

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 21-15
Z.C. CASE NO. 21-15
S Street Village, LLC
(Zoning Map Amendment @ Square 442, Lots 88, 108, 110, 810, and 811)
February 7, 2022

Pursuant to notice, at its public hearing on February 7, 2022, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) for a Zoning Map amendment by S Street Village, LLC (the “Applicant”)¹ for approval of a map amendment of the Zoning Map from the RF-1 zone (“Existing Zone”) to the ARTS-2 zone (the “Map Amendment”) for Lots 88, 108, 110, 810, and 811 in Square 442 (the “Property”), pursuant to Subtitle X § 500.1 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), Zoning Regulations of 2016, to which all references are made unless otherwise specified).

The Commission determined the property was appropriate for Inclusionary Zoning (“IZ”) Plus. The property shall be indicated with an “IZ+” symbol on the Zoning Map. For the purposes of calculating an IZ Plus set-aside requirement pursuant to Subtitle C § 1003, the maximum permitted FAR of the existing zone was equivalent to 0.9.

The Commission considered the Application as a contested case pursuant to Subtitle A § 210 and Subtitle Z, Chapter 4. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. In addition to the Applicant, the parties to this case were: Advisory Neighborhood Commission (“ANC”) 6E, the ANC in which the Property is located and so an “affected ANC” pursuant to Subtitle Z § 101.8 and 403.5(b).²

¹ S Street Village is the owner of the majority of the subject property and the designated representative; Manna, Inc. is the owner of Lot 108 in Square 442.

² Under the Zoning Regulations, ANC 1B is also an affected ANC because a portion of the Property is on a segment of S Street that serves as a boundary line between ANC 1B and ANC 6E. Via email to the Applicant’s counsel dated September 14, 2021, the Chair of the ANC 1B Preservation and Development Committee communicated that ANC 1B would defer to ANC 6E with respect to evaluating the Application. (Ex. 15 at p. 7.)

2. The Commission received no requests for party status.

NOTICE

3. On June 28, 2021, the Applicant mailed a Notice of Intent to file the Application to all property owners within 200 feet of the Property as well as ANC 6E, as required by Subtitle Z §§ 304.5 and 304.6. (Exhibit [“Ex.”] 3J.)
4. On December 15, 2021, the Office of Zoning (“OZ”) sent notice of the February 7, 2022, virtual public hearing to: (Ex. 18, 19.)
 - Applicant;
 - ANC 6E;
 - ANC Single Member District (“SMD”) 6E02;
 - ANC 1B;
 - Office of the ANCs;
 - Office of Planning (“OP”)
 - District Department of Transportation (“DDOT”);
 - Department of Consumer and Regulatory Affairs (“DCRA”);
 - Office of Zoning Legal Division (“OZLD”)
 - Department of Energy and Environment (“DOEE”);
 - DC Council; and
 - Property owners within 200 feet of the Property.
5. OZ published notice of the public hearing in the December 24, 2021 *D.C. Register* (68 DCR 13802), as well as on the calendar on OZ’s website. (Ex. 17, 19.)

THE PROPERTY

6. The Property is located in the northwest quadrant of the District and consists of approximately 22,144 square feet of land area (approximately 0.51 acres).
7. The square within which the Property lies is generally bounded by S Street to the north, 6th Street to the east, Rhode Island Avenue to the south, and 7th Street to the west.
8. The Property has approximately 135 linear feet along S Street, and abuts a 20-foot public alley known as Glick Court to the south, a 15-foot-wide public alley to the east, and private property to the west.
9. The Property is a collection of underutilized lots. Lot 108 in Square 442 is improved with a three-story brick building. The remainder of the Property is improved with two-story row structures.
10. The Property is located immediately to the southeast of the Shaw-Howard University Metrorail Station, and is also within 0.25 miles of 11 Metrobus routes. As such, the Property is located in close proximity to transit and is within a pedestrian-oriented area, as indicated by its Transit Score of 83 (excellent transit) and a Walk Score of 98 (Walker’s paradise).

11. The properties to the west of the Property are zoned ARTS-2. The properties to the east of the Property, across the existing 15-foot wide public alley and moving towards the intersection of Florida and Rhode Island Avenues, are zoned RF-1. The property known as Lot 120 in Square 442 to the southwest, across Glick Court, is zoned C-2-B.

