  
Single Member District Representative, ANC 1B-01  
Via Email: 1b01@anc.dc.gov
  
3. ANC 6E  
c/o Commissioner Alex Marriott, Chair  
Via Email: alexmarriottanc@gmail.com
  
4. Commissioner Alexander Padro  
Single Member District Representative, ANC 6E-01  
Via Email: padroanc@gmail.com
  
5. Office of Planning  
Ms. Jennifer Steingasser  
Mr. Joel Lawson  
Ms. Maxine Brown-Roberts  
Via Email: jennifer.steingasser@dc.gov  
joel.lawson@dc.gov  
maxine.brownroberts@dc.gov
  
6. District Department of Transportation  
Ms. Anna Chamberlin  
Mr. Jonathan Rogers  
Via Email: anna.chamberlin@dc.gov  
jonathan.rogers2@dc.gov



Christopher S. Cohen  
Holland & Knight LLP

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 19-28  
Z.C. CASE NO. 19-28  
Square 417, LLC  
(Zoning Map Amendment @ Square 417, Lots 53 and 54)  
[DATE]**

The Zoning Commission for the District of Columbia (the “Commission”) held a properly noticed public hearing on July 14, 2020, to consider an application for a Zoning Map amendment (the “Application”) submitted by Square 417, LLC (the “Applicant”) 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, to amend the Zoning Map from the RF-1 zone district to the ARTS-3 zone district for Lots 53 and 54 in Square 417 (the “Property”). For the reasons set forth below, the Commission hereby **APPROVES** the Application.

**FINDINGS OF FACT**

**Summary of Application Timeline**

1. On October 1, 2019, the Applicant gave its notice of intent (“NOI”) to file the Application with the Commission pursuant to Subtitle Z § 304.5 of the Zoning Regulations. A copy of the NOI was mailed to the owners of all property within 200 feet of the perimeter of the Property, Advisory Neighborhood Commission (“ANC”) 1B, and ANC 6E.
2. On November 15, 2019, the Applicant filed the Application requesting the Commission to approve a Zoning Map amendment to rezone the Property from the RF-1 zone district to the ARTS 3 zone district.
3. At its public meeting on February 24, 2020, the Commission voted to set down the Application for a public hearing as a contested case.
4. The Applicant submitted its prehearing submission on March 5, 2020.
5. The public hearing on the Application was held on July 14, 2020, where the Commission voted to take proposed action (5-0-0).

## **Notice of Contested Case for Zoning Map Amendment**

6. Pursuant to the contested case notice requirements of Subtitle Z § 402, on May 21, 2020, the Office of Zoning (“OZ”) sent notice of the contested case public hearing to all property owners within 200 feet of the Property and to ANC 1B and ANC 6E, the “affected” ANCs pursuant to Subtitle Z § 101.8. Notice of the public hearing was published in the *D.C. Register* on May 29, 2020, and on the calendar on OZ’s website. (Ex. 15, 16, 16A.)
7. Due to the COVID-19 public health emergency, the notice of public hearing communicated that the hearing was to be conducted virtually. (Ex. 16.)
8. The virtual public hearing was conducted in accordance with the contested case provisions of Subtitle Z, Chapter 4 of the Zoning Regulations, which included the text provided in the Notice of Emergency and Proposed Rulemaking adopted by the Commission on May 11, 2020, in Z.C. Case No. 20-11 (*Text Amendment to Subtitles Y & Z, Virtual Meetings & Hearings*).

