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May 6, 2021

VIA IZIS

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

**Re: Z.C. Case No. 20-23 / Zoning Map Amendment from PDR-2 to MU-10
Square 3623, Lots 1 and 2, Parcels 131/94, 131/146, 131/147, 131/155, 131/161,
131/162, and 131/217
Applicant's Proposed Findings of Fact and Conclusions of Law**

Dear Members of the Commission:

On behalf of LDP Acquisitions, LLC & 525 Rhode Island Avenue LP (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 May 27, 2021. Thank you for your considerate attention to this matter.

Sincerely,



Leila M. Jackson Batties
HOLLAND & KNIGHT LLP

Encl.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 6, 2021, 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”) 5E
c/o Commissioner Bradley Thomas, Chair
Via Email: 5E05@anc.dc.gov

2. Commissioner Denise Wright
Single Member District Representative, ANC 5E03
Via Email: 5E03@anc.dc.gov

3. Office of Planning
Ms. Jennifer Steingasser
Mr. Joel Lawson
Ms. Anne Fothergill
Via Email: jennifer.steingasser@dc.gov
joel.lawson@dc.gov
anne.fothergill@dc.gov

4. District Department of Transportation
Ms. Anna Chamberlin
Mr. Aaron Zimmerman
Via Email: anna.chamberlin@dc.gov
aaron.zimmerman@dc.gov

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GOVERNMENT OF THE DISTRICT OF COLUMBIA



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 20-23

Z.C. CASE NO. 20-23

LDP Acquisitions, LLC & 525 Rhode Island Avenue LP

**(Zoning Map Amendment @ Square 3623, Lots 1 & 2; and Parcels 131/94, 131/146,
131/147, 131/155, 131/161, 131/162, and 131/217)**

May 27, 2021

The Zoning Commission for the District of Columbia (the “Commission”) held a properly noticed public hearing on April 22, 2021, to consider an application for a Zoning Map amendment (the “Application”) submitted by LDP Acquisitions, LLC & 525 Rhode Island Avenue LP (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 PDR-2 zone district to the MU-10 zone district for Lots 1 & 2 in Square 3623 and Parcels 131/94, 131/146, 131/147, 131/155, 131/161, 131/162, and 131/217 (the “Property”). For the reasons set forth below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

Parties

1. The following were automatically parties pursuant to Subtitle Z § 403.5:
 - The Applicant; and
 - Advisory Neighborhood Commission (“ANC”) 5E, in which district the Property is located, and so the “affected ANC” pursuant to Subtitle Z § 101.8.
2. The Commission received no requests for party status.

Notice

3. On October 1, 2019, the Applicant mailed a notice of intent to file the Application proposing the Map Amendment to all property owners within 200 feet of the Property, as well as ANC 5E, as required by Subtitle Z § 304.5 and 304.6. (Exhibit [“Ex.”] 3J.)
4. On October 6, 2020, the Office of Zoning (“OZ”) sent notice of the Application to:
 - ANC 5E;
 - ANC 5E03 Single Member District Commissioner, in whose district the Property is located;

- The Ward 5 Councilmember, in whose district the Property is located; and
 - The Office of Planning (“OP”). (Ex. 5, 6, 7).
5. OZ published notice of the April 22, 2021, public hearing in the October 16, 2020, *D.C. Register* (67 DCR 12234) as well as on the calendar on OZ’s website. (Ex. 8).

The Property

6. The Property is located in the northeast quadrant of the District and consists of approximately 122,631 square feet of land area.
7. The Property is bounded:
- To the north – by Rhode Island Avenue, NE;
 - To the south – by W Street, NE;
 - To the east – the Metrorail tracks, Rhode Island Avenue Metrorail Station, and Metropolitan Branch Trail; and
 - To the west – by 5th Street, NE.
8. The Property is comprised of a collection of underutilized lots that are currently improved with a variety of industrial, warehouse, retail, surface parking, and other uses.
9. At the time of the Application, the lots comprising the Property were held in multiple ownerships, with the majority land owner being the Greater Mount Calvary Holy Church (“GMCHC”). As required by Subtitle Z § 200, the Applicant was duly authorized in writing by all owners of the lots comprising the Property to submit the Application. (Ex. 3K, 3L).

