

Government of the District of Columbia  
Zoning Commission



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 23-11**  
**Z.C. CASE NO. 23-11**  
**7709 Georgia Avenue NW, LLC**  
**(Map Amendment @ Square 2961, Lot 810 [7709-7723 Georgia Avenue, N.W.])**  
**April 25, 2024**

Pursuant to notice, at its public hearing on February 22, 2024<sup>1</sup>, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) by 7709 Georgia Avenue NW, LLC (the “Applicant”) for an amendment to the Zoning Map from the MU-4 zone to the MU-10 zone (the “Map Amendment”) for the property located at 7709–7723 Georgia Avenue, N.W., which is more particularly known as Lot 810 in Square 2961 (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(b). The Property shall be indicated with an “IZ+” symbol on the Zoning Map. For 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 MU-4 is the equivalent of 2.5.

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”) 4A and ANC 4B. (Subtitle Z § 403.5.) The Property is within the boundary of ANC 4B and ANC 4A is across Georgia Avenue, N.W.; therefore, both are “affected ANCs” pursuant to Subtitle Z § 101.8.
2. The Commission received no requests for party status.

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<sup>1</sup> The Commission took proposed action at its public meeting on March 14, 2024, and final action at its public meeting on April 25, 2024.

## NOTICE

3. On February 10, 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 4A and 4B, as required by Subtitle Z §§ 304.5 and 304.6. (Exhibit (“Ex.”) 3I2.)
4. On June 27, 2023, the Office of Zoning (“OZ”) sent notice of the filing of the Application to:
  - Applicant;
  - ANC 4A and 4B;
  - ANC Single Member Districts (“SMD”) 4A01, 4A02, and 4B01;
  - Office of the ANCs;
  - Office of Planning (“OP”);
  - District Department of Transportation (“DDOT”);
  - At-Large Councilmembers and the Chair of the Council;
  - The Ward 4 Councilmember;
  - Department of Energy & Environment (“DOEE”);
  - Department of Buildings (“DOB”) General Counsel; and
  - Office of Zoning Legal Division (“OZLD”).(Ex. 7-9, 11.)
5. OZ published notice of the filing of the Application in the July 14, 2023, *District of Columbia Register* (70 DCR 9838 *et seq.*) (Ex. 10.)
6. On January 5, 2024, the Office of Zoning (“OZ”) sent notice of the February 22, 2024 public hearing to:
  - Applicant;
  - ANC 4A and 4B;
  - ANC/SMDs 4A01, 4A02, and 4B01;
  - ANC SMD 4B01;
  - Office of the ANCs;
  - OP;
  - DDOT;
  - At-Large Councilmembers and the Chair of the Council;
  - The Ward 4 Councilmember;
  - DOEE;
  - DOB General Counsel;
  - OZLD; and
  - Property owners within 200 feet of the Property.(Ex. 17, 18.)
7. OZ published notice of the public hearing in the January 12, 2024, *District of Columbia Register* (71 DCR 695 *et seq.*) (Ex. 16.)

8. 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. 19, 27.)

#### **THE PROPERTY**

9. The Property is located in the northwest quadrant of the District and consists of approximately 27,623 square feet of land area (approximately 0.63 acres). The Property is presently improved with a one-story commercial building and a surface parking lot. (Ex. 3.)
10. The Property is generally bounded by Kalmia Road, N.W. to the north, private property to the south, a 20-foot-wide public alley to the east, and Georgia Avenue, N.W. to the west. (Ex. 3.)
11. The area to the north of the Property consists of commercial and retail uses, the area to the south of the Property consists of commercial, residential, and educational uses, the area to the east of the Property is comprised of low- and moderate-density residential uses, and the area to the west of the Property is comprised of commercial uses. (Ex. 3.)
12. The Property is located on the Georgia Avenue Priority Corridor Metrobus Route. More specifically, the Georgia Avenue and Juniper Street Metrobus stop is located directly south of the Property and the Sixteenth Street Priority Corridor Metrobus Route is located less than 0.25 miles west of the Property. (Ex. 3.)

#### **CURRENT ZONING**

13. The Property is in the MU-4 zone. The MU-4 zone is intended to permit moderate-density mixed-use development, provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core, and be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers. (Subtitle G §§ 101.9(a)–(c).)
14. As a matter of right, the MU-4 zone requires/permits:
  - Building Height: 50 feet; (Subtitle G § 203.2.)
  - Penthouse Height: 12 feet and one story; except 15 feet and a second story is permitted for penthouse mechanical space; (Subtitle G § 205.1.)
  - Floor Area Ratio (“FAR”): 2.5 (3.0 w/ IZ); maximum 1.5 non-residential FAR; (Subtitle G § 201.1.)
  - Lot Occupancy: 60% (75% w/IZ); and (Subtitle G § 210.1.)
  - Green Area Ratio: 0.30. (Subtitle G § 211.1.)

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

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

15. 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.

16. 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 §§ 2501.4–2501.6, 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 consistent” with the CP, rather than a separate determination about a zoning action’s equitable impact.
17. 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.)
18. 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, the CP Implementation Element suggests to prepare and implement tools to use as a part of the Commission’s evaluation process. Consistent with Comprehensive Plan guidance, the Commission utilizes a Racial Equity Tool in evaluating zoning actions through a racial equity lens; the Commission released a revised Tool on February 3, 2023. The Tool requires submissions from applicants and OP analyzing the zoning action’s consistency with the Citywide and Area Elements of the Comprehensive Plan, 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 OP including disaggregated race and ethnicity data for the Planning Area affected by the zoning action (Part 3). Part 3 of the Tool instructs OP that Planning Area disaggregated race and ethnicity data should be compiled from four sources only, including: OP Demographic Data Hub, US Census, Open Data DC Platform, and OP Upward Mobility Dashboard. Part 3 also requests data, by affected Planning Area and by race, on total population, median income and age, vulnerable populations, homeowners, and renters; and requests data on whether the affected Planning Area is on track to meet the Mayor’s 2025 affordable housing goal as set by the Mayor’s 2019 Housing Equity Report<sup>2</sup>. Finally, the Tool includes evaluation criteria (i.e., themes/questions) for the Commission’s use along with the submissions provided in Parts 1-3 of the Tool, to evaluate

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<sup>2</sup> See the Commission’s Racial Equity Analysis Tool, February 3, 2023, Part 3, <https://dcoz.dc.gov/release/zc-racial-equity-analysis-tool-new>

the zoning action's consistency with the Comprehensive Plan through a racial equity lens (Part 4.)

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

19. 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.)
20. 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.)
21. The CP's GPM designates the Property as being within a Main Street Mixed Use Corridor that encompasses the Georgia Avenue Corridor from Eastern Avenue, N.W. to Fern Place, N.W. The CP defines Main Street Mixed Use Corridors as:

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

**Future Land Use Map (the “FLUM”)**

22. 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.)
23. The CP's FLUM designates the Property as Mixed Use Medium Density Residential/Medium Density Commercial. The CP defines Medium Density Residential as:  
*“[The Medium Density Residential] . . . 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.” (See CP § 227.7.)*

The CP defines Medium Density Commercial as:

*“[The Medium Density Commercial] . . . designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Moderate Density Commercial areas. Retail, office, and service businesses are the predominant uses, although residential uses are common. Areas with this designation generally draw from a citywide market area. Buildings are larger and/or taller than those in Moderate Density Commercial areas. Density typically ranges between a FAR of 4.0 and 6.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-8 and **MU-10** Zone Districts are consistent with the Medium Density category, and other zones may also apply.”* (See CP § 227.12 (emphasis added).)

### **Rock Creek East Area Element**

24. The Property falls within the Rock Creek East Area Element. The Rock Creek East Area Element states:

- The Rock Creek East Planning Area is comprised of approximately 7.4 square miles located east of Rock Creek Park, north of Spring Road, N.W., and west of North Capitol Street, N.W. and Riggs Road, N.W.; (CP § 2200.1.)
- Georgia Avenue, N.W. is the commercial heart of the Rock Creek East Planning Area, with local shops and regional retail anchors that serve adjacent neighborhoods and beyond; (CP § 2200.3.)
- The Rock Creek East Planning Area is served by two major transit hubs: the Takoma and the Georgia Avenue/Petworth Metrorail stations; (CP § 2200.4.)
- The Rock Creek East Planning Area recognizes the number of land use and community development challenges and opportunities as Georgia Avenue, N.W. continues to have high commercial vacancy rates, aesthetic issues, parking problems, and land use conflicts where commercial businesses abut low-density housing; and (CP § 2200.7.)
- The Rock Creek East Planning Area estimates “[a]n increase of about 9,600 households . . . with the Planning Area reaching 37,600 households by 2045. Population is projected to grow by 37.6 percent, reaching approximately 106,000 in 2045.” (See CP § 2206.1.)

### **Upper Georgia Avenue – Great Streets Redevelopment Plan (“Upper Georgia Avenue Plan”)**

25. The Property falls within the Upper Georgia Avenue Plan, which was approved by the DC Council in 2008. The Upper Georgia Avenue Plan states:

- The Upper Georgia Avenue Plan is designed as a response to the demand for new retail and housing units in the area; (Upper Georgia Avenue Plan, p. 15.)
- The Property is located in the “Zone 1” area of the Upper Georgia Avenue Plan, which extends from Eastern Avenue, N.W. to Fern Street, N.W. and is called the “Gateway.” The Gateway site “is a prime redevelopment opportunity because of its status as the entrance to the District of Columbia and close proximity to the high-volume Metrorail Transit Station in Downtown Silver Spring, MD. New commercial and residential development at key sites, streetscape improvements, and support for existing businesses will help to create a dynamic, pedestrian friendly gateway to the District. (...) To achieve a prominent gateway envisioned in the plan, new development should



- feature the highest quality of architecture and a mix of uses which enliven the area as a pedestrian accessible and friendly area.” (Upper Georgia Avenue Plan, p. 43.); and
- The primary development opportunity sites identified in the Gateway zone are the parcels on the east and west sides of Georgia Avenue at the entry to the District. These parcels include the “7700 Block East,” which encompasses the Property. (Upper Georgia Avenue Plan, p. 44.)

## **II. THE APPLICATION**

### **PROPOSED ZONING**

26. The Application proposes to rezone the Property from the MU-4 zone to the MU-10 zone. (Ex. 2–3I2.) The Application asserts that the Property’s existing MU-4 zone is inconsistent with the Property’s FLUM designation, because the CP Framework Element indicates that the MU-4 zone is consistent with the FLUM’s Low Density Commercial designation, which generally consists of commercial and mixed-use buildings of lower scale and intensity that range in density up to a FAR of 2.5. The Property is designated Mixed-Use Medium Density Residential and Medium Density Commercial on the FLUM, which together contemplate density ranging from 1.8 to 6.0 FAR. Further, the Medium Density Commercial FLUM category cites the MU-10 zone as consistent with the category. Accordingly, the Property’s existing MU-4 zoning is inconsistent with its FLUM designation. (Ex. 3.)
27. The MU-10 zone is intended to permit medium- to high-density mixed-use development with a balance of uses conducive to a higher quality of life and environment for residents, businesses, employees, and institutions; be applied to areas where a mixture of uses and building densities is intended to carry out elements of the Comprehensive Plan, small area plans, or framework plans, including goals in employment, population, transportation, housing, public facilities, and environmental quality; require a level of public space at the ground level; and allow residential and non-residential bulk to be apportioned between two (2) or more lots in the same square. (Subtitle G §§ 101.15(a)–(d).)
28. As a matter of right, the MU-10 zone permits/requires:
- Building Height: 90 feet (100 w/ IZ); (Subtitle G § 203.2.)
  - Penthouse Height: 20 feet, one-story plus mezzanine; second story permitted for penthouse mechanical space; (Subtitle G § 205.1.)
  - FAR: 6.0 (7.2 w/ IZ); maximum 3.0 non-residential FAR; (Subtitle G § 201.1.)
  - Lot Occupancy: 75% (80% w/ IZ); and (Subtitle G § 210.1.)
  - Green Area Ratio: 0.20. (Subtitle G § 211.1.)

### **APPLICANT’S JUSTIFICATION FOR REZONING**

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

29. The Applicant asserted that the Map Amendment is not inconsistent with the CP, including the Property’s designations on the GPM and the FLUM, advances the objectives and recommendations of the Rock Creek East Area Element and the Upper Georgia Avenue Plan, and furthers racial equity goals. The Applicant asserted that the proposed Map

Amendment to the MU-10 zone would permit enhanced density and mix of uses envisioned for the Property by the CP, including additional residential and ground floor neighborhood serving retail. 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***

30. The Applicant asserted that the Map Amendment is not inconsistent with the GPM because:
- As shown on the GPM, the Property is located within the Main Street Mixed Use Corridor that encompasses the Georgia Avenue Corridor from Eastern Avenue, N.W. and Fern Place, N.W.;
  - According to the Framework Element of the CP, areas within a Main Street Mixed Use Corridor designation “are traditional commercial business corridors with a concentration of older storefronts along the street”; (CP § 225.14.)
  - The Framework Element of the CP recognizes the redevelopment opportunity in some underutilized corridors, and further provides that “[c]onservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs”; and (CP § 225.14.)
  - The proposed MU-10 zone is not inconsistent with the Property’s GPM designation because the MU-10 zone will facilitate enhancement of the surrounding corridor by enabling a new mix of uses on the Property, including housing and additional affordable housing through the provision of IZ Plus as well as additional retail, and improvements to the public realm as recommend by the Upper Georgia Avenue Plan. (Ex. 3.)

### ***FLUM***

31. The Applicant asserted that the Map Amendment is not inconsistent with the FLUM because:
- The Property’s FLUM designation, Mixed Use Medium Density Residential / Medium Density Commercial, indicates a desire for mixed-use development on the Property that balances residential and commercial uses;
  - The Medium Density Commercial FLUM category expressly states that the MU-10 zone is consistent with the category; and  
The MU-10 zone permits a maximum density of 6.0 FAR (7.2 FAR with IZ), which falls within the FAR contemplated by the Medium Density Commercial FLUM category, which specifies a density ranging between 4.0 FAR and 6.0 FAR, with greater density being possible when complying with IZ or when approved through a Planned Unit Development. (Ex. 3.)

### ***Rock Creek East Area Element***

32. The Applicant asserted that the proposed Map Amendment is not inconsistency with and will advance a number of objectives of the Rock Creek East Area Element. The proposed MU-10 zone, which permits up to a 6.0 FAR (7.2 FAR with IZ) and a non-residential FAR



of 3.0, will provide for increased development potential, enhancing both the residential character and economic vitality of the surrounding area, and facilitate the production of new housing opportunities for a range of incomes and households sizes along Georgia Avenue, N.W. (RCE-1.1.1, 1.1.6.) The Applicant stated the proposed Map Amendment will improve the Upper Georgia Avenue Corridor's visual and urban design qualities by encouraging the development of multi-use neighborhood shopping and services. (RCE-1.1.3, RCE-1.1.4.). Further, the proposed Map Amendment will encourage the integration of sustainable strategies in new development in the area. (RCE-1.1.15.)

