

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 22-02**

Office of Planning

(Zoning Map Amendment at 16th, 19th, 20th, & 21st Streets, N.E.; 23rd & 25th Place, N.E.; and Benning Road, N.E. – Square 4510, Lots 64-66, 82, 96-99, 150-153 & 156; Square 4511, Lot 68; Square 4513, Lots 77, 81, 82, 90, 91, 872, 875, 877, 881 883, 885, 901, 905, 909, 912, 919 & 921; Square 4514, Lots 31, 32, 808, 810 & 812; Square 4515, Lots 97, 98, 101-103, 803, 805, 809, 819, 823, 825, 828-831 & 834; Square 4516, Lots 206 & 208-210; Square 4517, Lots 77, 78, 803, 805, 809, 811, 813, 817, 819, 821 & 822; Square 4518, Lots 74-82 & 800, and Parcel 149/60)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2018 Repl.)), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206, as amended; D.C. Official Code § 2505 (2013 Repl.)), hereby gives notice of its adoption of the following amendments to the Zoning Map:

Rezone lots fronting Benning Road, NE located in Square 4510, Lots 64-66, 82, 96-99, 150-153 and 156; Square 4513, Lots 77, 81, 82, 90, 91, 872, 875, 877, 881 883, 885, 901, 905, 909, 912, 919 and 921; Square 4514, Lots 31, 32, 808, 810 and 812; Square 4515, Lots 97, 98, 101-103, 803, 805, 809, 819, 823, 825, 828-831 and 834; Square 4516, Lots 206 and 208-210; Square 4517, Lots 77, 78, 803, 805, 809, 811, 813, 817, 819, 821 and 822; Square 4518, Lots 74-82 and 800, and Parcel 149/60 from the MU-4 zone to the MU-5A zone; and Square 4511, Lot 68 from the RA-2 zone to the MU-5A zone (collectively, the Property).

Set Down

On January 3, 2022, the Office of Planning (OP) filed a report that served as a Petition (OP Petition and OP Setdown Report) requesting the Commission approve a proposed amendment of the Zoning Map for the Property from the MU-4 zone and RA-2 zone to the MU-5A zone (Map Amendment). (Exhibit [Ex.] 2.)

Most of the Property, consisting of lots and a parcel fronting Benning Road, N.E. on the south side, is currently zoned MU-4 with one block (Square 4511, Lot 68) currently zoned RA-2. The Property includes approximately 2,990.94 linear feet of frontage and approximately 372,938 square feet of land along the south side of Benning Road, N.E. and the H Street/Benning Road streetcar line between 16th Street and Oklahoma Avenue, N.E. The Property is bounded by Benning Road, N.E. to the north, an east-west alley or Gales Place, N.E. to the south, 16th Street, N.E. to the west, and Oklahoma Avenue, N.E. to the east. The Property is developed with a variety of retail, surface parking, and church uses which have been long-standing in the community. There is no single majority landowner of the properties on this south side of Benning Road, N.E. compared to the north side, east of 21st Street, N.E., where the District government owns a sizeable acreage of land, including public housing, educational uses and recreational uses. Across Benning Road on the north side is the large commercial property known as the Hechinger Mall site and east of that site are smaller residential properties between 17th and 21st Streets, N. E.

Directly to the west, at the corner of Benning Road and 16th Street, N.E., is a multifamily developed property (1505 Benning Road, Square 4509, Lot 157) that is split-zoned RA-2 and RA-3.

Current MU-4 Zoning:

The MU zones are designed to provide housing, shopping, and business needs, including residential, office, service, and employment centers. Subtitle G § 100.2. The purposes of the MU Zones include:

- Providing orderly development and use of land and structures, characterized by a mixture of land uses;
- Providing for a varied mix of residential, employment, retail, service, and other related uses and a variety of building types, including but not limited to, shop-front buildings with a mixture of residential and non-residential uses, and buildings made up of entirely residential or non-residential uses, at appropriate densities and scale throughout the city; and
- Preserving and enhancing existing commercial nodes and surroundings by providing an appropriate scale of development compatible with the prevailing development pattern and a range of shopping and service opportunities. (Subtitle G § 100.3.)

The MU-4 zone is intended to permit moderate-density mixed-use development, including facilities for shopping and business needs for large segments of the District outside of the central core; and is intended to be in low- and moderate density residential areas with access to main roadways or rapid transit stops and include office employment centers, shopping centers, and moderate bulk mixed-use centers. (Subtitle G § 400.3.) The MU-4 zone permits a maximum density of 2.5 FAR (3.0 FAR for Inclusionary Zoning (IZ)) and 1.5 FAR maximum for non-residential use; permits a maximum building height of 50 ft.; permits a maximum penthouse height of 12 ft. except 15 ft. for penthouse mechanical space; and permits a maximum lot occupancy of sixty percent (60%) (seventy-five percent (75%) for IZ). (Subtitle G §§ 402.1, 403.1, 403.3, 404.1.)

Current RA-2 Zoning:

The RA zones are designed to be mapped in areas identified as moderate- or high-density residential areas suitable for multiple dwelling unit development and supporting uses. (Subtitle F § 100.2.) The purposes of the RA Zones include:

- Providing orderly development and use of land and structures, in areas characterized by predominantly moderate- to high-density residential uses;
- Promoting stable residential areas with a walkable living environment while permitting all types of residential development for a variety of types of urban residential neighborhoods; and
- Allowing limited non-residential uses that are compatible with adjoining residential uses and the existing neighborhood. (Subtitle F § 100.3.)