CURRENT ZONING

12. The Property is in the RF-1 zone, which provides for areas predominantly developed with row houses on small lots within which no more than two dwelling units are permitted. (Subtitle E § 300.1.)
13. As a matter of right, the RF-1 zone requires/permits:
 - A 35-foot and 3-story maximum building height, not including the penthouse; (Subtitle E § 303.1.)
 - A 60% maximum lot occupancy (40% for structures other than detached, semi-detached, or row dwellings, flats, and places of worship); (Subtitle E § 304.1.)
 - 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.)
 - A minimum lot area of 1,800 square feet for a row dwelling or flat (1,500 square feet with IZ), 3,000 square feet for a semi-detached dwelling, and 4,000 square feet for all other structures; (Subtitle E § 201.1.)
 - For the purposes of calculating an IZ Plus set-aside requirement, the RF-1 zone has an FAR equivalent to 0.9; and (Subtitle X § 502.4.)
 - Residential uses (including flats with a maximum of two dwelling units), boarding houses, corner stores, medical care uses, and child/elderly development centers. (Subtitle U § 301.)

COMPREHENSIVE PLAN (TITLE 10A OF THE DCMR, THE “CP”)

Generalized Policy Map (the “GPM”)

14. The CP’s GPM designates the Property as a Neighborhood Enhancement Area, defined as:
[N]eighborhoods. . . that are primarily residential in character, as well as mixed-use and industrial areas ... These areas present opportunities for compatible infill development, including new single-family homes, townhomes, other density housing types, mixed-use buildings, and, where appropriate, light industrial facilities. Land uses that reflect the historical mixture and diversity of each community and promote inclusivity should be encouraged. ...[N]ew development [should] respond[] 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 and with Comprehensive Plan policies. The unique and special qualities of

each area should be maintained and conserved, and overall neighborhood character should be protected or enhanced as development takes place. . .New development in these areas should support neighborhood and city-wide housing needs, reduce crime and blight, and attract complementary new uses and services that better serve the needs of existing and future residents. (CP § 225.6-225.8.)

Future Land Use Map (the “FLUM”)

15. The CP’s FLUM Designates the Property as Mixed-Use -- Medium Density-Residential / Medium-Density Commercial:

- Medium-Density Residential –

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

- Medium-Density Commercial –

“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.)

- Mixed-Use

- The FLUM indicates areas where the mixing of two or more land uses is especially encouraged, and generally applies in established, pedestrian-oriented areas, commercial corridors where more housing is desired, large sites, and development that includes residential uses, particularly affordable housing. (CP § 227.20.)
- The general density and intensity of development within a given Mixed Use area is determined by the specific mix of uses shown. The CP Area Elements may also provide detail on the specific mix of uses envisioned. (CP § 227.21.)

- The “Mixed Use” designation is intended primarily for larger areas where no single use predominates today, or areas where multiple uses are specifically encouraged in the future. (CP § 227.22.)
- A variety of zoning designations are used in Mixed Use areas, depending on the combination of uses, densities, and intensities. (CP § 227.23.)

Near Northwest Area Element

16. The Property falls within the Near Northwest Area Element that calls for, among other things: (CP § 2108.)
- 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.
17. The Near Northwest Area Element locates the Property within the Shaw/Convention Center Area Policy Focus Area (the “Convention Center Focus Area”), which has the following goals: (CP § 2111.3.)
- Generate new quality housing;
 - Revitalize local businesses;
 - Improve sidewalks and public spaces; and
 - Upgrade parks and public facilities.

Small Area Plans

18. The Property is within the boundaries of two small area plans:
- The DUKE Development Framework for a Cultural Destination District within Washington, DC’s Greater Shaw/U Street (the “DUKE Small Area Plan (“SAP”)); and
 - The Convention Center Strategic Development Plan (the “Convention Center SAP”).

The DUKE SAP

19. The DUKE SAP provides guidance on revitalizing the transit accessible Shaw/U Street neighborhood, as well as to achieve a cohesive and inclusive district which meets the community and District goals.

