

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 23-09**  
**Z.C. CASE NO. 23-09**  
**650 Morton Street NW, LLC**  
**(Zoning Map Amendment @ Square 3040, Lots 33 & 34)**  
**January 25, 2024**

Pursuant to notice, at its January 25, 2024 public meeting<sup>1</sup>, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) for a Zoning Map amendment by 650 Morton Street NW, LLC (the “Applicant”) for approval of a map amendment of the Zoning Map from the RF-1 zone to the RA-3 zone (the “Map Amendment”) for Lots 33 and 34 in Square 3040 (collectively referred to as 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. The Property shall be indicated with an “IZ+” symbol on the Zoning Map. For the purposes of calculating an IZ Plus set-aside requirement pursuant to Subtitle C § 1003, the maximum permitted FAR of the Property’s existing zoning of RF-1 is the equivalent of 0.9 FAR.

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

**FINDINGS OF FACT**

**I. BACKGROUND**

**PARTIES**

1. In addition to the Applicant, the parties to this case were: Advisory Neighborhood Commission (“ANC”) 1E, the ANC in which the Property is located and the “affected ANC” pursuant to Subtitle Z §§ 101.8 and 403.5(b).
2. The Commission received no requests for party status.

**NOTICE**

3. On March 3, 2023, 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 1E, as required by Subtitle Z § 304.5. (Exhibit [“Ex.”] 2B.

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<sup>1</sup> At its December 14, 2023 public meeting, the Commission took proposed action on the Application.

4. On April 20, 2023, the Office of Zoning (“OZ”) sent notice of filing of the Application to:
  - Applicant;
  - ANC 1E;
  - ANC Single Member District (“SMD”) 1E02;
  - Office of the ANCs;
  - Office of Planning (“OP”);
  - District Department of Transportation (“DDOT”);
  - At-Large Councilmembers and the Chairman of the Council;
  - The Ward 1 Councilmember;
  - Department of Energy & Environment (“DOEE”);
  - Department of Buildings (“DOB”);
  - Office of Zoning Legal Division (“OZLD”); and
  - Property owners within 200 feet of the Property.(Ex. 9.)
5. OZ published notice of filing in the May 5, 2023, issue of the *District of Columbia Register* (70 DCR 6761 *et seq.*). (Ex. 8.)
6. On August 23, 2023, OZ sent notice of the November 2, 2023 virtual public hearing to:
  - Applicant;
  - ANC 1E;
  - ANC/SMD 1E02;
  - Office of the ANCs;
  - OP;
  - DDOT;
  - At-Large Councilmembers and the Chair of the Council;
  - The Ward 1 Councilmember;
  - DOEE;
  - DOB;
  - OZLD; and
  - Property owners within 200 feet of the Property.(Ex. 18, 19.)
7. OZ published notice of the public hearing in the September 1, 2023 issue of the *District of Columbia Register* (70 DCR 11618 *et seq.*), as well as on the calendar on OZ’s website. (Ex. 17.)
8. Pursuant to Subtitle Z §§ 402.8 and 402.9, the Applicant filed an affidavit supported by photos stating that on September 23, 2023, it had posted the required notice of the public hearing. (Ex. 24.)
9. Pursuant to Subtitle Z § 402.10, the Applicant filed an affidavit attesting that it had maintained the posting of the notice on the Property. (Ex. 29.)

### **THE PROPERTY AND SURROUNDING AREA**

10. The property to be rezoned is made up of two adjoining lots, the 650 Property and the 654 Property, (collectively, the “Property”), located in the northwest quadrant of the District.
11. The square within which the Property lies is generally bounded by Morton Street to the north, Georgia Avenue to the west, Lamont Street to the south, and a public alley to the east.
12. The 650 Property is currently improved with a vacant single-family dwelling (rowhouse) and the 654 Property is currently improved with a 13-unit apartment building.
13. The 654 Property has existed as an apartment building since at least 1943, according to the Certificates of Occupancy.
14. Across the alley from the Property to the west is a commercial property on Georgia Avenue, zoned NMU-4/GA, currently containing a mix of uses such as a beer garden, office use, and a USPS office.
15. The area is characterized by a mix of commercial and residential uses. Accordingly, there are a variety of commercial uses in the immediate area. Similarly, there are a mix of residential uses, including single-family row buildings, flats, and larger apartment buildings.
16. The area is well served by public transportation. The Property is located approximately 400-500 feet from a number of bus stops on Georgia Avenue. The Property is located four-tenths of a mile from the Georgia Avenue-Petworth Metro Station, and seven-tenths of a mile from the Columbia Heights Metro Station.