33. The Applicant also asserted that the Rock Creek East Area Element identifies eight areas in Rock Creek East as Policy Focus Areas. (CP § 2210.1.) The Property is located within the Upper Georgia Avenue/Walter Reed Policy Focus Area ("Focus Area"). (CP § 2213.1.) The strategies for this Focus Area include encouraging mixed-use development on underutilized properties, providing ground-floor retail with residential uses above, and encouraging transitions in height to preserve the character of the surrounding neighborhood. (RCE-2.3.1, RCE-2.3.5.) Accordingly, the Applicant stated that the proposed Map Amendment's increased development standards have the capability to further a multitude of the Rock Creek East Area Element policy objectives. (Ex. 3.)

***Upper Georgia Avenue Plan (Small Area Plan)***

34. The Applicant asserted that the Map Amendment is not inconsistent with and will advance the policies of the Upper Georgia Avenue Plan because the Property is located in the "Zone 1" area of the Upper Georgia Avenue Plan, which extends from Eastern Avenue, N.W. to Fern Street, N.W. and is called the "Gateway." Further, the Property's location within the Gateway presents a prime redevelopment opportunity because of its status as the entrance to the District of Columbia and close proximity to the high-volume Metrorail Transit Station in Downtown Silver Spring, MD. Additionally, the Property is located within the "7700 Block East" portion of land identified in the Upper Georgia Avenue Plan which contemplates the development of medium density uses along Georgie Avenue. Finally, affordable housing is one of the priorities of the Upper Georgia Avenue Plan and the proposed Map Amendment has the capability of producing more affordable housing at the Property through the provision of IZ Plus. (Ex. 3.)

***Land Use Element***

35. The Applicant asserted that the Map Amendment is not inconsistent with and will advance policies of the Land Use Element because the Map Amendment will facilitate new development on an underutilized site and enhanced connectivity on a Gateway site adjacent to transit and multimodal corridors while helping to accommodate population growth and advancing affordability, racial equity, and opportunity. (LU-1.4.6, LU-1.4.8, LU-1.5.1, LU-2.1.1.) Finally, the Applicant asserted that the Map Amendment will allow for an increase in density that will advance housing and affordable housing goals and that will expand neighborhood commerce in a mixed-use zone while providing appropriate transitions in height, design, and density. (LU-2.1.8, LU-2.3.4.) (Ex. 3.)

### ***Housing Element***

36. The Applicant asserted that the Map Amendment is not inconsistent with and will advance policies of the Housing Element because the Map Amendment will provide a substantial increase in the permitted density for residential uses on the Property, and potentially expand the District's housing and affordable housing supply. 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-1.1.1, H-1.1.3, H-1.2.9, H--1.2.F.) Greater density for development of new housing, including affordable housing, at the Property is encouraged given the Property's current underutilized state. (H-1.1.3.) Moreover, the proposed increase in density on the Property is consistent with the District's housing and affordable housing goals by Planning Area, as set forth in the Housing Element and the 2019 Housing Equity Report, which sets an affordable housing goal of 1,500 units in the Rock Creek East Planning Area by 2025. (H-1.2.3.) (Ex. 3.)

### ***Transportation Element***

37. The Applicant asserted that the Map Amendment is not inconsistent with and will advance 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.) Further the Map Amendment has the capability of resulting in a future transit-oriented development with multimodal access, which will facilitate bicycle and pedestrian access, and advance equity by fostering easy access to housing and affordable housing. (T-1.1.4, T-1.1.7.) (Ex. 3.)

### ***Environmental Protection Element***

38. The Applicant asserted that the Map Amendment is not inconsistent with and will advance 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***

39. 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.)
40. 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. (Ex. 3, 22, 33.)

41. The Applicant provided the following information about the community and its community outreach and engagement efforts:
- The Applicant identified the following as key historical attributes which helped shape and define the community impacted by the Map Amendment:
    - The Property is located between the Shepherd Park and Takoma neighborhoods;
    - This area of the District became accessible with the expansion of 7th Street (now Georgia Avenue) to the north, which catalyzed development along the corridor in the 19<sup>th</sup> and early 20<sup>th</sup> centuries, and by 1895 there were at least four distinct subdivisions in the area;
    - This area of the District was severely impacted and shaped by racially restrictive covenants which specifically barred Jews and Blacks, and sometimes persons of Mexican, American Indian, Persian, Syrian, or Armenian ancestry;
    - These racially restrictive covenants sought to shape the character, or color, of the neighborhood;
    - In 1948, the United States Supreme Court held that racially restrictive housing covenants cannot be enforced; and
    - The proposed Map Amendment would not perpetuate the discrimination of the past; (Ex. 3.)
  - The Property is within the boundaries of ANC 4B and ANC 4A is also considered an affected ANC because of the Property's location on a boundary line street. The Applicant provided the following information about its meetings with the affected ANCs: (Ex. 22.)
    - ANC 4B
      - On May 3, 2023, the Applicant presented the Application to ANC 4B's Housing Justice Committee. On January 3, 2024, the Applicant again presented the Application to ANC 4B's Housing Justice Committee and the Committee voted to support the Application; and
      - On January 22, 2024, ANC 4B considered the Application and voted to support the Application. The ANC filed a report in support of the Application, which is discussed below; (Ex. 21.)
    - ANC 4A
      - On January 11, 2024, the Applicant presented the Application at ANC/SMDs 4A01 and ANC 4A02's Joint Special Meeting; and
      - On February 6, 2024, the Applicant presented the Application to ANC 4A, and ANC 4A voted to oppose the Application. The ANC filed a report in opposition to the Application, which is discussed below; (Ex. 41.)
  - The Applicant provided disaggregated race and ethnicity data for the Rock Creek East Planning Area as a part of its Racial Equity Analysis; however, the Commission's Racial Equity Tool only requires this data and analysis to be provided by OP. The Applicant's Planning Area data (from the American Community Survey Five Year Estimates for 2012-2016 and 2017-2021, as provided via the OP Demographic Data Hub) included total population, racial and ethnic composition of the population, median income, median income by race, median age, median age by race, vulnerable or special

populations, percentage of population owning and renting and broken down by race. The Applicant's Planning Area data noted the following trends:

- The area is currently approximately 24% White and approximately 53% Black or African American and there has been a slight gain in individuals that identify as two or more races;
  - The area's median household income of \$95,572 is 2.1% higher than Districtwide, and when distinguished by race White and Asians have experienced the greatest income increases with other races also experiencing growth to a lesser extent;
  - The area's median age is higher than Districtwide and by race American Indians and Alaska Natives and Blacks or African Americans skew older within the area; and
  - The area has approximately 56.2 % owner occupied households and approximately 43.8 % renter occupied households, and homeownership rates are highest among White, Black or African American, and Asians. Overall, the area's homeownership rate is 15.1% higher than Districtwide; (Ex. 3.)
- The Applicant provided data regarding the Mayor's 2025 Affordable Housing Goal, stating that the 2019 Housing Equity Report establishes 2025 housing production goals by Planning Area. The total housing goal for the Rock Creek East Planning Area is the production of 1,580 total housing units by 2025 with 1,500 of those units being designated as affordable. At the time the Housing Equity Report was published it was estimated there would be a shortage of 340 units in the Rock Creek East Planning Area. The DC Comeback Plan, published in 2023, provides updated affordable housing projections and estimates that the Rock Creek East Planning Area will only meet 84.4% of its affordable housing goal by 2025. Given these estimations, the Applicant concludes that the Planning Area is falling behind in producing affordable housing; (Ex. 3.)
  - In response to OP's request, the Applicant filed a Supplemental Prehearing Statement including information about its assistance efforts with the existing commercial tenants of the Property with move-outs, relocations, and/or other assistance resources. (Ex. 22.) Also, in response to the Commission's request, the Supplemental Prehearing Statement included a supplement to the Applicant's Racial Equity Analysis analyzing the Application's potential impact on disaggregated race and ethnicity trends in the Rock Creek East Planning Area:
    - With respect to assistance efforts with existing commercial tenants of the Property, the Applicant stated that tenants were introduced to and in direct communication with the Upper Georgia Avenue Main Street ("UGAMS"), which provides comprehensive small business support during building transitions, including free legal and accounting services, and assistance in locating vacant spaces on Upper Georgia Avenue. (Ex. 22A.) Additionally, the Applicant retained brokers to offer free leasing assistance to the tenants. Moreover, the Applicant has offered the following resources to the tenants:

- Wes Neal – Leasing Assistance – offers free leasing assistance to the existing tenants;
- SM Works – specialized training, on-demand advisors, experienced consultants, subsidized facade improvements, and even community project management;
- DC Main Streets Program – offers revitalization support for business corridors and offers grants to support these businesses;
- Small Business Resource Center (“SBRC”) – guides businesses through the regulatory process impacting their businesses and offers business development support; and
- The Latino Economic Development Corporation (“LEDC”) – provides financial tools and support for Latinos and other underserved communities. The Applicant noted that all tenants have utilized the assistance provided by Wes Neal of Reconnaissance Commercial Real Estate Advisory and Transaction Services and have benefited from his expertise in identifying potential suitable new premises. Several tenants have begun to tour new locations. Moreover, the Applicant is actively exploring the reintegration/retention of current tenants; (Ex. 22, 22A.)
- With respect to analyzing the Application’s potential impact on disaggregated race and ethnicity trends in the Rock Creek East Planning Area, the Applicant stated that the Planning Area’s current population is predominately Black although Hispanic and Latino ethnicity have experienced significant growth. Blacks are the only racial group that is declining in the Planning Area and this demographic shift is contributing to increased racial and ethnic diversity. Based on the population by race data and the other Planning Area data trends discussed above (in the Applicant’s initial analysis), the Applicant concluded that the proposed Map Amendment will further augment the population and potential diversity of the Planning Area because it will raise the permissible height and residential density allowed on the Property. Moreover, future development of the Property will incorporate more affordable units as mandated by IZ Plus, thus enabling individuals and families of lower incomes to reside in proximity to public transportation and community resources; and (Ex. 22.)
- Applying the Tool’s racial equity themes, the Applicant asserted the Map Amendment would have the following impacts and/or outcomes:
  - Not result in negative outcomes with respect to direct displacement because of the following:
    - No physical displacement of residential tenants as there is currently no residential use on the Property; and
    - Increase in residential density allowed on the Property;
  - While the Map Amendment would potentially displace up to seven commercial businesses, it would provide opportunities for additional commercial space resulting from the additional non-residential FAR allowed in the MU-10 zone. The Applicant states it is working on strategies to mitigate business displacement that will provide assistance to the affected tenants;



- Result in positive changes with respect to housing because the Map Amendment would:
    - Increase the Property’s potential housing capabilities; and
    - Increase the Property’s IZ set-aside requirement because a higher IZ Plus set-aside would apply to the Map Amendment;
  - Result in positive changes to the physical environment because the development facilitated by the Map Amendment could potentially:
    - Improve stormwater infrastructure; and
    - Improve roadway circulation on the Property; and
  - Increase access to opportunity because the development facilitated by the Map Amendment could potentially:
    - Provide access to transit accessibility, including access to Metrorail and Metrobus routes;
    - Provide access to regional employment opportunities; and
    - Provide access to recreation facilities, open space, and neighborhood-serving retail services.
42. Based on the foregoing and based on the Applicant’s filings, the Applicant asserted that the proposed Map Amendment would not be inconsistent with the CP when evaluated through a racial equity lens, would further CP racial equity goals, and would result in positive racial outcomes.

***Potential Inconsistencies with the CP***

43. The Applicant conducted a CP evaluation of the Application through a racial equity lens and determined that the Application is not inconsistent with the CP when read as a whole. In conducting its evaluation, the Applicant identified CP two policies that are potentially inconsistent with the Application, Land Use Element policy LU-2.4.1: Promotion of Commercial Centers and policy LU-2.1.4: Rehabilitation Before Demolition. The Application is potentially inconsistent with these two policies because it will facilitate new development on the Property; therefore, the existing commercial tenants in the Property will likely be displaced and the existing structure demolished. The Applicant concluded that while these and other CP 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. (Ex. 3.)

***Public Hearing Testimony***

44. At the public hearing on February 22, 2024, 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 land planning and zoning. Ms. Elliott testified about the proposed Map Amendment’s consistency with the CP, including the CP maps, Citywide and Rock Creek East Area Elements, and affordable housing policy objectives and goals while noting potential CP inconsistencies with policies that prioritize preventing commercial business displacement, rehabilitation before



demolition, and preservation of established low-density neighborhoods and zoning. Ms. Elliott also testified about the Applicant's racial equity analysis, including a discussion of disaggregated race and ethnicity data for the Rock Creek East Planning Area; she noted that the 2019 Housing Equity Report requires the Planning Area to provide 1,500 affordable units by 2025 and that data from the Deputy for Planning and Economic Development ("DMPED") Dashboard, which is updated monthly, indicated that the Planning Area had reached 70.7% of its affordable housing goal as of January 2024. Furthermore, Ms. Elliott noted that the proposed MU-10 zone has a requirement to provide a plaza; therefore, there would be a preservation of open space along with any future development of the Property site; and (Ex. 14A, 33, February 22, 2024, Hearing Transcript ["Tr"] at pp. 10-28.)

- Mr. Haaziq Gragg and Mr. Oussama Souadi, representatives of the Applicant. Mr. Gragg primarily testified about the Applicant's experience and mission. Both Mr. Gragg and Mr. Souadi responded to cross examination questions from the ANC 4A representative regarding the Applicant's community outreach and engagement efforts and interaction with the existing commercial tenants of the Property. (Tr. at pp. 6-10, 48-49, 50-59.)

45. At the public hearing, the Commission questioned the Applicant about its community outreach and engagement efforts with the existing commercial tenants, relocation assistance and possible retention; the appropriateness of the MU-8 zone for the Property site; and specific outreach with ANC 4A. The Applicant responded describing its outreach efforts with tenants and two tenants in particular and stated that discussions were ongoing about retention following any future development of the Property. The Applicant responded explaining that both the proposed MU-10 zone and the MU-8 zone are consistent with the FLUM; however, the additional density and height the MU-10 zone would permit would allow for more design options in the future development of the Property and would be more consistent with the Upper Georgia Avenue Plan recommendation that the Property serve as a gateway. Finally, the Applicant responded stating the dates it met with ANC 4A and also mentioned email correspondences with ANC representatives. (Tr. at pp. 29-43.)
46. At the hearing, ANC 4A cross examined most of the testimony provided<sup>3</sup>. In its cross examination of the Applicant, ANC 4A questioned the appropriateness of the proposed MU-10 zone versus the MU-8 zone or other zones; and the specific timing of the Applicant's outreach to both the commercial tenants and ANC 4A Commissioners. The Applicant responded to ANC 4A's questions, noting that it would provide a post-hearing submission comparing the MU-8 and MU-10 zones' development standards; and discussing its outreach with tenants beginning in Spring 2023 and its outreach to ANC 4A Commissioners beginning in January 2024. (Tr. at pp. 46-59.)
47. In its cross-examination of OP, ANC 4A asked several questions to which OP responded, as summarized below: (Tr. at pp. 62-74.)

