

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 23-04
Z.C. CASE NO. 23-04
ALT-G Investment, LLC
(Map Amendment @ Square 3832, Lot 806
3250 9th Street, N.E.)
[INSERT DATE]

Pursuant to notice, at its public hearing on December 11, 2023, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) by ALT-G Investment, LLC (the “Applicant”) for an amendment to the Zoning Map from the PDR-1 zone to the MU-7A zone (the “Map Amendment”) for the property 3250 9th Street, N.E., which is more particularly known as Lot 806 in Square 3832 (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 is appropriate for IZ Plus pursuant to Subtitle X § 502.1(a)(1). The Property shall be indicated with an “IZ+” symbol on the Zoning Map.

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 Commissions (“ANC”) 5B and ANC 5F. (Subtitle Z § 403.5.)
2. The Commission received no requests for party status.

NOTICE

3. On May 25, 2022, 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 5B and ANC 5F, as required by Subtitle Z §§ 304.5 and 304.6. (Exhibit (“Ex.”) 3I.)
4. On February 10, 2023, the Office of Zoning (“OZ”) sent notice of the filing of the Application to:
 - Applicant;
 - ANC 5B;
 - ANC Single Member District (“SMD”) 5B04;
 - ANC 5F;
 - ANC SMD 5F02;
 - Office of the ANC;
 - Office of Planning (“OP”);
 - District Department of Transportation (“DDOT”);

- At-Large Councilmembers and the Chair of the Council;
 - The Ward 5 Councilmember;
 - Department of Energy & Environment (“DOEE”);
 - Department of Buildings (“DOB”) General Counsel;
 - Office of Zoning Legal Division (“OZLD”); and
 - Property owners within 200 feet of the Property.
- (Ex. 7–9, 11.)
5. OZ published notice of the filing of the Application in the February 24, 2023, *District of Columbia Register* (70 DCR 2645) (Ex. 10.)
 6. On October 26, 2023, the Office of Zoning (“OZ”) sent notice the Applicant’s public hearing to:
 - Applicant;
 - ANC 5B;
 - ANC Single Member District (“SMD”) 5B04;
 - ANC 5F;
 - ANC SMD ANC 5B02;
 - Office of the ANC;
 - The Ward 5 Councilmember;
 - Office of Planning (“OP”);
 - District Department of Transportation (“DDOT”);
 - Department of Buildings (“DOB”) General Counsel;
 - Department of Energy & Environment (“DOEE”);
 - Office of Zoning Legal Division (“OZLD”);
 - At-Large Councilmembers and the Chair of the Council; and
 - Property owners within 200 feet of the Property.
 7. The Applicant submitted evidence that it had posted notice of the public hearing as required by Subtitle Z § 402.3 and maintained said notice in accordance with Subtitle Z § 402.10. (Ex. 21, 30.)

THE PROPERTY

8. The Property is located in the northeast quadrant of the District and consists of approximately 6,901 square feet of land area (approximately 0.15 acres). The Property is a vacant and irregularly shaped, triangular lot.
9. The Property is located north of Jackson Street, NE, south of Kearny Street, NE, east of the Washington Metropolitan Area Transit Authority (“WMATA”) Red Line railway, and west of 9th Street, NE.
10. The area to the north and east of the Property is comprised of low- and moderate-density residential uses and neighborhood commercial uses that are zoned R-2 and RF-1. The Catholic University of America is located less than a quarter-mile northwest of the Property. Additionally, Saint Paul’s College, the Theological College, and the Dominican

House of Studies are located within 2,000 feet of the Property. The Property is located less than a mile from the southwest corner portion of the Armed Forces Retirement Home.

11. The Brookland-CUA Metrorail station is located just under a quarter mile to the north of the Property, and the Property is located within 0.25 miles of several WMATA bus routes (e.g., G8, H8, H2, H4, 80).