The RA-2 zone is intended to provide for areas developed with predominately moderate-density residential. (Subtitle F § 300.3.) The RA-2 zone permits a maximum density of 1.8 FAR (2.16 FAR for IZ); permits a maximum building height of fifty feet (50 ft.); permits a maximum

penthouse height of twelve feet (12 ft.) except fifteen feet (15 ft.) for penthouse mechanical space; and permits a maximum lot occupancy of sixty percent (60%). (Subtitle F §§ 302.1, 302.2, 303.1, 303.2, 304.1.)

Proposed MU-5A Zone:

The MU-5 zones are intended to:

- Permit medium-density, compact mixed-use development with an emphasis on residential use;
- Provide facilities for shopping and business needs, housing, and mixed-uses for large segments of the District of Columbia outside of the central core; and
- Be located on arterial streets, in uptown and regional centers, and at rapid transit stops. (Subtitle G § 400.4.)

The MU-5A zone permits a maximum density of 3.5 FAR (4.2 for IZ) of which no more than 1.5 FAR is permitted for non-residential uses; permits a maximum building height of sixty-five feet (65 ft.) (seventy feet (70 ft.) for IZ); permits a maximum penthouse height of twelve feet (12 ft.) except eighteen feet, six inches (18 ft., 6 in.) for penthouse mechanical space; and permits a maximum lot occupancy of 80%. Subtitle G §§ 402.1, 403.1, 403.3, and 404.1. The limitation of a maximum 1.5 FAR for non-residential uses is to encourage and ensure that more of the maximum density is devoted to housing development where it is a priority.

The OP Setdown Report explains that the proposed Map Amendment is intended to implement changes to the recently updated Comprehensive Plan (2021) and would not be inconsistent with the Comprehensive Plan and the Benning Road Corridor Redevelopment Framework Plan (2008) (Benning Road Small Area Plan), in which boundary the Property is located. The OP Setdown Report also notes that the Map Amendment is the first submission of a series of future consistency amendments recommended in the D.C. Council Approved Comprehensive Plan Amendment (2021) for Benning Road and the surrounding area. OP is collaborating with the Ward 7 Economic Development Advisory Council (Advisory Council) to initiate the amendments. The Advisory Council acted in accordance with input received from the community and is focused on facilitating continued opportunities for existing business owners as economic development flourishes and ensuring that the series of future amendments recommended by the D.C. Council do not encroach on existing residential areas. (Ex. 2.)

Through this amendment and future amendments, the Advisory Council seeks to facilitate the redevelopment of underutilized and/or blighted sites along Ward 7's primary corridors and major intersections; include better density capacities, particularly for mixed-use development; preserve sites for affordable and workforce housing while also creating new and more diverse housing; and attract more higher quality retail and neighborhood service amenities to Ward 7 to spur economic growth. (Advisory Council Report, p. 27, 2017).

At its January 13, 2022 public meeting, the Commission set the Map Amendment down as a rulemaking case.¹ At the meeting, the Commission heard testimony from OP in support of the Map Amendment. The OP Setdown Report noted that the current zoning of the Property does not permit medium-density residential development and is therefore inconsistent with the Property’s designation as Mixed Use-medium-density residential/moderate-density commercial on the Comprehensive Plan (“CP”) Future Land Use Map (“FLUM”). OP also recommended that the Map Amendment be subject to IZ Plus, a higher IZ set aside requirement than regular IZ requirements, pursuant to Subtitle X § 502.1(b). (Ex. 2.)

Notice

Pursuant to Subtitle Z § 502, the Office of Zoning (OZ) sent notice of the May 9, 2022 public hearing on February 22, 2022 and published notice of the public hearing in the March 4, 2022 *D.C. Register* as well as on the calendar on OZ’s website. (Ex. 3-5.)

ANC Report

The property is within the boundary of ANC 6A and the boundary of ANC 7D is across the street. Therefore, both ANCs are the “affected ANC” as defined by Subtitle Z § 101.8. Neither affected ANC testified at the public hearing or submitted a written report to the case record.

DDOT Report

DDOT submitted an April 29, 2022 report (DDOT Report) stating no objection to the approval of the Map Amendment. DDOT’s Report determined that the proposed Map Amendment 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. Given the Property’s location a short walking distance to multiple shops along the Union Station-H Street/Benning Road Streetcar line, the proposed rezoning is consistent with DDOT’s approach because of its potential to facilitate new development which supports higher densities, proximity to transit, and walkable design. (Ex. 7.)

OP Reports

OP Setdown Report

The OP Setdown Report states that the current MU-4 and RA-2 zoning of the Property is inconsistent with the Property’s FLUM mixed-use designation of medium density residential and moderate density commercial. OP contends that a rezoning is appropriate to facilitate redevelopment of the Property in the future with mixed-use development of higher density than allowed under the current zoning. Further, the Comprehensive Plan Future Land Use Map (FLUM) and Generalized Policy Map (GPM), Citywide and Area Elements and other policies, and the Benning Road Small Area Plan support the rezoning of the Property to the MU-5A Zone. (Ex. 2.) A summary of the contents of the OP Setdown Report follows.