Current Zoning

10. The Property is currently located in the PDR-2 zone, which is intended to permit medium-density commercial and Production, Distribution, and Repair (“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 § 200.2);
11. The PDR-2 zone imposes the following limits for matter-of-right developments:
- A maximum density of 4.5 FAR for permitted uses and 3.0 FAR for restricted uses (Subtitle J §§ 202.1 – 202.3); and
 - A maximum height of 60 feet, not including penthouse (Subtitle J § 203.1);

Comprehensive Plan (Title 10A DCMR, the “CP”)

12. The CP’s Generalized Policy Map (the “GPM”) designates the majority of the Property as a Neighborhood Conservation Area, with a small eastern portion of the Property designated as a Land Use Change Area. (Ex. 3D.)
13. For the Neighborhood Conservation Area designation, the CP states that:

“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.” (CP § 225.5).

14. For the Land Use Change Area designation, the CP states that:

“Land Use Change Areas are areas where change to a different land use from what exists today is anticipated. In some cases, the Future Land Use Map depicts the specific mix of uses expected for these areas...The guiding philosophy in the Land Use Change Areas is to encourage and facilitate new development and promote the adaptive reuse of existing structures. Many of these areas have the capacity to become mixed-use communities containing housing, retail shops, services, workplaces, parks, and civic facilities. The Comprehensive Plan’s Area Elements provide additional policies to guide development and redevelopment within the Land Use Change Areas, including the desired mix of uses in each area.” (CP §§ 225.9 and 225.11).

15. The CP’s Future Land Use Map (“FLUM”) designates the Property as Mixed-Use (High Density Residential/Medium Density Commercial). (Ex. 3C).

16. The CP’s Framework Element states that the High Density Residential FLUM category describes *“neighborhoods and corridors generally, but not exclusively, suited for high-rise apartment buildings. Pockets of less dense housing may exist within these areas. Density is typically greater than a FAR of 4.0, and greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The RA-4 and RA-5 Zone Districts are consistent with the High Density Residential category, and other zones may also apply.”* (CP § 227.8).

17. The CP’s Framework Element states that the Medium Density Commercial FLUM designation is used to describe *“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.” (CP § 227.12).

18. The CP’s Framework Element states that the “Mixed Use” FLUM designation indicates areas where the mixing of two or more uses is especially encouraged. The Mixed Use category generally applies in the following four 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. (CP § 227.20).
19. 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 the FLUM may note the dominant use by showing it at a slightly higher density than the other use in the mix. The CP Area Elements may also provide detail on the specific mix of uses envisioned. (CP § 227.21).
20. In addition to applicable CP Citywide Element policies, the proposed map amendment is subject to the Upper Northeast Area Element.
21. The proposed map amendment is also subject to the Rhode Island Avenue Metro Station Policy Focus Area within the Upper Northeast Area Element, where “[I]and around the Rhode Island Avenue Metro Station is underutilized,” and that “medium to high density housing is strongly encouraged.” Moreover, “filling the gaps” would be desirable in the commercial areas, creating a more pedestrian-friendly environment. While most of the street is zoned for commercial uses, development that includes ground floor retail uses and upper story housing would be desirable. The surrounding area is under-served by retail uses and would benefit from new restaurants, local-serving stores, and other services.” (CP §§ 2415.2 and 2415.4).

Small Area Plans

22. The CP’s Framework Element states that "Small Area Plans are prepared with community input, to provide more detailed planning guidance, and typically are approved by resolution of the Council. Unless a Small Area Plan has been made binding on the Zoning Commission through its enactment as part of a Comprehensive Plan amendment, a Small

Area Plan provides only supplemental guidance to the Zoning Commission and it does so only to the extent it does not conflict with the Comprehensive Plan.” (CP § 224.5).