CURRENT ZONING

12. The Property is in the PDR-1 zone. The PDR-1 zone is intended to permit moderate density commercial and PDR activities employing a large workforce and requiring some heavy machinery under controls that minimize any adverse impacts on adjacent, more restrictive zones. Residential uses are not permitted. (Subtitle J § 101.3.)
13. As a matter of right, the PDR-1 zone requires/permits:
 - Building Height: 50 feet (Subtitle J § 203.2.)
 - Penthouse Height: 12 feet and 1 story; except 15 feet and a second story is permitted for penthouse mechanical space (Subtitle J § 205.1.)
 - Floor Area Ratio (“FAR”): 3.5 for listed uses (2.0 all other uses) (Subtitle J § 201.1.)
 - Rear Yard: 2.5 inches per 1 feet of height; 12 feet minimum (Subtitle J § 207.)
 - Side Yard: None required unless a side lot line abuts a residential zone, then one required. (Subtitle J § 208; *see also* Subtitle J § 210: Transition Setback Regulations.)
 - Green Area Ratio: 0.3 (Subtitle J § 211.1.)

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

Equity and the Comprehensive Plan

14. Pursuant to Subtitle X § 500.3, the Commission shall find that the Map Amendment is not inconsistent with the CP and with other adopted public policies and active programs related to the Property.
15. In applying the standard of review applicable to the Map Amendment, the CP requires the Commission to do so through a racial equity lens. Consideration of equity is intended to be based on the policies of the CP, and part of the Commission’s considerations of whether the Map Amendment is “not consistent” with the CP, rather than a separate determination about a zoning action’s equitable impact.
16. The CP 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. (CP § 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.” (CP § 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. (CP § 213.9.)

17. The CP Implementation Element provides guidance to help the Commission in applying a racial equity lens to its decision making. Specifically, the Implementation Element states “[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 of the District.” (CP § 2501.6.)

Generalized Policy Map (the “GPM”)

18. The GPM highlights areas where more detailed policies are necessary, both within the CP and in follow-up plans, to most effectively chart the District’s envisioned growth. (CP § 225.1.)
19. The GPM is intended to “guide land use decision-making in conjunction with the text of the CP, the Future Land Use Map, and other CP maps. Boundaries on the map are to be interpreted in concert with these other sources as well as the context of each location.” (CP § 225.2.)
20. The CP’s GPM designates the Property as a Neighborhood Conservation Area. The CP defines Neighborhood Conservation Areas as:

Neighborhood Conservation areas have little vacant or underutilized land. They are generally residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. Where change occurs, it will typically be modest in scale and will consist primarily of infill housing, public facilities, and institutional uses. Major changes in density over current (2017) conditions are not expected but some new development and reuse opportunities are anticipated, and these can support conservation of neighborhood character where guided by Comprehensive Plan policies and the Future Land Use Map. Neighborhood Conservation Areas that are designated “PDR” on the Future Land Use Map are expected to be retained with the mix of industrial, office, and retail uses they have historically provided. (CP § 225.4.)

Future Land Use Map (the “FLUM”)

21. The FLUM shows the general character and distribution of recommended and planned uses across the District, and, along with the GPM, is intended to provide generalized guidance on whether areas are designated for conservation, enhancement, or change and guidance on anticipated future land uses. (CP § 200.5, 224.4.)
22. The CP’s FLUM designates the Property as Mixed Use Moderate Density Residential / Moderate Density Commercial. The CP defines Moderate Density Residential as:

“[The Moderate Density Residential] . . . designation is used to define neighborhoods generally, but not exclusively, suited for row houses as well as low-rise garden apartment complexes. The designation also applies to areas

characterized by a mix of single-family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings. In some neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). Density in Moderate Density Residential areas is typically calculated either as the number of dwelling units per minimum lot area, or as a FAR up to 1.8, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The R-3, RF, and RA-2 Zone Districts are consistent with the Moderate Density Residential category, and other zones may also apply. (See CP § 227.11.)

The CP defines Moderate Density Commercial as:

“[The Moderate Density Commercial] . . . designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Low-Density Commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts 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. (See CP § 227.11 (emphasis added).)

Upper Northeast Area Element

23. The Property falls within the Upper Northeast Area Element. The Upper Northeast Area Element states:

- The Upper Northeast Planning Area is comprised of approximately 8.7 square miles and includes roughly two-thirds of the District’s northeast quadrant. (CP § 2400.1.)
- The Upper Northeast is principally known as a residential community with a spattering of row house neighborhoods and higher-density housing communities. (CP § 2400.2.)
- The mix of uses in Upper Northeast is particularly diverse compared to other parts of Washington, DC as the planning area contains the largest concentration of industrial land uses in the District. (CP § 2400.3.)
- The Planning Area is especially well known for its large concentration of religious institutions, including the Basilica of the National Shrine of the Immaculate Conception and the Pope John Paul II Cultural Center. (CP § 2400.5.)
- “Upper Northeast has experienced significant growth along the Red Line over the past . . . years” and that “growth is anticipated to continue as underused land [is] . . . redevelop[ed].” (CP § 2400.7.)