¹ The Commission set this case down as a rulemaking per Subtitle Z § 201.7(a) because the petition was initiated by OP and encompasses multiple properties; and per Subtitle Z § 201.7(b)(1) because the Property is owned by various owners.

Comprehensive Plan Maps

Future Land Use Map (FLUM)

The Future Land Use Map (FLUM) indicates that the Property is appropriate for **Mixed-Uses - medium-density residential and moderate-density commercial uses.**

***Mixed Use Categories:** The Future Land Use Map indicates areas where the mixing of two or more land uses is especially encouraged. The particular combination of uses desired in a given area is depicted in striped patterns, with stripe colors corresponding to the categories defined on the previous pages. . . The Mixed Use Category generally applies in the following 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. (10-A DCMR § 227.20.)*

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. 10-A DCMR §227.22. A variety of zoning designations are used in Mixed Use areas, depending on the combination of uses, densities, and intensities. . . Residential uses are permitted in all of the MU zones, however, so many Mixed Use areas may have MU zoning. (10-A DCMR § 227.23.)

***Medium Density Residential:** This designation is used to define 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. 10-A DCMR § 227.7*

***Moderate Density Commercial:** This designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Low-Density Commercial area. Retail, office, and service businesses are the predominate uses. Areas with this designation range from small business districts that draw primarily from the surrounding*

neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in Low Density Commercial areas. Density typically ranges between a FAR of 2.5 and 4.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-5 and MU-7 Zone Districts are representative of zone districts consistent with the Moderate Density Commercial category, and other zones may also apply. (10-A DCMR § 227.11.)

OP concludes that the proposed Map Amendment to the MU-5A zone is consistent with the Property's FLUM designation as Mixed-Use moderate-density commercial and medium density residential. The MU-5A Zone is an appropriate zone for the Property given its alignment on the route of the streetcar line and the goal of providing more housing across the city. The height and overall density allowed in the MU-5A zone are consistent with what is described in the Framework Element and the supplemental guidance provided in the Benning Road Small Area Plan.

Generalized Policy Map

The Generalized Policy Map indicates that the Property is within the policy area designated as **Main Street Mixed Use Corridor** with a small area at the eastern end designated within a **Resilience Focus Area**.

***Main Street Mixed Use Corridors:** These are traditional commercial business corridors with a concentration of older storefronts along the street. The area served can vary from one neighborhood (e.g., 14th Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper-story residential or office uses. Some corridors are underutilized, with capacity for redevelopment. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment. (10-A DCMR § 225.14.)*

***Resilience Focus Area:** For areas within the 100- and 500-year floodplain, future planning efforts are intended to guide resilience to flooding for new and existing development and infrastructure projects, including public capital projects. Resilience focus areas will explore watershed resilience to encourage the implementation on a neighborhood scale, as well as site-specific solutions, design guidelines and policies for a climate adaptive and resilient District. (10-A DCMR § 304.8.)*

OP concludes that the proposed Map Amendment is not inconsistent with the GPM based on the Benning Road Small Area Plan, the mixed-use designation on the FLUM, and both the Capitol Hill and the Upper Northeast Area Elements' policies. In addition, the density permitted in the proposed MU-5A zone would be consistent with the guidance of the Benning Road Small Area Plan, the FLUM, and Comprehensive Plan policies. OP's determination is further supported by the surrounding context as the rezoning will allow for the type of mixed-use development that is compatible with development currently underway to the north and west of Benning Road and

would be appropriate given the Property's convenient location along a rich transit-oriented corridor that anticipates future redevelopment that would support transit use, and improvements to public space and the pedestrian realm. The proposed rezoning would allow future redevelopment opportunities including new housing and affordable housing, which is desired under the District's affordable housing goals and initiatives including an infusion of housing and commercial uses to add vitality to an area.

IZ Plus

The OP Setdown Report recommended that the Map Amendment be subject to IZ Plus. IZ Plus requires a higher affordable housing set-aside requirement than Regular IZ and prescribes a set aside requirement based on either:

- A sliding-scale that is correlated to the total floor area built; or
- The amount of IZ bonus density built.

OP's Setdown Report reasoned that an IZ Plus set-aside requirement would be appropriate pursuant to Subtitle X § 502.1(b) because:

- The map amendment would rezone the properties to MU-5A, which allows a higher maximum permitted FAR than the existing MU-4 and RA-2 zone; and
- The 2019 Housing Equity Report prepared by the Office of Planning and the Department of Housing and Community Development reports that:
 - There is only three percent (3%) of the District's total number of affordable housing units as of 2018 in this planning area; and
 - The Capitol Hill Planning Area has a shortage of one thousand one hundred twenty (1,120) units with a total production goal of three thousand two hundred seventy (3,270) units by 2025.

For the purposes of calculating an IZ Plus set-aside requirement pursuant to Subtitle C § 1003, the maximum permitted FAR for the existing MU-4 zone was equivalent to 2.5 FAR (3.0 FAR for IZ) and for the existing RA-2 zone was equivalent to 1.8 FAR (2.16 FAR for IZ).