### **Parties**

9. Other than the Applicant, the only other parties to this case were ANC 1B and ANC 6E.

### **The Property**

10. The Applicant is the designated representative of the land owner, Howard University.
11. The Property is located in the northwest quadrant of the District and consists of approximately 42,751 square feet of land area (0.98 acres ±). The Property is bounded by 7<sup>th</sup> Street on the east; S Street on the south; a 10-foot wide public alley on the west; and T Street on the north.
12. The Property is located in Ward 1 and within the boundaries of ANC 1B01. The boundary of ANC 6E is located along S Street, immediately south of the Property.
13. The Property is located on the west side of 7<sup>th</sup> Street, NW, across the street from the Shaw-Howard University Metrorail station, and is also within 0.2 miles of 10 Metrobus routes. With a Transit Score of 83 (excellent transit) and a Walk Score of 98 (walker’s paradise), the Property is located within a pedestrian-oriented area with immediate proximity to transit.

### **Current Zoning**

14. The Property is currently located in the RF-1 zone, which is described on the Future Land Use Map and the Zoning Regulations as a moderate-density residential zone. The purpose of the RF-1 zone is to provide for areas predominantly developed with row

houses on small lots within which no more than two (2) dwelling units are permitted. Subtitle E § 300.1.

15. As a matter of right, the RF-1 zone requires/permits:

- a) a maximum permitted building height, not including the penthouse, of 35 feet and 3 stories (Subtitle E § 303.1), except that new construction of three or more immediately adjoining residential row dwellings or flats, built concurrently on separate record lots, can have a maximum building height of 40 feet and 3 stores (Subtitle E § 303.2);
- b) a maximum permitted lot occupancy of 60% for detached dwellings, semi-detached dwellings, row-dwellings, flats, and places of worship, and a maximum permitted lot occupancy of 40% for all other structures (Subtitle E § 304.1);
- c) a minimum lot width of 18 feet for a row dwelling or flat, 30 feet for a semi-detached dwelling; and 40 feet for all other structures (Subtitle E § 201.1); and
- d) a minimum lot area of 1,800 square feet for a row dwelling or flat (1,500 square feet with Inclusionary Zoning), 3,000 square feet for a semi-detached dwelling, and 4,000 square feet for all other structures (Subtitle E § 201.1).

### **Comprehensive Plan**

16. The Comprehensive Plan (Title 10A of the DCMR, the “CP”) under which the Commission must review the proposed map amendment was adopted by the D.C. Council in 2013.
17. The Generalized Policy Map (the “GPM”) of the CP identifies the Property as a Neighborhood Enhancement Area. (Ex. 2D.)
18. The CP’s Framework Element establishes that a “Neighborhood Enhancement Area” designation on the GPM is assigned to areas that present opportunities for compatible small-scale infill development, including new single family homes, townhomes, and other density housing types. Uses that reflect the historical mixture and diversity of each community should be encouraged. (10A DCMR § 223.6.)
19. The guiding philosophy in Neighborhood Enhancement Areas is to ensure that new development “fits-in” and responds to the existing character, natural features, and existing/planned infrastructure capacity. New housing should be encouraged to improve the neighborhood and must be consistent with the land use designation on the Future Land Use Map (“FLUM”). (10A DCMR § 223.7.)
20. Overall, new development in Neighborhood Enhancement Areas should improve the real estate market, reduce crime and blight, and attract complementary new uses and

services that better serve the needs of existing and future residents. (10A DCMR § 223.8.)

21. The CP's FLUM designates the Property as Mixed-Use (Medium Density Residential / Medium Density Commercial). (Ex. 2C.)
22. The CP's Framework Element states that the Medium Density Residential FLUM category describes neighborhoods or areas "where mid-rise (4-7 stories) apartment buildings are the predominant use. Pockets of low and moderate density housing may exist in these areas. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space." (10A § 225.5.)
23. The CP's Framework Element states that the Medium Density Commercial FLUM designation is used to define "shopping and service areas" that are somewhat more intense in scale and character than the moderate-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation generally draw from a citywide market area. (10A § 225.10.)
24. The CP's Framework Element uses a Mixed Use designation to indicate areas where the mixing of two or more uses is encouraged. The Mixed Use category generally applies in the following three 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 that 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; and
  - c) Large sites (generally greater than 10 acres in size), where opportunities for multiple uses exist but a plan dictating the precise location of these uses has yet to be prepared. (10A § 225.18.)
25. The CP Framework Element states that the general density and intensity of development within a given Mixed Use area is determined by the specific mix of uses shown. If the desired outcome is to emphasize one use over the other, a variety of zoning designations is used in Mixed Use areas, depending on the combination of uses, densities, and intensities. (10A DCMR §§ 225.19 - 225.21.)
26. In addition to applicable CP Citywide Element policies, the proposed map amendment is subject to the Near Northwest Area Element, which encourages, among other things, the maintenance and enhancement of the "historic, architectural distinctive mixed density character of Near Northwest residential neighborhoods," the enhancement of