- According to the CP, the greatest future challenge for the Upper Northeast Area will be to respond to change in a way that keeps the Upper Northeast a socially, culturally, and economically diverse community. (CP § 2400.9.)

II. THE APPLICATION

PROPOSED ZONING

24. The Application proposes to rezone the Property from the PDR-1 zone to the MU-7A zone. (Ex. 2–3J.) The Application asserts that the Property’s existing PDR-1 zone is inconsistent with the CP, particularly because the PDR-1 zone is intended to permit PDR activities which employ a large workforce and require some heavy machinery, and because the PDR-1 zone does not permit a mix of residential and non-residential uses that are suggested by the Property’s FLUM designation and encouraged by the CP. (Ex. 3.)
25. The MU-7 zones are intended to permit medium-density mixed-use development and are intended to be located on arterial streets, in uptown and regional centers, and at rapid transit stops. (Subtitle G § 101.12.)
26. As a matter of right, the MU-7A zone permits/requires:
 - Building Height: 65 feet (Subtitle G § 203.2.)
 - Penthouse Height: 12 feet; except 18 feet 6 inches is permitted for penthouse mechanical space (Subtitle G § 205.1.)
 - FAR: 4.0 (4.8 w/ Inclusionary Zoning) Residential with maximum 1.0 Non-residential (Subtitle G § 201.1.)
 - Rear Yard: 2.5 inches per 1 feet of height; 12 feet minimum (Subtitle G § 207.7.)
 - Side Yard: None required, but if provided, 2 inches per 1 foot of height, but no less than 5 feet (Subtitle G § 208.2.)
 - Maximum Residential Lot Occupancy: 75% (80% w/ IZ) (Subtitle G § 210.1.)
 - Green Area Ratio: 0.25 (Subtitle G § 211.1.)
27. A Zoning Map Amendment of the Property to the MU-7A zone would permit enhanced development standards that would facilitate the redevelopment of the Property with additional residential and commercial uses as anticipated by the FLUM.

APPLICANT’S JUSTIFICATION FOR REZONING

Not Inconsistent with the CP

28. The Applicant asserted that the Map Amendment is not inconsistent with the CP, including the Property’s designations on the GPM and the FLUM, and advances the objectives and recommendations of the Upper Northeast Planning Area, Citywide Elements, and racial equity goals. The Applicant also asserted that the Map Amendment is consistent with the purposes of the Zoning Act in that it will create conditions that are favorable to public health, safety, welfare, and convenience; and that the Map Amendment is consistent with other adopted public policies and active programs applicable to the Property, as detailed below. (Ex. 3.)

GPM

29. The Applicant asserted that the Map Amendment is not inconsistent with the GPM because:

- As the Framework Element of the CP implies, the Neighborhood Conservation Area designation is not intended to stifle development opportunities. Conversely, new development is welcome so long as it supports the existing neighborhood character and addresses city-wide priorities; and
- The existing PDR-1 zoning constrains potential development opportunities at the Property, whereas the proposed MU-7A zone has the capability of supporting additional density and enhanced development standards, ultimately strengthening the neighborhood. For example, the proposed MU-7A zone would permit the construction of a new commercial and residential building, including affordable housing, which would address critical District-wide housing needs. (Ex. 3.)

FLUM

30. The Applicant asserted that the Map Amendment is not inconsistent with the FLUM because:

- The Property's FLUM designation, Mixed Use Moderate Density Residential / Moderate Density Commercial, expressly states the MU-7 zone is consistent with the category; and
- The MU-7A zone permits a maximum density of 4.0 (4.8 with IZ), which falls within the FAR contemplated by the Moderate Density Commercial FLUM category, which specifies a density ranging between 2.5 FAR and 4.0 FAR, with greater density being possible when complying with IZ or when approved through a Planned Unit Development. (Ex. 3.)