20. The DUKE SAP places the Property just along the southeastern edge of the Howard Theatre Sub-district, which is envisioned as a vibrant center and a complete destination with outdoor cafes, restaurants and other destination uses. (DUKE SAP, p. 14)
21. The DUKE SAP also places the Property just along the northeastern edge of the Rhode Island Avenue Sub-district, which prioritizes residential development and where the intended primary use is “high density residential above neighborhood retail uses.” (DUKE SAP, p. 24)

The Convention Center SAP

22. The Convention Center SAP was prepared to help the District and the community guide development to realize several key objectives, including:
 - Generation of quality housing that will ensure that the community remains demographically diverse and offers a wide range of housing types; and
 - Strengthening 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.
23. The Property is located more or less between the boundaries of the Convention Center Plans’ Historic Row-House and Uptown Destination District sub-areas.
24. The development objective for the Historic Row District is to construct new housing on vacant or underutilized land that would be consistent with the neighborhood character. (Convention Center SAP, pg. 31.)
25. The Uptown Destination District is defined by its numerous African-American cultural landmarks and proximity to Howard University. The vision for this sub-area includes streets “lined with ground floor shops” and “upper levels of other buildings [that] are residential; [where] the larger projects include affordable units.” (Convention Center SAP, p. 36.)

II. THE APPLICATION

PROPOSED ZONING

26. The Application proposed to rezone the Property from the RF-1 zone to the ARTS-2 zone.
27. The purposes of the ARTS zones are to: (Subtitle K § 800.1.)
 - Encourage pedestrian activity, especially residential, retail, and entertainment uses;
 - Expand the area’s housing supply in a variety of rent and price ranges;

- Expand business and job opportunities, and encourage development of residential and commercial buildings; and
 - Strengthen the design character and identity of the area by means of physical design standards.
28. Specifically, the ARTS-2 zone is intended to permit medium-density, compact mixed-use development, with an emphasis on residential development. (Subtitle K § 800.3.)
29. As a matter of right, the ARTS-2 zone permits/requires:
- A maximum density of 3.5 FAR (4.2 with IZ), of which no more than 1.5 can be devoted to non-residential uses; (Subtitle K § 801.1.)
 - A maximum permitted height of 65 feet (70 feet with IZ) and no limit on the number of stories; (Subtitle K § 803.1.)
 - A maximum permitted penthouse height of 12 feet and one story, except 18 feet, 6 inches and a second story is permitted for penthouse mechanical space; (Subtitle K § 803.5.)
 - A maximum permitted lot occupancy of 80% for residential uses; (Subtitle K § 804.1.)
 - A minimum rear yard of 15 feet; and
 - A minimum green area ratio (“GAR”) of 0.30. (Subtitle K § 808.1.)

APPLICANT’S JUSTIFICATION OF RELIEF

Not Inconsistent with the CP

30. The Application asserted that it was not inconsistent with the CP and with other adopted public policies and active programs applicable to the Property, as detailed below.

Racial Equity

31. The Application asserted that the Map Amendment would not be inconsistent with racial equity policies. The Application noted that equity is conveyed throughout the CP where priorities of affordable housing, displacement, and access to opportunity are distinguished. The Map Amendment would increase the allowable density and permit a mix of uses which would enhance the opportunity for:
- Redevelopment of the Property for the production and preservation of housing and certainly affordable housing, as IZ Plus will apply to the Map Amendment; and
 - Redevelopment of the Property with a mix of uses at a transit accessible location.

GPM

32. The Application asserted that the Map Amendment would not be inconsistent with the GPM because:
- The Map Amendment will allow for the redevelopment of the Property with a mixed-use building that will be consistent with the heights and densities of existing density along 7th Street, N.W.;
 - The additional density will allow for the Property to support a range of uses, including multi-family residential and street-level retail; and
 - The redevelopment of the Property will support nearby transit options, including Metrorail, and will also provide the opportunity for improvements to pedestrian facilities.

FLUM

33. The Application asserted that the Map Amendment would not be inconsistent with the FLUM because:
- The ARTS-2 zone is intended to allow medium-density, mixed-use development;
 - The ARTS-2 zone's 3.5 FAR falls within the range of 1.8 to 6.0 included in the FLUM designation; and
 - The ARTS-2 development standards fall within the maximum of the zones identified as being specifically consistent with the FLUM, including the MU-8 zone.