### **CURRENT ZONING**

17. The Property is zoned RF-1. The purpose of the RF-1 zone is to provide for areas predominantly developed with residential row buildings on small lots within which no more than two principal dwelling units are permitted. (Subtitle E § 101.4.)
18. The RF-1 zone imposes the following limits for matter-of-right developments:
  - a. Two principal dwelling units per lot subject to Subtitle U, Use Permissions, or more than two principal dwelling units pursuant to Subtitle U, Chapter 3; (Subtitle E §§ 201.1, 201.2.)
  - b. A maximum height of 35 feet with a limit of three stories; (Subtitle E § 203.2.)
  - c. A maximum lot occupancy of 60% for single household dwellings and flats; (Subtitle E § 210.1.) and
  - d. A minimum rear yard of 20 feet. (Subtitle E § 207.1.)

## **COMPREHENSIVE PLAN (TITLE 10A DCMR [THE “CP”])**

### **Equity and the Comprehensive Plan**

19. 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.
20. In applying the standard of review applicable to the Map Amendment, the CP requires the Commission to do so through a racial equity lens. (CP § 2501.8.) 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 inconsistent” with the CP, rather than a separate determination about a zoning action’s equitable impact.
21. 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.)
22. 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.) In addition, CP § 2501.8 suggests to prepare and implement tools to use as a part of the Commission’s evaluation process. Consistent with CP guidance, the Commission utilizes a Racial Equity Analysis Tool in evaluating zoning actions through a racial equity lens; the Commission released a revised Tool on February 3, 2023. The revised Tool requires submissions from applicants and the Office of Planning analyzing the zoning action’s consistency with the Citywide and Area Elements of the CP, and Small Area Plans, if applicable (Part 1); a submission from applicants including information about their community outreach and engagement efforts regarding the zoning action (Part 2); and a submission from the Office of Planning including disaggregated race and ethnicity data for the Planning Area affected by the zoning action (Part 3).

### **Generalized Policy Map (the “GPM”)**

23. The CP’s GPM designates the Property as a Neighborhood Enhancement Area.  
Neighborhood Enhancement Areas – *“Neighborhood Enhancement Areas are neighborhoods with substantial amounts of vacant and underutilized land. They include*

*areas that are primarily residential in character, as well as mixed-use and industrial areas. Many of these areas are characterized by a patchwork of existing homes and individual vacant lots, some privately owned and others owned by the public sector or non-profit developers. These areas present opportunities for compatible infill development, including new single-family homes, townhomes, other density housing types, mixed-use buildings, and, where appropriate, light industrial facilities. Land uses that reflect the historical mixture and diversity of each community and promote inclusivity should be encouraged. (CP § 225.6). The guiding philosophy in Neighborhood Enhancement Areas is to ensure that new development responds to the existing character, natural features, and existing/planned infrastructure capacity. New housing should be encouraged to improve the neighborhood and must be consistent with the land-use designation on the Future Land Use Map and with Comprehensive Plan policies. The unique and special qualities of each area should be maintained and conserved, and overall neighborhood character should be protected or enhanced as development takes place. Publicly owned open space within these areas should be preserved and enhanced to make these communities more attractive and desirable.” (CP § 225.7).*

#### **Future Land Use Map (the “FLUM”)**

24. The CP’s FLUM Designates the Property Medium Density Residential. 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.” (CP § 227.7.)*

#### **Mid-City Area Element**

25. The Property falls within the Mid-City Area Element, and more specifically, the Columbia Heights Neighborhood. According to the Comprehensive Plan, “[u]nlike some changing neighborhoods in the District, Columbia Heights has not become homogeneous: White, Asian, Black, and Hispanic/Latino residents each make up at least 10 percent of the population—and no group constitutes a majority. Housing includes high-priced condominiums and townhouses, as well as public and middle-income housing and even multimillion-dollar homes. The neighborhood includes several public schools, including nine public charter schools. The neighborhood has dozens of new restaurants, shops, and nightlife.” (CP § 2001.12). The Mid-City Area Element encourages the preservation of existing affordable housing, either through rehabilitation or replacement of existing units with new affordable units. (CP § 2007.3).

## **II. THE APPLICATION**

#### **PROPOSED ZONING**

26. The Application proposes to rezone the Property from the RF-1 zone to the RA-3 zone.

27. The RA-3 zone “provides for areas developed with predominately medium-density residential.” (Subtitle F § 101.6.)
28. As a matter of right, the RA-3 zone permits/requires:
  - a. A maximum FAR of 3.0 (3.6 with IZ); (Subtitle F §§ 201.1, 201.4.)
  - b. A 60-foot maximum height, not including the penthouse; and (Subtitle F § 203.2.)
  - c. A maximum 75% Lot Occupancy. (Subtitle F § 210.1.)