Upper Northeast Planning Area

31. The Applicant asserted that the proposed Map Amendment to the MU-7A zone, which permits up to a 4.0 FAR (4.8 FAR with IZ) and a non-residential FAR of 1.0, will provide for increased development potential, enhancing both the residential character and economic vitality of the surrounding area. (UNE-1.1, UNE-1.1.6). The Applicant stated the proposal will also lead to a more connected neighborhood; provide new housing development and affordable housing opportunities; and will facilitate access to public transit. (UNE-1.2.4, UNE-1.2.5.) (Ex. 3.)

Land Use Element

32. The Applicant asserted that the Map Amendment is not inconsistent with the policies of the Land Use Element because the Map Amendment has the potential to facilitate the redevelopment of a vacant lot with a mix of uses at a site that is well-positioned to enhance the surrounding neighborhood and the vitality of the 9th Street corridor between the Rhode Island Avenue and Brookland/CUA Metrorail station. (LU-1.4.B, LU-1.4.C, LU-2.1.1.) The Applicant also asserted that the Map Amendment will help the District meet its long-term neighborhood and citywide demands for additional housing and affordable housing. (LU-2.1.2, LU-2.1.3) (Ex. 3.)

Housing Element

33. The Applicant asserted that the Map Amendment is not inconsistent with the policies of the Housing Element because the Map Amendment will provide a substantial increase in the permitted density for residential uses, ultimately expanding the District's housing and affordable housing supply. This increase in density is consistent with the District's housing and affordable housing goals set forth in the 2019 Housing Equity Report, which sets an affordable housing goal of 1,350 units in the Upper Northeast Planning Area. Moreover, the proposed rezoning will facilitate progress towards reaching the Housing Element's goal of achieving a minimum of 15% affordable units within each Planning Area by 2050. (H-1.2.9, H-1.2.F.) New housing, including affordable housing, at the Property is a desired development given the Property's vacant and underutilized status. (H-1.1.3, H-1.1.5.) (Ex. 3.)

Transportation Element

34. The Applicant asserted that the Map Amendment is not inconsistent with the policies of the Transportation Element because the Map Amendment would enable a new mixed-use development at the Property that is likely to involve streetscape improvements, and has the potential to result in a development that stabilizes the streetscape with an improved pedestrian network. (T-2.4.1.) (Ex. 3.)

Environmental Protection Element

35. The Applicant asserted that the Map Amendment is not inconsistent with the policies of the Environmental Protection Element because the Map Amendment would facilitate the redevelopment of the Property with new development that is required to comply with applicable Building Code requirements and energy-efficient building systems and technologies, therefore furthering the District's energy efficiency goals and complying with the Green Building Act, the District's storm water management regulations, and the Sustainable DC Plan. (E-3.2.3, E-3.2.7.) (Ex. 3.)

Racial Equity

36. The Application noted that equity is conveyed throughout the CP where priorities of affordable housing, preventing displacement, and access to opportunity are discussed. In light of the guidance provided by relevant CP policies the Applicant asserted that the Map Amendment would not be inconsistent with the CP when evaluated through a racial equity lens. In support of its assertion, the Applicant evaluated the Map Amendment's consistency with the CP through a racial equity lens by applying the Commission's Racial Equity Tool. (Ex. 3, Ex. 12A.)
37. The Applicant provided an assessment of how the Map Amendment is not inconsistent with the CP when evaluated through a racial equity lens in its CP Evaluation, in subsequent filings, and through testimony at the public hearing. OP concurred with the Applicant and/or made similar findings in its reports. (Ex. 3, Ex. 12A, Ex. 13, Ex. 25, Ex. 28.)
38. The Applicant provided the following information about the community and its outreach:

- The Applicant identified the following as key historical attributes which helped shape and define the community impacted by the Map Amendment:
 - i. The Property is located within the Brookland neighborhood;
 - ii. The Brookland neighborhood was shaped by racially restrictive covenants;
 - iii. These racially restrictive covenants sought to shape the character, or color, of the Brookland neighborhood;
 - iv. In 1948, the United States Supreme Court held that racially restrictive housing covenants cannot be enforced.; and
 - v. By the 1960s, Brookland was majority Black. (Ex. 12A.)
- The Applicant made a concerted effort to understand the community's priorities.
- The Property is within the boundaries of ANC 5B.
 - i. On June 24, 2022, the Applicant met with the ANC 5B-04 SMD Representative to discuss the Application;
 - ii. On March 2, 2023, the Applicant presented the Application to the community during ANC 5B-04 SMD Representative's community meeting;
 - iii. On June 8, 2023, the Applicant once again presented the Application to the community during ANC 5B-04 SMD Representative's community meeting; and
 - iv. On June 21, 2023, the Applicant presented the Application to ANC 5B, and ANC 5B voted to support the Application. (Ex. 12.)
- ANC 5F is considered an affected ANC because the Property is located on a street that serves as a boundary line between ANC 5B and ANC 5F.
 - i. On May 23, 2023, the Applicant presented the Application to ANC 5F, and ANC 5F voted to support the Application. (Ex. 12.)
- Applying the Tool's racial equity themes, the Applicant asserted the Map Amendment would have the following impacts and/or outcomes:
 - i. Not result in negative outcomes with respect to direct displacement because of the following:
 - 1. No physical displacement of residents; and
 - 2. Increase in residential density.
 - ii. Result in positive changes with respect to housing because the Project would:
 - 1. Increase the Property's potential housing capabilities; and
 - 2. Increase the Property's required IZ+ set-aside requirement because a higher IZ+ set-aside would apply to the Map Amendment.
 - iii. Result in positive changes to the physical environment because the development facilitated by the Map Amendment could potentially:
 - 1. Improve stormwater infrastructure; and
 - 2. Improve roadway circulation on the Property.
 - iv. Increase access to opportunity because the development facilitated by the Map Amendment could potentially:

1. Provide access to transit accessibility, including Metro and bus routes;
 2. Provide access to regional employment opportunities; and
 3. Provide access to recreation facilities, open space, and neighborhood-serving retail services.
39. Based on the foregoing and based on the Applicant's filings, the Applicant asserted, and OP agreed, the proposed Map Amendment would result in positive outcomes for all existing and future District residents, and therefore, the Application is not inconsistent with the CP when evaluated through a racial equity lens.

Potential Inconsistencies with the CP

40. The Applicant conducted a CP evaluation of the Application through a racial equity lens and determined that the Applications is not inconsistent with the CP when read as a whole. In conducting its evaluation, the Applicant identified CP policies that are potentially inconsistent with the Application; and concluded that while a few policies may be viewed as inconsistent, these potential inconsistencies are outweighed by the proposed Map Amendment's overall consistency with the FLUM and other CP policies relating to land use, housing, transportation, environmental sustainability, economic development, and urban design. The potential inconsistent CP policies were the Environmental Protection Element policy E-3.2.2: Net-Zero Buildings. (Ex. 28.)

Public Hearing Testimony

41. At the public hearing on December 11, 2023, the Applicant presented its case, including testimony from:
- Ms. Brandice Elliott, Director of Planning Services, Holland & Knight, LLP, whom the Commission recognized as an expert in zoning and land use planning; and
 - Mr. Ty Simpson, representative of the Applicant.
- (Ex. 31.)

III. RESPONSES TO THE APPLICATION

OP REPORTS AND TESTIMONY

42. OP submitted a report, dated September 18, 2023, recommending the Commission set down for a public hearing the Applicant's request for a Zoning Map amendment (the "OP Setdown Report") and concluding that the Map Amendment would be appropriate for IZ Plus and would not be inconsistent with the CP. The OP Setdown Report's CP analysis concluded the following:
- **GPM** – The proposed MU-7A zone would be consistent with the Property's FLUM designation and the guidance of the CP policies. Further, the Framework Element of the CP states that Neighborhood Conservation Areas Neighborhood Conservation areas have little vacant or underutilized land and are generally residential in character. Therefore, the proposed map amendment, together with an IZ+ designation, would not be inconsistent with the CP guidance that redevelopment should have an emphasis on housing, especially in the Brookland neighborhood which has access to amenities and transit options.

- **FLUM** – The map amendment to MU-7A is consistent with the FLUM designation. The MU-7A zone would permit primarily residential, moderate density development with a maximum FAR of 4.0 and up to 4.8 for the provision of IZ units, consistent with the property’s FLUM designations. The proposed zone could also allow for a limited range of non-residential uses that could also serve the residents of the subject site and the surrounding neighborhood.
- **Upper Northeast Area Element** – The proposed map amendment, together with the IZ+ designation, would help fulfill the Area Element policies that call for the creation of new mixed-use neighborhoods, including housing for a mix of incomes. The proposed zoning parameters would also help fulfill policies that seek to take advantage of vacant land near metro and maximize the amount of housing within close distance to metro. Redevelopment of the site could also help to improve the streetscape around the site.
- **Land Use Element** – The proposed zoning action could enhance access to affordable housing in a new building for residents should housing be provided in a future development, with enhanced access to employment due to the site’s location at a metro hub.
- **Housing Element** – The CP supports additional housing development, particularly on underutilized sites near transit. The CP describes 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. Housing at this location, on currently underutilized land, would not result in the displacement of existing residents.