Near Northwest Area Element

34. The Application asserted that the Map Amendment would direct more reinvestment into the Shaw neighborhood by facilitating the redevelopment of an infill site with new mixed-use development, including multi-family housing and local-serving retail while remaining consistent with the Convention Center Focus Area's preference for residential uses due to the ARTS-2 zone's 1.5 FAR cap on non-residential density, and furthering a number of specified area element policies.

Land Use Element

35. The Application asserted that the Map Amendment would allow for the redevelopment of an underused infill site with new, mixed-use development, including multi-family housing, in a manner that reflects the character and scale of the surrounding development and provides a transition zone between the lower-density RF-1 zone to the east and the ARTS-2 zoned properties to the west, while furthering a number of specific Land Use Element policies. Moreover, the Application asserted that new development under the ARTS-2 zone will enable the production of new housing and affordable housing in close proximity to the Shaw-Howard University Metrorail station. (10-A DCMR §§ 307.12, 307.21.)

Housing Element

36. The Application asserted that the Map Amendment would facilitate the redevelopment of the Property with new market-rate and affordable housing options in a “high opportunity” location, proximate to transit options and commercial corridors, thereby supporting the District’s housing goals and furthering a number of specified Housing Element policies. (10-A DCMR § 503.3.)

Transportation Element

37. The Application asserted that the Map Amendment would facilitate the redevelopment of the Property that is located within a block of a major District transit corridor and in immediate proximity to a Metrorail station and multiple Metrobus routes. Moreover, the Application asserted that in connection with any redevelopment, the streetscape surrounding the Property would likely be enhanced in accordance with current DDOT design principles and practices, ensuring safe pedestrian connections and furthering a number of specified Transportation Element Policies.

Environmental Protection Element

38. The Application asserted that the Map Amendment would facilitate the redevelopment of the Property with new buildings which would incorporate new energy-efficient building systems and technologies which would further the District’s energy efficiency goals and comply with the Green Building Act, in addition to furthering a number of specified Environmental Protection Element policies.

Arts and Culture Element

39. The Application asserted that the Map Amendment would facilitate the redevelopment of the Property with a new mixed-use building that would attract an influx of residents that would support nearby arts and cultural venues in the Shaw neighborhood. (10-A DCMR § 1404.10.)

Potential Inconsistencies with the CP

40. The Application analyzed whether the Map Amendment would be considered inconsistent with certain policies of the CP. The Map Amendment could be viewed as conflicting with the Land Use Element policies to preserve and protect the row house character and family-sized units as the site is currently developed with row-structures. The Application asserted that because the Map Amendment would facilitate the construction of a new mixed-use development that will achieve compatibility with the surrounding neighborhood and provide new multi-family housing and affordable housing, any potential inconsistencies are tenuous at best, and are outweighed by the Applicant’s overwhelming consistency with a number of specific policies in the CP. Specifically, the District’s need to meet its affordable housing goals at transit accessible locations would be facilitated by the higher density afforded through the proposed Map Amendment to the ARTS-2 District while the current RF-1 zoning facilitates fewer units.

The Convention Center SAP

41. The Application asserted that the Map Amendment would further the Convention Center SAP by:
- Facilitating the redevelopment of the underutilized Property with new high quality market-rate and affordable housing in close proximity to transit, and with ground-floor retail use that would economically diversify and strengthen the surrounding neighborhood;
 - Furthering the goals of both the Historic Row-House sub-area by enabling development that would complement the existing character of the Shaw neighborhood; and
 - Helping to materialize the vision for the Uptown Destination District, as the increased height and density will allow for the production of significant affordable housing and ground floor retail.

The DUKE SAP

42. The Application asserted that the Map Amendment would further the DUKE SAP by enabling the redevelopment of an underutilized site with a mixed-use project consisting of new residential and ground-floor neighborhood retail uses, thereby fortifying the desired character of the Rhode Island Avenue Sub-district and potentially bringing an influx of residents to activate the Howard Theater Sub-district.