Rezoning applications only consider consistency with the Comprehensive Plan and not a specific development proposal. The amount of residential floor area built in any future development under the MU-5A zone would determine the actual IZ Plus set-aside requirement. However, given the increase in maximum FAR permitted by the zone change, it is likely that under the majority of development scenarios the IZ Plus set-side requirement could be close to eighteen percent (18%).

Racial Equity

In applying the standard of review applicable to the Map Amendment, the Comprehensive Plan requires the Commission to do so through a racial equity lens. (10-A DCMR § 2501.8.) Consideration of equity is intended to be based on the policies of the Comprehensive Plan, and part of the Commission's consideration of whether the Map Amendment is "not inconsistent" with the Comprehensive Plan, rather than a separate determination about a zoning action's equitable impact.

The Comprehensive Plan Framework Element states that equity is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities, but is not the same as equality. (10-A DCMR § 213.6.) Further, “[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, healthcare, technology, workforce development, and employment opportunities.” (10-A DCMR § 213.7.) The District applies a racial equity lens by targeting support to communities of color through policies and programs focusing on their needs and eliminating barriers to participate and make informed decisions. (10-A DCMR § 213.9.)

The Comprehensive Plan Implementation Element provides guidance to help the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states that “[a]long with consideration of the defining language on equity and racial equity in the Framework Element, guidance in the Citywide Elements on District-wide equity objectives, and the Area Elements should be used as a tool to help guide equity interests and needs of different areas in the District.” (10-A DCMR § 2501.6.)

The Comprehensive Plan recognizes that without increased housing, the imbalance between supply and demand will drive up housing prices in a way that creates challenges for many residents, particularly low-income residents. The Comprehensive Plan further recognizes the importance of IZ requirements in providing affordable housing opportunities for households of varying income levels.

The population of the Capitol Hill Planning Area (Planning Area), where the Property is located, is predominately white at seven-one and six-tenths percent (71.6%) of total residents, while the Black population is twenty-eight and four-tenths percent (28.4%), and the Hispanic/Latin origin population is seven percent (7%). The 2017 American Community Survey (ACS) data indicated the median income in the Planning Area was one hundred ten thousand, two hundred eight dollars (\$110,208). This is higher than the District-wide average of seventy thousand, eight hundred forty-eight dollars (\$70,848). Today, ten and one-half percent (10.5%) of the residents live below the federal poverty level, and the percentage of residents living in poverty decreased from fifteen and seven-tenths percent (15.7%) in 2000 and is less than the District average of eighteen percent (18%). (10-A DCMR § 1505.2.) The Comprehensive Plan defines affordable housing as housing available to households earning eighty percent (80%) or less of the median family income (MFI). 10-A DCMR § 304.3. As of 2018, the Planning Area only had 3 percent of the District’s total number of affordable housing units.

ACS data shows that in 2017, just over half of the homes (fifty and four-tenths percent (50.4%)) in the Capitol Hill Planning Area were row houses. This is more than double the District-wide average of twenty-five percent (25%). Only four percent (4%) of the housing units were single-family detached homes, compared to twelve percent (12%) for the District as a whole. The area also contained fewer units in large apartment buildings than Washington, DC as a whole. Eighteen percent (18%) of Capitol Hill’s housing units were in buildings with more than twenty (20) units, compared to thirty-five percent (35%) District-wide. Conversely, Capitol Hill has more two to four

(2-4)-unit buildings than the District as a whole—more than fifteen percent (15%) in 2017 (compared to a District-wide average of ten percent (10%)). (10-A DCMR § 1504.1.)

The current RA-2 and MU-4 zones only permit moderate-density detached and semi-detached single-family housing per lot, limiting the potential to provide a greater number of housing units available to a variety of household sizes and income levels, but particularly to lower-income households. The proposed MU-5A zone would permit a greater variety of permitted housing types, including apartment houses that can provide substantially more housing units per acre than smaller apartment housing units under the existing zones. Further, the potential to increase the total supply of housing units in the Planning Area could help alleviate the pressure on housing costs overall.

OP concluded that the proposed Map Amendment would advance equity policies of the Comprehensive Plan, particularly when viewed through a racial equity lens. Overall, the Map Amendment has the potential to create additional affordable housing through an IZ Plus set-aside requirement. It is likely that the MU-5A zone could require an eighteen percent (18%) set-aside requirement resulting in up to two hundred twenty-four (224) affordable housing units. The IZ program requires affordable housing units to be available to households earning either no more than sixty percent (60%) MFI for rental housing or eighty percent (80%) MFI for ownership housing. The potential affordable housing units that could be created under the proposed MU-5A zone is substantially higher than if the Property was not rezoned. Making room for affordable housing has the potential to benefit non-white populations who on average have lower incomes than white residents.

Citywide Elements

OP's Setdown Report concluded that the Map Amendment proposal is not inconsistent with the Citywide Elements of the Comprehensive Plan and would further the policies of the Land Use, Transportation, Housing, and Environmental Protection Elements noted below.

Land Use

As the Land Use Element guides the direction of future growth, it also affects future access to housing, education, jobs, services, amenities, and transportation and impacts the health and safety of residents. Growth can and must occur in a way that expands access to affordable housing, education, transportation, employment, and services for communities of color, low-income households, and vulnerable populations. Achieving equitable development requires attention to both the context and needs of different planning areas and to District-wide equity issues, described throughout the Comprehensive Plan. (10-A DCMR 304.4.)