#### **APPLICANT’S JUSTIFICATION OF RELIEF**

##### **Not Inconsistent with the CP**

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

##### **GPM**

30. The Application asserted that the Map Amendment would not be inconsistent with the Property’s designation as a Neighborhood Enhancement Area on the GPM because the Map Amendment will facilitate an opportunity to redevelop an underutilized site with multi-family development to provide additional housing adjacent to a major transit corridor.

##### **FLUM**

31. The Application asserted that the Map Amendment would not be inconsistent with the Property’s designation as Medium Density Residential on the FLUM because:
  - a. The CP Framework Element expressly states that the RA-3 zone is consistent with the Medium Density Residential FLUM category; and
  - b. The RA-3 zone’s maximum 3.0 FAR (3.6 with IZ) falls within the typical density range contemplated by the Medium Density Residential FLUM category.

##### **Racial Equity**

32. The Application asserted that the Map Amendment will further CP racial equity goals.
33. Community Outreach and Engagement- The Applicant provided information in its responses to the Community Outreach and Engagement component of the Commission’s revised Racial Equity Tool. The Applicant provided evidence that it conducted outreach regarding the Map Amendment with various community stakeholders, including ANC 1E, the Single Member District for the area, tenants residing in the 654 Property and nearby, and the Park View community generally through mailers. (Ex. 10, 14, 14E, 33.) The Applicant identified several attributes which helped define the community impacted by the Map Amendment, as follows:
  - a. The Property is located in the Park View Neighborhood, a historic African American neighborhood. The immediate area has a history of lack of investment in infrastructure. Based on the input received from the ANC, immediately impacted residents, and the larger surrounding community, the Map Amendment’s potential to provide affordable

- housing through IZ Plus and development in proximity to public transportation were emphasized as potential positive outcomes; and
- b. The Map Amendment will allow for development of a mix of affordable and market rate housing on the 650 Property; and allow for more flexibility in maintaining and upgrading the existing building on the 654 Property. The Map Amendment will not result in the direct displacement of any residents as the 650 Property has no existing residents and the owner of the 654 Property, who submitted a letter to the case record (Ex. 14D.), stated his commitment to maintain the existing thirteen-unit apartment building on the 654 Property. The owner stated that he rents at below market rates to predominately Hispanic tenants, and he has no plans to sell or redevelop the 654 Property as it would not be in his interest to displace existing paying tenants. (*Id.*)

#### **Mid-City Area Element**

34. The Application asserted that the Map Amendment is not inconsistent with the goals of the Mid-City Area Element by preserving affordable housing and providing new market rate and affordable housing near a high-volume corridor (Georgia Avenue). (Ex. 14.)

#### **Land Use Element**

35. The Application asserted that the Map Amendment is not inconsistent with the policies of the Land Use Element because the proposed Map Amendment will encourage new housing and new affordable housing along a priority corridor and has the potential to add to the beautification and revitalization of the neighborhood. (Ex. 2, 14; CP §§ 307.14, 307.20.)

#### **Housing Element**

36. The Application asserted that the Map Amendment is not inconsistent with the policies of the Housing Element because the Map Amendment will encourage new affordable and market rate housing of higher density in the area. (Ex. 2, 14; CP §§ 503.3, 503.5, 504.17, 504.29.)

#### **Transportation Element**

37. The Application asserted that the Map Amendment is not inconsistent with the policies of the Transportation Element because the Map Amendment will encourage transit-oriented development around a Bus Priority Corridor. The Property is also less than one-half mile from the Georgia Avenue-Petworth Metrorail station. Development on the Property could incentivize investment into surrounding infrastructure. (Ex. 2, 14; 1CP §§ 403.10, 405.7.)

#### **Environmental Protection Element**

38. The Application asserted that the Map Amendment is not inconsistent with the policies of the Environmental Protection Element because the Map Amendment would allow for the development of new buildings compliant with the Green Energy codes, which could include green roofs and other planting elements currently not on site. (Ex. 2, 14; CP §§ 615.3-4.)

#### **Public Hearing Testimony**

39. At the November 2, 2023, public hearing, the Applicant presented its case, including testimony from:

- Martin Sullivan, Partner, Sullivan & Barros, LLP, and;
- Christopher Burns, Representative of the Applicant.  
(Transcript [“Tr.”] from November 2, hearing at pp. 19)

### **Post-hearing Submission**

40. At the hearing, the Commission requested that the Applicant provide a massing study; and communicate with those who testified in opposition and update the Commission on those communications.
41. In its post-hearing submission (Ex. 36.), the Applicant submitted the following documentation, as requested by the Commission:
  - A massing study to illustrate the maximum matter-of-right massing on the site under the proposed RA-3 zoning; (Ex. 36A.)
  - An email, dated November 7, 2023, to the neighbors who testified in opposition providing additional information on the proposed Map Amendment and a copy of the massing study; and (Ex. 36B.)
  - An email summary of an in-person meeting, on November 20, 2023, between neighbors and Chris Burns, Applicant representative, where they discussed potential design approaches, historic preservation, green area in future development, privacy concerns, and potential development heights in relation to surrounding structures. (Ex. 36C.)