Community Outreach

43. The Applicant met with the SMD for ANC 6E02 on July 28, 2021, to discuss the Property and the Map Amendment. Subsequently, the Applicant presented the Application to the ANC 6E Zoning Advisory Committee on September 30, 2021, and then to the full ANC at its duly-noticed, regularly scheduled public meeting on October 25, 2021.

Public Hearing Testimony

44. At the February 7, 2022 public hearing, the Applicant presented its case, including testimony from:
- Reverend Jim Dickerson, Founder of Manna, Inc.;
 - Ms. Sasha-Gaye Angus, President and Chief Executive Officer of Manna, Inc.; and
 - Mr. Shane Dettman, Director of Planning Services, Holland & Knight LLP, whom the Commission has recognized as an expert in zoning and land use planning.

III. RESPONSES TO THE APPLICATION

OP REPORTS AND TESTIMONY

45. OP submitted a report, dated November 5, 2021, recommending that the Commission set down for a public hearing the Applicant’s request for a Map amendment (the “OP Setdown Report”) and concluding that the Map Amendment would not be inconsistent with the CP and would be appropriate for an IZ Plus set-aside requirement pursuant to Subtitle X § 502. (Ex. 12.)

46. The OP Setdown Report made the following conclusions regarding the CP:
- **Racial Equity** – The Commission is now charged to “evaluate all actions through a racial equity lens as a part of its [CP] consistency analysis” under § 2501.8 of the Implementation Element. The direction to consider equity is intended to be based on the policies of the CP and whether the proposed zoning action is “not inconsistent” rather than on a separate determination of a zoning action’s equitable impact. CP equity policy priorities would include increased housing and affordable housing in future development to balance supply and demand and mitigate increases in housing prices and costs; preventing displacement; and creating transportation access to employment and services. The proposed Map Amendment would support these equity policies as it would permit a mix of medium density residential and commercial uses, including a desirable depth of affordable housing through IZ Plus, which would enhance the opportunity for transportation access for its future residents, and contribute to the increase of affordable housing supply;
 - **GPM** – The Map Amendment would allow for the development of the Property with affordable housing with supportive services and retail uses where none currently exists but is desirable given the Property’s location abutting a mixed-use corridor. The proposed ARTS-2 zone will foster both economic and housing opportunities and serve neighborhood needs;
 - **FLUM** – The height and density of the ARTS-2 zone is consistent with what is described to be medium density in the Framework Element of the CP. The existing RF-1 zoning of the Property is inconsistent with the stated preference for residential use under the guidance provided in the SAPs;
 - **Near Northwest Area Element** – The Map Amendment would permit an increased housing density that could provide more units per acre than the single-family/flat housing. Further, the proposed ARTS-2 zone could potentially increase the supply to help mitigate pressure on the Shaw neighborhood’s housing costs overall, and would increase the ability to provide housing for a variety of household sizes and income levels;
 - **Convention Center Focus Area** – The Map Amendment would support matter-of-right, new affordable housing on an underutilized site near the active 7th Street corridor, which would be in harmony with the CP’s focus on equity, particularly in relation to the land use, transportation and environmental protection policies of the CP;
 - **Land Use Element** – The Map Amendment would allow for an appropriately scaled development in the vicinity of the Shaw-Howard University Metrorail Station, which would support accessibility to multiple modes of transit. Further, the rezoning of the Property would permit ground floor, neighborhood-serving retail;