23. Prior to 2010, the Property was designated as PDR on the FLUM. However, during the 2010 Comprehensive Plan amendment cycle the policies and recommendations of the Rhode Island Avenue “Diamond of the District” Small Area Action Plan (the “Rhode Island Avenue SAP”) were incorporated into the CP, and the Property was re-designated Mixed Use (High Density Residential / Medium Density Commercial).
24. The Rhode Island Avenue SAP which was adopted by the D.C. Council on May 3, 2011, pursuant to PR 19-0019, is intended to advance a wide range of investment opportunities along Rhode Island Avenue, NE, and to outline objectives, preferences, and concerns shared by area stakeholders and the District government for the appropriate redevelopment of underutilized commercial properties along the Rhode Island Avenue corridor.
25. The Rhode Island Avenue SAP also promotes transit-oriented development, stating that the Rhode Island Avenue Metrorail Station “contains tremendous potential to become a diverse mixed use center at densities which are suitable near major transit rail stations,” and asserting that “[a]s a policy, the District actively seeks to capitalize upon its transit and high-volume transit and traffic corridors to enhance neighborhood centers. (Rhode Island Avenue SAP @ p. 4).
26. The Rhode Island SAP states that its successful realization “depends heavily upon the ability to construct new housing at greater densities,” and that “building new housing in higher density, multifamily apartment/condominium buildings and stacked townhomes along [Rhode Island] Avenue is very important to generating the foot traffic to make the retail viable.” (Rhode Island Avenue SAP @ p. 4).
27. The Property is located within “Sub-Area 1 – Site B” of the Rhode Island Avenue SAP.
28. The Rhode Island Avenue SAP recognizes Site B for its untapped potential of Site B, and as being appropriate for a change in zoning to “allow more housing along Rhode Island [Avenue] in a mix of office, retail and housing and push the [PDR-2] zone back to W Street, NE.” (Rhode Island Avenue SAP @ p. 13.).
29. The Rhode Island SAP makes specific rezoning recommendations that are applicable to the Property to allow matter-of-right development up to 6.0 FAR and 90 feet in height. (Rhode Island Avenue SAP @ p. 17.).

II. THE APPLICATION

Proposed Zoning

30. The Application proposes to rezone the Property from the PDR-2 zone to the MU-10 zone to make the Property fully consistent with the CP, as supplemented by the Rhode Island Avenue SAP.

31. The MU-10 zone is intended to, among other things:
- Permit medium- to high-density mixed-use development with a balance of uses conducive to a higher quality of life and environment for residents, businesses, employees, and institutions, and
 - Be applied to areas where a mixture of uses and building densities is intended to carry out elements of the CP, small area plans, or framework plans, including goals in employment, population, transportation, housing, public facilities, and environmental quality. (Subtitle G § 400.9).
32. The MU-10 zone imposes the following limits for matter-of-right developments:
- A maximum density of 6.0 FAR (7.2 with Inclusionary Zoning [“IZ”]), of which no more than 3.0 FAR may be devoted to non-residential uses. (Subtitle G § 402.1);
 - A maximum permitted height of 90 feet (100 feet with IZ), not including penthouse. (Subtitle G § 403.1);
 - A maximum permitted occupancy of 75% for residential uses (80% with IZ), and 100% for non-residential uses (Subtitle G § 404.1);
 - 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 G § 405.3); and
 - A minimum green area ratio (“GAR”) of 0.2. (Subtitle G § 407.3).

Applicant’s Submissions

33. On January 20, 2021, the Applicant submitted a transportation study (the “Transportation Study”) prepared by Gorove Slade analyzing the potential traffic impacts of the Application and concluded that: (Ex. 12C)
- The existing site and use conditions generate fewer vehicle trips compared to the allowable land uses and densities under the current, existing PDR-2 zoning designation;
 - Development scenarios under the proposed MU-10 zoning have the potential to generate more trips than the existing zoning, and in all cases the difference in trips meets the threshold of requiring a detailed TIA per District Department of Transportation (“DDOT”) Comprehensive Transportation Review (“CTR”) guidelines; and
 - A detailed CTR should be performed during the Public Space Committee approval process, when a refined site plan is available, to allow for a thorough analysis of access, parking, and other details of the site plan, and to ensure appropriate transportation mitigations are selected per DDOT’s CTR guidelines.