## **III. RESPONSES TO THE APPLICATION**

### **OP REPORTS AND TESTIMONY**

42. OP submitted a report dated June 19, 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, on balance, would not be inconsistent with the CP maps, and policies of the CP that support increasing density to permit more housing, including affordable housing, in proximity to transit and services along Georgia Avenue, N.W. (Ex.11.) The OP Setdown Report made the following conclusions<sup>2</sup>:
  - a. **GPM** – Densities for the Neighborhood Enhancement Areas are guided by the property’s FLUM designation. The proposed rezoning from the RF-1 zone to the RA-3 zone would not be inconsistent with the Policy Map because the proposed RA-3 zone would be consistent with the property’s FLUM designation. The RA-3 zone primarily allows larger residential apartment homes compared to the RF-1 zone, which does not allow mid-rise apartment buildings without the requisite land area of 900 s.f. per unit.

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<sup>2</sup> The OP Setdown Report incorrectly states that the Property is located in the Rock Creek East Planning Area when the Property is actually located in the Mid-City Planning Area. As a result of this error, the disaggregated race and ethnicity data included in the OP Setdown Report does not apply to the Property and any racial equity related outcomes specific to the data in the OP Setdown Report are unreliable. OP corrected this error and provided disaggregated race and ethnicity data for the Mid-City Planning Area in its Hearing Report. (Ex. 28.) For this reason, no racial equity discussion is provided under the discussion of the OP Setdown Report in Finding of Fact No. 42 of this Order. The discussion of OP’s disaggregated race and ethnicity data for the Mid City Planning Area and its racial equity analysis is provided under the OP Hearing Report in Finding of Fact No. 44 of this Order.

The additional number of units and affordable units would add favorably to the District's housing stock in a transit accessible location;

- b. **FLUM** – The proposed rezoning from the RF-1 zone to the RA-3 zone would not be inconsistent with the Comprehensive Plan's FLUM. The RA-3 zone would permit medium-density residential development with a maximum FAR of 3.0 and up to 3.6 for the provision of IZ units. The proposed zone would allow for more residential units within a multi-story apartment house;
- c. **Land Use Element** – The proposed map amendment would permit medium density residential uses, including mid-rise apartment houses, which is not permitted by the existing RF-1 zone in proximity to the Georgia Avenue, N.W. bus priority transit route. The RA-3 zone would allow for substantially more housing to be built overall, both affordable and market-rate, within a larger structure. Any residential development that would result from the rezoning would be subject to IZ Plus, which would require more IZ units to be built than the Regular IZ set-aside requirements. The map amendment would be a new opportunity for the provision of housing on the combined lot to help advance racial equity and opportunity; (CP §§ 307.14, 307.20, 310.7, 310.10, 310.15, 310.17.<sup>3</sup>)
- d. **Transportation Element** – The subject property is within one block east of the 70 Metrobus line and approximately 1,000 feet from the 79 Metrobus line, which provides faster limited-stop service to Silver Spring via Georgia Avenue. The map amendment could also support the District's goals of enabling 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; (CP §§ 403.10, 403.13.)
- e. **Housing Element** – The map amendment would require IZ Plus for any future residential development, which could help the District towards its goals of ensuring that one-third of the new housing built from 2018 to 2030 be affordable to persons earning 80% or less of the MFI. The application of an IZ Plus set-aside requirement would also support mixed-income housing by encouraging affordable housing. The IZ Plus regulations also provide an incentive for property owners to provide larger family-sized units that are three-bedrooms or larger and an incentive for property owners to provide units for households earning 50% MFI or less. The proposal would also help the District achieve its goal of achieving a minimum of 15% affordable housing units in each planning area by 2050; and (CP §§ 503.3, 504.7, 504.8, 504.10, 504.13, 504.17, 504.18, 504.19, 505.9.)
- f. **Potential CP Inconsistencies** - The OP Setdown Report acknowledged that the proposal could be viewed as potentially inconsistent with certain CP policies. Specifically, the proposed RA-3 zone could be viewed as possibly conflicting with Land Use Element Policy LU-2.1.7: Row House Neighborhood Character because it calls for the respect of rowhouse character. (CP § 310.14.) The proposed rezoning could also be viewed as possibly conflicting with parts of the Framework Element Guiding Principle 14 Creating Successful Neighborhoods because it calls for conserving row houses and restoring neighborhood main streets through sensitive renovation and updating. (CP § 220.6.) However, the OP Setdown Report concluded that these