The OP Setdown Report concluded that the Map Amendment would be appropriate for IZ+, pursuant to Subtitle X § 502.1(a)(1) because:

- The map amendment would allow a higher maximum permitted FAR than the existing PDR-1 zone;
- Residential uses are not permitted in the PDR zone, but permitted under MU-7A;
- The 2019 Housing Equity Report, prepared by the Office of Planning and the Department of Housing and Community Development, set a goal for the Upper Northeast Planning Area to produce 1,350 affordable housing units by 2025; and
- According to DC’s Comeback Plan (January 2023), the Upper Northeast Planning Area has only achieved 53.4 percent of its 2025 affordable housing production goal.

43. OP submitted a hearing report, dated November 15, 2023, that largely reiterated the OP Setdown Report's conclusions, and recommended approval of the Map Amendment. (Ex. 25.)
44. At the public hearing, OP reiterated its support for the Application as detailed in its reports.

DDOT REPORT

45. DDOT submitted a report dated May 22, 2023 (the "DDOT Report") stating that "DDOT has no objection to the approval of the requested Map Amendment." (Ex. 26.)
46. DDOT did not provide testimony at the public hearing.

ANC REPORTS AND TESTIMONY

47. ANC 5B submitted a Resolution in Support of the Application, dated June 21, 2023 (the "ANC 5B Report"), stating at its properly noticed public meeting of June 21, 2023, at which a quorum was present, the ANC voted to support the Application. The ANC 5B Report did not express issues or concerns. (Ex. 12C.)
48. ANC 5F submitted a Resolution in Support of the Application, dated May 23, 2023 (the "ANC 5F Report"), stating at its properly noticed public meeting of May 23, 2023, at which a quorum was present, the ANC voted to support the Application. The ANC 5F Report did not express issues or concerns. (Ex. 12 D.)

PERSONS IN OPPOSITION

49. A letter raising questions and concerns about the Application's impact on the existing structures and residences along 9th Street, NE, its impact on traffic patterns along 9th Street, NE, its impact on on-street parking, its impact on privacy, and its impact on rodents were submitted by Mary Hughes. (Ex. 29.)

NATIONAL CAPITAL PLANNING COMMISSION ("NCPC")

50. The Commission referred the Application to the National Capital Planning Commission ("NCPC") on [REDACTED], 2023, 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. __.)
51. On [REDACTED], 2024, NCPC filed a report stating 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. [REDACTED].)

CONCLUSIONS OF LAW

1. Section 1 of the Zoning Act of 1938 (effective June 20, 1938, as amended, 52 Stat. 797; 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. The Commission concludes the Application advances the purposes of the Zoning Act. The Commission found the Applicant’s testimony compelling 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. 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.
5. The Commission concludes, based on the filings and testimony of the Applicant and OP, that the Map Amendment from the PDR-1 zone to the MU-7A 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.
6. Even if the Map Amendment conflicts with one or more individual policies associated with the CP, this does not, in and of itself, preclude the Commission from concluding that the Map Amendment would be consistent with the CP as a whole. (*See Durant v. D.C. Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013).)

Racial Equity

7. The Commission concludes that the Map Amendment is not inconsistent with racial equity policies because:

- The increase in allowable density permitted by the Map Amendment would help the District achieve its goal of achieving a minimum of 15 percent affordable housing units in each planning area by 2050. (FF. 33.); and
- The Map Amendment would support new housing, including affordable housing, that would help advance racial equity and opportunity. (FF. 33.)