stable commercial areas, the revitalization of neighborhood retail, the production of affordable housing, and a pedestrian-friendly environment. (10A DCMR § 2108.)

27. The proposed map amendment is also subject to the Shaw/Convention Center Area Policy Focus Area within the New Northwest Area Element, where there is a need to generate new quality housing, revitalize local businesses, improve sidewalks and public space, and upgrade parks and public facilities. (10A DCMR § 2111.3.)

### **Small Area Plans**

28. The CP requires zoning to be “interpreted in conjunction with...approved Small Area Plans.” (10A DCMR § 266.1(d).) The CP also states that small area policies appear in “separately bound Small Area Plans” for particular neighborhoods and business districts. As specified in the city’s municipal code, Small Area Plans provide supplemental guidance to the CP.
29. Prior to 2006, the Property was designated as Mixed Use (Low Density Commercial / Moderate Density Residential) on the FLUM. However, during the 2006 Comprehensive Plan amendment cycle the policies and recommendations of the Convention Center Strategic Development Plan and the DUKE Plan were incorporated into the CP, and the Property was re-designated Mixed Use (Medium Density Commercial / Medium Density Residential).
30. The DUKE Plan provides direction to the community, private sector and public agencies in revitalizing the neighborhood to achieve a cohesive and inclusive district that meets the community and District government development goals. The DUKE plan calls for “land use adjustments that can be implemented through amendments to the zoning map, planned unit developments, and amendments to the zoning text.”
31. The DUKE Plan identifies the Property as an “other developable site.” In addition, the DUKE Plan places the Property within the Howard Theatre Sub-District, which contemplates mixed-use redevelopment, including active, ground floor retail.
32. The DUKE Plan recommends the existing building on the Property to be demolished in order to “allow mixed use redevelopment, including active, ground floor retail, which complement other proposed destination uses and optimized density.”
33. The Property is located within the boundaries of the Convention Center Strategic Development Plan (the “Convention Center Plan”). The Convention Center Plan was prepared to help the District and the community guide development to realize several key objectives, among which include: (i) generate quality housing that will ensure that the community remains demographically diverse and offers a wide range of housing types; and (ii) strengthen neighborhood businesses by attracting new business in Shaw through capital investment that meets the needs of visitors and tourists and creates job opportunities and tax revenues for local services.

34. Additionally, the Property is located within the Convention Center Plan's Uptown Destination District sub-area, which describes the streets as being "lined with ground floor shops, restaurants and clubs. Activity spills into the sidewalks, which are furnished with new trees, lights and public art. The upper level of some buildings within the Uptown Designation District are "residential; the larger projects include affordable units."
35. The Convention Center plan acknowledges that the existing building on the Property is "not an ideal use for its location, adjacent to a Metro station – and is architecturally insignificant; its current configuration fails to take advantage of its proximity to Metro, and ground floor ceiling heights are lower than desirable for retail; the site, on the west side of the 1800 block of 7<sup>th</sup> Street, is zoned R-4 and not consistent with the surrounding commercial zones."
36. The Convention Center Plan identifies the Property as a "priority development site" and designates the Property as a "potential site for high and medium density residential development." The Property is also a "preferred location of ground floor retail" along 7<sup>th</sup> Street, NW.