Policy LU-1.1.1: Future Planning Analysis and Resilience Focus Areas

The Generalized Policy Map shows areas of large tracts and corridors where future analysis is anticipated to plan for inclusive, equitable growth and climate resilience... Planning analyses generally establish guiding documents, such as Small Area Plans, Development Frameworks, Retail Strategies, or Design guidelines. Areas anticipated for future planning analysis include the following:

- New York Avenue NE corridor;
- Upper Wisconsin Avenue NW corridor;

- Upper Connecticut Avenue NW corridor;
- Foggy Bottom/West End;
- Benning Road corridor;
- Poplar Point;
- Congress Heights;
- North Capitol Crossroads—Armed Forces Retirement Home; and
- RFK Stadium

(10-A DCMR § 304.8.)

LU-1.4 Transit-Oriented and Corridor Development

Policy LU-1.4.6: Development Along Corridors

Encourage growth and development along major corridors, particularly priority transit and multimodal corridors. Plan and design development adjacent to Metrorail stations and corridors to respect the character, scale, and integrity of adjacent neighborhoods, using approaches such as building design, transitions, or buffers, while balancing against the District’s broader need for housing. (10-A DCMR § 307.14.)

Action LU-1.4.B: Zoning Around Transit

With public input, develop and use zoning incentives to facilitate new and mixed-use development, and particularly the provision of new housing, and new affordable housing in high opportunity areas to address more equitable distribution. (10-A DCMR § 307.20.)

Policy LU-1.5.1: Infill Development

Encourage infill development on vacant land within Washington, DC, particularly in areas where there are vacant lots that create gaps in the urban fabric and detract from the character of a commercial or residential street. Such development should reflect high-quality design, complement the established character of the area and should not create sharp changes in the physical development pattern. (10-A DCMR § 308.6.)

Policy LU-1.5.2: Long-Term Vacant Sites

Facilitate the reuse of vacant lots that have historically been difficult to develop due to infrastructure or access problems, inadequate lot dimensions, fragmented or absentee ownership, or other constraints. Explore lot consolidation, acquisition, and other measures that would address these constraints. (10-A DCMR § 308.7.)

Policy LU-2.1.2: Neighborhood Revitalization

Facilitate neighborhood revitalization by focusing District grants, loans, housing rehabilitation efforts, commercial investment programs, capital improvements, and other government actions in those areas that are most in need, especially where projects advance equitable development and racial equity, as described in § 213 of the Framework Element, and create opportunities for disadvantaged persons and for deeply affordable housing. Engage and partner in these efforts with the persons intended to be served by revitalization, especially residents. Use social, economic, and physical indicators, such as the poverty rate, the number of abandoned or substandard buildings, the crime rate, and the unemployment rate, as key indicators of need. (10-A DCMR § 310.9.)

Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods

Recognize the importance of balancing goals to increase the housing supply, including affordable units, and expand neighborhood commerce with parallel goals to preserve historic resources, advance environmental and sustainability goals, and further Fair Housing. The overarching goal to create vibrant neighborhoods in all parts of the District requires an emphasis on conserving units and character in some neighborhoods and revitalization in others, including inclusive and integrated growth and meeting communities and public facility needs. All neighborhoods have a role to play in helping to meet broader District-wide needs, such as affordable housing, public facilities, and more. (10-A DCMR § 310.10.)

Policy LU-2.1.4: Rehabilitation Before Demolition

In redeveloping areas characterized by vacant, abandoned, and underused older buildings, generally encourage rehabilitation and adaptive reuse of architecturally or historically significant existing buildings rather than demolition. (10-A DCMR § 310.11.)

Policy: LU-2.1.8 Explore Approaches to Additional Density in Low- and Moderate-Density Neighborhoods

Notwithstanding Policy LU-2.1.5, explore approaches, including rezoning, to accommodate a modest increase in density and more diverse housing types in low-density and moderate-density neighborhoods where it would result in the appropriate production of additional housing and particularly affordable housing. Build upon the guidance of the April 2020 Single Family Housing Report to diversify the cost of housing available in high-opportunity, high-cost low- and moderate-density neighborhoods, especially near transit. However, neighborhood planning and engagement is a condition predicate to any proposals. Infill and new development shall be compatible with the design character of existing neighborhoods. Minimize demolition of housing in good condition. (10-A DCMR § 310.15.)

Policy LU-2.1.10: Multi-Family Neighborhoods

Maintain the multi-family residential character of the District's medium- and high-density residential areas. Limit the encroachment of large-scale, incompatible commercial uses into these areas. Make these areas more attractive, pedestrian-friendly, and transit accessible, and explore opportunities for compatible commercial development which provides jobs for nearby residents. (10-A DCMR § 310.17.)

Policy LU-2.4.1: Promotion of Commercial Centers

Promote the vitality of commercial centers and provide for the continued growth of commercial land uses to meet the needs of residents, expand employment opportunities, accommodate population growth, and sustain Washington, DC's role as the center of the metropolitan area. Commercial centers should be inviting, accessible, and attractive places, support social interaction, and provide amenities for nearby residents. Support commercial development in underserved areas to provide equitable access and options to meet the needs of nearby communities. (10-A DCMR § 313.9.)