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<sup>3</sup> The CP policies cited under Finding of Fact No. 42 for the Land Use, Transportation, and Housing Elements are those cited in both the OP Setdown and the OP Hearing Report. (Ex. 11, 28.)

potential conflicting CP policies are outweighed by the citywide priority need for additional and affordable housing, the redevelopment potential of the property consistent with the medium density residential designation of the FLUM with IZ Plus, and the location of the lots as a transition between the commercial corridor and the rowhouse neighborhood.  
(Ex. 11.)

43. The OP Setdown Report also stated that an IZ Plus set-aside requirement was appropriate for the Map Amendment, pursuant to Subtitle X § 502.1(b), noting that the map amendment would rezone the property to RA-3, which allows a higher maximum permitted FAR than the existing RF-1 zone. (Ex. 11.)
44. OP submitted a hearing report (the “OP Hearing Report”), dated October 23, 2023, that largely reiterated the OP Setdown Report’s conclusions, and included a corrected Racial Equity Analysis with disaggregated race and ethnicity data for the Mid-City Planning Area, in which the Property is located<sup>4</sup>. (Ex. 28.) The OP Hearing Report made the following observations and conclusions regarding racial equity:
- **Racial Equity** – The OP Hearing Report states that the proposal could potentially increase the residential development through IZ for dedicated housing affordability in the neighborhood and Planning Area, is not inconsistent with the Citywide Elements of the CP and would further racial equity policies of the Land Use, Transportation, and Housing Elements as well as the Mid-City Area Element. The OP Hearing Report also notes that the Mid-City Planning Area currently exceeds the Mayor’s 2025 affordable housing goal and will continue to do so into 2025:
    - Disaggregated Race and Ethnicity Data – OP provided data for the Mid-City Planning Area showing that for both the period between 2012-2016 and 2017-2021, Whites made up the largest portion of the Planning Area population, at 51.98% then falling slightly to 49.73%. Over the same period, the Black population decreased from approximately 33% (2016) to 28% (2021) while most of the other races or ethnicity groups saw an increase or retained their percentage of the population. The median income of the Planning Area was higher than Districtwide over both periods; and the Planning Area saw a median income increase of approximately \$27,686 while the Districtwide increase was approximately \$21,000. Still, Blacks had the lowest median income in the Planning Area and the lowest increase in income for both time periods. The data seems to indicate that the Planning Area population is becoming more diverse due to increased housing opportunities and advances in median income; and
    - Displacement – The OP Hearing Report acknowledges that 654 Property currently has existing residents; however, as stated by the owner of the Property at Exhibit 14D, the proposal will not result in displacement of these residents. OP notes that it does not anticipate indirect displacement as a result of the proposal given the future provision of additional market rate and affordable housing;

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<sup>4</sup> In response to the Commission’s question to OP of whether rezoning the remaining RF-1 lots along Morton Street within the Property square was appropriate, the OP Hearing Report provided a response explaining that it does not recommend additional rezonings on Morton Street. (See Ex. 28, p. 2-3.)

- Mid-City Area Element – The OP Hearing Report states that the proposal would advance policies of the Area Element because it would facilitate infill and rehabilitation on the site, and development of new housing, including affordable housing; and (CP § 2008.4.)
  - Potential CP inconsistencies – The OP Hearing Report states that the proposal is potentially inconsistent with the following CP policies that call for the conservation of rowhouse neighborhoods:
    - Policy MC-1.1.5: *Conservation of Row House Neighborhoods*; and
    - Policy LU-2.1.7: *Row House Neighborhood Character*
- (Ex. 28.)

45. At the November 2, 2023 public hearing, OP reiterated its support for the Application as detailed in its reports. (Hearing Tr. at p. 41.)