Testimony

34. At the April 22, 2021, public hearing, the Applicant provided testimony in support of the Application from:

- Dwight Ellard, Chief Operating Officer, GMCHC;
- Jair Lynch, President and Chief Executive Officer, Jair Lynch Real Estate Partners; and
- Shane Dettman, Director of Planning Services at Holland & Knight LLP, accepted by the Commission as an expert in zoning and land use planning.

Applicant’s Justification in Support of the Application

Not Inconsistent with the CP

35. The Applicant asserted that the Zoning Map amendment was not inconsistent with the CP and with other adopted public policies and active programs applicable to the Property, as detailed below:

36. **GPM** – The Applicant asserted that the Zoning Map amendment would not be inconsistent with the GPM because:

- The Map Amendment will allow for redevelopment of the Property with mixed-use development that will help address citywide housing needs;
- The FLUM, Upper Northeast Area Element policies, and the Rhode Island Avenue SAP all promote rezoning the Property to optimize density and allow for the development of new housing, office, and neighborhood retail uses;
- The density permitted under the proposed MU-10 zone is not inconsistent with the FLUM and the Rhode Island Avenue SAP;
- Redevelopment under the proposed MU-10 zone will be compatible with new and existing development around the Rhode Island Avenue Metrorail Station and the surrounding context; and
- Unlike the existing PDR-2 zoning and existing improvements on the Property, redevelopment of the Property under the proposed MU-10 zone is more appropriate for its location along Rhode Island Avenue NE, a designated Great Street.

37. **FLUM** – The Applicant asserted that the Zoning Map amendment would not be inconsistent with the FLUM because:

- The Zoning Regulations describe the MU-10 zone is intended for areas where a mix of uses and densities is intended to carry out the CP and small area plans, including goals in employment, population, transportation, and housing;
- The MU-10 zone is intended to permit medium- to high-density development with a balance of uses including housing, office, and retail that are conducive to a higher quality of life and environment for residents, businesses, employees, and institutions;
- The MU-10 zone places an emphasis on housing by limiting to a degree the amount of overall permitted density that may be devoted to non-residential uses;
- The density and height permitted in the MU-10 zone, 6.0 FAR (7.2 with IZ) and 90 feet (100 feet with IZ), respectively, are consistent with the density and height recommendations in the Rhode Island Avenue SAP;
- The density permitted in the MU-10 zone is consistent with the typical density guidance provided in the CP Framework Element for both the Medium Density

Commercial (4.0 – 6.0 FAR with greater density with IZ) and the High Density Residential (above 4.0 FAR with greater density with IZ);

- The MU-10 zone is expressly identified in the CP Framework Element as being consistent with the Medium Density Commercial FLUM land use category.

38. ***Upper Northeast Area Element*** – The Applicant asserted that the Map Amendment would:

- Capitalize on the Property’s location adjacent to a Metrorail Station and the Metropolitan Branch Trail to provide new transit-oriented housing, community services, and jobs (CP § 2408.4);
- Allow for pedestrian-oriented retail growth at the Property that will help address the need for additional retail identified in the Rhode Island Avenue SAP (CP § 2408.7);
- Result in substantial improvements to the quality of the streetscape along Rhode Island Avenue, a designated Great Street, including improvements to pedestrian facilities (CP §§ 2409.1 and 2415.7);
- Allow for the development of an underutilized, older industrial site with new medium- to high-density mixed-use development (CP §§ 2415.5 and 2415.6);

39. ***Land Use Element*** – The Applicant asserted that the Map Amendment would:

- Advance land use policies that promote mixed-use development that includes an appropriate mix of housing, office, and retail new transit, and the creation of Metrorail stations as anchors for neighborhood centers. (CP §§ 306.10, 306.11, and 306.12).
- Contribute to the variety of neighborhood types in the District and the ongoing revitalization of the area around the Rhode Island Avenue Metrorail Station. (CP § 309.5 and 309.8).
- Encourage pedestrian-oriented nodal development along the Rhode Island Avenue corridor, immediately adjacent to the Metrorail station, by permitting mixed-use development at a height and density that are consistent with the Rhode Island Avenue SAP and FLUM. (CP § 312.9).
- Facilitate the redevelopment of an underutilized site that is no longer appropriate for industrial uses as reflected in the recommendations of the Rhode Island Avenue SAP and FLUM. (CP § 314.10).