Policy LU-2.4.5: Encouraging Nodal Development

Discourage auto-oriented commercial strip development and instead encourage pedestrian oriented nodes of commercial development at key locations along major corridors. Zoning and design standards should ensure that the height, mass, and scale of development within nodes respects the integrity and character of surrounding residential areas and does not unreasonably impact them. (10-A DCMR § 313.13.)

Transportation

The Transportation Element provides policies and actions to maintain and improve the District's transportation system and enhance the travel choices of current and future residents, visitors, and workers. (10-A DCMR § 400.1.)

Policy T-1.1.7: Equitable Transportation Access

Transportation within the District shall be accessible and serve all users. Residents, workers, and visitors should have access to safe, affordable and reliable transportation options regardless of age, race, income, geography or physical ability. Transportation should not be a barrier to economic, educational, or health opportunity for District residents. Transportation planning and development should be framed by a racial equity lens, to identify and address historic and current barriers and additional transportation burdens experienced by communities of color. (10-A DCMR § 403.13.)

Policy T-1.1.8: Minimize Off-Street Parking

An increase in vehicle parking has been shown to add vehicle trips to the transportation network. In light of this, excessive off-street vehicle parking should be discouraged. (10-A DCMR § 403.14.)

Action T-2.3.B: Bicycle Facilities

Wherever feasible, require large, new commercial and residential buildings to be designed with features such as secure bicycle parking and lockers, bike racks, shower facilities, and other amenities that accommodate bicycle users. Residential buildings with eight or more units shall comply with regulations that require secure bicycle parking spaces. (10-A DCMR § 410.16.)

Housing

The Housing Element describes the importance of housing to neighborhood quality in Washington, DC and the importance of providing housing opportunities for all segments of the population throughout Washington, DC. (10-A DCMR § 500.1.)

The overall goal for the District of Columbia is that a minimum of one third of all housing produced should be affordable to lower-income households. The short-term goal is to produce thirty-six thousand (36,000) residential units, twelve thousand (12,000) of which are affordable, between 2019 and 2025. (10-A DCMR § 501.1.)

Policy H-1.1.1: Private Sector Support

Encourage or require the private sector to provide both new market rate and affordable housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives. (10-A DCMR § 503.3.)

Policy H-1.1.3: Balanced Growth

Strongly encourage the development of new housing, including affordable housing, on surplus, vacant, and underused land in all parts of Washington, DC. Ensure that a sufficient supply of land is planned and zoned to enable the District to meet its long-term housing needs, including the need for low- and moderate-density single-family homes, as well as the need for higher-density housing. (10-A DCMR § 503.5.)

Policy H-1.1.4: Mixed-Use Development

Promote moderate- to high-density, mixed-use development that includes affordable housing on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed-use corridors and high-capacity surface transit corridors, and around Metrorail stations. (10-A DCMR § 503.6.)

Policy H-1.1.5: Housing Quality

Require the design of affordable and accessible housing to meet or exceed the high-quality architectural standards achieved by market-rate housing. Such housing should be built with high-quality materials and systems that minimize long-term operation, repair, and capital replacement costs. Regardless of its affordability level, new or renovated housing should be indistinguishable from market rate housing in its exterior appearance, should be generally compatible with the design character of the surrounding neighborhood, and should address the need for open space and recreational amenities. (10-A DCMR § 503.7.)

Policy H-1.1.9: Housing for Families

Encourage and prioritize the development of family-sized units and/or family sized housing options which generally have three or more bedrooms, in areas proximate to transit, employment centers, schools, public facilities, and recreation to ensure that the District's most well-resourced locations remain accessible to families, particularly in areas that received increased residential density as a result of underlying changes to the Future Land Use Map. Family-sized units and/or family-sized housing options include housing typologies that can accommodate households of three or more persons and may include a variety of housing types including townhomes, fourplexes and multi-family buildings. To address the mismatch between meeting the needs of larger households and the financial feasibility of developing family-sized housing, support family-sized housing options through production incentives and requirements that address market rate challenges for private development that may include zoning, subsidies or tax strategies, or direct subsidy and regulatory requirements for publicly owned sites. (10-A DCMR § 503.11.)

Policy H-1.2.2: Production Targets

Consistent with the Comprehensive Housing Strategy, work toward a goal that one-third of the new housing built in Washington, DC from 2018 to 2030, or approximately twenty thousand (20,000) units, should be affordable to persons earning eighty percent (80%) or less of the area-wide MFI. In aggregate, the supply of affordable units shall serve low-income households in proportions roughly equivalent to the proportions shown in Figure 5.8: thirty percent (30%) at sixty to eighty percent (60%-80%) MFI, thirty percent (30%) at thirty to sixty percent (30%-60%) MFI, and forty percent (40%) at below thirty percent (30%) MFI. Set future housing production

targets for market rate and affordable housing based on where gaps in supply by income occur and to reflect District goals. These targets shall acknowledge and address racial income disparities, including racially adjusted MFIs, in the District, use racially disaggregated data, and evaluate actual production of market rate and affordable housing at moderate, low, very-low, and extremely-low income levels. (10-A DCMR § 504.9.)