GPM

8. The Commission concludes that the Map Amendment is not inconsistent with the GPM's designation of the Property as a Neighborhood Conservation Area because:
 - The Neighborhood Conservation Area designation is not intended to stifle development opportunities, and the Map Amendment has the potential to result in new development that will support the existing neighborhood character and that will address city-wide priorities (FF 29.); and
 - The existing PDR-1 zoning constrains potential development opportunities at the Property, whereas the proposed MU-7A zone has the capability of supporting additional density and enhanced development standards, ultimately strengthening the neighborhood. For example, the proposed MU-7A zone would permit the construction of a new commercial and residential building, including affordable housing, which would address critical District-wide housing needs. (FF 30.)

FLUM

9. The Commission concludes that the Map Amendment is not inconsistent with the Property's Mixed Use Moderate Density Residential / Moderate Density Commercial FLUM designation because:
 - The MU-7A zone permits a maximum density of 4.0 (4.8 with IZ), which falls within the FAR contemplated by the Moderate Density Commercial FLUM category, which specifies a density ranging between 2.5 FAR and 4.0 FAR, with greater density being possible when complying with IZ or when approved through a Planned Unit Development. (FF 30.)

Upper Northeast Planning Area Element

10. The Commission concludes that the Map Amendment furthers the policies of the Upper Northeast Planning Area Element because the Map Amendment will provide for increased development potential, enhancing both the residential character and economic vitality of the surrounding area. Additionally, the Commission concludes that the Map Amendment will lead to a more connected neighborhood, provide new housing development and affordable housing opportunities, and will facilitate access to public transit. (FF 31.).

Land Use Element

11. The Commission concludes that the Map Amendment furthers the Land Use Element because:
 - The Map Amendment will facilitate the redevelopment of a vacant lot with a mix of uses at a site that is well-positioned to enhance the surrounding neighborhood and the vitality of the 9th Street corridor between the Rhode Island Avenue and Brookland/CUA Metrorail station. (FF 32.)

- The Map Amendment will help the District meet its long-term neighborhood and citywide demands for additional housing and affordable housing. (FF 32.)

Housing Element

12. The Commission concludes that the Map Amendment furthers the Housing Element because it will require IZ Plus for any future residential development, which would help the District towards its goals of ensuring that one-third of the new housing built from 2018 to 2030 is affordable. (FF 33.)

Transportation Element

13. The Commission concludes that the Map Amendment furthers the Transportation Element as it will facilitate a new mixed-use development at the Property that is likely to involve streetscape improvements, and has the potential to result in a development that stabilizes the streetscape with an improved pedestrian network and would also support the District's goals of providing more housing, including affordable housing, in proximity to safe, affordable, and reliable transportation regardless of a person's age, race, income, geography, or physical ability. (FF 34.)

Environmental Protection Element

14. The Commission concludes that the Map Amendment is not inconsistent with the policies of the Environmental Protection Element because the Map Amendment will facilitate the redevelopment of the Property with new development that is required to comply with applicable Building Code requirements and energy-efficient building systems and technologies, therefore furthering the District's energy efficiency goals and complying with the Green Building Act. (FF 35.)

GREAT WEIGHT TO THE RECOMMENDATIONS OF OP

15. 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)).
16. 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's rezoning would not be inconsistent with the CP Maps, the Citywide Elements and Area Element, and would advance the CP racial equity goals when evaluated through a racial equity lens, as discussed above. The Commission also concurs with OP that the proposed Map Amendment is appropriate for an IZ Plus set-aside requirement. (FF 42–44.)

"GREAT WEIGHT" TO THE ANC REPORTS

17. 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. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted)).

18. The ANC 5B Report and the ANC 5F Report expressed the ANCs’ recommendation of support for the Map Amendment. The Commission concurs with the ANCs’ recommendations. (FF. 46, 47.)

DECISION

In consideration of the record for Z.C. Case No. 23-04 and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and, therefore, **APPROVES** the Application to amend the Zoning Map as follows:

SQUARE	LOT(S)	MAP AMENDMENT
3832	806	PDR-1 to MU-7A

Proposed Action

Vote (December 11, 2023): 4-0-1 (Robert E. Miller, Joseph Imamura, Tammy M. Stidham, Anthony J. Hood to **APPROVE**; 3rd Mayoral Appointee seat vacant.)

Final Action

Vote (January 25, 2024): 4-0-1 (Robert E. Miller, Joseph Imamura, Tammy M. Stidham, Anthony J. Hood to **APPROVE**; 3rd Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 23-04 shall become final and effective upon publication in the *D.C. Register*, that is on [REDACTED], 2024.

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

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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.

DRAFT