40. ***Transportation Element*** – The Applicant asserted that the Map Amendment would:

- Discourage auto-oriented uses by allowing for the productive use of an underutilized site on a key urban boulevard. (CP § 404.6).
- Substantially reduce the number and total length of curb cuts, thus improving the urban design quality and pedestrian and bicycle safety along the Property’s Rhode Island Avenue frontage. (CP §§ 404.8, 409.10, 410.5, and 410.6).

41. ***Housing Element*** – The Applicant asserted that the Map Amendment would:

- Facilitate private sector development of new housing on the Property that is not possible under the existing PDR-2 zoning. (CP § 503.2).
- Encourage the development of new housing, including affordable housing, on an underutilized site. (CP § 503.4).

- Promote mixed-use development on the Property that can create mixed-income housing (market-rate, workforce, affordable) and community-serving retail and office space consistent with the recommendations of the Rhode Island Avenue SAP. (CP §§ 503.5 and 501.12).

42. Environmental Protection Element – The Applicant asserted that the Map Amendment would:

- Facilitate the redevelopment of the Property with transit-oriented, mixed-use development that will improve the overall environmental quality of the Property in part through compliance with the DC Green Building Act, D.C. Construction Code requirements, and efficient mechanical, water, and electrical systems. (CP §§ 609.3, 610.3, 613.3, 614.2, and 618.10).

43. Economic Development Element – The Applicant asserted that the Map Amendment would:

- Accommodate growth of the District’s office sector at density that is appropriate given the Property’s location outside of the downtown core adjacent to Metrorail. (CP § 707.6).
- Facilitate expansion of the District’s retail sector and allow for neighborhood-serving retail growth at the Property that will help address the need for additional retail identified in the Rhode Island Avenue SAP. (CP §§ 708.4 and 708.7).
- Enable development of new shopping opportunities at the Property to better meet the demand for basic goods and services for residents, and help to create and sustain a viable multi-neighborhood commercial center that is taking shape around the Rhode Island Avenue Metrorail Station. (CP § 713.5 and 713.6).

44. Urban Design Element – The Applicant asserted that the Map Amendment would:

- Permit a scale and type of development that is appropriate along the Rhode Island Avenue [Great Street] corridor, and that will complement ongoing development activity on the north side of Rhode Island Avenue. (CP §§ 906.6 and 906.11).
- Spur new medium- to high-density mixed-use development that will contribute positively to the new neighborhood center that is rapidly taking shape around the Rhode Island Avenue Metrorail Station, and will expand the range of shopping opportunities available to the surrounding neighborhoods. (CP § 910.9).

Acknowledgement of potential CP inconsistencies

45. The D.C. Court of Appeals (the “Court”) has stated that “[e]ven if a proposal conflicts with one or more individual policies associated with the [CP], this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the [CP] as a whole.” *Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). The CP reflects numerous “occasionally competing policies and goals,” and, “[e]xcept where specifically provided, the [CP] is not binding.” *Id.* at 1167, 1168. Thus, “the Commission may balance competing priorities” in determining whether a proposal would be inconsistent with the [CP] as a whole. *D.C. Library Renaissance Project/West*

End Library Advisory Grp. v. District of Columbia Zoning Comm'n, 73 A.3d 107, 126 (D.C. 2013). “If the Commission approves a [proposal] that is inconsistent with one or more policies reflected in the [Comp] Plan, the Commission must recognize these policies and explain [why] they are outweighed by other, competing considerations.” *Friends of McMillan Park v. District of Columbia Zoning Comm'n*, 149 A.3d 1027, 1035 (D.C. 2016).