### **The Application**

37. The Application requests rezoning the Property from the RF-1 zone to the ARTS-3 zone to make the Property consistent with the CP, as supplemented by the Convention Center Plan and DUKE Plan, and the Zoning Act.
38. The purposes of the ARTS Districts are, among other things, to encourage pedestrian activity, especially residential, retail, and entertainment uses; to expand business and job opportunities, and encourage development of residential and commercial buildings; and to strengthen the design character and identity of the area by means of physical design standards. (Subtitle K § 800.1.) Specifically, the ARTS-3 zone district is intended to permit medium-density, mixed-use development, with a focus on employment. (Subtitle K § 800.4.)
39. As a matter of right, the ARTS-3 zone district permits/requires:
  - a) a maximum density of 4.0 FAR (4.8 with IZ), of which no more than 2.5 FAR can be devoted to non-residential uses (Subtitle K § 802);
  - b) a maximum permitted height of 75 feet, subject to the following limitations: (i) no penthouse shall exceed a height of 83.5 feet above the measuring point used for the building; and (ii) if a lot abuts either a R, RF, or RA zone or an alley that serves as the zone district boundary line of an adjacent R, RF, or RA zone, no part of the building will project above a plane drawn at a 45 degree angle from a line located 50 feet directly above the property line that abuts the R, RF, or RA zone or the alley (Subtitle K § 803.3);



- c) a maximum permitted occupancy of 75% for residential uses (80% with IZ) (Subtitle K § 804.1);
- d) a minimum rear yard of 2.5 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet (Subtitle K § 805.1); and
- e) a minimum green area ratio (“GAR”) of 0.25. (Subtitle K § 808.1).

## **Responses to the Application**

### **Office of Planning Report**

- 40. OP submitted a report dated February 14, 2020, recommending that the Commission set down the Applicant’s request for a Zoning Map amendment (the “OP Setdown Report”). (Ex. 12.) The OP Setdown Report stated that the proposal would not be inconsistent with the FLUM, GPM, and text of the CP. The report also stated that the existing RF-1 zoning of the Property is inconsistent with the FLUM which designates the site Mixed Use (Medium Density Commercial / Medium Density Residential). Furthermore, when evaluating the Application in the context of the surrounding area, the report notes that the ARTS-3 zone is more appropriate for the Property than the ARTS-2, since it allows for slightly more density than the ARTS-2 zone and would ultimately provide for a greater amount of housing on the subject property. Overall, the OP Setdown Report found the proposal to be not inconsistent with the CP.
- 41. On May 4, 2020, OP submitted a report recommending approval of the Zoning Map amendment (the “OP Final Report”). (Ex. 14.) The OP Final Report stated that the ARTS-3 zone is not inconsistent with the FLUM recommendation for Mixed Use/ Medium Density Residential and Medium Density Commercial, the GPM, the text of the CP, the Convention Center Plan and the DUKE Plan.
- 42. At the public hearing, OP reiterated its support for the Application as detailed in the OP Final Report, noting that the proposed map amendment was not inconsistent with the CP, and rested on the record.

### **District Department of Transportation**

- 43. On June 30, 2020, the District Department of Transportation (“DDOT”) submitted a report expressing no objection to the Application (the “DDOT Report”). (Ex. 19.)
- 44. The DDOT Report noted that based on the information provided by the Applicant, 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. However, the DDOT Report stated given the achievable matter-of-right density possible on the Property, it is expected that the Applicant will continue to coordinate with DDOT through the permitting process if and when a

development proposal is put forth in order to ensure that impacts to the transportation network will be minimized.