- **Housing Element** – The Map Amendment would permit future development with additional density to support expanding the housing supply, including additional IZ units or all affordable units within a mixed-use development. The Map Amendment supports equity objectives for a desirable depth of affordability and access;
 - **Transportation Element** – The Map Amendment would support transit-oriented development within a transit-accessible neighborhood, providing opportunities to lower-income residents who would be able to access employment, services, and/or retail without the burden of high transportation costs and loss of time;
 - **Environmental Protection Element** – Future redevelopment of the Property would be subject to certain building code requirements which protects the health and well-being of residents across all incomes and the District as a whole;
 - **The DUKE SAP** – The Map Amendment would encourage a mixed-use project that is consistent with the goals for the Rhode Island Avenue Sub-District, which prioritizes residential development, as well as the goals of the Howard Theatre Sub-District, which envisions ground floor retail and destination uses; and
 - **The Convention Center SAP** – The Map Amendment would support development that would complement the higher density mix of uses along the 7th Street Corridor while providing a compatible transition to the row house neighborhood to the east.
47. OP recommended that the Map Amendment be subject to Enhanced Inclusionary Zoning also referred to as “IZ Plus”. Decisions to amend the Zoning Map only consider the consistency of the proposed new zone with the CP; a map amendment application does not include specific development proposals. Therefore, the amount of residential floor area built in any future development under the ARTS-2 zone would determine the actual IZ Plus set-aside requirement and would be determined at the building permit stage.
48. OP’s Setdown Report made the following conclusions regarding its recommendation for an IZ Plus set-aside requirement:
- IZ Plus requires a higher affordable housing set-aside requirement than Regular IZ based on either:
 - A sliding-scale that is correlated to the total floor area built; or
 - The amount of IZ bonus density built; and
 - An IZ Plus set-aside requirement is appropriate for this Map Amendment, pursuant to Subtitle X § 502, because:
 - The Map Amendment would rezone the Property to ARTS-2, which allows a higher maximum permitted FAR than the existing RF-1 zone; and
 - The 2019 Housing Equity Report prepared by OP and the Department of Housing and Community Development reports that the Near Northwest Planning Area only contained 7.7 percent of the District’s total number of affordable housing units as of 2018.

49. OP submitted a final report, dated January 28, 2022, that largely reiterated the OP Setdown Report’s conclusions, and recommended approval of the Map Amendment. (Ex. 25.)
50. At the public hearing, OP reiterated its support for the Application as detailed in its reports.³

DDOT REPORT

51. DDOT submitted a January 26, 2022 report (the “DDOT Report”), stating that it had no objection to the Application because: (Ex. 24.)
- DDOT’s conclusion that 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;
 - DDOT strongly encouraged the minimization of any off-street parking on the Property due to the proximity to the Shaw-Howard Metro station;
 - DDOT expected that all loading, trash pick-up, and vehicle parking will take place from the 10-foot public alley in the rear of the Property; and
 - DDOT expected the Applicant to continue to coordinate with DDOT through the permitting process for any future development proposals in order to minimize any transportation network impacts caused by the increased matter-of-right density possible on the Property.
52. DDOT did not provide testimony at the public hearing.

ANC REPORTS AND TESTIMONY

53. ANC 6E submitted a resolution, dated November 15, 2021 (the “ANC 6E Report”), stating that at its properly noticed public meeting of October 5, 2021, at which a quorum was present, the ANC voted in unanimous support of the Application and expressed no issues or concerns with the Map Amendment. “The Commission acknowledge[d] that the proposed map amendment will facilitate new development opportunities at the Property that may produce new affordable housing and a new mix of uses appropriate for its transit-oriented location in the Shaw neighborhood.” (Ex. 13.) ANC 6E did not appear at the public hearing.
54. ANC 1B did not submit a written report into the case record, nor appeared at the public hearing, as ANC 1B deferred to ANC 6E’s recommendation regarding the Application. (Ex. 15 at p. 7; Hr. Tr. February 7, 2022 at p. 5.)

³ At the public hearing, the Commission told OP that in its final report (Ex. 25), the blue outline of the FLUM did not correspond to the location of the site. (Hr. Tr. February 7, 2022 at p. 30.) OP submitted a Corrected OP report to the case record to correct this error. (Ex. 33.)

PERSONS IN SUPPORT

55. On December 20, 2021, a letter in support of the Map Amendment was submitted by Shealee Samnang, owner of the property located at 1738 Glick Court, N.W., known as Lot 87 in Square 442. (Ex. 20.)
56. No other persons or organizations submitted comments to the case record or testified at the public hearing.

NATIONAL CAPITAL PLANNING COMMISSION (“NCPC”)

57. The Commission referred the Application to the NCPC on February 8, 2022, for the 30-day review period required by § 492(b)(2) of the District Charter. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(b)(2); D.C. Official Code 6-641.05.) (Ex. 30.)
58. NCPC filed a March 3, 2022, report stating that NCPC had determined, pursuant to delegated authority, that the Map Amendment was not inconsistent with the federal elements of the Comprehensive Plan and would not adversely impact any identified federal interests. (Ex. 32.)