46. In its evaluation of the CP, the Applicant identified a small number of CP policies that pertain to retention and redevelopment of industrial land that one could read as being at odds with the Zoning Map amendment. These policies include:
- LU-3.1.2: Redevelopment of Obsolete Industrial Uses (CP § 314.8);
 - ED-2.5.1: Industrial Land Retention (CP § 711.5);
 - UNE-1.1.8: Untapped Economic Development Potential (CP § 2408.9); and
 - UNE-1.1.9: Production, Distribution, and Repair Uses (CP § 2408.10).
47. The Applicant asserted that the Application will eliminate a current inconsistency between the Property’s current zoning and the FLUM, and to the extent the Zoning Map amendment is inconsistent with these aforementioned CP policies, such inconsistencies are far outweighed by other CP policies and competing considerations that strongly weigh in favor of the Application, including:
- The recommendations of the Rhode Island Avenue SAP;
 - The Property’s FLUM designation;
 - Land Use Element policies (LU-1.3.1, LU-1.3.3, and LU-3.1.4);
 - Housing Element policies (H-1.1.1, H-1.1.3, and H-1.1.4);
 - Urban Design Element policies (UD-1.4.1); and
 - Upper Northeast Element policies (UNE-1.1.3, UNE-1.1.6, UNE-2.5.1, and UNE-2.5.2).

III. RESPONSES TO THE APPLICATION

Office of Planning

48. OP submitted a report dated January 4, 2021, recommending that the Commission set down the Applicant’s request for a Zoning Map amendment (the “OP Setdown Report”). (Ex. 10.) 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 PDR-2 zoning of the Property is inconsistent with the FLUM which designates the site Mixed Use (High Density Residential / Medium Density Commercial). The OP Setdown Report notes that the MU-10 zone is consistent with the FLUM and is an appropriate zone for the Property given its close proximity to a Metrorail station and the goal of providing more housing across the city. Further, the OP Setdown Report states that the height and density permitted in the MU-10 zone are consistent with what is described in the Framework Element and the supplemental guidance provided in the Rhode Island Avenue SAP. Overall, the OP Setdown Report found the proposal to be not inconsistent with the CP.
49. On April 12, 2021, OP submitted a report recommending approval of the Zoning Map amendment (the “OP Final Report”). (Ex. 21.) The OP Final Report stated that the MU-10

zone is not inconsistent with the FLUM recommendation for Mixed Use (High Density Residential / Medium Density Commercial), the GPM, the text of the CP, and the Rhode Island Avenue SAP.

50. 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

51. On April 12, 2021, DDOT submitted a report expressing no objection to the Application (the “DDOT Report”). (Ex. 20).
52. The DDOT Report noted that based the information provided by the Applicant, DDOT has no objection to the Application as 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 the Property was developed with the most intense matter-of-right uses.
53. DDOT did not provide testimony at the public hearing.

ANC 5E

54. At a duly noticed virtual meeting held on June 16, 2020, ANC 5E voted 8-0-2 in support of the Application. A copy of the ANC’s resolution in support of the Application (the “ANC 5E Report”) was included in the Applicant’s initial submission. (Ex. 3H).
55. ANC 5E did not provide testimony at the public hearing.

Eckington Civic Association

56. At a meeting held on June 1, 2020, the Eckington Civic Association (“ECA”) voted in support of the Application. A copy of the ECA’s letter in support of the Application (the “ECA Letter”) was included in the Applicant’s initial submission. (Ex. 3I).
57. ECA also submitted written testimony in support of the Application. (Ex. 23).
58. ECA did not provide testimony at the public hearing.

Public Comments

59. The Commission received one (1) written response in support of the Application and heard testimony at the public hearing in support of the Application from two (2) individuals. (Ex. 18 and 25.).
60. The Commission received no written response or testimony opposing the Application.