Environmental Protection

The Environmental Protection Element addresses the protection, conservation, and management of Washington, DC's land, air, water, energy, and biological resources. This Element provides policies and actions for addressing important issues such as climate change, drinking water safety, the restoration of the tree canopy, energy conservation, air quality, watershed protection, pollution prevention, waste management, the remediation of contaminated sites, and environmental justice. (10-A DCMR § 600.1.)

Policy E-1.1.2: Urban Heat Island Mitigation

Wherever possible, reduce the urban heat island effect with cool and green roofs, expanded green space, cool pavement, tree planting, and tree protection efforts, prioritizing hotspots and those areas with the greatest number of heat-vulnerable residents. Incorporate heat island mitigation into planning for GI, tree canopy, parks, and public space initiatives. (10-A DCMR § 603.6.)

Policy E-3.2.6: Alternative Sustainable and Innovative Energy Sources

Support the development and application of renewable energy technologies, such as active, passive, and photovoltaic solar energy; fuel cells; and other sustainable sources such as shared solar facilities in neighborhoods and low- or zero-carbon thermal sources, such as geothermal energy or wastewater heat exchange. Such technology should be used to reduce GHGs and imported energy, provide opportunities for economic and community development, and benefit environmental quality. A key goal is the continued availability and access to unobstructed, direct sunlight for distributed-energy generators and passive solar homes relying on the sun as a primary energy source. (10-A DCMR § 612.8.)

Policy E-3.2.8: Locally Generated Electricity

Support locally generated electricity from renewable sources, including both commercial and residential renewable energy projects. Policies could support the option to share a solar project among several neighbors (i.e., community solar), financial incentives, research and education, and maximizing existing programs to help install solar panels and solar thermal systems throughout the District. (10-A DCMR § 612.10.)

Policy E-4.1.2: Using Landscaping and Green Roofs to Reduce Runoff

Promote an increase in tree planting and vegetated spaces to reduce stormwater runoff and mitigate the urban heat island, including the expanded use of green roofs in new construction and adaptive reuse, and the application of tree and landscaping standards for parking lots and other large, paved surfaces. (10-A DCMR § 615.4.)

Area Elements

OP's Setdown Report concluded that the Map Amendment proposal is not inconsistent with the Area Elements of the Comprehensive Plan and would further the policies of the Capitol Hill Area Element noted below.

Capitol Hill Area Element

CH-2 Policy Focus Areas

The Comprehensive Plan has identified five areas within the Capitol Hill Planning Area as Policy Focus Areas, indicating that they require a level of direction and guidance above that provided in the prior section of this element and in the Citywide Elements. These areas are:

- H Street/Benning Road NE;
- Pennsylvania Avenue SE Corridor;
- U.S. Capitol perimeter;
- Reservation 13/RFK Stadium Complex; and
- Southeast Boulevard.

(10-A DCMR § 1509.1.)

CH-2.1 H Street/Benning Road NE

At one time, the mile-long stretch of H Street, N.E. between Union Station and the starburst intersection at Bladensburg and Benning Roads was the second busiest commercial area in the District. The area faced economic challenges during the 1950s and 1960s and was heavily damaged by the unrest in 1968. An Urban Renewal Plan sparked some reinvestment on the corridor in the 1970s and 1980s, including the Hechinger Mall development on the eastern end, but until recently, the corridor was slow to recover. H Street, N.E.'s retail space had not been keeping up with the rapidly expanding buying power of the surrounding neighborhoods or the burgeoning office market north and east of Union Station until the last five years. Millions of public and private dollars have been invested into new housing, grocery stores, retail, restaurants, and cultural facilities. (10-A DCMR § 1510.1.)

East of H Street, the Benning Road, N.E. corridor (between 15th Street and Oklahoma Avenue) includes a mix of residential uses and auto-oriented commercial uses. The character of the street changes considerably, with higher traffic volumes, a wider right-of-way, and a much less pedestrian-oriented atmosphere. The construction of the H Street-Benning streetcar, along with accompanying streetscape improvements such as new street trees and lighting, will create opportunities for revitalization and new businesses along Benning Road, N.E. This will provide a needed amenity for the adjoining Rosedale and Kingman Park neighborhoods, which currently lack convenient retail services. (10-A DCMR § 1510.5.)

Policy CH-1.1.6: Inappropriate Commercial Uses

Prevent the proliferation of fast-food outlets, self-service gas stations, convenience mini-marts, and other drive-through businesses along Capitol Hill's commercial corridors. The commercial corridors of Capitol Hill are part of the historic L'Enfant Plan, and they contribute to the national image of the nation's capital and provide a walkable neighborhood environment; inappropriate and automobile-oriented uses should be prohibited. (10-A DCMR § 1507.7.)

Small Area Plan (Benning Road Small Area Plan)

OP's Setdown Report concluded that the Map Amendment proposal will further the objectives of the Benning Road Small Area Plan. The area of the proposed map amendment is located within the Benning Road Small Area Plan, which was approved by District Council in 2008. The Plan is part of the District's Great Streets Initiative which was designed to transform under-invested corridors into thriving and inviting neighborhood centers by using public actions and tools to attract private investment. Additionally, the H Street, N.E. Strategic Development Plan anticipated market interest to progress down Benning Road, and the Plan also anticipated this growth and provided a framework to guide development as pressure moves eastward from H Street. Within the Plan, one of the study areas was Benning Road from Bladensburg Road to Anacostia Avenue, which includes the proposed MU-5A map amendment area. The Plan states that this area is the natural extension of the H Street, N.E. corridor, and the western portion near Hechinger Mall is likely to start attracting development interest in the near future as opportunities on H Street are taken up. The Plan's vision for this specific stretch includes:

- New development that takes full advantage of current zoning to build four to eight (4-8) story structures that better frame and respect the wide boulevard;
- Mixed use development with mixed-income housing to fill the gaps along this portion of the corridor, while providing a boost in population necessary for sustaining new retail and commercial ventures; and
- More neighborhood-serving retail, restaurants and service businesses.