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<sup>3</sup> All of ANC 4A's cross examination is not summarized in this Order. The cross examination that raises the issues deemed most relevant to the Commission's evaluation of this Application has been summarized herein; however, the summary herein is not intended to be exhaustive.

- The ANC questioned why the Applicant's and OP's data differs regarding the amount of affordable housing that has been produced in the Rock Creek East Planning Area. Specifically, the Applicant indicates 70.7% and OP indicates 59.7%.  
OP Response: OP acknowledged that the Applicant's data is more recent, from the DMPED Dashboard and OP's data is from the DC Comeback Plan;
- The ANC questioned the currency of the American Community Survey ("ACS") data provided by OP in its reports. Specifically, the data OP used is older instead of the most current data available, from December 2023.  
OP Response: OP confirmed that it used ACS data for the period from 2017 to 2021 and did not use the ACS data from 2022 that came out in December 2023. OP stated that it uses ACS data from the OP State Data Center, and the data is aggregated by planning area. Therefore, OP needs to check to see if the updated 2022 data has been aggregated by planning area and disaggregated by racial categories. OP also confirmed that it does not validate the OP State Data Center data to ensure its accuracy;
- The ANC questioned if OP representatives visited the Property site in conjunction with the Application's filing and if OP is aware of the Property's proximity to Montgomery County and current development in Montgomery County.  
OP Response: OP confirmed that no OP representatives have visited the Property site since the Application was filed. OP stated that it was aware that Silver Spring is a robust urban center, but it has not reviewed the south Silver Spring Plan and it is not familiar with Jessup Blair Park;
- The ANC questioned if OP considered whether a zone district other than the proposed MU-10 zone might also not be inconsistent with the CP for this Property site.  
OP Response: OP confirmed that it only considered the Application proposed, for the MU-10 zone;
- The ANC questioned the speculative nature of the potential outcomes discussed in the OP reports, and whether there have been other MU-4 to MU-10 zone map amendments in the city or in the immediate area of the Property.  
OP Response: OP stated that it is difficult to assess impacts in a map amendment because there is no definitive project; therefore, OP is less committal about the outcomes of a map amendment. OP stated that it was not aware of any MU-10 zone map amendments in the immediate area and that it believed this would be the first in this area;
- The ANC questioned if any consideration was given to the fact that the Property is a gateway across from Montgomery County.  
OP Response: OP stated that no consideration was given regarding the Property's proximity to Montgomery County but stated that the Comprehensive Plan policies and the Upper Georgia Avenue Plan policies that speak to the importance of the Property's location at a gateway and its capability to accommodate greater density weighted into OP's analysis;
- The ANC questioned how the CP Environmental Protection Element was weighted in OP's analysis because the Housing Element was weighted highly; whether OP was aware of the urban heat index studies and the stormwater management program from

Montgomery County; and whether OP considered how development in Montgomery County might strain transportation modalities at the Property.

OP Response: OP stated that it is difficult to evaluate the full environmental impacts of a map amendment but given that the site is currently used a one-story commercial building with a parking lot, OP is hopeful that future development of the site would follow green building standards and potentially minimize environmental impacts. OP stated that generally providing more residences in a transit accessible, bikeable, and walkable location decreases carbon impact and would be beneficial for the environment. OP stated that it was not aware of the urban heat index studies or the stormwater management program from Montgomery County. OP stated that it did not know if DDOT's transportation analysis looked at development in Montgomery County;

- The ANC questioned if it is OP's job to say that there are downsides to a proposal and draw attention to those potential problems even if OP determines the proposal is not inconsistent with the Comprehensive Plan.

OP Response: OP stated that its Racial Equity Analysis responded to the Commission's Racial Equity Tool and stated Comprehensive Plan policies that could be furthered and policies that would not be furthered by the proposal; however, OP did not identify many policies that would be negatively impacted by the proposal. OP did note potential retail displacement as a negative outcome but stated that the Applicant had addressed this impact to OP's satisfaction given its relocation and retention efforts with existing tenants of the Property. OP acknowledged that the Applicant also identified a few Comprehensive Plan policies that would not be furthered by the proposal but explained how they would be outweighed by other policies;

- The ANC stated that OP must not be aware that UGAMS, who the Applicant cited as helping assist existing tenants, had gone out of business in September 2023 since OP referenced UGAMS in its report. The ANC also asked about who prepared the OP Setdown Report.

OP Response: OP did not respond directly to the ANC statement about UGAMS. The OP representative who was testifying stated that he prepared the OP Setdown Report and acknowledged and apologized for a typographical error on the third slide which incorrectly referenced Case No. 23-07 instead of this case; and

- The ANC questioned if OP is concerned that by concentrating a lot of very affordable housing in one area, it is depressing the area median income such that retailers would be less likely to locate in the area based on demographics.

OP Response: OP acknowledged that it is not an expert on housing or retail; however, overconcentrating income or demographics was not a concern as the proposal will likely facilitate development of a new mixed-use building with nicer retail space. OP further acknowledged that it is recommending IZ Plus for the map amendment which would result in potentially 20% affordable housing on the site.

48. The Commission heard testimony from OP, ANC's 4B and 4A, and persons in support and opposition, as discussed in greater detail below.

49. In ANC 4A's cross examination of Naima Jefferson, a person in opposition, the ANC questioned Ms. Jefferson on the source of the affordable housing data provided in her written and oral testimony and its availability; and her assertions that there was a lack of comprehensive impact analysis of the map amendment application and that it is illegal spot zoning. Ms. Jefferson responded as follows: (Tr. at pp. 131-138.)
- Naima Jefferson Response: Ms. Jefferson stated that the data provided came from the Project Pipeline database and the DMPED database, and both are publicly available. Ms. Jefferson explained that the lack of critical impact analysis entailed two parts, first that there were no studies related to the 2021 Comprehensive Plan amendments' update to the FLUM for the site and its legality; and second, that there were not sufficient studies as to this map amendment's impact (e.g., in terms of adequately defining the community, multi-jurisdiction coordination with Montgomery County, and accounting for existing affordable housing geographically with the Rock Creek East Planning Area). Ms. Jefferson also stated her belief that the map amendment is illegal spot zoning describing it as follows: "essentially . . . the rezoning of a single property [that] would allow the property owner or developer to build something that's more intense and denser and earn income that without spot zoning would not be possible. And also . . . one of the other characteristics is . . . whether it's not inconsistent with the Comprehensive Plan or with regulations. And so, I've detailed in my written testimony why I believe this is illegal spot zoning." (Tr. at p. 134.)
50. At the conclusion of the February 22, 2024 public hearing, the Commission requested post-hearing submissions. Specifically, the following submissions:
- A post-hearing ANC 4A report, as authorized by the ANC, further detailing the ANC's opposition arguments from its initial report and the public hearing, and a discussion of the data discrepancies cited by the ANC. The Commission noted that the ANC's post-hearing report should not include Montgomery County data as it would not consider such data in its evaluation of the Application;
  - A post-hearing submission from the Applicant, including written rebuttal to ANC 4A and other opposition comments/testimony from Naima Jefferson specifically; and a comparison/summary between the proposed MU-10 zone and the MU-8 zone, recognizing that both are not inconsistent with the Property's FLUM designation;
  - A response from the Applicant to ANC 4A's post-hearing report; and
  - Any party responses from ANC 4B or ANC 4A. (Tr. at pp. 146-156.)

### ***Post-hearing Submissions***

51. On February 29, 2024, the Applicant filed a post-hearing submission that responded to the arguments raised by ANC 4A and Naima Jefferson, both in their written and oral testimony; and provided an analysis between the proposed MU-10 zone and the MU-8 zone. (Ex. 50.) The Applicant's post-hearing submission is summarized as follows:
- MU-8 vs. MU-10 comparison and CP consistency
    - The Applicant provided a side-by-side comparison of MU-8 vs. MU-10 zone development standards and concluded that while the MU-8 zone allows for less density than the MU-10 zone, both are equally consistent with the Property's

Medium Density Commercial FLUM designation, as both are expressly cited as consistent in the FLUM category;

- Lack of community outreach
  - The Applicant stated that it conducted robust community outreach as evidenced by the list of community meetings and correspondence with adjacent neighbors/existing tenants in the case record and the extensive support for the Application reflected in the case record. The Applicant acknowledged that it did not reach out to Concerned Neighbors Inc., but it did request a meeting with Shepherd Park Citizens Association; and
  - The Applicant stated that ANC 4B demonstrated, through its resolutions/reports to the case record and public hearing testimony, that it followed its standard procedures and processes for engaging with the Applicant and residents of ANC 4B in its evaluation of the Application.
- OP Data / No Over Concentration of Affordable Housing in the Rock Creek East (“RCE”) Planning Area
  - The Applicant made the following assertions:
  - Montgomery County data is irrelevant to evaluating a map amendment in the District of Columbia;
  - The Commission’s Racial Equity Tool specifically requires the use of only four data sources for the disaggregated race and ethnicity data by planning area. Those four data sources are OP Demographic Data Hub, US Census, Open Data DC Platform, and OP Upward Mobility Dashboard and both the Applicant and OP used the data sources specified in the Commission’s Racial Equity Tool for their respective analyses<sup>4</sup>;
  - The Application is automatically subject to IZ Plus, pursuant to Subtitle X § 502.1(b), unless OP recommends, and the Commission agrees that IZ Plus should not apply due to mitigating circumstances identified by OP in its report. (Subtitle X § 502.2(c).) OP has recommended that IZ Plus not apply only in cases where there is an over concentration of affordable housing in the planning area;
  - The ANC 4A argument that the RCE Planning Area is exceeding its affordable housing target as set by the Mayor in 2019 is simply incorrect. The RCE Planning Area is not exceeding its affordable housing target as set by the Mayor’s 2019 housing equity report and the most recent DMPED 36,000 by 2025 Dashboard data shows that the RCE planning area still has not met its affordable housing target. As of February 28, 2024, the DMPED Dashboard states that RCE Planning Area is at 70.7% of its targeted goal of delivering 1,500 affordable housing units by 2025. Therefore, given that the RCE Planning Area is roughly 30% away from meeting its affordable housing goal, there is no over concentration of affordable housing in the RCE Planning Area, as asserted by ANC 4A and Ms. Jefferson; and
  - The data provided by Ms. Jefferson, in both her oral and written testimony, to demonstrate an overconcentration of affordable housing in the RCE planning area

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<sup>4</sup> See the Commission’s Racial Equity Analysis Tool, February 3, 2023, Part 3, <https://dcoz.dc.gov/release/zc-racial-equity-analysis-tool-new>



is unreliable and unverified. In Appendix C to her written testimony (Ex. 43)<sup>5</sup>, Ms. Jefferson cites no sources for her compilation of data; does not identify the methodology she used for selecting sites/projects to include in the Appendix; includes at least one project, namely 435 Edgewood Street, N.E., that is not within the boundaries of the RCE Planning Area; includes two projects (3825 Georgia and 6925-29 Georgia) that completed construction prior to 2019 and would not have been included when the Mayor set affordable housing production goals in 2019; and includes projects that may be renovations of existing affordable units that would not count towards the Mayor's housing production goals. (See Ex. 50 at pp. 13-16.) For these reasons, Ms. Jefferson's affordable housing data and analysis, which is unreliable, should not be given more weight than the data and analysis provided by OP and included in the DMPED Dashboard;

- Comprehensive Plan analysis is lacking critical analysis
  - The Applicant made the following assertions:
    - OP's CP analyses, including its racial equity analysis, do not over weigh one element over others; and it does identify CP policies that would not be advanced by the proposal, as required by the Commission's Racial Equity Tool;
    - The evaluation required for a map amendment review has been completed; no further critical analysis is required for the application, such as impact studies regarding additional density and displacement pressures on existing small businesses or reports from DC Metropolitan Police or Fire Emergency Medical Services, as suggested by Ms. Jefferson; and (See Ex. 43.)
    - Ms. Jefferson's assertion that the map amendment is inconsistent with the Upper Georgia Avenue Plan ignores that the plan identifies the Property as a "Major Development Opportunity" site and recommends additional density and building heights of 90 feet facing Georgia Avenue, which is the base height of the proposed MU-10 zone; and (See Ex. 50 at p. 17.)
- Spot Zoning
  - The Applicant stated to constitute illegal spot zoning, the zoning action: "(1) must pertain to a single parcel or limited area ordinarily for the benefit of a particular property owner or specially interested party; and (2) must be inconsistent with the city's comprehensive plan, or if there is none, with the character and zoning of the surrounding area, or the purposes of zoning regulation, i.e., the public health, safety, and general welfare. *See Daro Realty v. District of Columbia Zoning Commission*, 581 A.2d 295 (1990)." (Ex. 50 at p. 21.) The Applicant concluded that the proposal is not illegal spot zoning because although it includes one property, it is not inconsistent with the CP, as outlined in the Applicant's Statement in Support and PowerPoint Presentation, as well as in OP's Setdown and Hearing Reports. (See Ex. 3, 12, 25, 33.)

52. On February 29, 2024, ANC 4A filed a post-hearing report stating at a duly noticed regular public meeting on February 6, 2024, at which a quorum was present, ANC 4A voted (7-0-0) to oppose the Application. The report stated that the following conditions make it

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<sup>5</sup> Appendix C at Ex. 43 appears to be the same document submitted by ANC 4A as Appendix 1 at Ex. 51A; these two documents are provided to evidence an overconcentration of affordable housing in the RCE Planning Area.



impossible for the Commission to decide whether the application is not inconsistent with the Comprehensive Plan: (Ex. 51.)

- Lack of community outreach
  - The ANC stated that the Applicant has not sufficiently engaged with the existing tenants, the community, and ANC 4A. Specifically, the Applicant failed to contact the ANC Commissioners for ANC 4A, Edwards and Hoyte, and sent notice of the application to the wrong address for ANC 4A. In addition, many constituents in the affected Single Member District are not aware of the Application, and the Applicant did not contact Northminster Presbyterian Church, which is within 397 feet of the site;
- OP Data
  - The ANC stated that the data provided in OP's reports is outdated and inaccurate. Specifically, OP used data from the DC Comeback Plan, which includes 2021 ACS data showing that RCE has reached 57.9% of its affordable housing production goal while the Applicant's information shows that approximately 70% of the production goal has been reached. The ANC notes that District of Columbia Housing Authority data showed that RCE has produced 110% of its affordable housing goal; therefore, there is no affordable housing shortage to rectify in RCE; (See Appendix 1, Ex. 51A<sup>6</sup>.)
- Comprehensive Plan analysis is lacking critical analysis
  - The ANC stated there was a lack of critical impact analysis of the map amendment, which resulted in a subjective endorsement of the application rather than an objective critique that enables the Commission to evaluate CP consistency. Specifically, OP's reports only envision displacement of tenants as a negative outcome of the map amendment with no discussion of indirect displacement, parking and environmental concerns, the appropriateness of the MU-10 zone for the site, and the negative impact overconcentration of affordable housing would have on potential retail development in the area. In addition, the ANC argued that the Black population has declined in Census tracts where properties were rezoned to MU-10 and provided Census tract data as evidence; (Ex. 51 at pp. 4-5.)
- Omission of Data from OP and DDOT<sup>7</sup> Reports
  - The ANC stated that OP reports are defective because they do not include the most current data, a shadow study given the site's small size and high elevation, and other configurations that may be appropriate for the site. (See Elevation Maps, Ex. 51D, 51E.) The ANC argued that a shadow study should have been performed to determine the degree to which a building on the site will obstruct the view and block light to existing buildings;
- Overweighing of CP Housing Element Policies
  - The ANC stated that OP's analysis outweighs the CP Housing Element to the exclusion of other elements resulting in unbalanced and unintended detrimental

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<sup>6</sup> Appendix 1 at Ex. 51A (submitted by ANC 4A) appears to be the same document submitted by Ms. Jefferson as Appendix C at Ex. 43; these two documents are provided to evidence an overconcentration of affordable housing in the RCE Planning Area.