### **DDOT REPORT**

46. DDOT submitted an October 23, 2023, report (the “DDOT Report”), stating that it had no objection to the Application because the site is less than one-half mile from the Georgia Avenue-Petworth Metrorail Station and less than one-fourth mile from the 79 Bus Priority Route on Georgia Avenue, N.W.: (Ex. 27.)
- The proposed RA-3 (Residential Apartment - Moderate Density) zone would allow for approximately 43 more residential units on the property than the maximum allowed in the existing RF-1 zoning;
  - The increased density is expected to generate a moderate increase the amount of transit, biking, and walking trips, and a minor increase in the amount of generated vehicle trips;
  - The additional vehicle trips generated by the additional density are expected to have minimal impact on the roadway network;
  - Since the site is proximate to Metrorail and priority bus service, DDOT encourages the Applicant to minimize the amount of off-street parking provided with any future redevelopment proposals. Per DDOT’s January 2022 Guidance for Comprehensive Transportation Review, ideally no more than 0.35 vehicle spaces per unit (1 per 3 units);
  - Any development proposals for the site will need to account for a long-term bicycle parking storage room, either below- or at-grade in an easily accessible location from the lobby, as well as short-term bicycle parking, as required by 11 DCMR 801 and 18 DCMR 1214;
  - The site currently has access to an existing 15-foot rear public alley. When the site redevelops, it is expected that all loading, trash pick-up, and vehicle parking will take place from the rear alley;
  - DDOT will not support any new curb cuts to the property from Morton Street, N.W.; and
  - The proposed up-zoning would support nearby transit and generate additional foot traffic to support nearby businesses. This is consistent with DDOT’s approach to infill sites which should be dense, compact, transit oriented, and improve the public realm.
47. DDOT did not provide testimony at the public hearing.

### **ANC REPORTS AND TESTIMONY**

48. On July 2, 2023, ANC 1E submitted a report stating that at its regularly scheduled properly noticed public meeting on June 28, 2023, with a quorum present, the ANC voted 6-0-0 to support the Map Amendment application. (Ex. 12.) The ANC report did not list any issues or concerns.
49. On December 4, 2023, ANC 1E submitted an addendum to its previously submitted report to state its position on three conditions of approval requests that were made by opponents of the application during the November 2, 2023 hearing. (Ex. 12A.) The addendum states that the ANC considered the three condition requests at a properly noticed public meeting on November 29, 2023, with a quorum present, and voted 5-0-0 against the three<sup>5</sup> requests. (*Id.*)

### **PERSONS IN SUPPORT**

50. Three letters in support were submitted to the case record. (Ex. 30-32.)

### **PERSONS IN OPPOSITION**

51. Similar letters in opposition were submitted to the record by neighbors on Morton Street, citing the following concerns regarding the Map Amendment proposal: removal of the large tree on the site, no height limitation on the site, the lack of preserving historic neighborhood integrity, and on street parking impacts. (Ex. 20, 21, 26, 34.) The opposition letters proposed three conditions of approval, as follows:
- The layout of the building must accommodate the current large tree;
  - Height restrictions of three stories must be maintained, they can go deeper into the lot; and
  - They must maintain one parking spot for every two-unit existing ratio.”
- (*Id.*)
52. Three people testified in opposition at the November 2, 2023 hearing, two of whom also submitted letters in opposition; and reiterated many of the same concerns posed in the opposition letters. (Hearing Tr. at pp. 53-60.) At the hearing, the Applicant responded to many of the concerns raised, as follows:
- The Applicant stated it contacted an arborist about the large tree on the site and learned it was in poor condition, its roots were interfering with neighboring properties, and it was harboring rodents;
  - The Applicant and OP stated that the maximum height under the proposed RA-3 zone is consistent with the heights of several nearby buildings, including across the street from the site; and
  - The Applicant stated that concerns about historic integrity and parking impacts were related to future development of the site and because the application is a map amendment, there is no specific project before the Commission for discussion. But the

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<sup>5</sup> The opponent requests were for the Commission to impose the following three conditions of approval: (1) that the layout of the building must accommodate the current large tree on the site; (2) that height restrictions of 3 stories must be maintained; and (3) that a 1 parking spot for every 2-unit existing ratio must be maintained. The ANC addendum provides a discussion for its rationale in rejecting these three condition requests. (See Ex. 12A.) These three requests are also discussed in Finding of Fact No. 51.

Applicant did note that any future development would have to conform to parking requirements. (Hearing Tr. at pp. 24, 26, 28, 37, 41, 47, 82.)

**NATIONAL CAPITAL PLANNING COMMISSION (“NCPC”)**

53. The Commission referred the Application to NCPC on December 18, 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. 38.)
54. On January 24, 2024, NCPC staff filed a letter stating that the proposal falls under an exception listed in NCPC’s submission guidelines, and NCPC staff has determined that the proposal is exempt from review. (Ex. 39.)

**CONCLUSIONS OF LAW**

1. Section 1 of the Zoning Act of 1938 (effective June 20, 1938, as amended, 52 Stat. 797 Ch. 534; D.C. Official Code § 6-641.01 *et seq.* (2012 Repl.)) (the “Zoning Act”) authorizes the Commission to create zones within which the Commission may regulate the construction and use of property in order to “promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital.”
2. Section 2 of the Zoning Act (D.C. Official Code § 6-641.02) further provides that:

*Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers, to promote health and the 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 of 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 of districts and of land values therein.*
3. Pursuant to Subtitle X § 500.3, the Commission shall find that the map amendment is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Property.