National Capital Planning Commission

61. The National Capital Planning Commission (“NCPC”) responded to the Commission’s referral of the Application 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 § 1-201 *et seq.*) with a [DATE], report stating that NCPC, pursuant to the authority delegated to NCPC’s Executive Director, had determined that the Application’s proposed amendment of the Zoning Map is not inconsistent with the Comprehensive Plan for the National Capital and would not adversely impact any other federal interests. (Ex. ##).

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 5E Report, the ECA Letter, the testimony provided at the public hearing, and for the reasons stated below, the Commission concludes that the proposed

rezoning of the Property from PDR-2 to MU-10 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 Rhode Island Avenue Plan, and is consistent with the purposes of the Zoning Act.

Consistent with the GPM

5. The Commission acknowledges the Applicant's testimony regarding the potential inconsistency with the GPM as related to the proposed map amendment to MU-10 and the designation of all but a relatively small part of the Property as a Neighborhood Conservation Area. However, as discussed below, the Commission does not believe there is an inconsistency between the proposed map amendment and the GPM when considering the interpretive guidance provided on the GPM and in the Framework Element.
6. The interpretive guidance provided on the GPM stipulates that the map represents a "generalized depiction" and that "boundaries shown should be interpreted as approximate and not precise delineations." Further, the Framework Element states that the GPM "should be used to guide land-use decision-making in conjunction with the [CP] text, the [FLUM], and other [CP] maps." (CP § 225.2). As such, the Commission concludes the boundaries depicted on the GPM are intended to provide generalized policy guidance rather than establish fixed lines and quantitative standards by which zoning proposals are to be approved or disapproved.
7. In reviewing the GPM in concert with the Property's FLUM designation and the CP text, particularly the policies of the Rhode Island Avenue Metro Station Policy Focus Area within the Upper Northeast Area Element, the Commission concludes that the proper interpretation of the GPM relative to the Property leans in favor of the portion of the Property designated as a Land Use Change Area rather than a Neighborhood Conservation Area. First, it's important to note that even the Neighborhood Conservation Area designation does not preclude development. The Framework Element makes this very clear by stating that "[t]he guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-wide housing needs." Emphasis added (CP § 225.5).
8. Based on the 2010 amendment to the Property's FLUM designation, which incorporated the recommendations of the Rhode Island Avenue SAP and changed the Property's land use designation from PDR to Mixed Use (High Density Residential / Medium Density Residential), it is clear to the Commission that the District's land use goals for the Property envision a shift away from PDR uses toward higher-density mixed-uses, including office, retail and an emphasis on new housing. This is further supported by CP Citywide Element policies relating to land use and housing, and Upper Northeast Element policies promoting mixed-use development near the Rhode Island

Avenue Metro Station. Based on the foregoing, the Commission concludes that the proposed map amendment is not inconsistent with the GPM.

Consistent with the FLUM

9. The Commission concludes that the map amendment is not inconsistent with the Property's Mixed Use (High 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 Rhode Island Avenue SAP, the Property is located in an area that the District envisions as a mixed use, transit-oriented neighborhood consisting of medium- to high- residential, commercial, retail and service uses. Development under the MU-10 zone will be consistent with these goals.
10. The Commission further concludes that the existing PDR-2 zone is inconsistent with the Property's FLUM designation, and that the map amendment to MU-10 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 adjacent to the Rhode Island Avenue Metrorail Station, a location where more new development should and can be accommodated given the Property's proximity to transit.
11. The Property's FLUM designation expresses a preference for residential uses. The Commission concludes that the map amendment is consistent with the FLUM since the MU-10 zone generally favors residential use over commercial use by allowing overall density of 7.2 FAR with IZ, but capping non-residential density at 3.0 FAR.

Upper Northeast Area Element

12. 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, increasing housing choices, mitigating the expansion and impacts of PDR uses, increasing retail options, improving major thoroughfares, and promoting development around the Rhode Island Avenue Metrorail station.
13. The Commission concludes that the proposed map amendment also furthers the policies under the Rhode Island Avenue Metro Station Policy Focus Area. The proposed map amendment will encourage medium- to high-density mixed-use development with housing, office, and retail, strengthen the corridor as a pedestrian-oriented mixed-use district, and enhance pedestrian connections.

