



January 5, 2024

Zoning Commission of the District of Columbia
441 4th Street, NW - Suite 210
Washington, DC 20001

VIA IZIS

Re: OAG Comments in Z.C. Case No. 23-02 of the Office of Planning – Map Amendment

Dear Members of the Zoning Commission:

The Office of the Attorney General (“OAG”) submits this statement in support of the proposed Map Amendment to the MU-10 zone. As explained in more detail below, and as previously detailed in OAG’s November 16, 2023 presentation¹, the Map Amendment is consistent with the Comprehensive Plan’s (the “CP”)² map designations and policies for the site, and adopting the map amendment will advance the public interest by permitting additional density that will facilitate the creation of affordable housing in a key transit and amenity rich area. And although the Map Amendment may result in some adverse impacts, the Commission is empowered to mitigate them through the imposition of specific conditions on the Map Amendment’s approval, and OAG urges the Commission to impose such conditions.

I. The Commission Is Empowered to Protect the Public Interest.

The Commission has broad and exclusive authority under the Zoning Act to promulgate the District’s zoning regulations and zoning maps “to promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia”—in essence, to act to protect and advance the public interest.³ The Zoning Act limits this authority by requiring that the Commission’s actions “shall not be inconsistent with the comprehensive plan for the national capital.”⁴ The CP is law, adopted by the Council following a public process that results in a draft prepared by the Mayor. Articulating the public’s vision and goals for the District’s growth, the CP fills the gaps in the broad commands of the Zoning Act regarding, among other things, health, safety, and order. Taken together, the Zoning Act and the CP simultaneously empower and guide the Commission to protect District residents through the exercise of its authority over zoning.

The Zoning Regulations implementing the Zoning Act do not impose any additional standards on the Commission for the evaluation of a proposed map amendment.⁵ Therefore, the Commission

¹ [OAG Presentation, Exhibit 391A.](#)

² [Title 10A DCMR.](#)

³ [D.C. Code §§ 6-641.01-02](#); see also *Wisconsin-Newark Neighborhood Coalition v. Dist. of Columbia Zoning Comm’n*, 33 A.3d 382, 389–90 (D.C. 2011).

⁴ [D.C. Code § 6-641.02.](#)

⁵ [Zoning Regulations, 11 DCMR Subtitle X § 500.3.](#)

must determine that a proposed map amendment is both consistent with the CP and protects and advances the public interest. To fulfill its charge and protect against potential adverse impacts, the Commission is empowered to impose conditions on its approval of a map amendment.

II. The Map Amendment Is Consistent with the Public Interest as Identified in the CP.

The Map Amendment is consistent with the public interest as identified in the CP, which calls for the leveraging of public sites (including the specifically identified Map Amendment site) and bonus density to create more affordable housing in amenity- and transit-rich areas.⁶ Increasing affordable housing is of particular importance in the Mid-City planning area. The neighborhood immediately surrounding the site has seen soaring housing costs over the past 20 years, resulting in the displacement of residents.⁷ Between 2000 and 2021, the median annual rent in the census tract increased by 70%, from \$16,190 to \$27,516, far exceeding the District’s median annual rent of \$20,172.⁸ These rising costs have had disparate racial impacts: the median white household income in the Mid-City Planning Area is almost three times the median Black household income.⁹ Thus, non-white households are more likely to be housing cost burdened, leading to an increased risk of both displacing existing residents and creating barriers to entry for potential new residents.¹⁰ If rising housing costs are not mitigated by the creation of affordable housing, there is a risk that the area will lose its racial and income diversity.

In response to these trends, the Mayor and the Council amended the site’s Future Land Use Map (“FLUM”) designation in 2021 to “High Density Residential.” The new FLUM designation recognizes the need for greater density on the site, which would support additional housing, including additional affordable housing.¹¹ The site’s Generalized Policy Map, Main Street Mixed Use Corridor and Neighborhood Conservation Area (“NCA”) designations in the CP also accommodate and encourage the creation of affordable housing.¹²

The Map Amendment fully complies with the CP. *First*, the height and density permitted within the MU-10 zone of the Map Amendment is consistent with the FLUM’s new “High Density Residential” designation and thus accommodates the development of additional housing, including affordable housing, as the CP directs. *Second*, the Map Amendment is consistent with the CP’s directive to leverage District-owned properties to “meet the equity needs of DC’s neighborhood in the form of deeply affordable housing.”¹³ Indeed, the Mid-City Area Element of the CP specifically identifies the Map Amendment site itself as a public site that “should be used to create a significant amount of new affordable housing”¹⁴

⁶ [CP §§ 229.3, 2013.11.](#)

⁷ [CP § 2007.3.](#)

⁸ Appendix B - Census Data Charts. Note – historic figures have been adjusted for inflation to 2021 dollars.

⁹ Appendix B - Census Data Charts.

¹⁰ Appendix B - Census Data Charts.

¹¹ [CP § 227.8](#); Zoning Regulations 11 DCMR [Subtitle F §§ 201.1, 201.4, 203.2](#), & [Subtitle G §§ 201.1, 203.2](#).