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

#### ANC Reports

46. On December 9, 2019, ANC 1B submitted a resolution in support of the Application (the “ANC 1B Report”). (Ex. 11.) The ANC 1B Report indicated that, with a quorum present, the ANC voted 10-0-0 in support of the Application. The report stated that there were no issues or concerns with the Applicant’s request to rezone the Property to ARTS-3.
47. On July 13, 2020, ANC 6E submitted a resolution in opposition to the Application (the “ANC 6E Report.”). (Ex. 22.) The ANC 6E Report indicated that, with a quorum present, the ANC voted 3-0-3 to oppose the Application. The issues raised in the ANC 6E Report pertained to the Applicant’s decision to not pursue a Planned Unit Development, impacts to parking, and widening the northern portion of the alley adjacent to the Property.

#### Support for the Application

48. At the public hearing, the Commission received testimony in support of the Application from Mr. Nicholas Smith, who resides at 711 S Street, NW, which is located directly west of the public alley that abuts the Property.

#### Opposition to the Application

49. At the public hearing, the Commission did not receive any testimony from person(s) in opposition to the Application.
50. One letter was submitted in opposition to the Application by the French Street Neighborhood Association (“FSNA”) (Ex. 25.) The issues raised in the letter concerned impacts to parking, future traffic congestion, and widening of the alley adjacent to the Property.

#### Community Outreach

51. On October 28, 2019, the Applicant met with the Howard Community Advisory Committee (“CAC”), which includes representatives from several civic and community organizations operating or providing services in proximity to the Property. During the meeting, the CAC expressed support for the proposed rezoning and redevelopment of the Property. (Ex. 13, page 5.)
52. On March 10, 2020, the Applicant met with the president of the Parent Teacher Association (“PTA”) for Cleveland Elementary School, which is located immediately

west of the Property, in order to discuss potential impacts the redevelopment of the Property may have on the school. Additionally, the Applicant committed to contribute \$15,000 to the PTA to support classroom technology upgrades, new software licenses, student laptops and similar hardware (e.g., tablets) to facilitate remote internet access and distance learning, school garden improvements, and an improved sound system for the school auditorium/gymnasium. (Ex. 23.)

### **Public Hearing**

53. The following persons testified on behalf of the applicant: Mr. Derrek Niec-Williams, Executive Director of Campus Planning, Architecture, and Development at Howard University; and Mr. Shane Dettman, Director of Planning Services, Holland & Knight LLP. Mr. Dettman was acknowledged by the Commission as an expert in zoning and land use planning.
54. Commissioner Alexander Padro, Single Member District 6E01, testified on behalf of ANC 6E.

### **CONCLUSIONS OF LAW**

1. The Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, ch. 534; D.C. Official Code § 6-641.01, et seq.) (“Zoning Act”) authorizes the Commission to divide the District of Columbia into districts or 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.” (§ 1 of the Zoning Act; D.C. Official Code § 6-641.01.)
2. Section 2 of the Zoning Act (D.C. Official Code § 6-641.02) further provides that the: ...zoning regulations shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and general welfare, to provide adequate light and air, to prevent the undue concentration and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection or property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

### **Subtitle X § 500.3 – Not Inconsistent with the Comprehensive Plan**

3. The Commission must ensure that the Zoning Map, and all amendments to it, are “not inconsistent” with the CP pursuant to § 492(b)(1) of the District of Columbia Home

Rule Act (§ 2 of the Zoning Act; D.C. Official Code § 6-641.02.). Subtitle X § 500.3 incorporates this mandate into the Zoning Regulations by requiring that map amendments be “not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.”

4. Based upon the case record, including the Applicant’s exhibits, the reports of OP and DDOT, the ANC 1B Report and the ANC 6E Report, the testimony provided at the public hearing, and for the reasons stated below, the Commission concludes that the proposed rezoning of the Property from RF-1 to ARTS-3 furthers the goals of the CP and promotes orderly development in conformity with the Zone Plan as embodied in the Zoning Regulations and Zoning Map. The Commission further concludes that the Application will benefit the community in which the Property is located and is in the best interest of the District of Columbia. The Commission therefore concludes that the Application is not inconsistent with the CP, as supplemented by the DUKE Plan, and the Convention Center Plan, and is consistent with the purposes of the Zoning Act.