The Plan states that the specific area of the proposed MU-5A zone has re-densification potential to accommodate more residential, and, as a result, increase the commercial/retail support base in the area. An overall goal of the Plan for shopping and business is to build new retail space attractive to high-quality retailers and improve existing retail along the corridor, to better serve area residents and other corridor users and new retail should be transit accessible and pedestrian accessible to nearby neighborhoods.

OP Hearing Report

OP submitted an April 29, 2022 report (OP Hearing Report) that recommended approval of the proposed Map Amendment and largely reiterated the statements and conclusions in the OP Setdown Report. (Ex. 6.)

Public Hearing

At the May 9, 2022 public hearing, the Commission heard testimony from OP and DDOT, mostly reiterating the reports they submitted into the case record. No persons or organizations testified in support, in opposition, or undeclared.

The Advisory Council submitted a letter in support of approving the proposed Map Amendment, stating “. . . the proposed rezoning will facilitate the redevelopment of the mostly underutilized property in a manner that advances the District's housing and affordable housing initiatives. Also, the future redevelopment of the property will encourage use of the Union Station-Benning Road Streetcar, which has stops within a quarter mile of this section of Benning Road, NE. . . The Ward 7 EDAC appreciates the Office of Planning's leadership in initiating the proposed rezoning. . . this

proposed rezoning reflects the aspirations and efforts of numerous stakeholders seeking to facilitate the thoughtful planning and economic growth of Ward 7; in large part, through the creation of new housing and improved retail options and amenities that serve the community.” (Ex. 8.)

At the close of the public hearing, the Commission took proposed action on the Map Amendment.

Conclusion

Pursuant to Subtitle X § 500.3, the Commission shall find that the proposed Map Amendment is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Property. The Commission finds the proposed Map Amendment not inconsistent with the maps, and the Citywide and Area Elements of the Comprehensive Plan, particularly when viewed through a racial equity lens. The opportunity provided by the increased MU-5A zone density would create new housing development along a transit-accessible corridor and the potential for additional affordable housing with the imposition of the IZ Plus set aside requirement. The proposed Map Amendment along this corridor would not only provide additional housing along the corridor but would replace and improve many of the vehicle-oriented commercial uses along the transit-rich corridor and improve pedestrian activity to increase the vibrancy of this section of the H Street/Benning Road. The Commission also finds that the proposed Map Amendment would advance the goals of the Benning Road Small Area Plan. Finally, the Commission is mindful that the proposed Map Amendment is based on the recommendation of the D.C. Council and the result of community input and collaboration with the Advisory Council as stated in its letter supporting the proposal. (Ex. 8.)

“Great Weight” to the Recommendations of OP

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).)

The Commission finds OP’s recommendation that the Commission take proposed action to adopt the proposed Map Amendment persuasive and concurs in that judgment based on the analyses in the OP Reports detailed above. The Commission also finds OP’s rationale that the Map Amendment be subject to IZ Plus, pursuant to Subtitle X § 502.1(b), persuasive, which is also detailed above.

“Great Weight” to the Written Report of the ANCs

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 Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

As noted, neither affected ANC testified at the public hearing or submitted a written report to the case record; therefore, there is nothing for the Commission to give great weight to.

Proposed Action

At its May 9, 2022 public hearing, the Commission voted to take **PROPOSED ACTION** to adopt the Map Amendment and to authorize the publication of a Notice of Proposed Rulemaking to amend the Zoning Map as follows:

VOTE (May 9, 2022): **3-0-2** (Robert E. Miller, Anthony J. Hood, and Joseph S. Imamura to **APPROVE**; Peter G. May not present, not voting; one seat vacant, not voting)

PARCEL	MAP AMENDMENT
149/60	MU-4 zone to MU-5A

SQUARE	LOTS	MAP AMENDMENT
4510	64-66, 82, 96-99, 150-153 & 156	MU-4 zone to MU-5A
4513	77, 81, 82, 90, 91, 872, 875, 877, 881, 883, 885, 899, 901, 905, 909, 912, 919 & 921	MU-4 zone to MU-5A
4514	31, 32, 808, 810 & 812	MU-4 zone to MU-5A
4515	97, 98, 101-103, 803, 805, 809, 819, 823, 825, 828-831 & 834	MU-4 zone to MU-5A
4516	206 & 208-210	MU-4 zone to MU-5A
4517	77, 78, 803, 805, 809, 811, 813, 817, 819, 821 & 822	MU-4 zone to MU-5A
4518	74-82 & 800	MU-4 zone to MU-5A
4511	68	RA-2 zone to MU-5A

The complete record in the case can be viewed online at the Office of Zoning’s Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by e-mail at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.