<sup>7</sup> The ANC 4A submission at Ex. 51 states that data was omitted from the DDOT Reports but does not cite any specific data.

effects on the community. Specifically, the ANC argued that the CP states that the Land Use Element should be the most heavily weighted element. Thus, OP's overweighing of the Housing Element excludes other elements such that environmental and other concerns and impacts are not properly weighted; and

- Overconcentration of Affordable Housing
  - The ANC argues that the map amendment will result in racial disparities and inequity because it will concentrate affordable housing in a largely African American and other races community while other less racially diverse communities such as Rock Creek West Planning Area are excluded from this overconcentration.

53. On March 7, 2024, ANC 4B filed a response to ANC 4A's post hearing report. (Ex. 53.) ANC 4B's response explained its community engagement processes; stated what meetings occurred with the Applicant regarding the Application; stated that ANC 4A is entitled to express its opinions and concerns regarding the Application; stated that ANC 4A's impressions about the lack of engagement does not supplant or negate the extensive outreach and community engagement by ANC 4B.

54. On March 7, 2024, the Applicant filed a cover letter and a Draft Order (Ex. 54, 54A.) as well as a response to the ANC 4A's post-hearing report (Ex. 54B.) The Applicant's responded to the arguments in ANC 4A's post-hearing report, as follows:

- Application Meets Map Amendment Standard of Review
  - The Applicant stated that the map amendment meets the standard of review because the proposal would advance several policies of the CP without overweighing housing or retail policies, and is not inconsistent with the CP, including the FLUM and GPM recommendations for the Property, the Upper Georgia Avenue SAP recommendations for the Property, and other District goals such as the Mayor's Housing Equity Report.
- Lack of Community outreach
  - The Applicant stated that it engaged in robust community outreach and engagement and provided outreach to existing commercial tenants to help in relocation efforts; the case record evidences the Applicant's outreach efforts.
- OP data
  - The Applicant stated that current data shows that affordable housing is still needed in the RCE planning area. The proposal will not overconcentrate affordable housing in the area. ANC 4A misconstrues the standard of review for a map amendment by presenting evidence of how other zonings to MU-10 in the District have negatively impacted and displaced black people to demonstrate that the MU-10 is somehow a negative zone.
- CP Consistency/Lack of critical impact analysis
  - The Applicant argued that it and OP's reports provide thorough analyses of the CP policies that would be advanced along with CP policies that would not be advanced by the map amendment; and analyzed the map amendment through a racial equity lens while considering its potential negative impacts, including direct commercial displacement, indirect displacement, parking, and environmental impacts; and

- The Applicant asserted that the increased non-residential density (from 1.5 FAR in the MU-4 zone to 3.0 FAR in the MU-10 zone) will allow for enhanced neighborhood serving retail opportunities on the site. The Applicant stated that the proposed MU-10 zone and declining black population have no direct causal link, despite the opposition's assertions; the black population has been declining Districtwide for decades now;
- Alleged missing information
  - The Applicant stated that ANC 4A's assertion that shadow studies or impact analysis based on a project are required are unfounded as this is a map amendment application; and there is no project for review before the Commission; and
- Distribution of affordable housing
  - The Applicant stated that ANC 4A's assertion that other parts of the city, namely the Rock Creek West Planning Area, should be required to reach the Mayor's affordable housing target before other parts of the city absorb affordable housing is not germane to the Commission's evaluation (of whether the MU-10 zone is consistent with the CP and other public policies and programs affecting the subject Property).

55. On March 7, 2024, ANC 4A filed a response to the Applicant's post-hearing submission (Ex. 55.) and an attachment including affordable housing data (Ex. 55A<sup>8</sup>.) The ANC 4A filing responded to the arguments in the Applicant's post-hearing submission, as follows: (Ex. 55.)

- Notice and CP Consistency (Racial Equity Community Outreach and Engagement)
  - The ANC made the following assertions:
    - The notice of intent (NOI) was not received by ANC 4A because it was sent to the wrong address;
    - Notice of the hearing was not provided to property owners in Montgomery County within 200 feet (in violation of the Zoning Regulations' notice requirements in Subtitle Z § 402.1.); and
    - Community outreach did not start early enough, focused on ANC 4B, and did not broadly or fully define the affected community to include ANC 4A (west of Georgia Avenue); Applicant has not done the necessary job to obtain overall community support; Applicant presented a project to ANC 4B to garner support and cannot have it both ways as this is a map amendment;
- CP Consistency (CP Elements) and Lack of Comprehensive Impact Analysis
  - The ANC made the following assertions:
    - The Applicant and OP's CP consistency analyses focus on Housing Element policies and overweighs them at the expense of other CP policies that are inconsistent with this proposal. Namely, policies that encourage development of scale and character that is consistent with the surrounding neighborhood, and policies that encourage transition between higher density development and existing low density residential development;

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<sup>8</sup> At its March 14, 2024 public meeting, the Commission struck from the case record certain pages that were originally included in Ex. 55A; a more detailed discussion of the Commission's ruling on this matter is included in Finding of Fact 56.

- The Application doesn't fully consider the Upper Georgia Avenue SAP;
    - The Application doesn't fully consider alternative zones and uses for the site that would be appropriate and doesn't provide adequate comparative analysis. Specifically, the Applicant's post-hearing submission's comparison of MU-8 vs. MU-10 is not comprehensive or detailed enough; and
    - Not considering Montgomery County data is inconsistent with CP guidance encouraging coordination with neighboring jurisdictions;
  - OP Data is Old and Inaccurate
    - The ANC made the following assertions:
      - US Census/American Community Survey (ACS) data was updated in December 2023 from 2017-2021 data to 2018-2022 data; and
      - OP used the older 2017-2021 data for its racial equity analysis. This is unacceptable and OP should update its analysis to include the most recent available data;
  - IZ Plus
    - The ANC made the following arguments:
      - OP and the Applicant have conflicting affordable housing data for the RCE Planning Area. The Mayor's 2019 housing equity report goal for the RCE planning area is the main discrepancy in the record between OP's data and the Applicant's. OP's data showed that 57.9 percent of the affordable housing goal had been reached based on the Mayor's 2023 DC Comeback plan data; the Applicant's data showed that 70.7 percent had been reached based on DMPED 2025 data. The ANC 4A data shows an even higher number based on additional data sources. For these reasons, IZ Plus should not automatically apply to this map amendment. There should be some analysis about how the Applicant will mitigate the impacts of the concentration of affordable housing in the area;
  - DDOT Report should not be considered
    - The ANC made the following argument:
      - DDOT made a mistake in its report citing the MU-10 zone as mixed-use moderate density instead of mixed-use medium density. DDOT's conclusions about traffic related impacts may be erroneous because of this mistake; and
  - The Application is an example of Illegal Spot Zoning
    - The ANC made the following argument:
      - The Application is illegal spot zoning because it will benefit a single property owner and is inconsistent with the CP.
56. OP's Supplemental Report, which the Commission accepted into the case record (see discussion in Finding of Fact 57 below), made the following two clarifications: (Ex. 57.)
- OP stated that it used the US Census/ACS data from two increments, both 2012-2016 and 2017-2021, in its reports. OP acknowledged that the US Census/ACS 2018-2022 data has been released (in December 2023) as asserted by ANC 4A. However, the State Data Center within OP is still in the process of extracting the relevant data for purposes of the Racial Equity Analyses OP provides; specifically, distilling the data into geographic areas corresponding to the CP's planning areas and separating out economic, social, and racial data most pertinent to the Commission's Racial Equity

Tool. This process should be completed soon but until it is, the US Census/ACS 2017-2021 data provided in OP's Racial Equity Analysis for the Application is the most current data available. because it is the data that has been distilled by Planning Area to fully respond to the Planning Area specific data metrics (i.e., total population, median income and age, vulnerable populations, homeowners, and renters) requested in the Commission's Racial Equity Tool; and

- OP stated that it has consistently used data from the Mayor's 2023 Comeback Plan, which provides information on the affordable housing developed in each planning area and the planning area's progress toward meeting the goal as stated in the Mayor's 2019 Housing Equity Report. Given the date of the Comeback Plan and the progress made over the past year in providing affordable housing, the DMPED 36,000 by 2025 Dashboard ("DMPED Dashboard") data is the more accurate data regarding affordable housing production by planning area than the Comeback Plan. The DMPED 36,000 by 2025 Dashboard data shows that RCE has achieved 70.7% of the target for affordable housing, not the 57.9% shown in OP's Reports. OP will use the DMPED 36,000 by 2025 Dashboard data moving forward.

***Proposed Action (Procedural Issues)***

57. At its March 14, 2024 public meeting, the Commission considered proposed action of the Application. Before doing so, the Commission made a number of procedural decisions. ANC 4A filed a motion to strike two documents that were filed to the case record. (Ex. 58.) ANC 4A's motion requested that the Commission strike a letter in support of the Application, and an OP Supplemental Report because the filings were untimely, and neither was requested by the Commission. The Applicant filed a response to the ANC's motion to strike stating no opposition to striking the letter in support of the Application and stating that it believed the Commission could accept OP's Supplemental Report, pursuant to Subtitle Z § 602.5, which allows the Commission to reopen the record for additional materials. (Ex. 59.) The Commission decided to strike the letter of support from the case record, and to accept OP's Supplemental Report into the case record. (March 14, 2024 Public Meeting Tr. at pp. 13-15.) In addition, the Commission decided to strike certain pages from ANC 4A's attachment at Ex. 55A because the pages included project-specific information from a presentation, given by the Applicant, that the Commission deemed irrelevant to its evaluation of the Application. (*Id.* at pp. 18-19.) The Commission reminded the Applicant that presentations about a specific project should not be presented for map amendment applications because map amendments do not entail approval of a specific project.
58. The Commission also addressed ANC 4A's argument that the Zoning Regulations' notice requirements of Subtitle Z § 402.1 were violated because owners of property within 200 feet of the Property located in Montgomery County were not provided with notice of the February 22, 2024 public hearing. The Commission acknowledged that Montgomery County property owners were not provided with public hearing notice and explained its belief that the intent is for the 200-foot notice rule to only apply to properties located within the District of Columbia. Because the text of the notice rule does not expressly limit the notice requirements to only District of Columbia properties within 200 feet, the Commission decided to waive the notice rule, pursuant to Subtitle Z § 402.12. The



Commission concluded that the failure to notice Montgomery County property owners was a waivable technical defect given that the public hearing was well attended. (*Id.* at pp. 16-18.)

59. Finally, the Commission addressed ANC 4A’s argument that DDOT’s Report should not be considered because it includes an error. The Commission acknowledged that DDOT’s Report, at Ex. 24 of the case record, incorrectly stated that the MU-10 zone is a mixed-use moderate density zone instead of a mixed-use medium density zone. The Commission requested that DDOT submit a corrected report to correct the error and to correct any conclusions about traffic related impacts that may be erroneous because of the error. (*Id.* at pp. 19-20.)

### III. RESPONSES TO THE APPLICATION

#### OP REPORTS AND TESTIMONY

60. OP submitted a report, dated November 20, 2023 (the “OP Setdown Report”), recommending the Commission set down for a public hearing the Applicant’s Map Amendment and concluded that the Map Amendment would be appropriate for IZ Plus and would not be inconsistent with the CP, including when viewed through a racial equity lens. The OP Setdown Report’s CP analysis concluded the following:
- **GPM** – The proposed Map Amendment would not be inconsistent with the Property’s GPM designation as Main Street Mixed Use Corridor, which the CP describes as “a pedestrian oriented environment with traditional storefronts.” While no specific development proposal is part of this application, the new zone designation should incentivize the redevelopment of an underutilized site with significant transit access. Any new project on this site would have the opportunity to enhance the pedestrian environment and provide for economic development and additional housing;
  - **FLUM** – The proposed Map Amendment would not be inconsistent with the Property’s FLUM designation as Mixed-Use Medium Density Residential and Medium Density Commercial. The CP specifies that MU-10 is compatible with the Medium Density Commercial designation. The density permitted by the MU-10 zone, up to 7.2 FAR, would not be inconsistent with the Framework Element, which states that FARs greater than 6.0 are possible when complying with IZ requirements;
  - **Rock Creek East Area Element** – The proposal would advance policies of the Rock Creek East Area Element. The proposed Map Amendment, together with the IZ Plus designation, would help fulfill the Area Element policies that call for strengthening 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 underutilized land along Georgia Avenue. Redevelopment of the Property could also help to improve the streetscape around the Property; (Policies RCE-1.1.3, 1.1.6, 1.1.14, 2.3.1, 2.3.2, 2.3.5.)
  - **Land Use Element** – The proposal would advance policies of the Land Use Element. The proposed Map Amendment could enhance access to affordable housing, and provide access to transportation, and therefore enhanced access to employment, for



- residents of a new building on the site; (Policies LU-1.1, 1.4.6, 1.5.1, 2.1.1, 2.1.3, 2.1.8, 2.4.5, 2.4.6.)
- **Transportation Element** – The proposal would advance policies of the Transportation Element. The proposed Map Amendment would facilitate future development of a site in a transit rich accessible location and could potentially result in new development that improves the pedestrian network/streetscape and pedestrian safety; (Policies T-1.1.4, 1.1.7, 1.2.1, 2.2.1, 2.4.1, 2.4.2.)
  - **Housing Element** – The proposal would advance policies of the Housing Element. The CP supports additional housing development, particularly on underutilized sites near transit, and the Map Amendment would facilitate such housing development. 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, currently underutilized land, would not result in the displacement of any existing residents; (Policies H-1.1.1, 1.1.2, 1.1.3, 1.1.4, 1.1.8, 1.2.1, 1.2.2, 1.2.3, 1.2.9, 1.2.11.)
  - **Environmental Protection Element** – The proposal would advance policy objectives of the Environmental Protection Element. The proposed Map Amendment does not involve a specific project; however, any project facilitated by the proposed Map Amendment would likely create housing in a location proximate to transit, which would minimize the need for automobile trips and reduce pollution from cars. A project would also be likely to improve the stormwater runoff performance of the site, which currently has a large surface parking lot. A healthier environment would benefit all residents of the District and further environmental equity; (Policy E-5.1.5.)
  - **Urban Design Element** – The proposal would advance policies of the Urban Design Element. The proposed Map Amendment does not involve a specific project; however, a project that takes advantage of the zoning parameters of the proposed MU-10 zone could further Urban Design policies that call for improvements to the city’s major thoroughfares and neighborhood entry points; (Policies UD-1.4.1, 1.4.2.)
  - **Potential CP policy inconsistency** – The OP Setdown Report identified the Map Amendment proposal as potentially inconsistent with Economic Development Element Policy ED-3.2.6: Commercial Displacement because the proposal will likely accelerate displacement of existing businesses on the site. The OP Setdown Report requested the Applicant provide details of their assistance plan in the record prior to a hearing, as well as an update on the current status of any business move-outs or relocations, and how the businesses have utilized the assistance plan to date. As discussed above, the Applicant provided its response in its Supplemental Prehearing Statement; (Ex. 22, 22A.)
  - **Racial Equity** – The OP Setdown Report provides a racial equity analysis but notes that it can only analyze the potential development and its potential impacts under the Map Amendment. It is anticipated that the MU-10 zone will generally lead to positive impacts, and that the Map Amendment, when evaluated through a racial equity lens, is not inconsistent with the CP because:
    - Direct Displacement – The site has no residential uses, so the proposed zoning map amendment would not result in any direct displacement of residents as there is no residential use currently on the site;