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

4. The Commission concludes, based on the filings and testimony of the Applicant and OP, that the Map Amendment from the RF-1 to the RA-3 zone is not inconsistent with the CP on

the whole, including its CP maps and elements, and will advance a number of CP Elements as discussed below.

5. 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. (*Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013).) In this case, the Commission concludes that any inconsistencies with CP policies, including policies that call for the conservation of rowhouse neighborhoods and respect of rowhouse character, are outweighed by the Map Amendment's overall consistency with the CP Maps and Citywide and Area Element policies, which support, among other things, increasing density to permit more housing, including affordable housing, in proximity to transit on an underutilized property. (Finding of Fact ["FF"] 42, 44.)

### **Racial Equity**

6. The Commission concludes that the Map Amendment is not inconsistent with the CP when evaluated through a racial equity lens. The Commission reaches this conclusion based on the case record and the racial equity analyses provided by the Applicant, inclusive of community outreach and engagement information, and the OP Hearing Report, inclusive of disaggregated race and ethnicity data for the Mid-City Planning Area. (FF 33, 44.) The Commission finds that the racial equity analyses provided address the components of the Commission's Racial Equity Tool and will further CP racial equity goals, as discussed in more detail below:
  - The Map Amendment would increase the allowable density to medium density levels and would permit increased residential use that will enhance the Property's opportunity for development with market rate and affordable housing, and an IZ Plus set-aside requirement will apply to the Map Amendment to further increase the affordable housing supply;
  - The increase in allowable density permitted by the Map Amendment could help to balance supply and demand of housing which could help mitigate increases in housing prices and costs;
  - Community Outreach and Engagement – The Commission finds that the Applicant's racial equity analysis included evidence that it conducted community outreach and engagement with ANC 1E, the Single Member District for the area, tenants residing in the 654 Property and nearby, and the Park View community generally through mailers. (FF 33.) The Commission acknowledges that some of the opposition testimony at the hearing cited failures in the Applicant's outreach and engagement efforts. Because of this opposition testimony and the other concerns raised during the hearing, the Commission asked the Applicant to meet with opponents to address their concerns and report back to the Commission. (FF 40, 41.) The Applicant complied with the Commission's request and the Commission finds the Applicant's efforts to engage the surrounding community and the opponents adequate;
  - Displacement – The Commission is persuaded, based on the letter from the owner of the 654 Property, that the proposal will not result in the direct displacement of existing residents. (FF 33, 44.) There are no existing residents in the 650 Property. (FF 12, 33.)

The Commission acknowledges that the proposal could have indirect displacement impacts on the surrounding community but is hopeful that any such impacts would be mitigated by the additional housing the proposal will facilitate; and (FF 44.)

- Disaggregated Race and Ethnicity Data - The OP Hearing Report racial equity analysis included disaggregated race and ethnicity data for the Mid-City Planning Area showing that over the period from 2012-2021, the White population remained relatively steady, shifting from 51.98% (2012-2016) down to 49.73% (2017-2021). While most of the other races or ethnicity groups saw an increase or retained their percentage of the population over the period from 2016 to 2021, the Black population declined from approximately 33% (2016) to 28% (2021). Blacks also had the lowest median income in the Planning Area and the lowest increase in income for both 2012-2016 and 2017-2021. Despite the reduced Black population, the Planning Area is becoming more diverse and has seen advances in median income. The Commission is hopeful that the proposal's potential to increase housing opportunities will create opportunities for minority populations, including Blacks, to live in the neighborhood and stay in the neighborhood. (FF 33, 44.)

#### **GPM**

7. The Commission concludes that the Map Amendment is not inconsistent with the GPM's designation of the Property as a Neighborhood Enhancement Area because the Map Amendment will facilitate redevelopment of an underutilized site with multi-family development adjacent to a major transit corridor that could enhance the surrounding neighborhood. (FF 23, 30, 42.)

#### **FLUM**

8. The Commission concludes that the Map Amendment is not inconsistent with the Property's Medium Density Residential FLUM designation because:
  - The CP Framework Element expressly states that the RA-3 zone is consistent with the Medium Density Residential FLUM category, and the RA-3 zone is intended to permit medium-density development; and
  - The RA-3 zone's maximum 3.0 FAR (3.6 with IZ) falls within the typical density range contemplated by the Medium Density Residential FLUM category. (Ex. 24, 27, 28, 31, 42.)