¹² [CP §§ 225.5 & 225.14.](#)

¹³ [CP § 229.3.](#)

¹⁴ [CP § 2013.11.](#)

What is more, by increasing allowable density, the Map Amendment will facilitate compliance with the District’s Surplus and Disposition Process requirements (D.C. Code § 10-801). For the redevelopment of public sites, such as the subject site, this process requires a greater percentage of affordable units, and more deeply affordable units, than the Zoning Regulations.¹⁵ As noted by the Office of Planning, the additional height and density permitted by the Map Amendment, in combination with the requirements of D.C. Code § 10-801, “could permit construction of newer MPD and FEMS facilities, [and] over 200 affordable housing units,” which would “help mitigate rising housing costs that affect households of color disproportionately.”¹⁶

III. The Commission Should Impose Setback and Side Yard Requirements as Conditions.

While the Map Amendment is consistent with the CP as a whole, the additional height and density it will permit could result in adverse impacts to some of the neighboring properties, principally adverse impacts to light and air. To mitigate these potential impacts, the Office of Planning has proposed a text amendment (Z.C. Case No. 23-26) that would impose increased setback and side yard requirements exclusively for the Map Amendment site, with approval of the Map Amendment linked to the approval of the text amendment.¹⁷

OAG believes that the Map Amendment is consistent with the CP without the setbacks, and notes that setback requirements will result in reductions to the building footprint, which will in turn reduce the amount of housing, including the amount of affordable housing, that can be provided. Nevertheless, the Commission does have the ability to impose these site-specific setback and side yard requirements if it determines that they are necessary to mitigate adverse impacts resulting from the Map Amendment. Rather than imposing them through a separate text amendment, however, OAG suggests incorporating them directly into the Map Amendment case and imposing them as conditions of approval via a covenant recorded against the property. OAG believes that this is preferable to a text amendment because the imposition of conditions on the proposed Map Amendment (1) would result in greater “judicial economy” for the resolution of this case, and (2) would avoid potential confusion caused by adding different, site-specific requirements into the Zoning Regulations.

Functionally, the execution and recordation of the covenant would be a condition precedent to the approval of the Map Amendment. It would make the effective date of the order approving the Map Amendment the date of recordation of the executed covenants. The covenant could be modified or extinguished by the Commission only upon a finding that the impact the condition was intended to mitigate is no longer present.

The Commission has the legal authority to impose the site-specific setback and side yard requirements as conditions of approval for the Map Amendment. When the Commission considers

¹⁵ [D.C. Code § 10-801\(b-3\)](#); see also [OP Setdown Report, Ex. 2](#), at 1–2.

¹⁶ [OP Setdown Report, Ex. 2](#), at 1–2, 6, 8–9; see also [Feb. 23, 2023 Public Meeting Transcript at 15](#); [OP Report of June 16, 2023, Ex. 58](#) at 1-2.

¹⁷ [OP Supplemental Report, Ex. 358](#) at 1.

a proposed map amendment that will increase the height and density allowed on a property, the Zoning Regulations require the Commission to consider whether the added density is anticipated by the CP.¹⁸ In addition, to meet the Commission’s charge under the Zoning Act “to promote the health, safety, morals, convenience, order, prosperity, or general welfare” of the District, the Commission must also consider whether the added density will impact neighboring properties, and whether those impacts require mitigation.¹⁹ Thus, if the Commission determines that the impacts of a proposed map amendment are substantial enough to require mitigation, its broad authority under the Zoning Act empowers it to condition approval on the recordation of a covenant that limits the unfettered use of the property under the new zone’s ordinary permissions. This use of covenants to implement zoning requirements is well established. The Zoning Regulations already utilize covenants to enforce zoning requirements in several contexts, including Inclusionary Zoning, Planned Unit Developments, Voluntary Design Reviews, loading berths, Density/Historic credits in Downtown Zones, combined lot developments, and FAR limits in the St E and Walter Reed zones.²⁰ The use of covenants in these situations is designed to ensure that the Commission’s site-specific requirements for approval, which are intended to advance and protect the public interest, are clearly documented through an enforceable legal instrument.

The Commission should approve the Map Amendment because it is consistent with the CP’s planning goals for the individual site, the Mid-City Planning Area, and the District as whole. Most importantly, the Map Amendment will facilitate the provision of critically needed affordable housing in a transit- and amenity-rich area of the District, thereby advancing the CP’s goals for a more equitable and inclusive city. To fulfill its charge under the Zoning Act to ensure that the Map Amendment will advance the public interest, the Commission should incorporate the Office of Planning’s proposed setback and side yard requirements as conditions of approval via a covenant recorded against the property.

Respectively submitted,

BRIAN L. SCHWALB

¹⁸ [Zoning Regulations, Title 11 DCMR Subtitle X § 500.](#)

¹⁹ [D.C. Code § 6-641.01.](#)

²⁰ See covenants required by Zoning Regulations (Subtitle A § [303.2](#), [306.1](#)); Inclusionary Zoning (Subtitle C §§ [1001.6](#), [1006.6](#), [1006.7](#), [1006.8](#), [1007.3](#)); Planned Unit Developments (Subtitle X §§ [311.3](#), [311.4](#), [702.10](#); Subtitle Z § [604.10](#), [703.6](#)); Voluntary Design Review (Subtitle X § [606.3](#), [606.4](#)); Loading berths (Subtitle C § [903.6](#)); Density/Historic credits in Downtown zones (Subtitle I §§ [305.3](#), [800.3](#), [800.4](#), [805](#), [806.3](#), [806.4](#), [807.6](#), [807.7](#), [807.9](#), [807.12](#), [807.15](#), [807.17](#), [807.18](#)); Combined Lot Developments (Subtitle C § [1200.4](#); Subtitle K §§ [511.2](#), [511.3](#), [511.4](#), [1009.3](#), [1009.4](#), [1009.5](#)); St E zone FAR limits (Subtitle K §§ [602.6](#), [602.7](#), [602.8](#)); and Walter Reed zone FAR limits (Subtitle K §§ [902.5](#), [920.7](#), [920.8](#)).

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Attachments:

Appendix A – CP Sections

Appendix B – Census Data Charts