- Indirect Displacement – OP does not anticipate indirect displacement as a result of this zoning action. The provision of a large quantity of housing should help to ease upward pressure on housing costs in the vicinity. Research shows that there is a positive relationship between the provision of more housing and the ability of Black populations to remain in a neighborhood;
- Housing – The zoning action would allow the provision of more market rate housing on the site than under current zoning. The implementation of IZ Plus would result in a higher percentage of affordable units than would occur in a matter of right development, or under a rezoning with only regular IZ. In general, the provision of market rate and affordable housing should help to ease upward pressure on housing costs in the vicinity;
- Physical – It is likely that a redevelopment of the site facilitated by this case would result in an improved streetscape and pedestrian realm around the property. Redevelopment could improve the site’s environmental performance by removing a large surface parking lot and complying with up-to-date green building regulations;
- Access to Opportunity – It is likely that a new development at the site would result in a new resident in the neighborhood, who would support local shops, arts, and services. Residents at the site would have access to transit, as well as local roads, which would provide access to employment centers;
- Community – In Exhibit 3 the applicant describes their efforts to engage with the ANC and affected neighbors. Because there is no specific project associated with the request, there are no project features that could be adjusted to community feedback;
- Disaggregated Race and Ethnicity Data – The OP racial equity analysis provides disaggregated race and ethnicity data for the Rock Creek East Planning Area, in which the Property is located. Based on the data it compiled, OP made the following observations and conclusions about the area immediately surrounding the Property:
  - Rock Creek East planning area has a majority minority population with 53% of its residents being Black and 22% of its residents being Hispanic in the 2017 to 2021 period. Though in the majority, the Black population decreased from 60% of the population to 53% from 2012 to 2021, which is similar to the District-wide trend during this period. The White population increased from 21% to 24%;
  - Rock Creek East’s median age was slightly older than the Districtwide median during both 5-year periods. Rock Creek East maintained the same median age of 39 throughout 2012 to 2021 which is higher than the District-wide median that went down from 38 to 34. When race is considered, the data shows that the Black residents in Rock Creek East were on average older than most of the other groups during the 10-year period;
  - Rock Creek East Planning area had a similar percentage of vulnerable residents as the District. The planning area had a higher percentage of children than the District and this percentage slightly increased over the 10 year period;
  - The Rock Creek East planning area had a slightly higher median income than the District median in the 2017-2021 period, which represents an increase from the 2012-2016 period when the area had a lower median income than the

District. Though all of the demographic groups saw an increase in their median income, only Asian, Two or More, and White residents had a median income above the District median;

- More than half of the residents in Rock Creek East owned their own home in both five-year periods, which was a higher percentage than the District as a whole. The area also had a lower cost burden percentage than the District as a whole. This indicates that Rock Creek East has been one of the more affordable neighborhoods in the District to purchase a home. Also noteworthy is that the area's cost burden of 33.3% in the 2017-2021 period is lower than the 37.9% in 2012- 2016; and
- When race/ethnicity is considered, almost every group of residents had a higher percentage of homeowners than their District-wide percentage. This can be seen in the 2017-2021 period where 55% of Black residents in Rock Creek East owned a home whereas District-wide 36% of Black residents owned their home. Also, during this same period 37.4% of Hispanic residents in Rock Creek East owned a home whereas District-wide only 34.8% owned their home;
- **Upper Georgia Avenue Plan:** The OP Setdown Report concluded that proposal would further policies of the Upper Georgia Avenue Plan as the Property site is described as part of the "Gateway Sites" portion of Georgia Avenue and a number of policy statements apply to the Property, including a statement that calls for more intense development of sites with a mix of uses to create greater diversity of neighborhood retail and increase housing opportunities; and a statement that envisions new development at the 7800 and 7700 blocks of Georgia Avenue consisting of moderate to medium density development incorporating street level retail with residential or office above, and notes that development in the medium density range should be placed at the intersection and along Georgia;

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

- The map amendment would rezone the property to MU-10, which allows a higher maximum permitted FAR than the existing MU-4 zone;
- The 2019 Housing Equity Report, prepared by the Office of Planning and the Department of Housing and Community Development, set a goal for the Rock Creek East Planning Area to produce 1,500 affordable housing units by 2025; and
- According to DC's Comeback Plan (January 2023), the Rock Creek East Planning Area has only achieved 57.9 percent of its 2025 affordable housing production goal<sup>9</sup>.

(Ex. 12.)

61. OP submitted a hearing report, dated February 12, 2024 (the "OP Hearing Report"), that largely reiterated the OP Setdown Report's conclusions, and recommended approval of the Map Amendment. In response to the Commission's question at setdown about Maryland providing notice to District of Columbia property owners, OP stated that it was unaware of

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<sup>9</sup> During ANC 4A's cross-examination at the February 22, 2024 public hearing and in its Supplemental Report, OP acknowledged that the DMPED 36,000 by 2025 Dashboard data shows that RCE has achieved 70.7% of the target for affordable housing not the 57.9% shown in OP's Reports. (See Findings of Fact 47, 56.)

Maryland’s notice procedures; however, the Zoning Regulations’ notice procedures have been interpreted to apply only to District of Columbia properties primarily because the Office of Tax and Revenue, which provides property owner information to applicants, only maintains data regarding District properties. The OP Hearing Report concluded that the uses and development types generally permitted in the MU-10 zone would be compatible with the surrounding community and the Georgia Avenue corridor, and the rezoning would not be inconsistent with the written policies of the Comprehensive Plan. When viewed through a racial equity lens, on balance the proposed map amendment would not be inconsistent with the Comprehensive Plan and would further a number of Citywide and RCE Element policies; however, the proposal would potentially not further policies that call for preventing small business displacement. OP did note that potential small business displacement would generally be offset by the Applicant’s efforts to assist existing small businesses at the Property with relocation as detailed in the assistance plan submitted by the Applicant at Ex. 22A. (Ex. 25.)

62. At the public hearing, OP reiterated its support for the Application as detailed in its reports.

#### **DDOT REPORT**

63. DDOT submitted a report dated February 12, 2024, (the “DDOT Report”) stating that “DDOT has no objection to the approval of the requested Map Amendment.” (Ex. 24.) The DDOT Report stated that the additional density is expected to generate a moderate increase in vehicle, transit, biking, and walking trips, and noted that the proposal would support nearby transit and generate additional foot traffic to nearby businesses.
64. DDOT did not provide testimony at the public hearing.

#### **ANC REPORTS AND TESTIMONY**

65. ANC 4B submitted a Resolution in Support of the Application, dated January 22, 2024, (the “ANC 4B Report”), stating at its properly noticed public meeting of January 22, 2024, at which a quorum was present, the ANC voted (9-0-0) to support the Application. The ANC 4B Report concluded that the proposed Map Amendment is not inconsistent with the CP—specifically the FLUM and the Rock Creek East Area Element—and that the proposed Map Amendment advances the goals of the Upper Georgia Avenue Plan. (Ex. 21.) ANC 4B testified in support of the Application consistent with the ANC 4B Report. In addition, Commissioner Erin Palmer (ANC 4B02) and Commissioner Evan Yeats (ANC 4B04) testified in support of the Application consistent with their written testimony. (Ex. 38, 46; Tr. at pp. 74-80.)
66. ANC 4A submitted an ANC Report, dated February 21, 2024 (the “ANC 4A Pre-hearing Report”), stating at its properly noticed public meeting of June 2, 2024 [sic], at which a quorum was present, the ANC voted (7-0-0) to oppose the Application. The ANC 4A Pre-hearing Report identified five concerns, specifically:
- The lack of outreach to the community, tenants, and ANC 4A;
  - The presence of outdated data and omissions in the OP Report;
  - The overweighting of one element of the CP to the exclusion of other elements in the OP Report;

- The concentration of density east of Rock Creek Park while excluding west of Rock Creek Park creates racial inequity; and
- The lack of critical evaluation of the appropriateness of the structure for this specific site.

ANC 4A recommended that the OP Report be reissued with correct information and that OP reevaluate the proposal in light of accurate and current information. (Ex. 41, 41A.)

67. At the public hearing, Commissioner Paula Edwards testified (ANC 4A) in opposition to the map amendment and cited the following issues and concerns regarding the proposal:
- Lack of community engagement from the Applicant to ANC 4A and its Commissioners, and the existing tenants of the Property;
  - Lack of coordination and outreach with Montgomery County given the Property's close proximity to the county line;
  - Concern that the MU-10 zone is too intense for this location and not consistent with the Comprehensive Plan;
  - Concern that housing was overweighed in the Comprehensive Plan consistency analysis of the proposal to the exclusion of other Comprehensive Plan Element policies regarding the environment and traffic; and
  - Concern that OP's data, specifically the ACS and affordable housing data in its reports, is old and outdated. (Tr. at pp. 87-92).

#### **PERSONS IN SUPPORT**

68. Letters and materials in support of the Application were submitted to the record from the following:
- Alison Horn, resident of Tuckerman Street, N.W.; (Ex. 28.)
  - Eva Beauty Salon, commercial tenant of the Property; (Ex. 29.)
  - Ramos Market, commercial tenant of the Property; (Ex. 30.)
  - Jenna Cevasco, resident of Elder Street, N.W.; (Ex. 32.)
  - Elizabeth Buchanan, resident of Elder Street, N.W.; (Ex. 34.)
  - Ken Jacobs, resident of 9<sup>th</sup> Street, N.W.; (Ex. 35.)
  - Beth Davidson, resident of Walnut Street, N.W.; (Ex. 36.)
  - Cathy Eisenhower, resident of 9<sup>th</sup> Street, N.W.; (Ex. 37.)
  - Chris Gorud, resident of Cedar Street, N.W.; (Ex. 39.)
  - Christopher Sousa, resident of Piney Branch, N.W.; (Ex. 42.)
  - LeighAnn Rosenberg, resident of 9<sup>th</sup> Street, N.W.; (Ex. 44.)
  - Georgia Avenue Redevelopment, LP, nearby residential property owner; and (Ex. 47.)
  - Juniper Gardens, LLC, nearby residential property owner. (Ex. 48.)
69. At the public hearing, Dave Cooke testified in support of the Application. (Tr. at pp. 110-112.)



### **PERSONS IN OPPOSITION**

70. Letters and materials in opposition to the Application were submitted to the record from the following:
- Brian Coates, resident of Fern Place, N.W.; (Ex. 31.)
  - Elizabeth Allaben, resident of Jonquil Street, N.W.; (Ex. 40.)
  - Naima Jefferson, resident of Kalmia Road, N.W.; and (Ex. 43.)
  - David Jefferson, resident of Kalmia Road, N.W. (Ex. 49.)
- (Hereinafter, Brian Coates, Elizabeth Allaben, Naima Jefferson, and David Jefferson are collectively referred to as the “Opponents”.)
71. At the public hearing, Brian Coates, Naima Jefferson, and David Jefferson testified in opposition of the Application; they each filed a letter/testimony in opposition of the Application. Generally, their oral and written testimony made the following arguments and observations:
- The proposal is illegal spot zoning and is too intense for the location and inconsistent with the lower density zoning nearby;
  - There is enough affordable housing in the Rock Creek East Planning Area based on Ms. Jefferson’s data sources (Ex. 43, Appendix C.), not too little; thus, OP’s recommendation that IZ Plus should apply to the map amendment is flawed;
  - OP’s data is old and inaccurate, it does not provide enough analysis of the surrounding area including Montgomery County and comprehensive impact analyses/studies are necessary for map amendment proposals and were not completed;
  - The prospect of more affordable housing opportunities does not correspond with creating more retail opportunities as retail decisions are driven by income demographics (e.g., the vacancies at Walter Reed);
  - Community outreach and engagement was lacking and not compliant with the Commission’s Racial Equity Tool’s instruction that outreach begin early in the process. Community is defined broadly in the Racial Equity Tool and the Applicant did not do so in its application of the Racial Equity Tool;
  - The proposal will dramatically change the area and continue the trend of widespread displacement of people of color in this area; and
  - Housing is not the only objective and should not be prioritized over all other considerations. (Ex. 31, 43, 49; Tr. at pp. 112-121.)
72. Elizabeth Allaben, a resident of Jonquil Street, filed a letter in opposition stating that the MU-10 zone is too intense for this location abutting residential areas and would result in adverse consequences, including reduced sunlight, increased traffic congestion, and displacement of retail businesses that serve the community. (Ex. 40.)

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

73. The Commission referred the Application to the National Capital Planning Commission (“NCPC”) on March 25, 2024, 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. 61.)



74. On April 25, 2024, NCPC staff filed a letter stating that the proposal falls under an exception listed in Chapter 8 of NCPC’s submission guidelines; therefore, NCPC staff determined that the proposal is exempt from NCPC review. (Ex. 63.)

#### **COMMISSION’S REQUEST FOR CORRECTED DDOT REPORT**

75. On March 22, 2024, DDOT filed a Supplemental Report that acknowledged the error in the original DDOT report, and clarified that the MU-10 zone is classified as mixed-use medium density zone. (Ex. 60.) The report also stated that the error in the original report does not change DDOT’s assessment of the impacts of the zoning action as stated in its original report. DDOT’s original report concluded that the increased density under the MU-10 zone would result in moderate impacts to the transportation network.

#### **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 must ensure that the Zoning Map, and all amendments to it, are “not inconsistent” with the CP pursuant to § 492(b)(1) of the District of Columbia Home Rule Act. (§ 2 of the Zoning Act; D.C. Official Code § 6-641.02) and Subtitle X § 500.3 incorporates this intent to the Zoning Regulations by requiring that map amendments be “not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.”