#### **Mid-City Area Element**

9. The Commission concludes that the Map Amendment furthers the policies of the area element because it will balance the goals and policies of the Mid City Area Element by facilitating new market-rate and affordable multi-family housing adjacent to Georgia Avenue, N.W. (FF 25, 34, 44.)

#### **Land Use Element**

10. The Commission concludes that the Map Amendment furthers this element because it will encourage new housing and new affordable housing adjacent to Georgia Avenue, which is a Priority Corridor in the District. (FF 35, 42.)

### **Housing Element**

11. The Commission concludes that the Map Amendment furthers this element because it will:
- Encourage the private sector to provide both new market rate and affordable housing to meet the needs of present and future District residents at a location consistent with District land use policies and objectives; and
  - Strongly encourage the development of new housing, including affordable housing, on underused land and help to 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 higher-density housing.
- (FF 36, 42.)

### **Transportation Element**

12. The Commission concludes that the Map Amendment furthers this element because it will support transit-oriented development given the Property's location adjacent to a major bus corridor and less than half a mile from the Georgia Avenue-Petworth Metro Station. (Ex. 37, 42.)

### **Environmental Protection Element**

13. The Commission concludes that the Map Amendment furthers this element because it will allow for new development compliant with the Green Energy codes, which could include green roofs and other planting elements currently not on the site. (FF 38.)

### **GREAT WEIGHT TO THE RECOMMENDATIONS OF OP**

14. 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).)
15. 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, Citywide Elements and the Mid City Area Element, and would advance the equity policies of the CP 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**

16. 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 (D.C. 1978) (citation omitted).)

17. The ANC Report expressed the ANC’s recommendation of support for the Map Amendment. The Commission acknowledges the ANC’s support for the Map Amendment. (FF 48.) The Commission also acknowledges the addendum to the ANC Report recommending that the Commission not impose the three conditions suggested by the opponents of the Map Amendment. (FF 49.) The Commission agrees with the ANC’s recommendation to not adopt the suggested three conditions for the reasons discussed below.
18. The Commission notes the opposition in this case and the opposition’s suggested three conditions of approval with regard to the large tree, height limit, and parking. (FF 51, 52.) The Commission finds that the Applicant responded to the opposition concerns and testimony regarding the large tree, the proposed RA-3 zone height limit, historic integrity, and parking impacts at the public hearing. (FF 52.) The Commission also carefully considered the advice on these issues provided in ANC 1E’s report addendum, (FF 49.), and concludes as follows. The Commission believes that the opposition concerns and suggested conditions of approval primarily relate to impacts associated with future development of the site as opposed to the appropriate matter-of-right development standards for the site, only the latter is the decision before the Commission. Accordingly, the Commission does not agree with imposing the opposition’s suggested conditions to require the layout of the building to accommodate the large tree and to require a minimum parking ratio because both conditions directly relate to future development of the site. The Commission believes there may have been some confusion about whether the proposed RA-3 zone would impose a height limit on the site. To clarify, any zone district approved for the site by the Commission, including the proposed RA-3 zone, would have a maximum height limit. Accordingly, the Commission does not agree with the opposition’s suggested condition to require a 3-story height limit. In response to the opposition concerns about the 60-foot height limit under the proposed RA-3 zone, the Commission requested that the Applicant provide a massing study to illustrate the maximum matter-of right height in relation to the surrounding neighborhood. (FF 40.) The Commission reviewed the massing study and found it helpful in providing some general context of the potential massing on the site, under the RA-3 zone, in relation to surrounding property. (FF 41.) For the reasons stated above, the Commission does not agree with the opposition’s suggested three conditions of approval. Accordingly, the Commission has given the requisite great weight to the ANC’s advice.

### **DECISION**

In consideration of the record for Z.C. Case No. 23-09 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
3040	33, 34	RF-1 to RA-3

For the purposes of calculating an IZ Plus set-aside requirement pursuant to Subtitle C § 1003, the maximum permitted FAR of the Property's existing zoning of RF-1 is the equivalent of 0.9 FAR.

**Proposed Action**

**VOTE (December 14, 2023): 4-0-1**


(Anthony J. Hood, Joseph S. Imamura, Robert E. Miller and Tammy Stidham to approve; 3<sup>rd</sup> Mayoral Appointee seat vacant.)


**Final Action**

**VOTE (January 25, 2024): 4-0-1**

(Joseph S. Imamura, Tammy Stidham, Anthony J. Hood and Robert E. Miller, to approve; 3<sup>rd</sup> Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 23-09 shall become final and effective upon publication in the *District of Columbia Register*, that is on August 23, 2024.

  
**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.