Land Use Element

14. The Commission concludes that the proposed map amendment furthers this element because it will support new multifamily, office, and retail development around Metrorail stations (i.e., immediately proximate to the Rhode Island Avenue 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

15. 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 MU-10 zone will allow for greater amounts of new housing in a "high opportunity" location.

Transportation Element

16. 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, rezoning the Property to the MU-10 zone will not result in undue adverse impacts to the surrounding transportation network.

Environmental Protection Element

17. The Commission concludes that the proposed map amendment furthers this element because it enables future redevelopment of the Property that will incorporate green building methods that will include measures to conserve water and energy, reduce storm water runoff, and improve air quality through transportation efficiency.

Economic Development Element

18. The Commission concludes that the proposed map amendment furthers this element because the redevelopment of the underutilized Property will create new jobs for District residents, expand the office and retail sector, generate increased tax revenue for the District, and bring patrons to new and existing local businesses along Rhode Island Avenue.

Urban Design Element

19. The Commission concludes that the proposed map amendment furthers this element because it will maximize utilization of the Property by facilitating the type of mixed-use development that is appropriate along one of the District's major avenues, Rhode Island Avenue, rather than continuing to permit the location of low-rise industrial uses under the existing PDR-2 zoning. Such redevelopment carried out in accordance with the MU-10 zone will be at a scale that is appropriate given the Property's location.

Acknowledgement of Comprehensive Plan Inconsistencies

20. The Commission concludes that while the Zoning Map amendment may be inconsistent with a few individual CP policies that encourage retention of PDR land and uses, such inconsistencies are overwhelmingly outweighed by the Application's consistency with the FLUM; numerous CP policies related to land use, housing, and urban design; and the recommendations of the Rhode Island Avenue SAP.

Small Area Plans

21. The Commission concludes that the proposed map amendment is not inconsistent with the recommendations of the Rhode Island Avenue SAP. The requested rezoning to MU-10 will facilitate new development on an underutilized site that will be compatible with other development occurring around the Rhode Island Avenue Metrorail station. The rezoning will phase out the existing incompatible industrial uses along this segment of Rhode Island Avenue.
22. The Commission concludes that the proposed map amendment will enable the exact type of development envisioned for the Property by the Rhode Island Avenue SAP, which supports new mixed-use development with a mix of office, retail and housing. The Rhode Island Avenue SAP recommends rezoning the Property to allow matter-of-right development up to 6.0 FAR and 90 feet in height. As a matter-of-right, the MU-10 zone permits 6.0 FAR (7.2 FAR with IZ) and 90 feet (100 feet with IZ).

National Capital Planning Commission ("NCPC") Review

23. 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. ##).
24. 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

25. 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.
26. The Commission concludes that OP's report, which provided an in-depth analysis of the proposed map amendment, is persuasive and concurs with OP's recommendation that the Property be rezoned to MU-10, as discussed above.

“Great Weight” to the ANC Reports

- 27. 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).)
- 28. The Commission concludes the ANC 5E Report is persuasive and concurs with, and has given great weight to, ANC 5E’s recommendation of support for the Application.

DECISION

In consideration of the record for Z.C. Case No. 20-23 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
3623	1 and 2	PDR-2 to MU-10
PAR	131/94, 131/146, 131/147, 131/155, 131/161, 131/162, and 131/217	PDR-2 to MU-10

Proposed Action

Vote (April 22, 2021): 4-0-1 (Robert E. Miller, Anthony J. Hood, Peter G. May and Michael G. Turnbull to **APPROVE**, Peter A. Shapiro not present not voting)

Final Action

Vote (May 27, 2021) 4-0-1 (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May and Michael G. Turnbull to **APPROVE**, Peter A. Shapiro not present not voting)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 20-23 shall become final and effective upon publication in the *D.C. Register*; that is on [DATE].