4. The Commission concludes the Application advances the purposes of the Zoning Act. For the reasons described below, the Commission finds 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.)**

5. 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.
6. The Commission concludes, based on the filings and testimony of the Applicant and OP, that the Map Amendment from the MU-4 zone to the MU-10 zone is not inconsistent with the CP in its entirety, including the CP maps and elements, and will advance a number of CP Elements, as discussed below.
7. 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).) In this case, the Commission concludes that any potential inconsistencies with CP policies, specifically policies that encourage development of scale and character consistent with the surrounding neighborhood and transitions between higher density development and existing low density residential development, preservation of established low density neighborhoods and zoning, promoting commercial centers, preventing small business displacement, coordination with neighboring jurisdictions, and rehabilitation before demolition, are outweighed by the Map Amendment’s overall consistency with the CP Maps and Citywide and Rock Creek East Area Element policies, as discussed in greater detail below. Namely, the Map Amendment is consistent with GPM and FLUM guidance for the Property and CP policies that support increasing density to permit more housing, including affordable housing, and more neighborhood serving retail, on underutilized property in close proximity to priority transit corridors, as discussed below.

**GPM**

8. The Commission concludes that the Map Amendment is not inconsistent with the GPM’s designation of the Property as a Main Street Mixed Use Corridor because:
  - Areas within a Main Street Mixed Use Corridor designation “are traditional commercial business corridors with a concentration of older storefronts along the street” and the Framework Element of the CP recognizes the redevelopment opportunity in some underutilized corridors, and further provides that “[c]onservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs.”; and (Findings of Fact (“FF”) 19-21, 30.)
  - The proposed MU-10 zone is not inconsistent with the Property’s GPM designation because the MU-10 zone will facilitate enhancement of the surrounding corridor by enabling a new mix of uses on the Property, including housing and additional affordable housing through the provision of IZ Plus as well as additional retail and

improvements to the public real as recommend by the Upper Georgia Avenue Plan. (FF 30, 60.)

## **FLUM**

9. The Commission concludes that the Map Amendment is not inconsistent with the FLUM's designation of the Property as Mixed Use Medium Density Residential / Medium Density Commercial as the Map Amendment would provide for increased density on a site that is underutilized and would facilitate the development of housing, including affordable housing. (FF 22, 23, 31.) The Commission notes that the Medium Density Commercial FLUM category expressly states that the MU-10 zone is consistent with the category. Further, the MU-10 zone permits a maximum density of 6.0 FAR (7.2 FAR with IZ), which falls within the 4.0 FAR – 6.0 FAR density range contemplated by the Medium Density Commercial FLUM category, with greater density being possible when complying with IZ or when approved through a Planned Unit Development. Therefore, the Commission finds that the MU-10 zone is appropriate for the Property as it will allow for higher density development on the Property, as contemplated by the FLUM, and which is ideal for the Property given its gateway location between two jurisdictions. (FF 31, 60.)

## **Racial Equity**

10. 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 Reports, and inclusive of disaggregated race and ethnicity data for the Rock Creek East Planning Area. (FF 18, 41, 56, 60, 61.) The Commission finds that the racial equity analyses provided by the Applicant and OP fully address the components (Parts 1-4) of the Commission's Racial Equity Tool and that the Map Amendment will further CP racial equity goals, for the following reasons: (*Id.*)
- Displacement – The Map Amendment will not result in the direct displacement of residents because there are no existing residential uses on the Property; however, the Map Amendment will likely displace the existing commercial tenants on the Property. The Commission notes the Applicant's commitment to mitigate this potential small business/commercial retail displacement through efforts to assist with relocation of the existing commercial tenants on the Property, as detailed in the Applicant's assistance plan. (FF 41, 60, 61.) The Commission notes that the Applicant states that it initially worked with the Upper Georgia Avenue Main Street, which offered free legal and accounting services and helped in identifying finding vacant space around the Georgia corridor for the tenants to relocate; and according to ANC 4A and opponents' testimony, it subsequently went out of business. (FF 47.) Further, the Commission notes that the Applicant then engaged a retail consultant to offer leasing assistance to the tenants in an effort to help them find new space and negotiate leases; (FF 41, 60, 61.)
  - Indirect Displacement – The Commission acknowledges that the Map Amendment could result in indirect displacement impacts, both to existing businesses and residents in the area. However, the Commission believes these indirect displacement impacts are both mitigated and outweighed by the Map Amendment's potential to create

additional retail opportunities compared to those currently existing on the Property site and its potential to create housing on an underutilized site where there currently is no residential use. The Commission is hopeful that the provision of housing on the site will increase the likelihood of residents of color being able to remain in the neighborhood; (FF 41, 60.)

- Community Outreach and Engagement – The Applicant’s racial equity analysis included evidence that it conducted outreach with various community stakeholders as detailed in the record, including existing tenants of the Property, adjacent property owners, community organizations, ANC 4A, and ANC 4B. (FF 41, 44, 45, 51, 54.) The Commission acknowledges ANC 4A and opponents’ assertions that the Applicant’s community outreach was lacking to ANC 4A, the community, and existing tenants; and assertions that ANC 4B’s outreach procedures failed to include ANC 4A. (FF 52, 55, 66, 67, 71, 72.) The Commission is sensitive to these arguments and generally makes every effort to encourage dialogue and collaboration between applicants, parties, and opponents, while recognizing that oftentimes everyone involved will have different interpretations on the adequacy of outreach and engagement. Likewise, the Commission generally encourages applicants to commence outreach efforts as early in the process as possible. In this case, the Commission acknowledges that the Applicant’s community outreach and engagement efforts fell short from ANC 4A and opponents’ perspective. Much of the community input and concerns that were raised relate to a potential development program for the Property site and subsequent impacts resulting from a specific development; some of this is attributable to the Applicant presenting a specific development to the community, which the Commission communicated was not appropriate in a map amendment case because map amendments do not entail approval of a specific development. (FF 55, 57.) As noted by ANC 4A and opponents, the Commission agrees that the Applicant could have reached out to more local residents, community organizations, and churches in the immediate vicinity, and it could have commenced its efforts sooner. However, these failures on the Applicant’s part do not diminish the Applicant’s outreach and engagement efforts, as demonstrated both by the case record and testimony at the public hearing, nor does the Commission find the efforts that were made inadequate or contrary to the Racial Equity Tool’s guidance for applicants to begin their community outreach and engagement efforts early on and with stakeholders who might be most affected, i.e., which, in this case, does include the existing commercial tenants and the ANC in which the Property is located. (FF 41, 44, 45, 51, 54.) Similarly, the Commission finds ANC 4B’s submission to the record detailing its outreach processes fully responsive to ANC 4A and opponents’ assertions; (FF 53.)
- Disaggregated Race and Ethnicity Data: ANC 4A and opponents raised concerns about the accuracy of the disaggregated race and ethnicity data provided in OP’s Setdown and Hearing Reports. (FF 52, 55, 66, 67, 71, 72.) As confirmed by OP, in both its cross-examination testimony at the public hearing and its Supplemental Report, the ACS data in OP’s Setdown and Hearing reports was older data from 2022 (for the period of 2017-2021) instead of the more current data (for the period of 2018-2022 available as of December 2023). (FF 47, 56.) Likewise, OP also confirmed that the Planning Area data in OP’s Setdown and Hearing reports regarding the Mayor’s affordable housing target progress (for RCE Planning Area) was older data from the Mayor’s 2023 DC

Comeback Plan instead of more current data from the DMPED Dashboard. (*Id.*) The Commission acknowledges that the disaggregated race and ethnicity data, specifically the ACS data and the affordable housing target progress data in the OP Setdown and Hearing reports, was not the most current data, and the Commission discusses this issue fully below in Conclusion of Law (“COL”) 23 under the heading *OP Data (Outdated)*. The Commission summarizes the disaggregated race and ethnicity data for the RCE Planning Area provided in the OP Setdown Report, as follows: (FF 60.)

- Rock Creek East Planning Area data showed that the Black population within the Planning Area has decreased from 60% to 53% from 2012 to 2021, which mirrors the District-wide trend during that period; and that the White population increased from 21% to 24%. Further, OP’s disaggregated race and ethnicity data indicated that the Rock Creek East Planning Area has a majority minority population with 53% of its residents being Black and 22% of its residents being Hispanic for the period of 2017-2021. OP’s disaggregated race and ethnicity data also demonstrates that the median age within the Planning Area is slightly older than the District-wide median age for both the period of 2012-2016 and 2017-2021 and that, when race was factored in, the age of Black residents, on average, was older than most of the other groups within the Planning Area during the 10 year period. The Planning Area has a slightly higher median income than the District-wide median in the 2017-2021 period, which represents an increase from the 2012-2016 period when the area had a lower median income than District-wide. More than half of the residents in the Planning Area owned their residence in both 5-year periods, which indicates that RCE has been one of the more affordable neighborhoods in the District to purchase a home. When the data is distinguished by race, both home ownership and median income are higher for Whites than Blacks. Based on the Planning Area data, the Commission is hopeful that allowing increased density on the Property will positively impact the Planning Area, specifically because the Map Amendment is subject to IZ Plus which will provide increased housing opportunities for lower income households, who are more likely Black and brown. Furthermore, the Commission is encouraged that increasing overall housing opportunities in the Planning Area could relieve some of the housing cost pressures impacting lower income households and increase their likelihood of being able to remain in the Planning Area. (*Id.*)

#### **Rock Creek East Area Element**

11. The Commission concludes that the Map Amendment furthers the policies of the Rock Creek East Area Element because the Map Amendment will provide for increased development potential, creating opportunity to enhance both the residential character and economic vitality of the surrounding area with new housing for a range of incomes and households’ sizes. Further, the proposed Map Amendment could improve the Upper Georgia Avenue Corridor’s visual and urban design qualities by encouraging the development of multi-use neighborhood shopping and services and encouraging the production of new housing at a mix of income levels along Georgia Avenue, N.W. (FF 24, 32-33, 60.)



### **Land Use Element**

12. The Commission concludes that the Map Amendment furthers the Land Use Element because:
- The Map Amendment will facilitate new development on a Gateway site located adjacent to transit and multimodal corridors that has been underutilized and expand neighborhood commerce in a mixed-use zone while providing appropriate transitions in height, design, and density; and
  - The Map Amendment will allow for an increase in density that will advance housing goals by helping the District meet its long-term neighborhood and citywide demands for additional housing and affordable housing. (FF 35, 60.)

### **Housing Element**

13. The Commission concludes that the Map Amendment furthers the Housing Element because it will provide a substantial increase in permitted density for residential uses on the Property and potentially expand the District's housing and affordable housing supply. In addition, the Map Amendment would require IZ Plus for any future residential development, which would ensure that more affordable housing than required under regular IZ is developed on the site. Also, 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; therefore, the Map Amendment could create opportunities for more low-income residents to remain in the area. (FF 36, 60.)

### **Transportation Element**

14. 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, with multimodal access, which will facilitate bicycle and pedestrian access, and advance equity by fostering easy access to reliable transportation. (FF 37, 60.)

### **Environmental Protection Element**

15. 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 by complying with the Green Building Act, the District's storm water management regulations and the Sustainable DC Plan. (FF 38, 60.)

### **Urban Design Element**

16. The Commission concludes that the future development the Map Amendment would facilitate could advance policy objectives of the Urban Design Element. More specifically, the increased density the Map Amendment will allow under the MU-10 zone could

facilitate new development on a Gateway site furthering Urban Design policies calling for improvements to the city's major thoroughfares and neighborhood entry points. (FF 60.)

### **Potential CP Inconsistencies**

17. The Applicant identified two CP policies as potentially inconsistent with the Map Amendment proposal: Land Use Element Policy LU-2.4.1: Promotion of Commercial Centers and Policy LU-2.1.4: Rehabilitation Before Demolition. OP identified one CP policy as potentially inconsistent with the Map Amendment proposal: Environmental Protection Policy ED-3.2.6: Commercial Displacement. Because the Map Amendment proposal will likely result in the displacement of the existing commercial tenants on the Property and the demolition of the existing structure on the site to build new construction, the Commission concludes that the proposal is inconsistent with these policies. The Commission acknowledges that the proposal is also inconsistent with other CP policies that state similar policy objectives and guidance (i.e., promotion of commercial centers, rehabilitation before demolition, and prevention of commercial displacement) to those identified by the Applicant and OP. However, for all the reasons herein, and largely because of the Property's location as a Gateway site on Georgia Avenue, the Commission believes this site is underutilized and appropriate for medium density development as contemplated by the CP maps and as supported by numerous CP policies, discussed immediately above. Accordingly, the Commission concludes that any potential CP inconsistencies are outweighed. (FF 43, 60.)

### **Upper Georgia Avenue Plan**

18. The Commission concludes that the Map Amendment is not inconsistent with and will further the Upper Georgia Avenue Plan because the Property is located in the "Zone 1" area of the Upper Georgia Avenue Plan, which extends from Eastern Avenue, N.W. to Fern Street, N.W. and is called the "Gateway." The Property's location within the "Gateway Sites" portion of Georgia Avenue because of its status as the entrance to the District of Columbia and close proximity to downtown Silver Spring, Maryland makes it a prime redevelopment opportunity. A number of policy statements in the Upper Georgia Avenue Plan apply to the Property, including a statement that calls for more intense development of sites with a mix of uses to create greater diversity of neighborhood retail and increase housing opportunities; and a statement that envisions new development at the 7800 and 7700 blocks of Georgia Avenue consisting of moderate to medium density development incorporating street level retail with residential or office above, and notes that development in the medium density range should be placed at the intersection and along Georgia. Finally, affordable housing is one of the priorities of the Upper Georgia Avenue Plan and the proposed Map Amendment has the capability of producing more affordable housing at the Property through the provision of IZ Plus. (FF 34, 60.)

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

19. 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)).

20. 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 the Rock Creek East 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, as discussed in more detail below in COL 23. (See FF 60.)