#### Consistent with the GPM

5. The Commission concludes that the proposed map amendment is not inconsistent with the GPM’s designation of the Property as a Neighborhood Enhancement Area.
6. Consistent with the guiding philosophy in Neighborhood Enhancement Areas, the map amendment will facilitate redevelopment of the underutilized Property in a manner that responds to the existing character, natural features, and existing/planned infrastructure on and surrounding the Property. New development under the ARTS-3 will also support neighborhood and city-wide housing needs and attract complementary new uses and services that better serve the needs of existing and future residents.

#### Consistent with the FLUM

7. The Commission concludes that the map amendment is not inconsistent with the Property’s Mixed Use (Medium Density Residential / Medium Density Commercial) land use designation on the FLUM. A variety of zone districts can be compatible with Mixed Use designated areas depending upon the desired combination of uses, densities, and intensities. Based upon the goals of the DUKE Plan and the Convention Center Plan, the Property is located in an area that the District envisions as a vibrant, mixed use neighborhood consisting of medium density commercial, residential, retail and service, and arts-related uses. Development under the ARTS-3 zone will be consistent with these goals.
8. The Commission further concludes that the existing RF-1 zone is inconsistent with the Property’s FLUM designation, and that the map amendment to ARTS-3 achieves greater compatibility with the envisioned uses for the Property. The Property has the locational characteristics of areas typically assigned a Mixed Use designation. The Property is located along 7<sup>th</sup> Street, a pedestrian-oriented corridor that already contains

residential and commercial uses, but where more new development should and can be accommodated given the Property's proximity to multiple nodes of transit.

9. While the Property's FLUM designation does not express a preference for either residential or commercial uses, the relevant policies and recommendations provided under the CP, as well as the Convention Center Plan and DUKE Plan, promote more residential use than commercial use. Thus, the Commission concludes that the map amendment is consistent with the FLUM since the ARTS-3 zone generally favors residential use over commercial use by allowing overall density of 4.2 FAR, but capping non-residential density at 2.5 FAR.

### Land Use Element

10. The Commission concludes that the proposed map amendment furthers this element because it will support new multifamily development around Metrorail stations (i.e., immediately proximate to the Shaw-Howard University Metrorail Station) and on land that is underutilized. Further, the Commission concludes that the proposal will allow for heights and densities that are consistent with the surrounding neighborhood, and will complement the established character of the area.

### Housing Element

11. The Commission concludes that the proposed map amendment furthers this element because it will allow the Property to be developed with new market-rate and affordable housing to help meet the needs of present and future District residents. Consistent with the Mayor's housing initiative, the ARTS-3 zone will allow for greater amounts of new housing in a "high opportunity" location.

### Transportation Element

12. The Commission concludes that the proposed map amendment furthers this element as it is consistent with policies related to transit oriented development. In addition, based on the DDOT Report amendment, rezoning the Property to the ARTS-3 zone will not result in undue adverse impacts to the surrounding transportation network.

### Environmental Protection Element

13. The Commission concludes that the proposed map amendment furthers this element because it enables future redevelopment of the Property that will incorporate energy-efficient systems to reduce energy use.

### Near Northwest Area Element

14. The Commission concludes that the proposed map amendment furthers this element because it will address several key planning and development priorities for this area. These include, though not limited to, maintaining and enhancing the Shaw neighborhood, directing growth to Shaw, revitalizing neighborhood commercial retail, specifically along 7<sup>th</sup> Street, NW, and facilitating the production of affordable housing.
15. The Commission concludes that the proposed map amendment also furthers the policies under the Shaw/Convention Center Area Policy Focus Area, which is within the Near Northwest Area Element. The proposed map amendment will foster new housing and ground floor retail and service uses. Redevelopment of the Property will also incorporate public space improvements that will enhance the pedestrian experience along the 7<sup>th</sup> Street, NW.