CONCLUSIONS OF LAW

1. Section 1 of the Zoning Act of 1938 (effective June 20, 1938, as amended, 52 Stat. 797 ch. 534; D.C. Official Code § 6-641.01 et seq. (2012 Repl.)) (the “Zoning Act”) authorizes the Commission to create 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.”
2. Section 2 of the Zoning Act (D.C. Official Code § 6-641.02) further provides that:
Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital and 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.

3. Pursuant to Subtitle X § 500.3, the Commission shall find that the map amendment is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Property.

NOT INCONSISTENT WITH THE COMPREHENSIVE PLAN (SUBTITLE X § 500.3)

4. The Commission concludes, based on the filings and testimony of the Applicant and OP, that the Map Amendment from the RF-1 zone to the ARTS-2 zone is not inconsistent with the CP in its entirety, including all CP maps and elements, and will advance a number of CP Elements as discussed below.

Racial Equity

5. The Commission concludes that the Map Amendment is not inconsistent with racial equity policies because:
 - The Map Amendment would increase the allowable density to medium density levels and permit a mix of uses that would enhance the opportunity for redevelopment of the Property with affordable housing and an IZ Plus set-aside requirement will apply to the Map Amendment to further increase affordable housing supply;
 - The housing development permitted by the Map Amendment would help to balance supply and demand of housing which could help mitigate increases in housing prices and costs; and
 - The Map Amendment would enhance the opportunity for redevelopment of the Property with a mix of uses in a transit accessible location in proximity to employment opportunities and services. (Findings of Fact [“FF”] 31, 46.)

GENERALIZED POLICY MAP (GPM)

6. The Commission concludes that the Map Amendment is not inconsistent with the GPM’s designation of the Property as a Neighborhood Enhancement Area because:
 - The Map Amendment will facilitate redevelopment of the underutilized Property in a manner that responds to and is consistent with the heights and densities of neighboring development along 7th Street, N.W.;
 - The development permitted by the Map Amendment will enhance the existing character of the surrounding neighborhood by facilitate medium-density, mixed-use development along the 7th Street, N.W. commercial corridor;
 - New development under the ARTS-2 zone will support neighborhood and city-wide housing needs and attract complementary new ground-floor retail and service uses that better serve the needs of existing and future residents; and
 - The provision of ground-floor retail and service uses near Metrorail and other transit options will encourage pedestrian traffic and facilitate improvements to the pedestrian space surrounding the Property. (FF 14, 32, 46.)

FUTURE LAND USE MAP (FLUM)

7. The Commission concludes that the Map Amendment is not inconsistent with the Property's Mixed-Use – Medium-Density Residential / Medium-Density FLUM designation because:
- The ARTS-2 zone is intended to allow medium-density, compact mixed-use development, with an emphasis on residential development;
 - The ARTS-2's maximum 3.5 FAR (4.2 FAR with IZ) falls within the 4.0-6.0 FAR range of Medium-Density Commercial FLUM category and the 1.8-4.0 FAR range of Medium-Density Residential FLUM category;
 - The ARTS-2 zone's development parameters falls within those of the MU-8 zone that the CP identifies as "consistent" with the Medium-Density Commercial FLUM designation; and
 - The Map Amendment will achieve greater compatibility with the envisioned density and uses for the Property than the current RF-1 zoning for the Property which is substantially below the anticipated density for this FLUM designation. (FF 15, 33, 46.)

Near Northwest Area Element

8. The Commission concludes that the Map Amendment furthers this area element and in particular the policies of the Convention Center Focus Area because:
- It will facilitate development that will maintain and enhance the Shaw neighborhood by directing growth to Shaw, through the production of new market-rate and affordable housing and revitalized neighborhood commercial retail uses along 7th Street, N.W.;
 - The ARTS-2 zone's cap on non-residential FAR (1.5) will ensure mixed-use development with an emphasis on housing consistent with the Convection Center Focus Area's preference for residential uses; and
 - It will allow for the development of ground-floor retail uses which will help foster associated public space improvements that will enhance the pedestrian experience along the 7th Street, N.W. and integrate the Property into the 7th Street commercial corridor. (FF 16, 17, 34, 46.)