#### **"GREAT WEIGHT" TO THE ANC REPORTS**

21. 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)).
22. The ANC 4B Report expressed the ANC's recommendation of support for the Map Amendment. The Commission concurs with ANC 4B's recommendation. (FF 65.)
23. The Commission carefully considered the issues and concerns raised in the ANC 4A Pre-hearing Report (FF 66, 67.), as corroborated in the ANC 4A public hearing testimony, and the ANC 4A Post-hearing Reports (FF 52, 55). The Commission did not find ANC 4A's arguments and rationale for opposing the Map Amendment persuasive, for the reasons explained below. The various issues and concerns raised by both ANC 4A (FF 52, 55, 66, 67.) and opponents (FF 71, 72.) are listed below by heading followed by the Commission's responses. The Commission has consolidated its responses to ANC 4A and the opponents because there was overlap in the opposition arguments raised:
- *Notice Issues / Lack of Public Hearing Notice to Maryland Property Owners*
    - ANC 4A and opponents argue that the Applicant failed to contact the ANC Commissioners for ANC 4A, Edwards and Hoyte, sent notice of intent to file the application to the wrong address for ANC 4A, and failed to make reasonable efforts to attend a meeting of ANC 4A during the 45-day notice period in accordance with Subtitle Z § 304.6. (FF 52, 71.) The Commission acknowledges these failures and the significance of applicant outreach and engagement efforts regarding zoning actions commencing as early as possible. Nevertheless, the Commission believes that ANC 4A and opponents participated in the zoning process, by attending the public hearing and providing testimony/letters to the case record. In addition, the Applicant did attend meetings with ANC 4A and ANC 4A Single Member District Commissioners and presented the Application to them. (FF 41.) The Commission agrees with ANC 4A and opponents that the Applicant's outreach efforts with ANC

- 4A and the broader community could have commenced earlier in this process and could have been more robust; however, the Commission does not find the Applicant's outreach and engagement inadequate in these factual circumstances. Notably, even if the Commission found the Applicant's community outreach and engagement efforts inadequate, that alone would not be a basis to deny this Application; to deny the Application, the Commission would have to find the Application to be inconsistent with the CP, on the whole; and
- ANC 4A and opponents argue that notice requirements, under Subtitle Z § 402.1 of the Zoning Regulations, for property owners within 200 feet of the Property site located in Maryland were violated because the Applicant failed to provide such notice. (FF 55, 71.) The Commission addressed this question as a procedural issue before considering proposed action of this case at its March 14, 2024 public meeting, and decided to waive the 200-foot notice rule. (See complete discussion of the Commission's ruling and reasoning on this issue above at FF 58.) The Commission notes that, in response to its request, OP also provided a response regarding why the 200-foot notice requirements have not been viewed as applicable to Maryland property owners because of limitations on the District agency which provides property owner information to applicants; (See FF 61.)
  - *Lack of Community Outreach and Engagement*
    - ANC 4A and opponents argue that there was a lack of public outreach to the existing tenants, the community, and ANC 4A by the Applicant; and that ANC 4B's outreach procedures failed to include ANC 4A. (FF 52, 55, 66, 67, 71, 72.) For the reasons discussed in detail above under COL 10, the Commission concludes that the case record demonstrates that the Applicant's community outreach efforts were adequate;
  - *OP Data (Outdated)*
    - ANC 4A and opponents argue that the data in OP's Setdown and Hearing reports is outdated and should be updated with current data and OP's analyses should be revised to reflect current data; (FF 52, 55, 66, 67, 71.)
    - ACS data – The case record establishes that the ACS data provided in OP's Setdown and Hearing Reports, to respond to the disaggregated race and ethnicity data component of the Commission's racial equity tool (Part 3), includes outdated data from 2022 (for the period of 2017-2021) instead of more current data from 2023 (for the period of 2018-2022). (FF 47, 56.) In its Supplemental Report, OP explained that US Census/ACS data for the period of 2018-2022 was released in December of 2023; however, the State Data Center within OP is still in the process of distilling the data to CP's Planning Areas to fully respond to the Planning Area metrics (i.e., total population, median income and age, vulnerable populations, homeowners, and renters) requested in the Commission's racial equity tool. OP noted that this process is underway and should be completed soon but until it is completed, the ACS data for the period of 2017-2021, included in OP's Setdown and Hearing reports, is the most current data available for purposes of responding to the data metrics in the Commission's racial equity tool. (FF 56.) The Commission must clarify that its evaluation of a zoning action through a racial equity lens

considers the racial equity analyses submitted by the Applicant and OP in response to Parts 1-3 of the tool; then, based on those responses, the Commission evaluates how the zoning action could positively and negatively impact CP racial equity goals using the themes/questions posed in Part 4 of the tool. (FF 18.) This evaluation through a racial equity lens is a part of the Commission's overall CP consistency analysis of a zoning action. The Commission notes that Part 3 of its racial equity tool requests specific data metrics for the Planning Area affected by the zoning action to provide for a consistent comparative analysis of zoning actions; and requires that data provided in response to Part 3 be compiled from four sources only, including: OP Demographic Data Hub, US Census, Open Data DC Platform, and OP Upward Mobility Dashboard. (*Id.*) The Commission intends for these data metrics, broken down by Planning Area and race, to look backward to observe trends in a Planning Area over time. The Commission acknowledges that its evaluation through a racial equity lens is not a perfect process as the Commission cannot predict with certainty how a zoning action will positively and negatively impact CP racial equity goals. But the Commission believes that looking at data metrics over time to identify trends as opposed to looking at only current data results in a more meaningful evaluation process. The Commission also believes that it's reasonable that there would periodically be a need for the OP's four data sources to be updated (with more current data) to fully respond to the Planning Area data metrics requested in the Commission's tool. In these factual circumstances, the Commission acknowledges that the ACS data provided in OP's Setdown and Hearing reports is not the most current data available (i.e., data for the period from 2018-2022). The Commission also acknowledges that OP has explained the reason for why the most current data was not used in its racial equity lens analysis and is in the process of updating the data to respond to the Planning Area metrics requested in the Commission's tool. Of course, the Commission would prefer if the most current data was available to be utilized, but again, the Commission finds it is reasonable that the four data sources cited in the tool will need to be updated periodically and understands that this particular update requires additional time. Moreover, the Commission concludes that its objective of looking at data metrics to identify trends over time can be fulfilled with the data provided in OP's reports (for the period of 2017-2021). In fact, the Commission finds that one year of new data (i.e., 2022 data) is unlikely to reflect any major shifts in the trends observed in the Commission's evaluation process. The Commission further notes that the updates to OP's data is a temporary situation in the process of being addressed;

- Affordable Housing Data – The case record establishes that the affordable housing target progress data for the RCE Planning Area, that appears in OP's Setdown and Hearing reports, includes older data from the Mayor's 2023 DC Comeback Plan as opposed to more current data from the DMPED Dashboard. (FF 44, 47, 51, 52, 55, 56.) Specifically, based on the Mayor's 2023 DC Comeback Plan data, OP's Setdown and Hearing reports indicate that the RCE Planning Area has achieved 57.9% of its affordable housing target as stated in the Mayor's 2019 Housing Equity



Report. However, based on more current data from the DMPED Dashboard, the RCE Planning Area has achieved 70.7% of its affordable housing target, as of January/February 2024. (*Id.*) The Commission acknowledges this error in OP's Setdown and Hearing reports, and notes that this error has been corrected in OP's Supplemental Report. (FF 56.) The Commission does not believe the previous error changes its overall finding that the Map Amendment will help achieve the Mayor's housing goals for the RCE Planning Area, since the current data still reflects a shortfall in reaching the Planning Area's affordable housing target; and

- Typo/Mistake in OP Setdown presentation referencing Case No. 23-07 – The case record establishes that OP's Setdown presentation mistakenly referenced Case No. 23-07 instead of Case No. 23-11. (FF 47, 71.) ANC 4A and opponents argue that this is evidence of cut-and-paste and point out that no one noticed the error. During cross examination testimony at the public hearing, the OP representative acknowledged the mistake and apologized for the oversight. (FF 47.) The Commission acknowledges the same and apologizes for failing to notice the oversight; however, the Commission appreciates ANC 4A and opponents citing the error so that it could be acknowledged openly;
- *Failure to Consider Montgomery County Data and Collaboration with Montgomery County in Inconsistent with the CP*
  - ANC 4A and opponents argue that the Commission should have considered Montgomery County data and should have required coordination with Montgomery County to fully evaluate the Map Amendment. (FF 55, 71.) In support of this contention, opponents cite CP § 2207.3, which summarizes key messages from the community during Comprehensive Plan workshops that took place in RCE during the CP revision and community meetings not directly connected to the Comprehensive Plan. (*See* Ex. 43, p. 4). Opponents also note that the Upper Georgia Avenue Plan mentions coordination with Montgomery County, to support this contention. (*Id.*) At the conclusion of the public hearing, the Commission stated that it would not consider Montgomery County data in its evaluation of this Application. (FF 50.) The Commission acknowledges that the Property is located in close proximity to and closely borders Montgomery County, and that there could be shared outcomes/results of zoning actions in either jurisdiction given their close proximity. Notably, the CP and Upper Georgia Avenue Plan guidance suggesting coordination with Montgomery County and cited by opponents, is not mandatory guidance specific to zoning actions. It is generally suggested guidance with no specification as to what measures are necessary to comply. The Commission does not dispute that such coordination would likely result in meaningful dialogue. However, the Commission will not consider Montgomery County data or input in its evaluation of zoning actions based on generally suggested guidance; and historically has not considered Montgomery County data or input in its evaluation of zoning actions where the property involved closely borders Montgomery County. Moreover, the Commission does not believe that Montgomery County data or input is necessary to conduct its evaluation of whether the matter of right development standards of the MU-10 zone are not inconsistent with the Comprehensive Plan, as a whole; (FF 51, 54.)

- *DDOT Report*
  - ANC 4A argues that DDOT’s original report should be excluded from the record and consideration by the Commission because it erroneously states that the MU-10 zone is a mixed-use moderate density zone. (FF 55.) The Commission acknowledged this error at its March 14, 2024 meeting, and requested that DDOT file a supplemental report correcting the error and any conclusions. (FF 59.) DDOT filed a supplemental report acknowledging the error and correctly stating that the MU-10 zone is a mixed-use medium density zone; DDOT also stated that the error did not impact the conclusions in its original report. (FF 75.) The Commission is satisfied with DDOT’s supplemental report correcting the error in the original report and sees no need to exclude DDOT’s original report from the case record, accordingly. The Commission notes that DDOT’s original report concluded the Map Amendment’s additional density is expected to generate a moderate increase in vehicle, transit, biking, and walking trips, and noted that the proposal would support nearby transit and generate additional foot traffic to nearby businesses; (FF 63.)
- *Overconcentration of Affordable Housing in the RCE Planning Area*
  - ANC 4A and opponents argue that, based on their data sources, there is an overconcentration of affordable housing in the RCE Planning Area. (FF 49, 52, 55, 66, 67, 71.) ANC 4A and opponents appear to have provided the same data source to establish their contention that RCE has an overconcentration of affordable housing; ANC 4A provided Appendix 1 at Ex. 51A and opponents provided Appendix C at Ex. 43. (FF 52, 71.) In addition, ANC 4A provided a second list of affordable housing projects from other data sources. (Ex. 55A; FF 55.) The Commission must again clarify that Part 3 of its racial equity tool requests specific data metrics for the Planning Area affected by the zoning action to provide for consistent comparative analysis of zoning actions; and Part 3 of the tool requests data on whether the affected Planning Area of the zoning action is on track to meet the Mayor’s 2025 affordable housing goal as set by the Mayor’s 2019 Housing Equity Report. (FF 18.) In addition, the Commission’s tool requires that data provided in response to Part 3 be compiled from four sources only, including: OP Demographic Data Hub, US Census, Open Data DC Platform, and OP Upward Mobility Dashboard. (*Id.*) Again, this is to facilitate consistent comparative analysis of zoning actions. The Applicant noted several issues with the affordable housing data supplied by ANC 4A and opponents to demonstrate an overconcentration of affordable housing in the RCE Planning Area. (FF 51.) Specifically, that the data supplied cites no sources for compilation of data; does not identify the methodology used for selecting sites/projects to include in the Appendix<sup>10</sup>; includes at least one project, namely 435 Edgewood Street, N.E., that is not within the boundaries of the RCE Planning Area; includes two projects (3825 Georgia and 6925-29 Georgia) that completed construction prior to 2019 and would not have been included when the Mayor set affordable housing production goals in 2019; and includes projects that may be renovations of existing affordable units that would not count towards the Mayor’s housing production goals. (*Id.*) The

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<sup>10</sup> This reference to the “Appendix” is referring to both Appendix 1 at Ex. 51A and Appendix C at Ex. 43.

Commission agrees with the issues cited by the Applicant regarding the affordable housing data supplied by ANC 4A and opponents in the Appendix referenced immediately above and at n. 10; and finds that the data is compiled from more sources than the four required in Part 3 of the tool, and includes affordable housing that is not within the RCE Planning Area and that does not count toward the affordable housing goal for the RCE Planning Area as set by the Mayor's 2019 Housing Equity Report. (FF 49, 51, 52.) Similarly, the Commission finds that the affordable housing data supplied from ANC 4A at Ex. 55A includes affordable housing that does not count toward the affordable housing goal as set by the Mayor's 2019 Housing Equity Report because it includes several projects that completed construction prior to 2019. The Commission's evaluation of Planning Area affordable housing in a zoning action is limited to affordable housing that counts toward the affordable housing goal set by the Mayor's 2019 Housing Equity Report based on the racial equity tool's requirements. (FF 18.) For all these reasons, the Commission does not find the affordable housing data supplied by ANC 4A and opponents to be relevant or reliable, for its evaluation purposes. The Commission is sensitive to the issue of conflicting data, especially because of the Commission's racial equity tool's data requirements. This is why the Commission's tool limits the data that will be utilized in the Commission's evaluation and only expressly requests Planning Area data metrics from OP and four data sources. (FF 18.) The Commission's goal is not to limit dialogue and discussion regarding Planning Area data metrics, but rather to provide for consistent comparative analysis of data utilized in its decision making. The Commission again acknowledges that the initial data provided in OP's Setdown and Hearing Reports incorrectly reflected that 57.9% of the affordable housing target for the RCE Planning Area had been achieved instead of correctly reflecting that 70.7% of the affordable housing target had been achieved based on more current data. (FF 56, 60, 61.) The Commission believes that the corrected data demonstrates that, based on the affordable housing goal set forth in the Mayor's 2019 Housing Equity Report, the RCE Planning Area does not have an overconcentration of affordable housing. Accordingly, the Commission is not persuaded by ANC 4A and opponents' arguments regarding an overconcentration of affordable housing;

- *IZ Plus*
  - ANC 4A and opponents argue that IZ Plus should not automatically apply to the Map Amendment, given data sources that show an overconcentration of affordable housing in the RCE Planning Area. (FF 52, 55, 66, 67, 71.) The Commission provides its rationale immediately above for disagreeing with the contention that there is an overconcentration of affordable housing in the RCE Planning Area. The Commission therefore does not agree that it should reconsider the automatic application of IZ Plus in this case. Under Subtitle Z § 502.1(b), IZ Plus automatically applies to this Application because the proposed MU-10 zone allows a higher maximum FAR than the existing MU-4 zone. However, under Subtitle X § 502.2(c), the Commission has authority to determine that the Application is not appropriate for IZ Plus based on OP's written recommendation that IZ Plus not apply "due to the mitigating circumstances identified by the Office of Planning in its report recommending that the map amendment not be subject to IZ Plus." To

date, OP has only recommended that IZ Plus not apply in cases where it identified an overconcentration of affordable housing in the Planning Area as a mitigating circumstance. In this case, OP is not recommending that IZ Plus not apply and there is no overconcentration of affordable housing in the RCE Planning Area. Given these facts and the potential for applying IZ Plus to the Map Amendment to result in more affordable housing, if the site is ultimately developed with residential use, the Commission concludes IZ Plus should automatically apply to the Map Amendment; (FF 51.)