### **Small Area Plans**

16. The Commission concludes that the proposed map amendment is not inconsistent with the recommendations of the DUKE Plan. The requested rezoning to ARTS-3 will facilitate new development (e.g., mixed use ground floor retail and upper floor residential) on an underutilized site that will be compatible with the surrounding Shaw neighborhood, and specifically the Howard Theatre Sub-District. Overall, the Zoning Map amendment furthers the policies and objectives of the DUKE Plan, discussed above in **Findings of Fact Nos. 30-32**.
17. The Commission concludes that the proposed map amendment will enable the exact type of development envisioned for the Property by the Convention Center Plan. The requested rezoning to ARTS-3 will allow for medium-density residential development with significant new housing and affordable housing on an underutilized site. Redevelopment of the Property also has the potential to expand ground floor retail in a location that reinforces a traditional main street pattern of commercial development and creates a unified identity for the community. Overall, the Zoning Map amendment furthers the policies and objectives of the Convention Center Plan, discussed above in **Findings of Fact Nos. 33-36**.

### **National Capital Planning Commission (“NCPC”) Review**

18. Pursuant to the District of Columbia Home Rule Act of 1973, as amended (87 Stat. 790, Pub. L. No. 93-198, D.C. Code § 1-201 *et seq.*), the Commission referred the Application to NCPC for review and comment on **[DATE]**. (**Ex. ##**).
19. By letter dated **[DATE]**, NCPC concluded that the Application was not inconsistent with the Comprehensive Plan for the National Capital and would not adversely impact any other identified federal interest. (**Ex. ##**).

### **“Great Weight to the Recommendations of OP**

20. Pursuant to § 13(d) of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP.
21. The Commission concludes that OP’s reports, which provided an in-depth analysis of the proposed map amendment, are persuasive and concurs with OP’s recommendation that the Property be rezoned, as discussed above.

### **“Great Weight” to the ANC Reports**

22. Pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975 (effective March 26, 1976, D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Y § 406.2, the Commission must give “great weight” to the issues and concerns

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

23. The Commission finds the ANC 1B Report did not express any issues with the Application, and concurs with the recommendation of support for the Application.
  
24. The Commission acknowledges the issues and concerns raised by the ANC 6E Report, including those concerning residential parking and the Applicant’s refusal to make any commitments related to an widening of the northern portion of the public alley adjacent to the Property. The Commission finds the issues raised in the ANC 6E Report unpersuasive for purposes of evaluating this Application against the criteria provided under Subtitle X § 500.3 of the Zoning Regulations and D.C. Code § 6-641.02. The Commission is persuaded by the DDOT Report that the map amendment will likely not lead to a significant increase in the number of peak hour vehicle trips on the District’s transportation network. The Commission also recognizes the expectation, as stated in the DDOT Report, that the Applicant will continue to coordinate with DDOT through the permitting process if and when a development proposal is put forth in order to ensure that impacts to the transportation network will be minimized. In regards to parking, based on the number of trips the could potentially result from the map amendment, as indicated in the DDOT Report, the Commission does not believe imposing any parking restrictions on future residents/occupants of the Property are warranted. In regards to the Applicant’s decision not to pursue a PUD, the Commission notes that a PUD is a voluntary process and the Commission cannot compel an applicant to pursue one.

**DECISION**

In consideration of the record for Z.C. Case No. 19-28 and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application to amend the Zoning Map as follows:

SQUARE	LOT	Map Amendment
417	53 and 54	RF-1 to ARTS-3



**Proposed Action**

**Vote (July, 14, 2020):** **5-0-0** (Peter A. Shapiro, Robert E. Miller, Anthony J. Hood, Peter G. May and Michael G. Turnbull to **APPROVE**)

**Final Action**

**Vote ([DATE])** **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May and Michael G. Turnbull to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 19-24A shall become final and effective upon publication in the *D.C. Register*; that is on [DATE].