Land Use Element

9. The Commission concludes that the Map Amendment furthers this element because:
- The increased density permissible under the ARTS-2 zone will support new, infill multifamily development near the Shaw-Howard University Metrorail station on land that is currently underutilized; and
 - It will allow for height and densities that are appropriate for the Property's location as a transition zone between the lower-density RF-1 zone to the east and the ARTS-2 zoned properties to the west, while furthering a number of specific Land Use Element policies. (FF 35, 46.)

Housing Element

10. The Commission concludes that the Map Amendment furthers this element because it will allow the Property to be redeveloped 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-2 zone will allow for greater amounts of new housing in a “high opportunity” location. (FF 36, 46.)

Transportation Element

11. The Commission concludes that the Map Amendment furthers this element as it will facilitate the redevelopment of the Property with transit-oriented development, including housing. In addition, the Commission credits the conclusions of the DDOT report that the Map Amendment will not result in undue adverse impacts to the surrounding transportation network. (FF 37, 46.)

Environmental Protection Element

12. The Commission concludes that the Map Amendment furthers this element because it enables future redevelopment of the Property that will incorporate energy-efficient systems to reduce energy use, and which will comply with the Green Building Act. (FF 38, 46.)

Arts and Culture Element

13. The Commission concludes that the Map Amendment furthers this element because it enables future redevelopment of the Property that may attract an influx of residents that would support nearby arts and cultural venues in the Shaw neighborhood. (FF 39.)

SMALL AREA PLANS (SAPs)

14. The Commission concludes that the Map Amendment is not inconsistent with the recommendations of the DUKE SAP because the Map Amendment will facilitate new mixed-use development including ground floor retail and upper floor residential on an underutilized site that will be compatible with the surrounding Shaw neighborhood, and advance the objectives of the commercial-centric Howard Theatre and the residentially-focused Rhode Island Avenue Sub-districts. (FF 19-21, 42, 46.)
15. The Commission concludes that the Map Amendment is not inconsistent with the recommendations of the Convention Center SAP, particularly given its location between the Uptown Destination District and the Historic Row-House sub-area, because the Map Amendment will facilitate new housing and affordable housing on an underutilized site; and redevelopment of the Property also has the potential to expand ground floor retail in a location that would economically diversify and strengthen the surrounding neighborhood. (FF 22-25, 41, 46.)

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

16. The Commission must give “great weight” to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8.

(*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

17. The Commission concludes that OP’s reports, which provided an in-depth analysis of the Map Amendment, are persuasive and concurs with OP’s recommendation that the Property be rezoned, as discussed above. (FF 45, 46, 47.)

“GREAT WEIGHT” TO THE ANC REPORTS

18. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
19. Although the ANC 6E Report did not express any issues or concerns to which the Commission can give great weight, the Commission notes ANC 6E’s support for the Map Amendment and concurs in that judgment. (FF 52.)

DECISION

In consideration of the record for Z.C. Case No. 21-15 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 | LOTS | MAP AMENDMENT |
|--------|----------------------------|----------------|
| 442 | 88, 108, 110, 810, and 811 | RF-1 to ARTS-2 |

For the purposes of calculating an IZ Plus set-aside requirement pursuant to Subtitle C § 1003, the maximum permitted FAR of the existing zone was equivalent to 0.9.


Proposed Action

Vote (February 7, 2022): 4-0-1 (Peter G. May, Joseph S. Imamura, Anthony J. Hood, Robert E. Miller to **APPROVE**; one seat vacant, not voting)

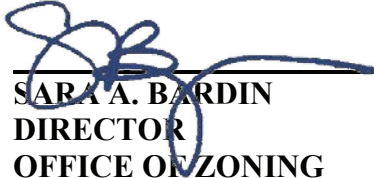
Final Action

Vote (March 10, 2022): 4-0-1 (Peter G. May, Joseph S. Imamura, Anthony J. Hood, Robert E. Miller to **APPROVE**; one seat vacant, not voting)

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 21-15 shall become final and effective upon publication in the *D.C. Register*, that is on May 13, 2022.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS THE D.C. HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (THE “ACT”). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE ACT, THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.