- *Lack of Critical Impact Analysis*
  - ANC 4A and opponents argue that the Application's lack of critical impact analysis of the Map Amendment does not enable the Commission to properly consider the Application. (FF 52, 55, 66, 67, 71, 72.) Specifically, there is a need for environmental, transportation (parking), and police and fire emergency impact studies; a need for density and existing small business displacement studies; and a need for shadow studies, given the Property site's small size and elevation, to assess the impacts to light. The Commission's evaluation of the appropriateness of a map amendment is based on consistency with the Comprehensive Plan and other adopted policies and program related to the subject property. (Subtitle X § 500.3.) In this case, that is an evaluation of whether the matter of right development standards of the MU-10 zone are not inconsistent with the CP, on the whole, and the Upper Georgia Avenue Plan. Accordingly, in its evaluation of this proposal, the Commission considered the CP map designations for the Property site as well as written elements of the CP, including Citywide and Rock Creek East Area Element policies. And additionally, policies of the Upper Georgia Avenue Plan. As detailed in COL 5-20 above, the Commission found that the map amendment was not inconsistent with the Property's Main Street Mixed-Use Corridor designation on the GPM and the Property's Medium Density FLUM designations; and would advance policy goals and objectives of the CP's Land Use, Housing, Transportation, Environmental Protection, Urban Design, and Rock Creek East Area Elements, as well as the Upper Georgia Avenue Plan. Based on the applicable and relevant evaluation criteria, the Commission is not persuaded by ANC 4A and opponents' assertions that the Applicant's and OP's analyses of the Application are lacking in critical impact analyses. The Commission concludes that environmental, transportation (parking), police and fire emergency impact studies, density and existing small business displacement impact studies, and shadow studies are not required or relevant to the Commission's evaluation of the Application. The Commission appreciates the concern about the potential impacts of the Map Amendment but believes the analyses provided in the case record by the Applicant, OP, and DDOT adequately address the applicable evaluation criteria for the Application. (FF 29-44, 51, 54, 56, 60-61, 63, 75.) The Commission further notes that the errors in the OP and DDOT reports, identified by ANC 4A and opponents, have been explained and corrected in the case record; (FF 47, 56, 75.)
- *Insufficient comparative analysis of the appropriateness of the MU-8 vs. MU-10 zone for the site.*
  - ANC 4A and opponents argue that the Commission has not fully compared the appropriateness of the MU-8 vs. the MU-10 zone for the Property site and whether

the structure is appropriate for the Property. (FF 52, 55, 66, 67, 71, 72.) In an IZ Plus map amendment application, the Commission has authority to determine that an alternate zone than the zone proposed in the application is more appropriate to achieve the goals of IZ Plus or the Comprehensive Plan. (Subtitle X § 502.7.) At the conclusion of the hearing, the Commission requested a comparative analysis from the Applicant between the MU-8 zone and the MU-10 zone, recognizing that both zones are not inconsistent with the Property site's FLUM designation of Mixed-Use Medium Density Residential and Medium Density Commercial. (FF 50.) The Applicant provided the requested analysis in a post-hearing submission (FF 51.) The Commission finds the comparative analysis to be comprehensive and detailed as it compares the respective development standards of the MU-8 and MU-10 zones; and notes that the Medium Density Commercial category contemplates density ranging from 4.0-6.0 FAR and specifically states that both the MU-8 and the MU-10 zones are consistent with the Medium Density category. The Commission believes that the MU-8 and MU-10 zones are both consistent with the Comprehensive Plan map designations for the Property site and with Upper Georgia Avenue Plan guidance for the Property, based on the case record. The Commission acknowledges that there are differences between the development standards of the MU-8 and the MU-10 zones, and overall, the MU-10 zone will allow for more intense development on the site than the MU-8 zone; however, the Commission does not find the MU-8 zone more appropriate for the Property site. In fact, the Commission believes that the Gateway location of the Property site along Georgia Avenue presents substantial opportunity for future development of the site, and the intensity allowed under the MU-10 zone will likely enhance that opportunity. (FF 29-41, 47, 51, 54, 60.) Moreover, the Commission notes the MU-10 zone requirement to provide a plaza and believes the provision of open space would further enhance any future development of the Property site. (FF 44; see Subtitle G § 212.1.) The Commission again acknowledges that the Applicant presented a specific project to the ANC, which is likely the reason the ANC mentions the appropriateness of a structure in its issues and concerns. (FF 52, 55, 66, 67.) The Commission is sensitive to project specific discussion in the context of a map amendment case and continually notes the distinction between map amendments and cases involving review of a specific project. The Commission's approval in a map amendment is limited to determining the appropriate matter of right development standards for the site and does not include review or approval of a specific project. More specifically, the evaluation standard is whether the map amendment is not inconsistent with the Comprehensive Plan and other adopted public policies and action programs related to the subject site. (Subtitle X § 500.3.) The Commission appreciates ANC 4A and opponents' project specific concerns, but they are irrelevant to the Commission's evaluation of this Application. Therefore, the Commission cannot consider arguments related to a specific structure or project in its evaluation;

- *Negative outcomes of the Map Amendment*
  - ANC 4A and opponents argue that the Map Amendment to the MU-10 zone will result in the following three negative outcomes: (FF 52, 55, 66, 67, 71.)



1. A decline in the Black population based on census tract data evidencing this outcome in other areas rezoned to MU-10;
  2. Overproduction of affordable housing will negatively impact retail development; and
  3. Overconcentrating affordable housing in largely African American communities such as Rock Creek East while other less racially diverse communities such as Rock Creek West are excluded resulting in racial disparities and inequities;
- The Commission acknowledges that the negative outcomes identified by ANC 4A and opponents are possible and undesirable; however, none of these outcomes are directly relevant to the Commission's evaluation of the Application based on the evaluation standard of whether the map amendment is not inconsistent with the Comprehensive Plan and other adopted public policies and action programs related to the subject site. (Subtitle X § 500.3.) ANC 4A and opponents' assertions and data to evidence that rezonings to the MU-10 zone in the District have resulted in a decline of the Black population, and that overproduction of affordable housing depresses median income demographics and negatively impacts retail development may be true statements. Similarly, ANC 4A and opponents' argument that greater distribution/over concentration of affordable housing east of Rock Creek Park, which is primarily African American, while west of Rock Creek Park, which is primarily White, does not absorb its full share contributes to racial disparities and inequities is also a true statement;
  - With respect to argument 1. above, the Commission acknowledges that RCE Planning Area data, provided in OP's Reports, shows a decline in the Black population; however, the Commission is not persuaded that there is a causal link between Black population decline and MU-10 rezonings in the District because the Black population is declining throughout the District for numerous reasons. (FF 54.) Notably even if there was a causal link, that fact alone would not be a basis for the Commission to deny this Application because of the evaluation standard in this case;
  - With respect to item 2. above, the Commission acknowledges that overproduction of affordable housing in an area could depress median income and negatively impact retail development in that area. Likewise, with respect to argument 3. above, the Commission acknowledges that greater distribution/over concentration of affordable housing in primarily African American neighborhoods while primarily White neighborhoods fail to absorb their equal share is a racial equity issue generally in the District. However, in this case, the record clearly establishes that the Rock Creek East Planning Area, in which the Property is located, does not have an over concentration of affordable housing based on the Mayor's 2025 affordable housing goal as set by the Mayor's 2019 Housing Equity Report. (FF 44, 51, 56). Accordingly, arguments 2. and 3. above, which are predicated on an overconcentration of affordable housing in the RCE Planning Area, do not relate to the Property site in addition to being irrelevant to the Commission's evaluation standard in this case; and
  - With respect to arguments 1., 2., and 3. above, ANC 4A and opponents have posited hypothetical negative outcomes of the map amendment, which would have negative

impacts on racial equity in the District. Therefore, out of an abundance of caution, the Commission also reaches an alternative conclusion to that immediately above. Specifically, that to the extent the map amendment is potentially inconsistent with CP policies encouraging minority population growth, promoting retail development investment opportunity, encouraging equal distribution of affordable housing throughout the District, and discouraging overconcentration or overproduction of affordable housing in minority neighborhoods, the Commission finds these potential CP policy inconsistencies to be outweighed by the CP policies that would be advanced by the map amendment. The Commission is ultimately persuaded by the evidence in the case record which establishes that the Application is, on the whole, not inconsistent with the CP, including when viewed through a racial equity lens, particularly because it will enable redevelopment of an underutilized Gateway site with the potential to create more housing, including affordable housing, and more neighborhood serving retail, than what could be achieved under current zoning; (See COL 5-20; see also FF 29-44, 60-61.)

- *Illegal Spot Zoning*
  - ANC 4A and opponents argue that the Map Amendment constitutes illegal spot zoning because it will benefit a single property owner and it is inconsistent with the Comprehensive Plan. (FF 49, 55, 71.) The Commission notes the definition of illegal spot zoning provided by the Applicant: “(1) must pertain to a single parcel or limited area ordinarily for the benefit of a particular property owner or specially interested party; and (2) must be inconsistent with the city’s comprehensive plan, or if there is none, with the character and zoning of the surrounding area, or the purposes of zoning regulation, i.e., the public health, safety, and general welfare. *See Daro Realty v. District of Columbia Zoning Commission*, 581 A.2d 295 (1990).” (FF 51.) The Commission does not agree that the Map Amendment constitutes illegal spot zoning because it finds the Map Amendment not inconsistent with the Comprehensive Plan, based on the Conclusions of Law herein;
- *Inappropriate overweighing of the Housing Element of the CP and Inconsistency with CP policy guidance*
  - ANC 4A and opponents argue that the Applicant’s and OP’s CP analyses of the Map Amendment proposal overweighs the Housing Element of the CP to the exclusion of other elements and produces an unbalanced result and unintended detrimental effects on the community. (FF 52, 55, 66, 67, 71.) ANC 4A and opponents cite transportation and parking related CP policy guidance and CP policy guidance that encourages development of scale and character consistent with the surrounding neighborhood and transition between higher density development and existing low density residential development as being overweighed by housing and the Housing Element. (*Id.*) In its CP consistency analysis of a proposal, the Commission is charged with weighing competing CP policies. The D.C. Court of Appeals has described this weighing process as within the Commission’s discretion, stating: “It is the Commission that is responsible for balancing the [CP’s] occasionally competing policies and goals, subject only to deferential review by this court.” (*See Durant v. D.C. Zoning Comm’n*, 65 A.3d 1161, 1167 (D.C. 2013).) In this case, the Commission finds that the analyses provided by the Applicant and OP do not outweigh the Housing Element to the exclusion of other CP Elements.

In fact, ANC 4A correctly notes that the CP states the Land Use Element should be given heaviest weight. (FF 52.) The Commission finds that the analyses provided included discussion of several Citywide Elements other than the Housing Element. Specifically, the Land Use, Transportation, Environmental Protection, Urban Design, and Economic Development Elements. (FF 29-41, 60, 61.) In addition, the Rock Creek East Area Element was analyzed along with the Upper Georgia Avenue Small Area Plan. (*Id.*) The Commission must acknowledge that the CP identifies the rising cost of housing as a critical issue facing the District, and stresses the need to provide housing for a variety of household types, and affordable housing specifically, both throughout the Framework Element (e.g., *see* CP § 206.) and other Elements generally. However, this distinction of housing as a CP priority does not diminish the Commission's consideration of other CP policy goals and objectives in its evaluation of a zoning action, and it did not in the Commission's evaluation of this case. The Commission considered policies of the Transportation Element, policies of the Land Use Element, and other Element policy guidance along with policy guidance that is potentially inconsistent with the Map Amendment, including the policy guidance cited above by ANC 4A and opponents. The Commission ultimately concluded that any potentially inconsistent CP policy guidance is outweighed given the Property site's gateway transit-accessible location on Georgia Avenue coupled with CP map, CP written element, and Upper Georgia Avenue Plan guidance supporting greater density than the existing MU-4 zone on the Property site. The Commission believes the MU-10 zone is appropriate for the Property site, based on the case record and the Conclusions of Law herein; and (*Id.*)

- *Failure to comply with the requirements of Commission's Racial Equity Tool*
  - Opponents argue that the Applicant and OP's analyses do not fully address the requirements of the Commission's Racial Equity Tool. (FF 71.) To support this contention, opponents argue the Applicant defined the community affected by the Map Amendment narrowly, contrary to the instruction in the tool to define community broadly; and OP and the Applicant did not identify enough CP policies that would not be advanced by the Map Amendment in their analyses. The Commission finds that the Applicant's and OP's analyses fully address the four components of the Commission's racial equity tool. As required, both the Applicant and OP responded to Part 1 of the tool (Consistency with the Citywide and Area Elements of the Comprehensive Plan, and Small Area Plans) (FF 18, 41, 60.) As required, the Applicant responded to Part 2 of the tool (Community Outreach and Engagement Efforts). (FF 41.) The Applicant's community outreach and engagement responses addressed past and present discrimination's impact on the community affected by the zoning action, how the Applicant defined the community affected by the zoning action, and how the Applicant targeted its outreach and engagement to encourage community participation accordingly. The Commission acknowledges ANC 4A and opponents' assertion that the Applicant failed to broadly define the affected community, as instructed in the tool, and therefore its outreach efforts were inadequate. The Commission finds defining the affected community to be a distinct and somewhat subjective process for the Applicant in every case. Here, the Commission concludes the Applicant's outreach

and engagement efforts were adequate as they resulted in meaningful community participation in the overall Application process, which is the primary objective of Part 2 of the tool. The Commission has also discussed its rationale for finding the Applicant's responses to Part 2 of the tool adequate in COL 10 above. As required, OP responded to Part 3 of the tool (Disaggregated Race and Ethnicity Data); and the Applicant also responded to Part 3 of the tool, though not required. (FF 18, 41, 60.) The Commission has discussed the analyses provided in response to Part 3 of the tool in detail both in COL 10 above and in this COL under headings *OP Data (Outdated)* and *Overconcentration of Affordable Housing in the RCE Planning Area*; and finds the analyses to be adequate for the reasons stated. Both the Applicant and OP responded to Part 4 of the tool (Evaluation Criteria of a Zoning Action through a Racial Equity Lens). (FF 18, 41, 43, 60.) The Applicant's and OP's responses to Part 4 of the tool discuss the themes/questions identified in the tool. The Applicant and OP also identified CP policies that would potentially be advanced and not advanced by the Map Amendment. (FF 43, 60, 61.) Opponents assert that the Applicant's identification of two potentially inconsistent CP policies and the OP's identification of one is insufficient. The Commission disagrees with this assertion and the Commission has discussed the potential CP inconsistencies identified in detail in COL 17 above.

## **DECISION**

In consideration of the record for Z.C. Case No. 23-11 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
2961	810	MU-4 to MU-10

For 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 MU-4 is the equivalent of 2.5.

### **Proposed Action**

**Vote (March 14, 2024): 3-0-2**

(Joseph Imamura, Robert E. Miller, and Anthony J. Hood to approve; Tammy Stidham, having not participated, not voting; 3<sup>rd</sup> Mayoral Appointee seat vacant.)

### **Final Action**


**Vote (April 25, 2024): 3-0-2**

(Joseph Imamura, Anthony J. Hood, and Robert E. Miller to approve; Tammy Stidham, having not participated, not voting; 3<sup>rd</sup> Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 23-11 shall become final and effective upon publication in the *District of Columbia Register*, that is on November 22, 2024.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

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

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

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